

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

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

Respondent

-and-

**CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL, and NISHNAWBE ASKI
NATION**

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**CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL, and NISHNAWBE ASKI
NATION**

Interested Parties

AFFIDAVIT OF ODI DASHSAMBUU

**I, ODI DASHSAMBUU, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:**

1. I am a legal assistant at the firm Falconers LLP, counsel of record for the Interested Party Nishnawbe Aski Nation (“NAN”), and as such have knowledge of the following to which I herein depose. Unless otherwise stated, all information is based on information provided

by Molly Churchill (“Ms. Churchill”), a lawyer at Falconers LLP involved with this file and whose information I do verily believe to be true.

2. Attached as **Exhibit “A”** to my affidavit is a copy of a paper presented by NAN to then-Minister of Indigenous Services Canada (“ISC”), Jane Philpott, regarding Canada’s “engagement” around Bill C-92, dated October 10, 2018.
3. Attached as **Exhibit “B”** to my affidavit is a copy of NAN’s submission to the Standing Committee on Indigenous and Northern Affairs regarding Bill C-92, dated May 9, 2019.
4. Attached as **Exhibit “C”** to my affidavit is a letter from Ms. Churchill to Natalie Nepton dated July 5, 2019. The letter provides written feedback from NAN regarding the draft Directive on Capital costs that had been circulated to the Consultation Committee on Child Welfare (“CCCW”) held on June 17, 2019.
5. Between June and December 2019, NAN and ISC had a series of exchanges regarding challenges experienced by NAN First Nations and agencies in accessing funding pursuant to this honourable Tribunal’s orders of February 1, 2018. Attached as **Exhibit “D”** to my affidavit is a letter dated June 3, 2019, from NAN’s Director of Social Services, Bobby Narcisse, to Director of Child and Family Services Reform and Transformation for ISC’s Ontario Region, Catherine Thai. Attached as **Exhibit “E”** to my affidavit is Ms. Thai’s response to Mr. Narcisse, dated June 28, 2019. Attached as **Exhibit “F”** to my affidavit is a further letter from Mr. Narcisse to Ms. Thai dated September 3, 2019. Attached as **Exhibit “G”** to my affidavit is a letter dated December 4, 2019, from Regional Director General of ISC’s Ontario Region, Anne Scotton, in response to Mr. Narcisse’s letter of September 3, 2019. Attached as **Exhibit “H”** to my affidavit is a letter dated November 8,

2019, from NAN Deputy Grand Chief Walter Naveau to Assistant Deputy Minister Joanne Wilkinson.

6. Attached as **Exhibit “I”** to my affidavit is an email sent by Ms. Churchill on September 5, 2019, for circulation to CCCW members regarding issues with claims for funding pursuant to this Tribunal’s orders.
7. Attached as **Exhibit “J”** to my affidavit is a copy of a document prepared by the Association of Native Child and Family Services Agencies of Ontario dated October 24, 2019, outlining issues with the process for accessing funding pursuant to this Tribunal’s orders.
8. Attached as **Exhibit “K”** to my affidavit is an email from Anne Morgan, Executive Assistant at Tikinagan Child and Family Services (“Tikinagan”), outlining concerns with the processing of claims for cost relating to prevention services.
9. Attached as **Exhibit “L”** to my affidavit is an email from Benjamin Loewen, a Financial Consultant for Tikinagan, dated February 19, 2020, explaining Tikinagan’s experience with one particular claim, and attaching an email chain of some of the back-and-forth between Tikiagan and ISC in relation to the claim. Attached as **Exhibit “M”** to my affidavit is the email chain between Tikinagan and ISC referenced in Mr. Loewen’s email of February 19, 2020. Attached as **Exhibit “N”** to my affidavit is an email from Ms. Morgan confirming that the claim was eventually approved.

10. I make this affidavit for the purposes of NAN's submissions responding to the Attorney General of Canada's submissions of March 4, 2020, and its submissions relating to capital and Band Representative Services, and for no other or improper purpose.

SWORN BEFORE ME this)
_____ day of _____, 2020)
in the City of Toronto,)
in the Province of Ontario.)
)
)
_____)
A Commissioner etc.)

This is Exhibit "A" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.



Nishnawbe Aski Nation

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FEDERAL LEGISLATION ON CHILD WELFARE: PROCESS and PRINCIPLES

*"Today our relationship with you must change. We will only accept your meaningful involvement. It will be on our terms or not at all."*¹

October 10, 2018

¹ Excerpt from A Declaration of the Nishnawbe Aski (The People and the Land), by the Ojibway-Cree Nation of Treaty #9 to the People of Canada, Delivered by the Chiefs of Grand Council Treaty #9 to Premier William Davis and his Cabinet in the City of Toronto, July 6, 1977, online at: <http://www.nan.on.ca/article/a-declaration-of-nishnawbeaski-431.asp>.

Introduction

This document responds to the process and questions that Indigenous Services Canada (“ISC”) has developed for its “engagement” with Nishnawbe Aski Nation (“NAN”) and others on a topic of fundamental and utmost importance: child and family well-being and welfare, and the role that Federal legislation might play in this for Indigenous communities. ISC has circulated eight questions that it has developed and used for “engagement” sessions on child welfare legislation.² To be clear, because of serious concerns with the paradigm under which ISC’s “engagement” is currently operating, this document does not aim to provide answers to all of ISC’s questions.

NAN represents 49 First Nations in Canada, who have a total membership of approximately 45,000 people. NAN’s territory makes up approximately two-thirds of the total land mass of present-day Ontario.

In July 1977, the Chiefs of Grand Council Treaty #9, the precursor to NAN, issued a declaration of independence³ (“the Declaration”). Addressed to Canada, the Declaration starts out, “We will use a second language to speak to you, in recognition of your inability to understand our language”. The Chiefs clearly hoped that if they communicated in English, Canada would understand the fundamental truths expressed in the Declaration. These truths have a direct bearing on the topic of child welfare legislation. A copy of the Declaration is found at Appendix B to this document.

Decades later, it is clear that language is not enough: just because someone is being addressed in their language does not mean they will understand. To understand, one must listen. To understand, one must be open to questioning assumptions and revisiting one’s framework for understanding.

For decades and longer, the people of NAN and their ancestors have spoken to Canada in English about the inherent rights and sacred duties of their peoples. Continuing this trend, NAN has spoken in English to Canada (ISC) over the last couple of months, raising concerns about ISC’s unclear process, assumptions, and goals regarding child welfare legislation. The question today is, is Canada ready to

² Reproduced at Appendix A.

³ A Declaration of the Nishnawbe Aski (The People and the Land), by the Ojibway-Cree Nation of Treaty #9 to the People of Canada, Delivered by the Chiefs of Grand Council Treaty #9 to Premier William Davis and his Cabinet in the City of Toronto, July 6, 1977, online at: <<http://www.nan.on.ca/article/a-declaration-of-nishnawbeaski-431.asp>> [A Declaration of the Nishnawbe Aski].

listen? Is Canada ready to question its assumptions and revisit its framework for understanding? Can Canada understand this key message?: Canada cannot responsibly, honourably, or defensibly develop Federal child welfare legislation unless it demonstrates its willingness and commitment to making such development a truly collaborative process.

By email dated October 2, 2018, ISC representatives referred to “the Ministerial engagement session” to take place on October 10, 2018 to discuss child welfare legislation. NAN rejects this framework. An “engagement” of one day, with lack of clarity about proposed timelines, overall process, and ultimate goals, does not reflect true collaboration. The session is not to be considered engagement or consultation. NAN is interested in true collaboration and nothing less.

This document addresses two key topics identified by NAN regarding potential Federal child welfare legislation, and which largely correspond with questions #1 and #2 of ISC’s engagement questions: process and principles.

Process

Relationships and how to relate with self and others in a good way lie at the heart of the systems of law that have operated in NAN territory since before Canada and its provinces existed. A good and respectful relationship is not possible without a good and respectful process of relating.⁴

ISC has referred to the importance of “ongoing engagement” regarding child and family services, and states that it “encourages” First Nations leadership to “join the dialogue that will help to advance our common objective: transforming Indigenous child and family services so that children can grow in a safe environment and families can stay together.”⁵

ISC has “proposed” a two-stage process to advance the above goal, and is currently in the first of the two proposed phases. It describes the phase as being “focus[ed] on co-developing options for potential

⁴ John Borrows, “Chapter 1: Living Legal Traditions”, *Canada’s Indigenous Constitution*

⁵ ISC’s Engagement Guide, “Keeping Children and Families Together: Exploring Federal Legislation on First Nations, Inuit and Métis Child And Family Services”, version of 17 August 2018.

federal legislation.” What does ISC mean by “co-developing options”? How is ISC ensuring that the “co-” in “co-development” is achieved? The short answer is that it is not.

To date, ISC’s process of relating through “engagement” on child welfare legislation has not been a good and respectful process. NAN’s expectation is that ISC engage in a truly collaborative process with NAN, inclusive of collaborative drafting of any potential child welfare legislation. A truly collaborative process requires, at a minimum, three inter-related conditions:

- 1) Adequate and proper notice regarding the proposed scope, aim, and timeline of the project;
- 2) Adequate financial resources to support informed collaboration; and
- 3) Enough time to complete the project.

So far, all three of these criteria have been missing from ISC’s process.

Notice

To be able to meaningfully collaborate, NAN must be provided with sufficient information on the proposed scope, aim, and timeline of ISC’s initiative relating to child welfare legislation. To date, this information has not been forthcoming.

ISC has not provided sufficient advance warning of the timing of its proposed “engagement” sessions. Just as importantly, ISC has not made it clear what is happening after the engagement sessions, on what timeline, or how. Furthermore, ISC has not indicated whether, and if so how, its child welfare engagement sessions and potential legislation fit into or interact with the Recognition and Implementation of Indigenous Rights Framework and related engagement sessions undertaken by Crown-Indigenous Relations and Northern Affairs Canada.

NAN has consistently expressed concerns to ISC about lack of adequate notice. NAN has asked ISC to provide further information and clarity related to timelines and steps for the engagement process, drafting of legislation, and potential submission to Cabinet to table legislation. As of the date of the “Ministerial engagement session”, NAN is still waiting for this information and clarity to be provided.⁶

⁶ The “outstanding item” mentioned in Catherine Thai’s email of October 2, 2018 remains outstanding today: “Headquarters to provide NAN with information and clarity related to timelines and steps for the engagement process, writing of legislation and potential submission to cabinet to table the legislation”. See Appendix C.

Notice of basic and crucial information is a precondition to collaboration. Without such notice, true collaboration is impossible. NAN demands that ISC openly and honestly answer NAN's questions, so that a collaborative path forward may be forged. Going forward, ISC must provide adequate notice of basic and crucial information on a timely basis. ISC must also guarantee that, as part of the process going forward, NAN and its member First Nations will have an opportunity to review any "final" draft legislation and have the right to approve, modify, or reject it prior to legislation being tabled.

Resources

Informed collaboration also requires having the opportunity to meet and discuss the collaborative project on a regular basis. For NAN and its member First Nations, this means having the opportunity for NAN's Chiefs Committee on Children, Youth, and Families (CCCYF) to meet regularly and hold focused discussions about the child welfare legislation project. It includes the opportunity for the CCCYF and NAN leadership to participate in ongoing discussions with ISC about the child welfare project. It also includes the opportunity for NAN's legal counsel to participate in some of these meetings and discussions, and to engage in collaborative drafting with ISC.

All of the above require financial resources: travel costs, accommodations, conference room bookings, legal fees, etc.

To date, it does not appear that sufficient resources have been allocated to or by ISC to enable such true and informed collaboration. ISC initially rejected a proposal NAN submitted seeking financial support to (1) enable it to host a briefing/educational meeting for all NAN chiefs prior to NAN and NAN chiefs meeting with ISC to discuss potential child welfare legislation; and (2) ensure NAN chiefs travel to attend a meeting with ISC. While NAN is pleased that ISC eventually secured resources necessary to support these basic and crucial steps, the initial lack of resources dedicated to this important process and project sends a strong message that ISC was not fully committed to the process and project, and certainly not to ensuring the process and project were truly collaborative. There is also no indication of what resources will be provided to enable collaboration going forward. Without adequate financial resources, regardless of parties' intention or desire, meaningful collaboration will remain elusive.

Time

To support true collaboration, notice of proposed meetings and events must be given with enough advance warning to enable participation by NAN and NAN chiefs. Additionally, sufficient time must be dedicated to the process of having initial conversations and subsequently to collaboratively drafting any potential legislation.

Less than a day of an “engagement session” is not sufficient time to allow for meaningful initial conversations. Additionally, ISC has yet to provide any indication of its expected timeline or process for the drafting of legislation.

Article 19 of the *United Nations Declaration on the Rights of Indigenous Peoples* provides, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

In the present context, cooperating in good faith necessitates engaging in collaborative drafting of legislation. Anything less is not good faith cooperation. Legislative drafting is generally not a speedy process, even when it is being done by only one order of government. Collaborative drafting will, necessarily, take longer than independent drafting.

NAN recognizes and appreciates that the Federal government is eager to move ahead as quickly as possible to achieve outcomes before the end of its electoral mandate. NAN agrees that moving forward with Federal child welfare legislation should be a priority. But the imperative of prioritizing and moving ahead as quickly as possible cannot come at the expense of good faith cooperation and the true collaboration this entails.

Conclusion

By asking for engagement without providing adequate notice in a timely manner, without dedicating sufficient resources, and without providing an anticipated or proposed timeline, ISC is asking NAN to walk blindly into a murky process about a topic whose importance cannot be over-stated: the well-being of children and youth of NAN communities. ISC is essentially saying, “Just trust us because ISC and NAN have a common goal of doing what is best for your children.” But trust, once broken, is something

that must be built through practices and processes of relating. The long history of harmful actions taken and enabled by the Federal government in the name of the “best interests” of Indigenous children means that NAN, its leadership, and the leadership and parents of NAN communities, cannot in any good conscience place blind trust in a murky process led by ISC. NAN wants to work with ISC, but basic preconditions for working together in a good way must be met.

Principles

At a multi-day meeting held in September, the NAN CCCYF discussed potential pros and cons of Federal child welfare legislation.

CCCYF members were and are intimately and painfully familiar with the violent failings of the current child welfare paradigm and with the harms caused by well over a century of Federal and provincial interference in the lives and governance of NAN communities and families. Equally importantly, they were and are intimately and gratefully familiar with the strengths and wisdom of their Elders and ancestors, and the cultural, intellectual, and spiritual richness they and their communities have to draw from and build on.

With all this in mind, the CCCYF considered the new child welfare legislation in Ontario as well as the *1965 Agreement* governing funding for on-reserve child welfare in Ontario. The CCCYF considered a cursory overview of child welfare legislation in all other nine provinces, focusing on provisions specific to First Nations or other Indigenous children, youth, families, and communities. The CCCYF considered the four structural impediments identified by the Auditor General of Canada in 2011 as preventing effective provision of public services on reserve: lack of clarity about service levels; lack of a legislative base; lack of an appropriate funding mechanism; and lack of organizations to support local service delivery.⁷ The CCCYF considered the Truth and Reconciliation Commission of Canada’s call for Federal legislation in the area of Indigenous child welfare.⁸ The CCCYF considered the Canadian Human Rights Tribunal’s decisions regarding Canada’s discrimination against First Nations children in the area of child welfare and through inadequate implementation of Jordan’s Principle. It considered the changes the decision is contributing to in their communities as some of the Tribunal’s orders are being

⁷ Auditor General of Canada, “Chapter 4 – Programs for First Nations on Reserves” in *2011 June Status Report of the Auditor General of Canada*.

⁸ Truth and Reconciliation Commission, *supra* note 2 at 143-144 (Call for Action No. 4).

implemented. The CCCYF considered several self-government or other agreements, as they relate to child welfare, between First Nations or Inuit and other levels of government in Canada. The CCCYF considered the United States' *Indian Child Welfare Act*.

The CCCYF noted that nowhere in Canada, whether under legislation or agreement, is a First Nation's inherent and exclusive jurisdiction regarding the care and well-being of its children explicitly recognized, affirmed, respected, and supported.

The CCCYF recognized the potential of Federal legislation to enable a needed paradigm shift in child welfare. It also recognized, however, the long history of Federal government interference and exercise of "power over" the peoples of NAN. The CCCYF, supported by legal counsel, distilled the main take-aways of its rich discussion to draft a Statement of Principles that could form part of a preamble to collaboratively drafted Federal child welfare legislation. These principles must inform both the content of the legislation, as well as the objective and process for developing it. A copy of the latest draft Statement of Principles is found at Appendix D.⁹

A starting point for any discussion of child welfare legislation is that such legislation must recognize that the peoples of NAN have their own legal systems, practices, and traditions governing the care and protection of their children. Federal legislation must support the exercise of the inherent rights and responsibilities of NAN communities and members thereof to care for their children in accordance with their legal systems, practices, and traditions. The legislation must recognize that Canada has acted in violation of treaty relations, and that as a part of its responsibilities in the treaty relationship and in redress and restitution, Canada must provide financial resources to support the self-directed healing and the exercise of NAN's member First Nations' inherent and exclusive jurisdiction over child and family well-being.

Conclusion

The process regarding child welfare legislation proposed and embarked upon by ISC has fallen well short, to date, of being a truly collaborative process. ISC has circulated eight questions that it has

⁹ See also Appendix E for NAN's Chart of the Rights of the Child, April 2018.

developed and used for “engagement” sessions on the topic of Federal child welfare legislation. Not only has inadequate notice been provided regarding the timing and purpose of these sessions, but ISC has proposed to “engage” with NAN by discussing these questions in a day or less. ISC’s overall process, proposed timeline, and ultimate goal regarding child welfare legislation have yet to be clearly communicated. ISC has not demonstrated that it is willing to commit the financial resources needed to enable true collaboration – from the early discussions stage all the way to the collaborative drafting stage.

It seems that the (English) words of the Chiefs of Grand Council Treaty #9 in 1977 have still not been understood by Canada:

Your cultural genocide is about to end. In order to regain our freedom we must establish our own control, and return to our traditional philosophy of life. [...]

The solutions to our problems must come from within our local communities. The right to deal with those problems must rest with our people. We will regain our independence only through legislation that recognizes and supports our form of local government.

Our nationhood itself is sacred and cannot be negotiated. However, we are ready to start negotiating the implementation of this nationhood.¹⁰

NAN is ready to start negotiating towards meaningful collaboration on child welfare legislation and beyond. The question today is, is Canada ready?

¹⁰ A Declaration of the Nishnawbe Aski, *supra*.



Nishnawbe Aski Nation

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Developed at NAN's CCCYF meeting Sept 5-7, 2018 – Version of Oct 10, 2018

Statement of Principles (Working Draft)

1. From time immemorial, our peoples have an inherent right to protect and promote the well-being of our children. This right has never been and is not confined to, or limited by, the colonial reserve system. From time immemorial, we have also a responsibility to exercise this right. This responsibility is not confined to, or limited by, the colonial reserve system either.
 2. The unlawful removal of our children from our families, communities, nations, and lands by federal and provincial authorities has been inextricably tied to foreign colonial aspirations and a program of cultural genocide.
 3. Children are vulnerable and sacred. Children are the present and the future. The desire of communities and nations to protect their children and help their children flourish is universal.
 4. Since time immemorial, our peoples have our respective systems of laws, and our respective practices and traditions relating to the care, protection, and well-being of our children. Our laws are gifts that were given to us by the Creator. Our relationships pre-exist Canada and its provinces, as do the legal traditions that govern them. Therefore, we assert our exclusive jurisdiction over our children.
 5. Our attempts to protect our children and promote the well-being of our children in accordance with our right, responsibility, and systems of law, have long been frustrated by a foreign system of laws and bureaucracy.
 6. The imposition of a foreign system of laws and bureaucracy on our peoples has caused great harm to our children, families, communities, and nations, and has undermined our self-determination.
 7. Despite foreign imposition and interference, our right and responsibility to care for our children in accordance with our laws, practices, and traditions have never been extinguished. They inhere in us as peoples and cannot be extinguished except through the destruction of our peoples.
 8. Despite the overwhelming odds, we have survived the elements of conquest and genocide. Our peoples have never stopped resisting the imposition of colonial laws and policies. We remember and respect the words of our
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Elders and ancestors. Today, as before, we demand the return of our children who have been stolen from us, in violation of treaty relations.

9. The federal government has utterly failed our children and families. In the name of “best interests of the child”, first the Indian Residential Schools system and then the child welfare system have ripped our children from their families, communities, nations, and lands, inflicting great trauma. The effects of these actions are ongoing and intergenerational. Canada and its provinces have no credibility asserting a right or ability to act in our children’s best interests.

10. Our peoples have had to bury too many of our young people who have been failed and harmed by provincial and federal laws and policies.

11. The *United Nations Declaration on the Rights of Indigenous Peoples* outlines some of the fundamental rights of our peoples, as well as fundamental obligations of Canada. Many commissions and reports over the last few decades, including the report of the Royal Commission on Aboriginal Peoples and the report of the Truth and Reconciliation Commission of Canada, have highlighted the terrible harm the federal government has perpetrated and facilitated against our children and families. Meaningful change is long overdue.

12. The federal government must address the legacy of what has been wrongly taken from our children, families, communities, and nations. As a part of its responsibilities in the treaty relationship and in redress and restitution, Canada must provide financial resources to support our self-directed healing and the exercise of our inherent and exclusive jurisdiction over child and family well-being.

This is Exhibit “B” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.



¹ Excerpt from *A Declaration of the Nishnawbe Aski (The People and the Land)*, by the Ojibway-Cree Nation of Treaty #9 to the People of Canada, Delivered by the Chiefs of Grand Council Treaty #9 (now NAN) to Premier William Davis and his Cabinet in the City of Toronto, July 6, 1977, online at: <<http://www.nan.on.ca/article/a-declaration-of-nishnawbeaski-431.asp>>.

Introduction and Overview

The Nishnawbe Aski Nation (“NAN”) takes this opportunity to share its views on Bill C-92, *An Act respecting First Nations, Inuit, and Métis Children, Youth and Families*. NAN is supportive of the idea of federal legislation affirming First Nations jurisdiction in the area of child and family well-being, but is concerned by certain weaknesses in the current drafting of Bill C-92.

NAN’s Chiefs Committee on Children Youth and Family (CCCYF) has deliberated on federal child and family services legislation on multiple occasions over the last nine months. CCCYF members are intimately and painfully familiar with the violent failings of the current child welfare paradigm and with the harms caused by well over a century of federal and provincial interference in the lives and governance of NAN communities and families. Equally importantly, they are intimately and gratefully familiar with the strengths and wisdom of their Elders and ancestors, and the cultural, intellectual, and spiritual richness they and their communities have to draw from and build on.

This submission assesses Bill C-92 against key characteristics for legislation identified by the CCCYF and endorsed at a Chiefs’ meeting on child welfare in October 2018. Federal Indigenous child welfare legislation must facilitate a paradigm shift in child and family services. For too long, these services have failed our children, youth, and families. With this in mind, NAN advocates for federal legislation that:

- Affirms inherent First Nations jurisdiction in the area of child and family well-being, and affirms that such jurisdiction is exclusive, where so asserted by a First Nation, regardless of the place of residency of a First Nation’s child. Such affirmation recognizes that respective First Nations are best-positioned to make determinations about what is in the “best interests” of their children;
- Guarantees adequate, sustainable, predictable, equitable funding for First Nations to enable the exercise of their inherent jurisdiction in the area of child and family well-being;
- Ensures any use of words such as “co-development” or “collaboration” are defined and operationalized as meaning true collaboration. Such concepts should be used to facilitate fulfilment of, and not replace, the duty consult and obtain free, prior, and informed consent; and
- Ensures a complete break from the way in which “best interest of the child” has been used in relation to First Nations children, families, and nations.

Jurisdiction

The first stated purpose of Bill C-92 is to “affirm the rights and jurisdiction of Indigenous peoples in relation to child and family services”². This is a good starting point. The current drafting of Bill C-92, however, waters down First Nations jurisdiction. The lack of recognition that we may exercise exclusive jurisdiction over our children³, and the retention of an override power by Canada and the provinces (and/or their service providers and judges) through invocation of “best interests of the child”⁴, mean Bill C-92 does not fully recognize our peoples’ inherent jurisdiction over child and family well-being.

A comparison to the American *Indian Child Welfare Act* (“ICWA”) brings into stark relief the fact that First Nations jurisdiction in Bill C-92 is currently circumscribed. The *ICWA* provides that Indian Tribes have exclusive jurisdiction over their children living in their reservation lands and presumptive jurisdiction over their children living outside their reservation lands. The *ICWA* also provides that all state and federal courts/decision-makers must recognize decisions made by Tribal Courts in relation to their children. In contrast, Bill C-92 leaves open the possibility of federal and provincial decision-makers ignoring decisions made by First Nations by alleging inconsistency with “best interests of the child”.⁵

Under *ICWA*, exclusive jurisdiction is not restricted by “best interests of the child” or other considerations, while presumptive jurisdiction can be rebutted for “good cause”. The *ICWA* sends the clear message that it is in the best interests of “Indian” children that decisions about them be made by their respective communities. Based on this same logic, NAN calls for recognition of exclusive jurisdiction over its children regardless of where they reside. Bill C-92 falls short in this regard: it does not even recognize exclusive jurisdiction over children who live on reserve.

Funding

Bill C-92 contains no legislative guarantee of funding for our children and families. This is deeply concerning. A statement in the preamble acknowledging an “ongoing call for funding for child and family services that is predictable, stable, sustainable, needs-based and consistent with the principle of

² Bill C-92, s. 8(a)

³ Also see ss. 21(3) and 22(1) of Bill C-92, which give primacy to federal law over First Nations laws in certain situations.

⁴ Bill C-92, s. 23

⁵ *Ibid.*

substantive equality in order to secure long-term positive outcomes for Indigenous children, families and communities”⁶ is not enough. This call needs to be met with legislative guarantees of such funding.

The *Caring Society* case at the Canadian Human Rights Tribunal has shed light on the human rights violations that occur when funding for our children is not legislated.⁷ In 2011, the Auditor General of Canada identified the lack of a legislative base for on-reserve programs and inadequate funding mechanisms as two of four structural impediments that “severely limit the delivery of public services to First Nations communities and hinder improvements in living conditions on reserves.”⁸

The Deputy Minister of Aboriginal Affairs and Northern Development Canada at the time testified before the Standing Committee on Public Accounts in 2012 about the Auditor General’s report and explained:

One of the really important parts of the Auditor General's report is that it shows there are four missing conditions. The combination of those is what’s likely to result in an enduring change. You could pick any one of them, such as legislation without funding, or funding without legislation, and so on. They would have some results, but they would probably, in our view, be temporary. If you want enduring, structural changes, it’s the combination of these tools.⁹

We need a paradigm shift. We need enduring change. Legislation must come hand-in-hand with legislated guarantees of funding. The proposed *First Nations Control of Education Act* at least proposed legislating *some* degree of a funding guarantee.¹⁰ Ontario’s new policing legislation offers a good template for what an effective legislated funding remedy might look like.¹¹

“Co-Development” & “Collaboration”

Since August 2018, NAN has raised several concerns with Indigenous Services Canada about proposed Indigenous child welfare legislation, including the use of “co-development” to describe the process around

⁶ Bill C-92, Preamble.

⁷ *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (CanLII) [*Caring Society*].

⁸ Auditor General of Canada, “Chapter 4: Programs for First Nations on Reserves” in *2011 June Status Report of the Auditor General of Canada* (Ottawa: Office of the Auditor General of Canada, 2011) at “Preface” online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html>

⁹ Reproduced in *Caring Society*, at para 212, citing to *Government Response to the Report of the Standing Committee on Public Accounts on Chapter 4, Programs for First Nations on Reserves, of the 2011 Status Report of the Auditor General of Canada* (Presented to the House of Commons on June 5, 2012), at p. 3.

¹⁰ Bill C-33 (2013-2014, under the government of Stephen Harper), at s. 43.

¹¹ *Community Safety and Policing Act, 2019*, SO 2019, c 1, Sch 1, at s. 51.

the legislation. In practice, meaningful collaboration, consultation and transparency have been lacking. Adequate notice and resources to enable informed dialogue are prerequisites to meaningful collaboration.

Bill C-92 provides, “If affected Indigenous governing bodies were *afforded a meaningful opportunity to collaborate* in the policy development leading to the making of the regulations, the Governor in Council may make regulations providing for any matter relating to the application of this Act or respecting the provision of child and family services in relation to Indigenous children.”¹² Bill C-92 does not specify what a “meaningful opportunity to collaborate” entails, nor who gets to determine whether such an opportunity has been afforded to First Nations.

Especially given concerns to date with Canada’s process of so-called “co-development”, this provision regarding “collaboration” is worrisome. Canada has a constitutional duty to consult First Nations when it contemplates actions that affect their s. 35 rights¹³, which regulations under Bill C-92 would. This duty is also articulated in the *United Nations Declaration on the Rights of Indigenous Peoples*, which makes it clear that Canada must obtain the “free, prior and informed consent” of First Nations “before adopting and implementing legislative or administrative measures that may affect them.”¹⁴ NAN is concerned that Bill C-92 is currently drafted in a way which suggests that the duty to consult and obtain free, prior and informed consent can be replaced with an ill-defined “opportunity to meaningfully collaborate.”

Best Interests of the Child

NAN is concerned by the way in which “best interests of the child” is drafted and used in Bill C-92. In a Statement of Principles it started developing in September 2018 to guide its deliberations regarding federal Indigenous child welfare legislation, the CCCYF stated the following:

The federal government has utterly failed our children and families. In the name of “best interests of the child”, first the Indian Residential Schools system and then the child welfare system have ripped our children from their families, communities, nations, and lands, inflicting great trauma. The effects of these actions are ongoing and intergenerational. Canada and its provinces have no credibility asserting a right or ability to act in our children's best interests.

¹² Bill C-92, s. 32(1) (emphasis added).

¹³ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73 (CanLII).

¹⁴ Article 19 of the Declaration reads, in whole, as follows: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

In November 2018, the CCCYF carefully reviewed the use of the term “best interests of the child” and determined that continued use of the term would risk perpetuating similar abuses by federal and/or provincial decision-makers.

In stark contrast to the *ICWA*, which sends the message that “Indian” children are best served when it is their nations that make determinations about how they can best be protected and supported, the “best interests” provisions in Bill C-92 keep alive a colonial and paternalistic notion that we cannot be trusted to make the best decisions for our children.¹⁵ They do not reflect lessons learned from the disastrous effects that have flown when Canada and the provinces have defined what is in our children’s “best interests”.

Conclusion

In 1979, the body that is now NAN, Grand Council Treaty No. 9, delivered *A Declaration of Nishnawbe-Aski (The People and the Land)*. In this declaration and reaffirmation of independence and sovereignty, the people of NAN shared a vision for a return to self-government, and expressed a desire to see the federal, provincial, and territorial governments “play a role” in this.¹⁶ They explained, through the *Declaration*, “The solutions to our problems must come from within our local communities. The right to deal with those problems must rest with our people. We will regain our independence only through legislation that recognizes and supports our form of local government.”¹⁷

NAN is encouraged by the thought of federal Indigenous child welfare legislation with a purpose of “affirm[ing] the rights and jurisdiction of Indigenous peoples in relation to child and family services”¹⁸ Bill C-92 should be strengthened to (1) clearly recognize that our inherent jurisdiction in this realm is exclusive when so asserted; (2) guarantee adequate funding for the exercise of our jurisdiction in this area; (3) avoid ambiguity introduced by ill-defined use of “meaningful opportunity to collaborate”; and (4) discard colonial, paternalistic, damaging notions perpetuated by the “best interests of the child” provisions, to ensure a complete break from the past. We are ready for a new paradigm in First Nations child and family services.

¹⁵ Bill C-92, ss. 10, 22(1), 23.

¹⁶ Excerpt from *A Declaration of the Nishnawbe Aski (The People and the Land)*, by the Ojibway-Cree Nation of Treaty #9 to the People of Canada, Delivered by the Chiefs of Grand Council Treaty #9 to Premier William Davis and his Cabinet in the City of Toronto, July 6, 1977, online at: <<http://www.nan.on.ca/article/a-declaration-of-nishnawbeaski-431.asp>>.

¹⁷ *Ibid.*

¹⁸ Bill C-92, s. 8(a)

APPENDIX: ABOUT NISHNAWBE ASKI NATION

Nishnawbe Aski Nation (known as Grand Council Treaty No. 9 until 1983) was established in 1973. It represents the legitimate, socioeconomic, and political aspirations of its First Nation members of Northern Ontario to all levels of government in order to allow local self-determination while establishing spiritual, cultural, social, and economic independence. In 1977, Grand Council Treaty No. 9 made a public declaration of the rights and principles of Nishnawbe Aski.

NAN's objectives are:

- Implementing advocacy and policy directives from NAN Chiefs-in-Assembly
- Advocating to improve the quality of life for the people in areas of education, lands and resources, health, governance, and justice
- Improving the awareness and sustainability of traditions, culture, and language of the people through unity and nationhood
- Developing and implementing policies which reflect the aspirations and betterment of the people
- Developing strong partnerships with other organizations

NAN is a political territorial organization representing 49 First Nation communities within northern Ontario with the total population of membership (on and off reserve) estimated around 45,000 people. These communities are grouped by Tribal Council (Windigo First Nations Council, Wabun Tribal Council, Shibogama First Nations Council, Mushkegowuk Council, Matawa First Nations, Keewaytinook Okimakanak, and Independent First Nations Alliance) according to region. Six of the 49 communities are not affiliated with a specific Tribal Council.

NAN encompasses James Bay Treaty No. 9 and Ontario's portion of Treaty No. 5, and has a total land-mass covering two-thirds of the province of Ontario spanning 210,000 square miles. The people traditionally speak four languages: Ojibwe in the west, Ojibway in the central-south area, and Cree and Algonquin in the east.

NAN continues to work to improve the quality of life for the Nishnawbe Aski territory. Through existing partnerships and agreements with Treaty partners (governments of Canada and Ontario), NAN continues to advocate on behalf of the communities it represents for self-determination with functioning self-government.

This is Exhibit "C" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on _____ day of _____ 2020.

A Commissioner for taking affidavits, etc.



SENT BY ELECTRONIC MAIL

July 5, 2019

Natalie Nepton
Executive Director
Indian Registration and Integrated Program Management
Indigenous Services Canada
nathalie.nepton@canada.ca

Martin Orr
Senior Analyst, Child Welfare
Assembly of First Nations
Ottawa, ON
MOrr@afn.ca

Dear Ms. Nepton and Mr. Orr:

Re: Draft FNCFS Program Directive re Capital Costs Incurred by Agencies
Initial Feedback from Nishnawbe Aski Nation

I write on behalf of Nishnawbe Aski Nation (“NAN”) further to the Consultation Committee meeting on June 17, 2019, and to Mr. Orr’s emails of June 14, 2019 and June 18, 2019, to which a draft First Nations Child and Family Services (“FNCFS”) Program Directive on Capital Costs Incurred by Agencies (“the Draft Directive”) was attached.

NAN has several concerns with the Draft Directive. NAN’s starting point for discussions regarding capital in the context of child and family services is the on-the-ground reality in many NAN communities: there is a significant capital infrastructure deficit that poses barriers to program delivery.¹ For many NAN communities, the issue is not simply one of inadequate buildings to support program delivery, but an actual *absence* of such buildings.

NAN’s concerns with the Draft Directive include the following:

- **Lack of clarity about what criteria will be used to determine/assess whether a proposed capital project “clearly contribute[s] towards the achievement of the intended outcomes**

¹ See, e.g., Affidavit of Bobby Narcisse affirmed April 3, 2019, at paras 9-16.



of the Program (i.e., reducing the over-representation of First Nations children in care).”² Some NAN communities have encountered frustration lately with what they have experienced as ISC’s lack of expertise in understanding how proposals under Band Representative Services (“BRS”) clearly contribute towards the achievement of the intended outcomes of BRS specific to their respective communities’ context and needs. NAN is therefore concerned that incorporating such an ill-defined requirement in the Draft Directive is not sufficient to ensure operationalization of the requirement in a clear and consistent manner.

- **Limiting projects to building repairs or to actuals of prevention-related infrastructure costs.** The Canadian Human Rights Tribunal (“the Tribunal”) has ordered Canada to reimburse and fund agencies at actuals for costs relating to child welfare prevention/least disruptive measures, intake and investigation, building repairs, and legal fees.³ It has also ordered Canada to reimburse and fund, at actuals, BRS for Ontario First Nations.⁴ Costs at actuals includes infrastructure costs. The Draft Directive appears to be limited in focus to (a) building repairs, and (b) prevention on actuals.⁵ The Draft Directive suggests that capital needs for delivering BRS will be limited to building repairs of existing assets: the only mention of BRS is in a footnote that reads, “Reimbursement on actuals also applies to Band Representatives’ needs for building repairs of existing assets”.⁶ The Tribunal has ordered that Canada reimburse BRS services at actuals, and this should be reflected in the Draft Directive. As NAN has consistently raised at the Consultation Committee and throughout the Tribunal proceedings, funding to repair existing assets does not help address an *absence* of assets, which is the reality faced by many NAN communities.
- **Lack of clarity regarding interplay with Capital Facilities and Maintenance Program (“CFMP”).** NAN recognizes that the draft directive states that the FNCFS Program, the CFMP, and the Health Infrastructure Support Program are currently formalizing how they will work together. NAN wishes to relay its concern that approval of capital under the FNCFS Program (to ensure compliance with orders of the Tribunal) must not detract from approval of other capital or maintenance projects/proposals. In other words, NAN believes it is critical to ensure an equivalent of reallocation that has been targeted as problematic by the Tribunal does not occur in the realm of capital infrastructure. Additionally, the statement at the fifth bullet under s. 5.1 on page 7 is confusing. Given that the FNCFS Program is part of “the Department”, the reference to pre-approval is confusing; NAN does not understand the requirement set out in that bullet.

Finally, NAN wishes to raise with Indigenous Services Canada (“ISC”) NAN’s concern about the strategy of having First Nations communities use agencies as flow-throughs to access funding being released to agencies for capital. As NAN has stated before, not all agencies and/or communities have the capacity to coordinate in this manner, and/or relationships between a given community and the agency that serves it is not always productive. NAN is concerned that in such circumstances, the

² Draft Directive, p. 2 (“Introduction”).

³ 2018 CHRT 4, at paras 410-412.

⁴ 2018 CHRT 4, at para 427 (as amended).

⁵ E.g. Draft Directive at p. 3 (“3. Minimal Requirements of All FNCFS Capital Projects”).

⁶ Draft Directive, p. 5, under the heading “Payment on Actuals – Building Repairs”.



infrastructure deficit in NAN communities will not be addressed through the mechanism proposed in the Draft Directive.⁷

NAN looks forward to reviewing other parties' feedback on the Draft Directive and to learning how ISC will be responding to and addressing NAN's concerns.

Yours very truly,
Falconers LLP



Molly Churchill

W:\General\Doc\N\NAN Corporate Services – Legal Support CCCYF.2031-16\Correspondence\L - to M. Orr and N. Nepton - re draft directive on capital - 5 July 2019.docx

⁷ Draft Directive, p. 7, first paragraph on the page.



This is Exhibit "D" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____ 2020.

A Commissioner for taking affidavits, etc.



- 1) The scope of Band Representative Services (“BRS”), particularly the Family Support Services component and whether major capital is eligible under BRS;
- 2) Whether a community must demonstrate that it has exhausted community-based prevention funds prior to an agency being able to access prevention funds targeted to an initiative in that community; and
- 3) The role of community-developed work plans in accessing funding.

The Scope of BRS, Particularly Its Family Support Services Component and Major Capital

The following outlines in key points in the messaging from ISC over the last year regarding the scope of BRS. One of the frustrations NAN has been dealing with is that communications from ISC about details of BRS have been almost exclusively verbal communications; however, the below is a summary of information provided by ISC to NAN and/or NAN communities and/or the agencies serving them (“NAN agencies”):

- **June 2018:**
 - At a meeting with Tribal Council leadership and Executive Directors of NAN agencies, you encouraged agencies to partner with communities to enable communities to access prevention funding through the agencies. BRS was not mentioned as a way for communities to access funds directly for prevention-focused initiatives.
 - In the experience of NAN communities, this route of accessing prevention funds by using agencies as “flow-throughs” has limitations. Some communities are not in a position to work with their respective child welfare agencies for a number of reasons, including agency capacity.
- **Early September 2018:**
 - At a presentation you (Ms. Thai) gave to NAN’s Chiefs Committee on Children, Youth & Families (“CCCYF”) in Toronto, you said regarding BRS that a community can have a band rep on-reserve and another off-reserve; that admin costs, etc., would be covered; that a community could hire support workers through BRS; and that requests for space and needed equipment (e.g. laptops) are eligible under BRS.
- **Around November 2018:**
 - At a monthly call between ISC Ontario region and agencies on or around November 28, 2018, you told NAN agencies that communities can access family support/prevention services funding through BRS funding. You said the Family Support Services component of BRS can be broadly defined to include a variety of prevention services and activities such as land-based programming, after care, family supports in urban centres, breakfast programs, etc. You indicated this means communities do not have to use agencies as flow-throughs for prevention funds.
- **Early February 2019:**
 - At a meeting in your office following a presentation you and Taia Tarvainen gave to the CCCYF (who met in Toronto February 5-7, 2019), you and Ms. Tarvainen told NAN (specifically, me and Natalie Hansen) that the eligibility criterion under BRS funding is demonstration that a service/program will work to keep families together. You told NAN that capital, building repairs, programming, and other items such as vehicles are all eligible under BRS, provided they are directly related to programming/services that will reach not only children/youth, but also parents.
 - Regarding home repairs (e.g. addressing mould), you said that such work is eligible under BRS only if it is for homes where children in the child welfare system are living. You said this would probably be better addressed by agencies.

- **May 2, 2019:**

- On a conference-planning call for the Conference, you told NAN and a NAN agency that BRS funding is limited to “at-risk” children and youth, while prevention funding (agency prevention funding/Community Well-being and Jurisdiction Initiative (“CWJI”)/Ramp-Up/Immediate Relief) can be directed at all children.¹

- **May 3, 2019:**

- Ms. Pezzo wrote to the Executive Director of Constance Lake First Nation (“CLFN”) in response to BRS claims submitted by CLFN on April 17, 2019, copying you and others from ISC. She wrote in part, “The ultimate intent of the reimbursements being made for cost of BRS is to reduce the number of First Nations children and youth that are taken into care or at risk of being taken into care away from their families and communities. Family support services may include prevention-related activities in support of the community’s children and families if there is a clear linkage and explanation as to how they relate to a community’s Band Representative Services programming that would mitigate risks of familial breakdown, and/or when children are at risk of interacting with the child welfare system.”

- **May 22, 2019:**

- In response to a conference participant’s question to you at the Conference, you explained that the traditional concept of BRS is having someone who represents a First Nation in court in child welfare proceedings, but this “doesn’t mean it’s that narrow.” You said BRS “can be helping support a child and family and navigate support services to ensure risks are mitigated to prevent a child from being taken to a place of safety or into protective care.”
- Regarding a question about capital by a conference participant, you explained the following: Because the Canadian Human Rights Tribunal’s order regarding BRS is for Canada to pay actuals for the costs of delivering BRS, there is no built-in limitation regarding capital. If a community requires new space for delivery of BRS, including the Family Support Services component, ISC “can work with you to support you in ensuring space is available for those services to support children and families. [...] For Band Representative Services, on a case-by-case basis, feel free to connect with [ISC] to determine a way to support you and your community.”

- **May 23, 2019:**

- At a break-out session led by Ms. Pezzo and Ms. Follon at the Conference, Ms. Pezzo explained that Family Support Services (under BRS) are about working with families “to prevent a family breakdown and ensure a child is not at risk of being apprehended.” Determining specifics of Family Support Services could involve speaking with families to see what they require, and that what is required can vary greatly. Claims are processed on a case-by-case basis.
- When asked about whether BRS funding could be used to cover costs of building a child, youth, and family centre, Ms. Pezzo kept avoiding the question. She spoke about other

¹ Also on the call were the following: from your team at ISC, Victoria Pezzo and Taia Tarvaiene; from NAN, me, Natalie Hansen, Kirsten Annis and Nichole Kinzel; from Tikinagan, Thelma Morris and Anne Morgan; and from SLFNHA, Emily Paterson.

streams of funding that are limited to minor capital so could not support construction of such a building, and she spoke about her previous experience working in infrastructure. When pressed further, she eventually said that Family Support Services are part of BRS and ISC would look at a claim as it came in.

- About half an hour later, in front of a primarily different audience, Ms. Pezzo gave a clear response that capital infrastructure can be covered under BRS and she apologized for earlier confusion.

Whether It is Necessary for a Community to Exhaust Its Own Funds in Order for an Agency to Access Prevention Funding for an Initiative in That Community

- **On or before February 5, 2019:** Victoria Pezzo told Kunuwanimano that an application submitted for prevention funds for a project in Constance Lake First Nation (“CLFN”) could not be approved until CLFN confirmed that its 2018-2019 Prevention funds had been expended or fully allocated.
- **February 6, 2019:** Victoria Pezzo clarified by email that her request for confirmation of expenditure/exhaustion of CLFN’s funds was in reference to its Community-Based Prevention funds and Community Well-Being & Jurisdiction Initiatives (“CWJI”) funds.
- **May 23, 2019:** In response to a question during a break-out session at the Conference, Victoria Pezzo and Vanessa Follon stated a community does not have to show that it has exhausted community-based prevention/CWJI funds prior to being able to access agency-based prevention funds.

Community Workplans

At a meeting in your office in early February 2019, attended by you, Taia Tarvainen of ISC, me and Natalie Hansen of NAN, you explained that ISC encourages communities to develop their own child and family well-being work plans and submit them to ISC, who can help the community determine what aspects of the workplan can be funded through which streams of funding. The development of a workplan is a labour-intensive task, and one that many NAN communities simply do not have the capacity to take on.

Following the meeting with you and Ms. Tarvainen in February, my staff and I have been involved in supporting NAN communities in developing such workplans. Our understanding coming out of our meeting with you in February 2019 was that submitting a workplan to ISC would result in a community being directed in a timely manner to the appropriate stream of funding under which applications or claims could be submitted to access money to start implementing the plan. Unfortunately, this has not been the case. For example, Sandy Lake First Nation submitted its three-year workplan in mid-March 2019. The workplan did not result in the community being directed to funding in a timely manner. It is unclear to NAN at this point whether it has resulted in the community being able to access any funding.

At the Conference, you stated that workplans are encouraged in relation to components of funding that do not require applications or claims (e.g. community-based prevention; CWJI). You stated that ISC encourages communities to develop workplans to help them focus in on priorities to decide how they will use their funding to meet their respective objectives.

OUR CURRENT UNDERSTANDING

While the Conference did not result in the clarity communities require to fully avail themselves of child welfare funding, as was hoped, we are glad that some items have been clarified. Specifically, we understand the following to be true:

- Major capital funding requests are eligible under BRS funding;
- The Family Support Services component of BRS is aimed at preventing familial breakdown and preventing children from being taken into care;
- A community does not have to exhaust community-based prevention or other funds prior to being able to access agency-based prevention funds through an agency;
- Workplans are not intended to assist communities in accessing funds.

If you disagree with any of the above statements – which are based on information shared by you, Victoria Pezzo, and Vanessa Follon at the Conference – I ask that you write back with a prompt response explaining the disagreement. Further, we are following up on your commitment to provide a few examples of successful band representative applications that include a broad concept of family support services.

OUTSTANDING AMBIGUITIES and CONCERNS

In the wake of the Conference, there remain outstanding concerns about how NAN communities can access funding and concerns regarding implementation of Jordan's Principle.

Applications in Limbo

I am aware that some NAN communities have submitted applications or claims for funding since January 2019 for which they still have not received a final determination from ISC. By way of example, CLFN has been involved in eight applications/claims for funding since January 2019 – four directly through BRS, and four through Kunuwanimano. Of these, only one has been fully processed; it was approved within 10 days of submission. Two seem to have been rejected, but as far as NAN is aware, they were “rejected” without any formal rejection letter and therefore no information about how the apparent rejection can be appealed. One of these “rejections” was on the basis that CLFN had not exhausted its Community-Based Prevention funds and CWJI funds – yet we were told at the Conference that an agency-based prevention application should not be rejected on the basis that a community has not exhausted its own funds. The rest are in limbo as ISC continues to seek follow-up information and clarification from the community, without always providing clear information on why ISC believes further information is required or what specifically is needed to make the claim successful. This is creating frustration, confusion and uncertainty for the community, and placing a big administrative burden on it as well.

I see this problem as directly linked to the mixed messaging and lack of clarity from ISC canvassed earlier in this letter. The Conference did not resolve all of the ambiguity. For example, you told us in early February 2019 that Family Support Services claims must demonstrate that the claims are for expenses being used to reach not only children or youth, but also parents. This “requirement” was not mentioned at all at the Conference, which leads me to believe it is no longer considered a requirement. After all, even programming that reaches only children or youth can still serve what you and Ms. Pezzo have described as the purpose of Family Support Services – i.e. to prevent familial breakdown and to prevent children/youth from being placed in care. It should be for communities to decide the approaches they believe will be most successful to keep families together. This might include some programming targeted specifically towards children and

youth; some targeted specifically towards parents; some targeted towards extended family; and some targeted towards families as a whole (nuclear and/or extended).

By way of further example, you mentioned in early May that BRS are limited to “at-risk” children and youth, but offered no explanation of what was meant by “at-risk”. At the Conference, you did not repeat this alleged limitation. You stated that BRS can be inclusive support services “to ensure risks are mitigated to prevent a child from being taken to a place of safety or into protective care.” Ms. Pezzo referred to BRS and risk in the context of explaining that BRS are working with families “to prevent a family breakdown and ensure a child is not at risk of being apprehended.”

Workplans

It is not clear whether the submission of workplans to ISC by communities actually serves any purpose. Development of such workplans is a demanding task.

Is ISC able to look at workplans and direct communities in a timely manner to the appropriate stream of funding so communities have clear guidance on what sort of applications/claims they should be making to be able to implement their workplans?

Jordan’s Principle Applications

During one of the conference breakout sessions led by Ms. Pezzo and Ms. Follon on May 23, 2019, a representative from Shibogama Tribal Council recounted the lengthy and frustrating experience he had trying to access Jordan’s Principle funding to be able to fill a gap in after-hour mental health services for youth in Sioux Lookout. The representative described the multi-month process that ensued once the application was submitted. The process involved him (the representative) being given the run-around and having to contact numerous people at ISC who usually provided no clarity. This is some of what he had to say:

It was so disorganized that even they [ISC employees] couldn’t figure out who emails were going to; emails were bouncing back. At one point, I was phoning someone and he asked why I was calling. I was calling because I had received an email telling me to call him. It was very disorganized, yet it made us look bad. It didn’t look like Jordan’s Principle. No one was able to answer our questions. It took almost three months to get resolved. In the end, we got 48% of the requested funds. We revamped the application and got 58% of the requested funds. We revamped it again and got 80% of the requested funds. The first time, I was baffled. How do you expect positive results when only 48% of funds are approved?

Ms. Follon has said she will follow up with Jordan’s Principle staff about this experience. It is important to know why the process was so lengthy and disorganized, so that the causes can be addressed and you can ensure there are no repeat experiences of a similar nature.

Additionally, the issue of families being approved for Jordan’s Principle funding but not being able to access the funding was raised during one of the break-out sessions led by Ms. Pezzo and Ms. Follon at the Conference. Ms. Follon explained that the numbers reported by ISC are the number of Jordan’s Principle requests that have been *approved*; they do not reflect the number of children who have been able to access the needed service/item/support upon approval. Sometimes, a child’s application is approved, but the only way for the child to receive the needed service/etc. is if the family or someone else can front the money and seek reimbursement afterwards. Thus, Jordan’s Principle approvals are not necessarily resulting in children actually accessing the approved service. It is completely contrary to the spirit and intent of Jordan’s Principle

to require a First Nations family to front the money needed so a child can access a service the child is entitled to receive.

A year ago, in May 2018, Sonny Perron was cross-examined on this very issue by NAN's legal counsel. From what we heard at the Conference, it seems as though the issues raised by NAN a year ago have not been addressed by ISC. I want to know what ISC is doing to ensure that children who are approved for services under Jordan's Principle are actually able to access the funding and approved services in a timely manner.

Additionally, I want to know whether ISC is tracking not only approvals, but also the number of approvals that actually result in children accessing the approved funding.

Finally, it came to our attention recently that Keewaywin First Nation, as of May 24, 2019, has not received any funding for 2019/2020. The community's Jordan's Principle Case Manager has said the absence of funding is jeopardizing the community's ability to ensure its children can access the services they need. This is unacceptable.

In closing, I thank you again for attending the Conference. I look forward to hearing back from you promptly with responses to the concerns outlined in this letter, and what you and your team are doing to address them.

Sincerely,
NISHNAWBE ASKI NATION



Bobby Narcisse, Director of Social Services

cc: Joanne Wilkinson, ADM Indigenous Services Canada
Victoria Pezzo, Child and Family Services Transformation
Vanessa Follon, Jordan's Principle Regional Lead – Focal Point

This is Exhibit "E" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.



June 28, 2019



Mr. Bobby Narcisse
Director of Social Services
Nishnawbe Aski Nation
100 Back St, Unit 200
THUNDER BAY ON P7J 1L2

Dear Mr. Narcisse:

Thank-you for your letter of June 3, 2019, expressing concerns related to accessing funding for Band Representative Services and Jordan's Principle. I appreciate the concerns you raise in your letter. I understand there is some lack of clarity, despite our efforts to share information proactively and openly with First Nations and representatives in Ontario, regarding the administration of Canadian Human Rights Tribunal (CHRT) claims.

The well-being of children and our work with Indigenous partners to reform First Nations child and family services remains among the Government's most important priorities. Please know that we are implementing the CHRT Orders of February 1, 2018, and we are responding to the input on implementation of the Orders provided via the consultation protocol in place with the Parties, including Nishnawbe Aski Nation.

Generally, the function of Band Representative Services is to support First Nations and their citizens in instances where a child or youth has been taken into care, or is at risk of being taken into care. I would like to draw your attention to Annex B of the Ontario Region Recipient Guide for Reimbursement of Retroactive First Nations Child and Family Services Band Representative Services issued on May 17, 2018, and the Ontario Region Guide for Reimbursement of 2018-2019 First Nations Child and Family Services Band Representative Services, issued on November 9, 2018. Both Recipient Guides include Annex B which states the following:

ANNEX B - ADDITIONAL INFORMATION FOR REIMBURSEMENT FOR ONTARIO BAND REPRESENTATIVES

• Band Representative Funding Program:

- *Historically, the Band Representative Funding program helped to cover the costs incurred by Bands in representing their community's interest in child welfare cases involving a child registered under the Indian Act or who is entitled to be registered.*
- *A Band Representative is a person named by the Band to represent the Band's interest in child protection proceedings, or hearings, involving one of its children. The Band Representative has full party status in hearings and child protection proceedings. In cases where no consensus can be reached by the parties, the Band representative determines if legal advice is necessary.*
- *Band Representative Services arise where a formal notification has been received, for example, notices of alternate dispute resolution, apprehension/protection; status review; the Child and Family Services Review Board Hearings; adoption and other matters.*



• **Band Representative Responsibilities (these are examples but the responsibilities are not limited to this):**

- *Provide alternate dispute resolution to reduce the number of children in care (i.e. mediation, including Indigenous approaches).*
- *Provide information and resources to First Nations children and families, and advocacy for the Band and their community's best interest in court.*
- *Provide knowledge, awareness and promotion of the Band's interest, to courts, agencies and Children's Aid Societies, of culturally and community appropriate care options, particularly customary care arrangements.*
- *Collaborate with other support services around prevention and care options in the best interest of the child.*
- *Act as a key contact within First Nation communities for courts, Children's Aid Societies and First Nations Child and Family Services Agencies.*
- *Maintain the connection of children to their communities by working with communities, agencies and children's aid organizations in other jurisdictions and repatriate children as deemed necessary.*
- *Attend and participate in court proceedings where eligible members are involved with matters related to child protection.*
- *Participate in consultations and decisions related to adoptions of children as deemed appropriate.*
- *Receive notifications and monitor Temporary Care Agreements and Voluntary Service Agreements with Children's Aid Organizations/Societies.*

Band Representative Services may include: providing alternative dispute resolution, attending and participating in court proceedings and sessions; receiving and responding to notifications from the agency with protection issues; travel to meetings with CAS or court meetings; family support services; responding to queries related to court orders; conducting care/home visits to ensure that the child receives culturally appropriate services and placements.

All versions of the Recipient Guides issued by the Department, and the Terms and Conditions pertaining to the First Nations Child and Family Services program that were approved in December 2018, related to Band Representative Services, list the following examples of eligible costs: salary and benefits; per diem and honorarium payments; travel; accommodation and meal costs; long-distance telephone costs; client transportation (non-medical); family support services; and court fees and court-ordered costs related to child protection cases. Please note that this list of activities is not exhaustive, and other activities may be considered on a case-by-case basis. The criteria for claims' eligibility under the Band Representative Services Program are specific to that program and are found in the aforementioned Terms and Conditions and complemented by the referenced Recipient Guides.

Expenses for costs under 'family support services' may be considered if there is a clear linkage and explanation provided as to how they relate to a community's Band Representative Services that would support a family involved in child welfare proceedings, or mitigate the risks of familial breakdown, where a child or children is at risk of interacting with the child welfare system that may lead to protective care. Canada has consistently communicated this at meetings, presentations and during discussions with Indigenous Representative Organizations' representatives at the Ontario Technical Table on Child and Family Well-Being. The use of the term 'at risk' is intended to address and support families where there may be open investigations, or open protection cases, but the child has not been removed and placed in protective care, but is at risk of being removed from their home.

Capital costs required to deliver Band Representative Services may be considered as eligible costs and are reviewed on a case by case basis. Some examples of approved capital costs include: expansion of office space, family support meeting spaces or safe confidential spaces for access visits, and the lease or purchase of vehicles required for Band Representative Services program delivery that is non-medical. The Department has also received claims through the Band Representative Services reimbursement process where funding for capital projects have been requested, but may be beyond the purview of Band Representative Services, and would be ineligible expenses. Some examples of these requested capital projects include: the building of recreation centres; cultural centres; Early Years buildings; soccer fields; baseball diamonds; playground structures; basketball courts; ice rinks; and winter and summer road maintenance projects. I would like to add that, to date, there has not been a capital project request to specifically fund a child, youth and family centre.

With respect to pending claims, we continue to process claims that are complex and involve follow-up with recipients to obtain and clarify information. In certain cases, follow-up is required to ascertain how the requests are directly linked to a First Nation's Band Representative Services program delivery, how the expenditures, or capital projects, are required for program delivery, or how the requests will mitigate the risks of a child or youth from being removed from their home by a First Nations Child and Family Services agency or Children's Aid Society. In order to assess a claim, the decision maker is required to consider all- relevant information pertaining to a specific claim. As such, when further information is necessary to render a decision, a response from the eligible applicant is required in order to provide that recipient the opportunity to present supporting or clarifying information. Your reference to claims pending since January involve two claims from the same recipient; the Department followed up with the recipient in January and February of 2019, and the recipient resubmitted new, revised claims on March 31, 2019. Upon receipt of the revised claims, we acknowledged receipt and followed up to request further information. To date, we have not received a response, and have sent further follow-up communication to the recipient to indicate that further information is required in order to finalize the claim.

For cases that are not approved, notices are sent by the decision maker in writing to the recipient as per the Escalation Protocol. These notices include information related to the appeals process. If you are aware of cases that have not been approved and the recipient did not receive notice in writing, please provide me with specific details of the claim to allow me to look into the matter immediately.

As of June 18, 2019, under the CHRT Order 427, related to Band Representative Services, we have approved 39 claims from Nishnawbe Aski Nation communities, amounting to \$10,887,625.95. We have also processed 68 claims under Order 411 that were submitted by the three First Nations Child and Family Services Agencies in Nishnawbe Aski Nation's territory, amounting to \$37,427,585.71. We will continue to process claims based on the principle of working to keep families together and reducing the number of First Nations children in care.

Budget 2018 announced an additional \$1.4 billion over six years to address funding pressures facing First Nations child and family services agencies, while also increasing prevention resources for communities. This commitment increased the funding that went directly to Ontario First Nations for prevention and community well-being activities and supports, including Nishnawbe Aski Nation's member First Nations. In 2019-2020, Nishnawbe Aski Nation's communities received \$7.56 million in Community-Based

Prevention funding, and \$5.98 million in Community Well-Being and Jurisdiction Initiatives funding. To be clear, it is not a requirement that a First Nation exhaust Community-Based Prevention or Community Well-Being and Jurisdiction Initiatives funding prior to submitting a claim for actual costs related to Band Representative Services.

The Department has also suggested that First Nations may wish to work with First Nations Child and Family Services agencies in partnership on joint initiatives, where appropriate, to provide additional support to communities. A First Nation may use the Community-Based Prevention and Community Well-Being and Jurisdictional Initiatives funding for prevention and well-being activities and initiatives as set out in its work plan. In addition, if there are joint initiatives where a First Nation Child and Family Services agency is working directly on reserve in cooperation and collaboration to deliver prevention services, those costs may be claimed by the agency. It is not a requirement that a First Nation exhaust Community-Based Prevention or other funds prior to engaging in a partnership or joint initiative with a First Nations Child and Family Services agency.

With respect to work plans, this year we requested that First Nations develop a 'living' work plan that outlines how annual Community-Based Prevention and Community Well-Being Jurisdictional Initiatives funding is being used and identifies some of the priorities to be supported in future years. We do not intend this to be an onerous exercise. We envision a plan to be a useful capacity tool for First Nations' staff and leadership, so that they can identify objectives and expected outcomes, and dedicate available resources accordingly.

A plan can be adjusted as a First Nation's priorities change or expand. The template that was provided to communities was intended to be easy to complete, and allows for amendments to reflect individual communities' needs.

Canada has also been supportive of other needs related to child and family services in Nishnawbe Aski Nation territory, including:

- \$177,980 annually for engagement in technical and leadership discussions concerning First Nations child and family services;
- \$179,000 specifically for Nishnawbe Aski Nation leadership and members to discuss options for federal Indigenous child and family services legislation (proposed Bill C-92, *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*);
- \$1.29 million for development of the Nishnawbe Aski Nation Remoteness Quotient Report to address the funding needs of child and family service agencies in northern Ontario;
- In 2018-2019 and 2019-2020, \$6.6 million was provided to First Nations child and family services agencies that serve Nishnawbe Aski Nation communities, specifically to address remoteness over and above the funding which went directly to First Nations

Your letter also refers to issues related to Jordan's Principle, and it is noted that you have copied Vanessa Follon as the Jordan's Principle, Ontario Regional lead. As such, I defer to my colleagues responsible for the administration of Jordan's Principle at the First Nations Inuit Health Branch to provide you with a response as soon as possible.

To provide greater clarity, an approach for supporting Band Representatives Services in Ontario will be determined in consultation with First Nations and provincial stakeholders. We have discussed the matter internally and see the importance of discussions and work

required to establish a Band Representative Services Program which responds to the needs of your communities. The discussions and design could be the focus of the Ontario Technical Table on Child and Family Well-Being in the immediate future. In the meantime, we would be pleased to meet with you to discuss what elements you wish to have considered in a Band Representative Services Program.

Please note, this letter will be filed with the Canadian Human Rights Tribunal as Canada's response to the undertakings provided in Ms. Joanne Wilkinson's cross-examination on June 4, 2019.

I respect and value our working relationship and am committed to working with you, sharing information, and responding to concerns. I look forward to our joint efforts to effect positive change, and to develop new policy and funding approaches for First Nations child and family services in Ontario that are child-centred, community-directed, and prevention-focused.

Sincerely,



Catherine Thai
Director, Child and Family Services Reform and Transformation, Ontario Region
Indigenous Services Canada

655 Bay Street, Suite 700
TORONTO ON M5G 2K4

c.c.: Grand Chief Fiddler, Nishnawbe Aski Nation

Ms. Joanne Wilkinson, Assistant Deputy Minister, Child and Family Services Reform Branch, ISC

Ms. Valerie Gideon, Senior Assistant Deputy Minister, First Nations and Inuit Health Branch, ISC

Ms. Anne Scotton, Regional Director General, Ontario Region, ISC

Mr. Garry Best, Regional Executive, Ontario Region, First Nations and Inuit Health Branch, ISC

Mr. Julien Castonguay, Director, Regional Plans and Partnerships, Ontario Region, First Nations and Inuit Health Branch, ISC

Ms. Vanessa L. Follon, RN, Jordan's Principle Regional Lead, Ontario Region, First Nations and Inuit Health Branch, Ontario, ISC

Mr. Robert Frater, Q.C., Chief General Counsel, Counsel for the Attorney General of Canada

Mr. Jonathan Tarlton, Senior Counsel, Counsel for the Attorney General of Canada

Ms. Tara DiBenedetto, Counsel, Counsel for the Attorney General of Canada

Mr. Julian Falconer, Legal Counsel, Falconers LLP

Ms. Akousa Matthews, Legal Counsel, Falconers LLP

Ms. Molly Churchill, Legal Counsel, Falconers LLP

This is Exhibit “F” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.



Additionally, your letter did not respond to the following question posed to Ms. Wilkinson during cross-examination, though Canada has subsequently provided a response through the Tribunal proceedings and which may be the subject of future correspondence:

- Can family support workers be hired as part of a First Nation's Band Representative Services ("BRS") program, particularly the Family Support Services component, using BRS funds?¹

On the third page of your June 28th letter, you state that "to date, there has not been a capital project request to specifically fund a child, youth and family centre." Would you please confirm that this type of request could be eligible under BRS?

Regarding claims that have been pending for months, your letter suggests that two claims pending since January were left in limbo because of the relevant community's non-response to requests for further information made by ISC on or around March 31, 2019. We will be addressing this issue in more detail in subsequent communication. Communities have voiced frustration with what they describe as seemingly endless requests for further information from ISC in relation to claims. We believe a different approach is badly needed, and we look forward to discussing potential solutions with you.

On that note, I would like to arrange for a meeting in September. This meeting will allow us, as you propose in your letter, to discuss what NAN has heard from NAN communities about what initiatives and items they believe should be funded for their BRS programs to enable them to respond to community needs.

I look forward to hearing back from you.

Sincerely,

NISHNAWBE ASKI NATION



Bobby Narcisse, Director of Social Services

cc: *Grand Chief Alvin Fiddler, Nishnawbe Aski Nation*
Deputy Grand Chief Walter Naveau, Nishnawbe Aski Nation
Joanne Wilkinson, Assistant Deputy Minister, First Nations and Inuit Health Branch, ISC
Anne Scotton, Regional Director General, Ontario Region, ISC
Garry Best, Regional Executive, Ontario Region, First Nations and Inuit Health Branch, ISC
Julien Castonguay, Director, Regional Plans and Partnerships, Ontario Region, FNIHB, ISC
Vanessa L. Follon, RN, Jordan's Principle Regional Lead, Ontario Region, FNIHB, Ontario, ISC
Robert Frater, Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie and Tara DiBenedetto
Co-counsel for the respondent Attorney General of Canada in the Caring Society CHRT proceedings
David Nahwegahbow, Stuart Wuttke and Thomas Milne
Co-counsel for the complainant Assembly of First Nations in the Caring Society CHRT proceedings
David Taylor, Sarah Clarke and Barbara A. MacIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society in the Caring Society CHRT proceedings
Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission in the Caring Society CHRT proceedings
Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario in the Caring Society CHRT proceedings
Justin Safayeni and Ben Kates
Co-counsel for the interested party Amnesty International in the Caring Society CHRT proceedings
Julian Falconer and Molly Churchill
Co-counsel for the interested party Nishnawbe Aski Nation in the Caring Society CHRT proceedings

¹ Transcript of Cross-examination of Assistant Deputy Minister Joanne Wilkinson by Akosua Matthews, counsel for Nishnawbe Aski Nation, June 4, 2019, at p. 27, line 14 to p. 28, line 7.

This is Exhibit “G” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020

A Commissioner for taking affidavits, etc.

December 4, 2019

Mr. Bobby Narcisse
Director of Social Services
Nishnawbe Aski Nation
100 Back St, Unit 200
THUNDER BAY ON P7J 1L2

Dear Mr. Narcisse:

Thank you for your letter dated September 4, 2019 addressed to Catherine Thai, expressing your continued interest in working with ISC to support First Nations and First Nations Child and Family Services (FNCFS) agencies in accessing funding under the Canadian Human Rights Tribunal (CHRT) Orders. We remain committed to working together and would be pleased to meet with you to continue to support First Nations children and families in Nishnawbe Aski Nation (NAN). If you could please provide potential dates and locations that are convenient for you and your team, we can coordinate further meetings.

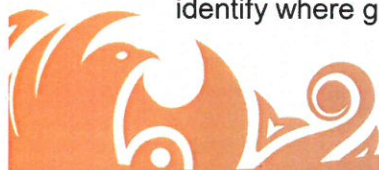
In your letter, you have raised several questions and concerns, and requested clarification on a number of issues. I hope the responses that follow will provide clarification on the questions posed.

1. *Can you provide NAN with examples of successful Band Representative Services (BRS) claims that have supported a broad approach to what can be covered under the Family Support Services component of BRS?*

Costs related to Family Support Services under Band Representative Services are reviewed on a case-by-case basis. Family Support Services are specifically for children and families where a child has been taken into care, or is at risk of being taken into care. Some examples of approved claims under the Band Representative Services, Family Support Services include: parent support workshops for families with children identified as at risk by a FNCFS agency; support for customary care placements, assessments and agreements; attending home-based meetings and investigations; one-on-one support; developing and monitoring plans of care; and case conferences to prevent children from entering care or remaining in care.

2. *Is ISC able and willing to look at work plans developed by communities to assist them in accessing funding?*

The FNCFS Program does not require work plans at this point in time, but each First Nation is encouraged to outline its priorities in supporting children and families. ISC is pleased to work closely with communities on workplans. The development of these workplans should consider funding provided by ISC to each First Nation in Ontario, including Community-Based Prevention, Community Well-being and Jurisdiction Initiatives, and Order 427, to identify where gaps in funding remain.



Indigenous Services
Canada

Services aux
Autochtones Canada

Canada

3. *Can family support workers be hired as part of a First Nation's Band Representative Services (BRS) program, particularly the Family Support Services component, using BRS funds?*

In a letter dated August 29, 2019, from Robert Frater, Q.C., Chief General Counsel, Counsel for the Attorney General of Canada to NAN's counsel, Molly Churchill, a response to your question was provided:

"As you know, any expenditure made by Canada through the First Nations Child and Family Services Program must adhere to the Program's Terms and Conditions that were developed with advice from the Consultation Committee on Child Welfare. As the Terms and Conditions stand, ISC may be able to fund a family support worker for services to support the Band Representative in exercising their duties toward a specific child. However, if the family support worker is to provide more general prevention services to the community, then this would not be eligible under the Program's Terms and Conditions."

For greater context, Canada was ordered on February 1, 2018, by the CHRT to fund Band Representative Services for Ontario First Nations at the actual cost of providing those services. Ontario's *Child, Youth and Family Services Act, 2017 (CYFSA)*, makes reference to the services of this representative to the Band relating to a specific child or young person where formal notification has been issued by a Children's Aid Society or First Nations Child and Family Services agency designated under the CYFSA. The FNCFS Program's Terms and Conditions specific to Band Representative Services reflect eligible costs pertaining to the delivery of Band Representative Services.

Eligible expenditures for family support services under Band Representative Services may therefore be considered for a specific child or family following a formal notification by a Children's Aid Society or First Nations Child and Family Services agency designated under the CYFSA where a child has been taken into care, or is at risk of being taken into care. This support is to be provided to a specific family in order to represent the best interest of the child

Band Representatives could, for example, be present during interventions and can interact with the caregivers afterwards to promote healthy parenting to keep the child safe, in addition to referring to and liaising with the adequate counselling or services based on the needs identified by a Children's Aid Society or First Nations Child and Family Services agency designated under the CYFSA. Family support services may also include accompanying the family to court to help navigate the child welfare system and accessing needed services, or locating a family member within the community to provide temporary care while an investigation unfolds. Alternatively, if intervention is required, eligible expenses could include the Band Representative supervising home visits and ensuring that the child remains safe.

If a community wishes to provide general prevention services to its citizens, there are resources available through two funding streams: Community-Based Prevention funding and Community Well-Being and Jurisdiction Initiatives funding. Additionally, we would recommend that communities work closely with their respective FNCFS agency operating under the CYFSA, to access further prevention services.

4. *On the third page of your June 28th letter, you state that "to date, there has not been a capital project request to specifically fund a child, youth and family centre." Would you please confirm that this type of request could be eligible under BRS?*

In response to your question about capital projects specifically for a child, youth and family centre, these costs are beyond the scope of Band Representative Services. As you know, broader discussions on capital are ongoing through the Consultation Committee on Child Welfare.

There is also the opportunity for FNCFS agencies operating under the CYFSA to work closely with communities in regards to prevention/ least disruptive services to ensure that agencies reflect communities' goals towards reducing the number of children in care and reuniting families. Within this context, agencies are expected to engage with their First Nations community partners on the identification of priorities as they develop their work plans for meeting these objectives.

I hope the information provided in this letter clarifies the services and supports that are eligible under the CHRT order 427 as reflected in the First Nations Child and Family Services program. We remain committed to working with NAN communities and, to that end, we are open to establishing regular meetings with NAN to create a forum to provide updates and discuss the processing of CHRT claims. This collaborative process will result in better service and more resources for NAN, while addressing the distinct needs of each First Nation.

Thank you once again for your letter. The Department remains committed to helping ensure that First Nations children and their families have access to the services and supports they need. I appreciate that we have a working relationship built on mutual trust and transparent communications, and I look forward to continuing to work with you and NAN to support children and families.

Sincerely,



Anne Scotton
Regional Director General
Ontario Region
Indigenous Services Canada

655 Bay Street, Suite 700
TORONTO ON M5G 2K4

C.C.:

Grand Chief Alvin Fiddler, Nishnawbe Aski Nation
Deputy Grand Chief Walter Naveau, Nishnawbe Aski Nation
Joanne Wilkinson, Child and Family Services Reform Branch, ISC
Catherine Thai, Child and Family Services Reform and Transformation, Ontario Region, ISC
Garry Best, Ontario Region, First Nations and Inuit Health Branch, ISC

Julien Castonguay, Regional Plans and Partnerships, Ontario Region, FNIHB, ISC
Vanessa L. Follon, Jordan's Principle Regional Lead, Ontario Region, FNIHB, Ontario, ISC
Robert Frater, Attorney General of Canada
Jonathan Tarlton, Attorney General of Canada
Patricia MacPhee, Attorney General of Canada
Kelly Peck, Attorney General of Canada
Max Binnie, Attorney General of Canada
Tara DiBenedetto, Attorney General of Canada
David Nahwegahbow, Assembly of First Nations
Stuart Wuttke, Assembly of First Nations
Thomas Milne, Assembly of First Nations
David Taylor, First Nations Child and Family Caring Society
Sarah Clarke, First Nations Child and Family Caring Society
Barbara A. MacIsaac, Q.C., First Nations Child and Family Caring Society
Brian Smith, Canadian Human Rights Commission
Jessica Walsh, Canadian Human Rights Commission
Maggie Wente, Chiefs of Ontario
Sinéad Dearman, Chiefs of Ontario
Justin Safayeni, Amnesty International
Ben Kates, Amnesty International
Julian Falconer, Nishnawbe Aski Nation
Molly Churchill, Nishnawbe Aski Nation

EXTERNAL ADDRESSES

- Grand Chief Alvin Fiddler, Nishnawbe Aski Nation afiddler@nan.on.ca
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- Robert Frater, Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie and Tara DiBenedetto, Co-counsel for the respondent Attorney General of Canada in the Caring Society CHRT proceedings Robert.Frater@justice.gc.ca, Kelly.Peck@justice.gc.ca, Jonathan.Tarlton@justice.gc.ca, Patricia.MacPhee@justice.gc.ca, Max.Binnie@justice.gc.ca, Tara.DiBenedetto@justice.gc.ca
- David Nahwegahbow, Stuart Wuttke and Thomas Milne, Co-counsel for the complainant Assembly of First Nations in the Caring Society CHRT proceedings swuttke@afn.ca, dndaystar@nncfirm.ca
- David Taylor, Sarah Clarke and Barbara A. MacIsaac, Q.C., Co-counsel for the complainant First Nations Child and Family Caring Society in the Caring Society CHRT proceedings DTaylor@conway.pro, sarah@childandfamilylaw.ca, barbara@mcisaacclaw.com
- Brian Smith and Jessica Walsh, Co-counsel for the Canadian Human Rights Commission in the Caring Society CHRT proceedings Jessica.walsh@chrc-ccdp.gc.ca, brian.smith@chrc-ccdp.gc.ca
- Maggie Wente and Sinéad Dearman, Co-counsel for the interested party Chiefs of Ontario in the Caring Society CHRT proceedings MWente@oktlaw.com, sdearman@oktlaw.com
- Justin Safayeni and Ben Kates, Co-counsel for the interested party Amnesty International in the Caring Society CHRT proceedings justins@stockwoods.ca, BenK@stockwoods.ca
- Julian Falconer and Molly Churchill, Co-counsel for the interested party Nishnawbe Aski Nation in the Caring Society CHRT proceedings julianf@falconers.ca, mollyc@falconers.ca

This is Exhibit “H” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.



1

and claimants, sometimes going on for months. For agencies and First Nations that are already struggling with capacity issues due to heavy demands and limited resources, such lengthy bureaucratic processes are a significant burden. I have heard some say they are ready to throw in the towel and give up on the promise of accessing funding they are entitled to under the CHRT orders. This is very concerning.

As you are surely aware, the Canadian Human Rights Tribunal (CHRT) ordered that BRS claims be processed within 15 business days. This timeline is not being respected. In one case, an ISC Ontario region employee wrote to a representative of one of our First Nations who had asked for clarity about what it meant for a claim to be deemed “complex” and when she could expect a response to her First Nation’s claim. The ISC employee wrote in part, “In regards to the time it takes for ISC to in turn respond there is unfortunately no clear timeline. The decision maker will be in receipt of the information provided to date and then render a decision to you directly. As that decision maker is not us in the regional office we can’t speak on their behalf.” I am very concerned by messages such as this. The CHRT was very clear about a timeline: 15 business days. ISC is now saying there is “no clear timeline.” This is not right. Again, I would like to discuss this with you. It appears ISC employees do not understand what the CHRT very clearly ordered.

I have also heard about inconsistency and uncertainty with claims for prevention expenses. It appears that claims that would have been successful a year ago are now not being approved. This places our agencies in a precarious financial situation and it jeopardizes the well-being of our children and families. For too long, we were deprived of prevention services and this was rightly recognized as contributing to the alarming rate of child apprehensions. Then, finally, prevention services became a possibility and reality. Now, it appears we are experiencing a restriction in this area. I am very concerned about this and would like to discuss this with you.

Finally, as I believe you are aware, there is great diversity within the 49 First Nations of NAN. There are different models of service delivery used within our territory. It is critical that the service delivery models that have been developed to respond to distinct regional needs and preferences are understood by ISC and are properly and respectfully taken into account when claims are being processed. Claims should not be rejected on the basis of regional-specific service delivery models that may differ from “mainstream” service delivery models.

I end by asking for a time when you can meet with me and my Social Services team to discuss the above concerns. It is crucial that we develop mutually agreeable solutions that are consistent with the CHRT orders and further the rights, well-being, and diverse aspirations of NAN First Nations.

Sincerely,

NISHNAWBE ASKI NATION

A handwritten signature in black ink, appearing to read "Walter Naveau", written in a cursive style.

Deputy Grand Chief Walter Naveau

cc. Members of NAN’s Chiefs Committee on Children, Youth and Families
Anne Scotton, Regional Director General, Ontario Region, ISC
Catherine Thai, Director, Child and Family Services Reform and Transformation, Ontario Region, ISC

This is Exhibit "I" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____day of _____, 2020

A Commissioner for taking affidavits, etc.

Molly Churchill

From: Molly Churchill <mollyc@falconers.ca>
Sent: Friday, September 6, 2019 12:23 PM
To: Martin Orr; Alvin Fiddler; Bobby Narcisse; Brian Smith; David Taylor; Dr. Cindy Blackstock; GC Joel Abram; Jessica Walsh; Jon Thompson; Judith Rae; Julie McGregor; Maggie Wente; nhansen@nan.on.ca; Ruby Miller; Sarah Clarke; Sinead Dearman; Stuart Wuttke; Julian Falconer
Cc: Kara Kennedy; Lorna Martin
Subject: RE: Agenda Items-Friendly Parties CCCW Meet-Sept 9

Hello everyone,

NAN has requested that the issue of CHRT-related funding claims be added to the agenda for Monday morning's "Friendly Parties" meeting. We wanted to provide a bit more detail to this request in advance. Here are some key issues NAN has become aware of:

- Band Rep Services claims:
 - Inordinate back-and-forth with many follow-up questions from ISC, who "pauses" the 15-business-day timeline until it receives a response. Many of these requests for follow-up include a generic question for further information about how the proposed activity falls within a community's BRS and contributes to the goals of BRS. It appears that this question is asked even when, from the claimant's perspective, the requested information has already been provided in a clear and direct manner. This can leave claimants at a loss as to how to respond further.
 - Narrow interpretation of what can be claimed as part of a community's BRS, while communities have a broad interpretation (and ISC previously advised they could take a broad approach)
 - ISC unilaterally deeming some claims "complex" and indefinitely pausing the 15-business-day timeline for processing claims. This is what NAN has learned about ISC's approach to "complex" claims, via an email from Ontario Region to a NAN community rep:
 - ISC deems a claim complex if there has been "a substantial amount of communication back and forth" between the Region and the claimant "resulting in a large deal of clarification being provided";
 - Once a claim is deemed complex, the 15 business day timeline pauses indefinitely and "there is unfortunately no clear timeline";
 - The Region cannot speak on behalf of the decision-maker, who will be in receipt of all information provided and will render a decision directly to the claimant, with the Region cc'd; and
 - "When decisions are being considered and made, in keeping with the intent of the CHRT Orders, the goal is for this process to be completed on an urgent basis."
- Prevention and other agency actuals claims:
 - ISC taking a narrow interpretation regarding what can be covered under "prevention". This is a shift from how ISC originally processed claims. We understand that ISC has recently told at least one NAN agency that prevention services are intended to be exclusively for "at-risk" children and youth with open files.
 - ISC stating that the 1965 Agreement precludes Ontario agencies from making claims for actuals to ISC for any children in care.

Martin, could this also be added to the agenda for the afternoon discussion? Could you forward the above to the relevant reps from Canada as well?

Many thanks,

Molly



Mary (Molly) Churchill | Associate |

www.falconers.ca

Main Office

10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
T: 416-964-0495 ext 235 | F: 416-929-8179

Northern Office

104 Syndicate Avenue North, Suite 200
Thunder Bay, ON P7C 3V7
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From: Martin Orr <MOrr@afn.ca>

Sent: Thursday, August 29, 2019 11:20 AM

To: Akosua Matthews <akosuam@falconers.ca>; Alvin Fiddler <afiddler@nan.on.ca>; Bobby Narcisse <bnarcisse@nan.on.ca>; Brian Smith <brian.smith@chrc-ccdp.gc.ca>; David Taylor <dtaylor@conway.pro>; Dr. Cindy Blackstock <cblackst@fncaringsociety.com>; GC Joel Abram <jabram@aiai.on.ca>; Jessica Walsh <Jessica.walsh@chrc-ccdp.gc.ca>; Jon Thompson <JThompson@afn.ca>; Judith Rae <jrae@oktlaw.com>; Julie McGregor <JMcGregor@afn.ca>; Maggie Wente <mwente@oktlaw.com>; Molly Churchill <mollyc@falconers.ca>; nhansen@nan.on.ca; Ruby Miller <ruby.miller@coo.org>; Sarah Clarke <sarah@childandfamilylaw.ca>; Sinead Dearman <SDearman@oktlaw.com>; Stuart Wuttke <stuartw@afn.ca>

Cc: Kara Kennedy <KKennedy@afn.ca>; Lorna Martin <lornam@afn.ca>

Subject: Agenda Items-Friendly Parties CCCW Meet-Sept 9

Hi all,

If you could send any suggested agenda items for our CCCW Friendly Parties meeting on Sept 9 from 9am-12. Given we will likely have the recent tribunal decisions and orders that will likely drive the bulk of the agenda.

Thanks,

Martin Orr
Senior Analyst, Child Welfare
Assembly of First Nations
Ottawa, ON
613-402-7871

This is Exhibit “J” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.

Submission to the National Advisory Committee (NAC) First Nations Child and Family Services Caucus

Association of Native Child and Family Services Agencies of Ontario
October 24, 2019

Purpose:

To highlight recent and ongoing concerns with application process to the Canadian Human Rights Tribunal (CHRT) and Jordan's Principle from the member agencies of the Association of Native Child and Family Service Agencies of Ontario (ANCFSAO).

About Our Member Agencies:

ANCFSAO's membership is comprised of 10 mandated and 2 pre-mandated Indigenous Child and Family Services Agencies (ICFSA). Our member agencies provide over 60 Indigenous child and family well-being programs and services to 119 of 133 First Nations and urban centres across the province. In total, ANCFSAO's members serve 90 percent of all First Nations communities in Ontario. We are deeply honoured to serve our member agencies and to provide the reach, coverage, and service delivery we do as a result of our valuable relationships with them.

Our member agencies include:

1. Anishinaabe Abinoojii Family Services
2. Dilico Anishinabek Family Care
3. Dnaagdawenmag Binnoojiiyag Child and Family Services
4. Kina Gbezhgomi Child and Family Service
5. Kunuwanimano Child and Family Services
6. Native Child and Family Services of Toronto
7. Niijaansinaanik Child Well Being Agency Development Project
8. Nogdawindamin Family & Community Services
9. Mnassged Child & Family Services
10. Payukotayno James and Hudson Bay Family Services
11. Tikinagan Child and Family Services
12. Weechi-it-te-win Family Services Inc.

Summary:

ANCFSAO member agencies have had varied successes in responding to the CHRT Orders and Jordan's Principle in the last 3 years. In late 2018, ANCFSAO began to hear that agencies were struggling with denials and delays in their requests for funding. This has amplified in the 2019-2020 fiscal year. As such, ANCFSAO has consulted with member agencies over the past months to understand the current landscape within the CHRT funding and Jordan's Principle implementation teams at Indigenous Services Canada (ISC). The below note outlines ongoing

obstacles for our agencies in their pursuit of providing wholistic, wraparound services that respond to their communities, families, and children.

Funding Needs and Access

Accessing funds is based on agency capacity. Because this was not immediately addressed as a matter of course in the original ISC-led implementation of CHRT funding, our agencies have been set up to fail. Opening a pot of funding does not address the fundamental issue of ICFSA staff capacity if that access is dependent on high staff capacity and available time to devote to written proposals, alongside extensive planning required to meet opaque guidelines, and unclear definitions. Decades of chronic underfunding means that the entire structure of child welfare has tended towards crisis-driven models of intervention with very little time to imagine, plan for, and implement preventive programming. The original 2016 Orders did not change this momentum. Agencies then did not, and now may not, have the necessary teams required to comb through the various CHRT Orders and respond to increasing administrative burdens and bureaucratic pushback.

The funding needs of our agencies are extensive, to the tune of multiple millions of dollars but there has been a wide variance in terms of access. One of our agencies has been able to invest substantial money over two years into preventive programming from approved CHRT proposals. These programs have demonstrated real success in keeping children with their families and reducing the numbers of children who are required to come into protective care. However, the need in these communities is such that these substantial investments are not enough: wait lists are long, programs are in demand, and expansion is necessary. But the current programs as they are now are in jeopardy because ISC will only fund programs on an annual basis and funding approvals for 2019-2020 have slowed substantially compared to years before. If these programs are shut down, agencies are not only at risk in terms of provincial employment law and bankruptcy, but also risk damaging community relationships integral to our service models and reach.

Human Resource Capacity

In the first and second years of the original CHRT Orders, our agencies were funded for their proposals. This meant that many were able to increase salaries to the provincial level and were able to fund more positions. For 2019/2020, agencies have now been told that they will only be eligible for this funding if they can prove that the previous years' funding are prevention positions; anything else is ineligible. For example, if a job description states that only 25% of the work is preventive based, then ISC will only fund 25% of that position. All documents related to this funding approval must be re-written and re-applied for on a yearly basis, downloading our agencies with yet another administrative burden. In the meantime, the cost is already there for them and if they are not able to receive the previous years' funds, then they will be in substantial deficit.

While ISC has stated funding approvals begin on February 1st for the next fiscal year, our agencies are facing delays in approvals alongside funding cuts from previous years, despite programming successes in preventing children from coming into care. This means that our agencies are now coming into financial risk and may not be able to fulfil provincial employee standards law.

On top of this issue, Canada states that intake and assessment falls under the protective arm of child welfare and therefore is the province's responsibility and our agencies must go to the province for this funding. This means that many children in need of preventive services are not able to be assessed until the situation becomes a protective concern, creating a bottleneck for staff employed under a provincial funding model that does not understand the actual costs of child welfare in this province.

CHRT

Funding and human resourcing issues are compounded by the fact that ISC has taken extremely literal interpretations of the CHRT Orders and Jordan's Principle.

For example, CHRT Order 408-411 states that Canada must reimburse actual costs for prevention/least disruptive measures, intake and investigation, and building repairs. Canada has interpreted this to mean no capital infrastructure investments for children and families even when that investment is a more cost effective, one-time fee. As a result, children who are facing health risks due to mold infestations in trailers are not eligible for a new trailer but rather the family must undergo a more expensive renovation that will require ongoing upkeep and further, potential risk to the child's physical safety.

Jordan's Principle

Canada's policy is that the legally mandated response times for Jordan's Principle stop when ISC has questions about applications. In some cases, our agencies are receiving up to 100 emails containing multiple questions and dollars are subsequently not released for months. In this time, some of our children have already aged out of the ISC-determined age of majority.

In addition, this past month, our agencies have been told that they are the ones who must cash flow Jordan's Principle and ISC will provide reimbursement based on receipts after the fact. Jordan's Principle has covered millions of dollars in necessary funding for our agencies. Our agencies do not have millions of dollars on hand.

Further, our agencies have been told that Jordan's Principle will no longer provide group-based funding and will only approve individual requests. This means that critical and comprehensive programming for children's mental health, an ongoing concern for our children and families and communities, will no longer be funded and that each child must go through an individual assessment in order to provide receipts for Jordan's Principle. Very simply, this is an impossible option: most of our agencies operate in northern and remote agencies where there is no

mental health infrastructure and services. If our agencies cannot provide this programming in an ongoing, comprehensive manner while employing critical professionals such as doctors and nurses at a provincial salary, then, very literally, hundreds of children will be forced to fly south for assessment in culturally alien environments with clinical professionals who do not know them, their families, and their histories. Our agencies cannot cash flow this expense and, further, Jordan's Principle is ostensibly to ensure that First Nations children have equitable access to all government funded public services. Children's mental health programming is a critical aspect to ensuring that Jordan's Principle is respected, and protection numbers will not go down until services are approved.

Communication with ISC

Communication issues are now prevalent in ways that did not exist in previous years and have resulted in tense relationships between our agencies and ISC. Agencies are receiving between 50 to 100 emails from ISC requesting changes to proposals, additional information, Band Council Resolutions, and information already and previously provided. When our agencies follow through, they are still met with delays in responses or incomplete funding approvals.

While ISC has provided agencies with 3 different versions of proposal guidelines between May and November 2019, these guidelines have neither been helpful nor fruitful. A core issue is that ISC will not provide a clear definition to our agencies of what constitutes prevention, yet they will unilaterally decide for our agencies what their prevention work is through denials or approvals for funding.

Federal and Provincial Messaging

From ANCFSAO's perspective, there has been a substantial, internal policy change within the ISC bureaucracy that has encouraged significant and serious delays in approvals for necessary funding that provides critical programming to not only reduce the number of children coming into care but also promote the wellbeing of our children, families, and communities. Further, we are concerned to hear that the policies around multiyear planning are not evenly applied nationally: while our agencies have recently been required to put forth multiyear plans without the allocated resources to do so, they have also been told that they are only eligible for funding on a year-by-year basis. However, in other provinces, we have heard that some agencies have received funding approval for 3-year plans.

Conclusion

ANCFSAO has laid out the concerns we have heard by our agencies in their pursuit of much needed funding relief for preventive programming. These concerns are various and multiple, from the conflicted messaging we have received from ISC to the very structure of an ISC-led implementation of CHRT Orders and Jordan's Principle. In our own work to consolidate these

concerns, we are reminded by our agencies that prevention work does not stop just because a child comes into care.

We are further led by the following, pulled from the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls: “Short-term or project-based funding models in service areas are not sustainable, and represent a violation of inherent rights to self-governance and a failure to provide funding on a needs-based approach, equitably, substantively, and stably” (2019: p.61).

This is Exhibit “K” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.

Molly Churchill

From: Bobby Narcisse <bnarcisse@nan.ca>
Sent: Thursday, February 27, 2020 1:02 PM
To: Anne Morgan
Cc: Molly Churchill; Nichole Kinzel
Subject: Re: ISC CHRT Consultation Committee

Thank you for this! We will bring this up for sure.

Bobby Narcisse
Nishnawbe Aski Nation Director of Social Services

From: Anne Morgan <annem@tikinagan.org>
Sent: Thursday, February 27, 2020 11:59:36 AM
To: Bobby Narcisse <bnarcisse@nan.ca>
Cc: Thelma Morris <ThelmaM@tikinagan.org>; Catherine Beamish <cathyb@beamishlaw.ca>; Clara Young <ClaraY@tikinagan.org>; Rachel Tinney <Rachelt@tikinagan.org>
Subject: ISC CHRT Consultation Committee

Hi Bobby,

In the monthly ISC teleconference with agencies yesterday, they mentioned that the 2020-21 Recipient Guide was in draft and going (or has gone) to the Consultation Committee for review/input. Of particular concern to Tikinagan and all the Indigenous agencies is the interpretation of the CHRT ruling that actual costs for prevention should be covered, is limited to secondary and tertiary – no primary prevention. We urge NAN to challenge this and call for all prevention activities to be covered. Currently they insist that they will only cover prevention service/activities for documented at risk families (so it has to be an open family file). All the primary prevention – community-wide activities and programs – are not eligible. It makes no sense to exclude this type of prevention. We believe the CHRT wanted to prevent families from needing intervention, not just preventing children from coming into care after their situation has deteriorated to the state that a CAS has had to open a file on them.

Let me know when the next consultation committee is and if NAN is able to advocate re above.

Thanks

-Anne

This is Exhibit “L” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.

From: Benjamin Loewen <BenjaminL@tikinagan.org>

Sent: Wednesday, February 19, 2020 10:53 PM

To: Cathy Beamish <cathyb@beamishlaw.ca>; Bobby Narcisse <bnarcisse@nan.on.ca>
<bnarcisse@nan.on.ca>; nkinzel@nan.ca <nkinzel@nan.ca>; Julian Falconer <julianf@falconers.ca>;
Aliah El-Houni <Aliahe@falconers.ca>

Cc: Thelma Morris <ThelmaM@tikinagan.org>; Anne Morgan <annem@tikinagan.org>; Clara Young
<ClaraY@tikinagan.org>; Bill Ferguson <BillF@tikinagan.org>

Subject: RE: Issues with CHRT Reimbursements

Good Evening:

In case you are interested, the attached email communication is an example of ISC suggesting that a claim (this one is for the building inspections & reports of all buildings), that we anticipated would clearly be eligible and easily approved, "does not appear to fit".

You will see that ISC proceeded to suggest that Tikinagan use its remoteness funding (which was being held for strategic and/or capital purchases because it has a broader criteria for use than Order 411, at least in Ontario) for these expenses. I anticipate that most people, including ISC, would suggest that it was not appropriate for ISC to make suggestions to Tikinagan as they did about how Tikinagan should be using its remoteness funds, especially while effectively denying (or at least resisting) a claim that I anticipate most would agree should be very eligible and easily approved.

(There are other threads from this email that are not included/attached, as it appears that each email was not responding to the most recent, which communicated surprise, confusion, and frustration to ISC.)

To resolve the matter, Tikinagan asked ISC to process the claim with the information that they had, which was subsequently approved.

Thank you & God bless,

Benjamin / 807-738-0625

This is Exhibit “M” referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____ day of _____, 2020.

A Commissioner for taking affidavits, etc.

Molly Churchill

From: Anne Morgan <annem@tikinagan.org>
Sent: Friday, December 13, 2019 5:17 PM
To: Clara Young; Benjamin Loewen; Bill Ferguson; Rachel Tinney
Subject: FW: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

On the ISC teleconference next Wednesday we should bring this up. We were told that we could ask at any time for a decision on our claim, I understood this includes when it is being reviewed by HQ. This is what I understood Catherine Thai had said in a monthly teleconference, but also in the ANCFSAO call. Or is the next step writing in red marker "appeal" on the claim and submitting is as an appeal? We should get her to confirm this on the call.

From: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>
Sent: November 27, 2019 3:37 PM
To: Bill Ferguson <BillF@tikinagan.org>
Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.rai2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>
Subject: Re: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Hi Bill,

I am sure that you are already aware, however I will make note of it for clarity, the 15 business days timeline remains paused while this claim is reviewed further by HQ.

Thank you.
Sakthy

From: Nithianandan2, Sakthy (AADNC/AANDC)
Sent: Wednesday, November 27, 2019 3:32 PM
To: Bill Ferguson
Cc: Clara Young; Benjamin Loewen; Dullabh, Vanessa (AADNC/AANDC); Hadid, Shareef (AADNC/AANDC); Hossain, Forhad (AADNC/AANDC); Pezzo, Victoria (AADNC/AANDC); Rai2, Saveena (AADNC/AANDC); Tarvainen, Taia (AADNC/AANDC); Thai, Catherine (AADNC/AANDC); Waters, Danielle (AADNC/AANDC); SEFPN / FNCFS (AADNC/AANDC)
Subject: RE: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Good afternoon Bill,

CHRT claims are a priority and processed as such, however for claims that are beyond the recipient guides for CHRT 411, we must seek clarification and at times a decision from HQ. We anticipate that it will take 5 to 10 business days however it may take longer for reasons beyond our control. We are committed to addressing the concerns raised by

FNCFS agencies related to processing times and therefore we have been tracking the claims and following up with our colleagues on a weekly basis.

Further to the discussion at held at the meeting with Tikinagan on November 14th, we had advised your team that due to various factors at HQ, including the availability of the ADM, we are unable to provide you with an exact time line of when a decision will be rendered.

We thank you for your patience and understanding.

Thank you.

Sakthy Nithianandan
Regional Program Development Advisor
Child and Family Services Reform and Transformation
Indigenous Services Canada / Government of Canada
Sakthy.Nithianandan2@canada.ca / Telephone : 416-659-4065

Conseillère régionale en développement de programmes
Réforme et transformation des services à l'enfance et à la famille
Services aux Autochtones Canada/ Gouvernement du Canada
Sakthy.Nithianandan2@canada.ca / Téléphone : 416-659-4065

From: Bill Ferguson <BillF@tikinagan.org>
Sent: Wednesday, November 27, 2019 11:15 AM
To: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>
Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.rai2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>
Subject: RE: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Thankyou Sakthy,

Is there a timeline for the decision? How long does it usually take at the next step?

Regards,
Bill

Bill Ferguson CPA CA
Financial Controller

TF 1-800-465-3624
P 807-737-7400 ext. 2309
C 807-738-5507
F 807-737-3543



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Tikinagan
Child & Family Services

"Mamow Obiki-ahwahsoowin: Everyone working together to raise our children"

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From: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>

Sent: November 26, 2019 2:13 PM

To: Bill Ferguson <BillF@tikinagan.org>

Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.rai2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>

Subject: RE: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Good afternoon Bill,

Per your request, the claim with the information submitted to date, has been sent to HQ for further review and you will be notified of a decision when they have completed their review of the information provided.

Thank you.

Sakthy Nithianandan
Regional Program Development Advisor
Child and Family Services Reform and Transformation
Indigenous Services Canada / Government of Canada
Sakthy.Nithianandan2@canada.ca / Telephone : 416-659-4065

Conseillère régionale en développement de programmes
Réforme et transformation des services à l'enfance et à la famille
Services aux Autochtones Canada/ Gouvernement du Canada
Sakthy.Nithianandan2@canada.ca / Téléphone : 416-659-4065

From: Bill Ferguson <BillF@tikinagan.org>

Sent: Friday, November 22, 2019 12:30 PM

To: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>

Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.rai2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>

Subject: RE: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Hi Sakthy,

I understand that we can ask ISC to make a decision on an application based on the information we have presented to date. Please make a decision on Tikinagan Child and Family Services application for reimbursement of the \$\$355,249.00 paid for a condition report on the properties owned and or occupied by Tikinagan Child and Family Services.

Please let me know when we can expect this decision.

Sincerely,
Bill

Bill Ferguson CPA CA
Financial Controller

TF 1-800-465-3624
P 807-737-7400 ext. 2309
C 807-738-5507
F 807-737-3543



"Mamow Obiki-ahwahsoowin: Everyone working together to raise our children"

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From: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>

Sent: October 9, 2019 3:12 PM

To: Bill Ferguson <BillF@tikinagan.org>

Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.raii2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>

Subject: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Good afternoon Bill,

We hereby acknowledge receipt of the attached FY2019-2020 claim for \$355,249.00 for professional consultation services. Upon review of the attached claim for professional services provided by Form Studio Architects Inc. to do building assessments, please be advised that it does not appear to fit under the Prevention CHRT 411 orders.

May we suggest that the agency consider utilizing funds from the available \$4.4M remoteness allocation which allows for greater flexibility in meeting operational needs, for this purpose? Kindly advise.

Please note that the 15 business days' timeline allowed to process CHRT claims has paused for this claim today and will resume after receiving the requested information from you.

Thank you.

Sakthy Nithianandan
Regional Program Development Advisor
Child and Family Services Reform and Transformation
Indigenous Services Canada / Government of Canada
Sakthy.Nithianandan2@canada.ca / Telephone : 416-659-4065

Conseillère régionale en développement de programmes
Réforme et transformation des services à l'enfance et à la famille
Services aux Autochtones Canada/ Gouvernement du Canada
Sakthy.Nithianandan2@canada.ca / Téléphone : 416-659-4065

From: Bill Ferguson <BillF@tikinagan.org>
Sent: Wednesday, October 9, 2019 10:31 AM
To: Créances des CHRT / CHRT Claims (AADNC/AANDC) <aadnc.creancesdeschrt-chrtclaims.aandc@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>
Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>
Subject: 2020 CHRT Sec 5 Bld Rep \$355,249 Condition Assessment

Attached is an application for reimbursement for money spent to have FormArchitects assess the condition of Tikinagan Child and Family Services properties and leased spaces.

Please send any notices or emails to Clara Young, Benjamin Loewen and Bill Ferguson.

Thank you,

Bill

Bill Ferguson CPA CA
Financial Controller

TF 1-800-465-3624
P 807-737-7400 ext. 2309
C 807-738-5507
F 807-737-3788



"Mamow Obiki-ahwahsoowin: Everyone working together to raise our children"

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This is Exhibit "N" referred to in the
Affidavit of Odi Dashsambuu sworn
before me, on this ____day of _____, 2020.

A Commissioner for taking affidavits, etc.

Molly Churchill

From: Anne Morgan <annem@tikinagan.org>
Sent: Wednesday, March 4, 2020 9:42 AM
To: Molly Churchill
Cc: Bobby Narcisse
Subject: Re: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257)
\$355,249 Condition Assessment

Hi Molly

The claim was eventually approved and funds received

Executive Assistant
Tikinagan Child and Family Services

Mamow Obiki-ahwahsoowin
“Everyone Working Together to Raise Our Children”

On Mar 4, 2020, at 9:30 AM, Molly Churchill <mollyc@falconers.ca> wrote:

EXTERNAL MESSAGE ALERT

The following message is from an outside source. Please use caution with links and attachments. If you have any doubt or questions, please contact the IT department.

Hello Anne,
Can you confirm that the below claim was ultimately successful? Or what's the status of it?
Thanks,
Molly

<image002.png>

Mary (Molly) Churchill | Associate |

www.falconers.ca

Main Office

10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
T: 416-964-0495 ext 235 | F: 416-929-8179

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This e-mail is confidential and is intended only for the addressee. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of solicitor-client privilege. If you have received this email in error please notify my office and fully delete this message.

From: Anne Morgan <annem@tikinagan.org>
Sent: Friday, December 13, 2019 5:17 PM
To: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Bill Ferguson <BillF@tikinagan.org>; Rachel Tinney <RachelT@tikinagan.org>
Subject: FW: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

On the ISC teleconference next Wednesday we should bring this up. We were told that we could ask at any time for a decision on our claim, I understood this includes when it is being reviewed by HQ. This is what I understood Catherine Thai had said in a monthly teleconference, but also in the ANCFSAO call. Or is the next step writing in red marker "appeal" on the claim and submitting is as an appeal? We should get her to confirm this on the call.

From: Nithianandan2, Sakthy (AADNC/AANDC) <sakthy.nithianandan2@canada.ca>
Sent: November 27, 2019 3:37 PM
To: Bill Ferguson <BillF@tikinagan.org>
Cc: Clara Young <ClaraY@tikinagan.org>; Benjamin Loewen <BenjaminL@tikinagan.org>; Dullabh, Vanessa (AADNC/AANDC) <vanessa.dullabh@canada.ca>; Hadid, Shareef (AADNC/AANDC) <shareef.hadid@canada.ca>; Hossain, Forhad (AADNC/AANDC) <forhad.hossain@canada.ca>; Pezzo, Victoria (AADNC/AANDC) <victoria.pezzo@canada.ca>; Rai2, Saveena (AADNC/AANDC) <saveena.rai2@canada.ca>; Tarvainen, Taia (AADNC/AANDC) <taia.tarvainen@canada.ca>; Thai, Catherine (AADNC/AANDC) <catherine.thai@canada.ca>; Waters, Danielle (AADNC/AANDC) <danielle.waters@canada.ca>
Subject: Re: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

Hi Bill,

I am sure that you are already aware, however I will make note of it for clarity, the 15 business days timeline remains paused while this claim is reviewed further by HQ.

Thank you.
Sakthy

From: Nithianandan2, Sakthy (AADNC/AANDC)
Sent: Wednesday, November 27, 2019 3:32 PM
To: Bill Ferguson
Cc: Clara Young; Benjamin Loewen; Dullabh, Vanessa (AADNC/AANDC); Hadid, Shareef (AADNC/AANDC); Hossain, Forhad (AADNC/AANDC); Pezzo, Victoria (AADNC/AANDC); Rai2, Saveena (AADNC/AANDC); Tarvainen, Taia (AADNC/AANDC); Thai, Catherine (AADNC/AANDC); Waters, Danielle (AADNC/AANDC); SEFPN / FNCFS (AADNC/AANDC)
Subject: RE: ACKNOWLEDGEMENT: FY2019-2020 CHRT Sec 5 Bld Rep TIKINAGAN (3257) \$355,249 Condition Assessment

**FIRST NATIONS CHILD AND FAMILY
CARING SOCIETY OF CANADA et al.**
**Complainants, Commission & Interested
Parties**

-and-

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T1340/7008

**CANADIAN HUMAN RIGHTS
TRIBUNAL**

AFFIDAVIT OF ODI DASHSAMBUU

**FALCONERS LLP
Barristers-at-Law
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9**

**Julian N. Falconer (L.S.O. #29465R)
Molly Churchill (L.S.O.#72510P)**

**Tel: 416-964-0495
Fax: 416-929-8179**

**Lawyers for the Interested Party, Nishnawbe
Aski Nation (“NAN”)**