

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT

-and-

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

RESPONDENTS

**RECORD OF THE ATTORNEY GENERAL OF CANADA'S REPLY TO
MOTION FOR A STAY OF EXECUTION AND ATTORNEY GENERAL OF
CANADA'S RESPONSE TO A MOTION TO HOLD JUDICIAL REVIEW IN
ABEYANCE**

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8
Fax: 613-954-1920

**Per: Robert Frater, Q.C.
Max Binnie
Meg Jones**

Tel: (613) 670-6289 / (613) 670-6270 /
(613) 670-6288

Email: Robert.Frater@justice.gc.ca
Max.Binnie@Justice.gc.ca
Meg.Jones@justice.gc.ca

Counsel for the Applicant / Moving Party

TO: Registrar
Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

AND TO: David Taylor
Sarah Clarke
Barbara McIsaac
Conway Baxter Wilson LLP/s.r.l.
Suite 400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613-619-0368
Fax: 613-688-0271
Email: dtaylor@conway.pro
sarah@childandfamilylaw.ca
barbara@mcisaaclaw.com

Counsel for First Nations Child and Family Caring Society of Canada

AND TO: Stuart Wuttke
Thomas Milne
David C. Nahwegahbow
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5
Tel: 613-241-6789
Fax: 613-241-5808
Email: swuttke@afn.ca
tmilne@nncfirm.ca
dndaystar@nncfirm.ca

Counsel for Assembly of First Nations

AND TO: Brian Smith
Jessica Walsh
Litigation Services
Canadian Human Rights Commission
344 Slater Street
Ottawa, ON K1A 1E1
Tel: 613-947-6399
Fax: 613-993-3089
Email: Brian.Smith@chrc-ccdp.gc.ca
Jessica.Walsh@chrc-ccdp.gc.ca

Counsel for Canadian Human Rights Commission

AND TO: Maggie Wente
Sinead Dearman
OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
Tel: 416-981-9330
Fax: 416-981-9350
Email: mwente@oktlaw.com
sdearman@oktlaw.com

Counsel for Chiefs of Ontario

AND TO: Justin Safayeni
Ben Kates
Stockwoods LLP Barristers
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: 416-593-3494
Fax: 416-593-9345
Email: justins@stockwoods.ca
benk@stockwoods.ca

Counsel for Amnesty International

AND TO: Julian Falconer
Molly Churchill
Aliah El-Houni
Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
Tel: 416-964-0495 ext. 222
Fax: 416-929-8179
Email: julianf@falconers.ca
mollyc@falconers.ca
aliahe@falconers.ca

Counsel for Nishnawbe Aski Nation

INDEX

TAB	DESCRIPTION	PAGE
1	Transcript of Cross-Examination of Sony Perron November 14, 2019	1
2	Affidavit of Sony Perron sworn November 8, 2019	26
3	Affidavit of Victoria Azevedo affirmed November 22, 2019	142
4	Written Submissions	160

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

- and -

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

Respondents

CROSS-EXAMINATION OF SONY PERRON
on his affidavit sworn October 3, 2019,
held at the offices of ASAP Reporting Services Inc.,
100 Queen Street, Suite 940, Ottawa, Ontario,
on Thursday, November 14, 2019, at 10:00 a.m.

CONDENSED TRANSCRIPT WITH INDEX

APPEARANCES:

Mr. Robert Frater, Q.C. on behalf of the Applicant
Mr. Max Binnie

Mr. David P. Taylor on behalf of the Respondent/
Ms. Barbara McIsaac First Nations Child and
Family Caring Society of
Canada

Mr. Stuart Wuttke on behalf of the Respondent/
Mr. Thomas Milne Assembly of First Nations

Ms. Jessica Walsh on behalf of the Respondent/
Canadian Human Rights
Commission

Ms. Sinéad Dearman on behalf of the Respondent/
Chiefs of Ontario

Ms. Molly Churchill on behalf of the Respondent/
Nishnawbe Aski Nation

A.S.A.P. Reporting Services Inc. © 2019
940-100 Queen Street 900-333 Bay Street
Ottawa, Ontario K1P 1J9 Toronto, Ontario M5H 2R2
(613) 564-2727 (416) 861-8720

INDEX

	PAGE
SWORN: SONY PERRON	3
EXAMINATION BY MS. McISAAC	3
EXAMINATION BY MR. WUTTKE	35

Page 3	Page 4
<p>1 Ottawa, Ontario</p> <p>2 --- Upon commencing on Thursday, November 14, 2019,</p> <p>3 at 10:00 a.m.</p> <p>4 SWORN: SONY PERRON</p> <p>5 EXAMINATION BY MS. McISAAC</p> <p>6 1 Q. Just to confirm, Mr.</p> <p>7 Perron, this is a cross-examination on two</p> <p>8 affidavits you have sworn in Court File T-1621 of</p> <p>9 '19?</p> <p>10 A. Yes, this is accurate.</p> <p>11 2 Q. The first being an</p> <p>12 affidavit dated October 3, 2019, which was filed</p> <p>13 in support of the Attorney General of Canada's</p> <p>14 motion to stay the Human Rights Tribunal order of</p> <p>15 September 6th, 2019?</p> <p>16 A. Yes, exactly.</p> <p>17 3 Q. Thank you. And I'm going</p> <p>18 to refer to that as the compensation ruling. And</p> <p>19 the second affidavit was sworn November 8, 2019 in</p> <p>20 response to the motion by the First Nations Child</p> <p>21 and Family Caring Society, which I will refer to</p> <p>22 as the Caring Society, its motion to hold the</p> <p>23 judicial review in abeyance?</p> <p>24 A. Yes, it is.</p> <p>25 4 Q. Thank you. And counsel,</p>	<p>1 can you just confirm that Mr. Perron's affidavits,</p> <p>2 both of them will be relied on with respect to</p> <p>3 both motions?</p> <p>4 MR. FRATER: Yes, that's</p> <p>5 correct.</p> <p>6 MS. McISAAC: Thank you.</p> <p>7 --- (Off-record Discussion)</p> <p>8 MS. McISAAC:</p> <p>9 5 Q. Thank you. Mr. Perron, I</p> <p>10 would like to start with some background questions</p> <p>11 with respect to your affidavits. But before I do</p> <p>12 so, I note that your affidavit contains a number</p> <p>13 of representations about the nature of Canada's</p> <p>14 compliance with the Tribunal's existing orders,</p> <p>15 and I just want to place on the record the fact</p> <p>16 the Caring Society will not be exploring these in</p> <p>17 any detail today. But it is our position that</p> <p>18 pursuant to the Tribunal's record and decisions,</p> <p>19 Canada has opposed each of the noncompliance</p> <p>20 motions before the Tribunal.</p> <p>21 We also note that those</p> <p>22 representations regarding Canada's approach to the</p> <p>23 orders is in our view irrelevant to the stay</p> <p>24 motion, and that's why we are not cross-examining</p> <p>25 on them. That speaks to what is happening in the</p>
Page 5	Page 6
<p>1 future as opposed to compensation for those who</p> <p>2 have been discriminated against in the past.</p> <p>3 Having said that, could I get</p> <p>4 you to look at paragraph 2 of your first</p> <p>5 affidavit, please?</p> <p>6 A. Yes.</p> <p>7 6 Q. Now I understand that you</p> <p>8 have worked with Indigenous Services Canada, which</p> <p>9 I will refer to as ISC, and that you are currently</p> <p>10 the Associate Deputy Minister and have been such</p> <p>11 since December of 2017, is that correct?</p> <p>12 A. Yes, I've been the</p> <p>13 associate deputy minister since mid-December 2017.</p> <p>14 7 Q. All right. Prior to</p> <p>15 that, you were the Senior Assistant Deputy</p> <p>16 Minister at the same department?</p> <p>17 A. Mostly at the Health</p> <p>18 Canada department. This branch or this sector was</p> <p>19 transferred to the new department, called</p> <p>20 Indigenous Services Canada, in fall of 2017.</p> <p>21 8 Q. Okay. And then prior to</p> <p>22 that, from 2011 to 2012, you were the Assistant</p> <p>23 Deputy Minister for Health Canada's corporate</p> <p>24 services branch?</p> <p>25 A. Exactly.</p>	<p>1 9 Q. And prior to that,</p> <p>2 Director General for the non-insured health</p> <p>3 benefits program?</p> <p>4 A. Yes.</p> <p>5 10 Q. Have you read all of the</p> <p>6 orders issued by the Tribunal respecting Jordan's</p> <p>7 Principle?</p> <p>8 A. I have read -- yes, I</p> <p>9 have read all the orders since the merit decision</p> <p>10 of 2016.</p> <p>11 11 Q. So I'm right in saying</p> <p>12 that you've been involved in one way or another in</p> <p>13 the Federal government's implementation of</p> <p>14 Jordan's Principle since the House of Commons</p> <p>15 unanimously passed its motion 296 in December of</p> <p>16 2007?</p> <p>17 A. No, this is not accurate.</p> <p>18 I have been involved in the file that is referred</p> <p>19 to as Jordan's Principle starting in 2016.</p> <p>20 12 Q. '16?</p> <p>21 A. Before that, as the</p> <p>22 Tribunal has assessed as part of this work, the</p> <p>23 focus of Jordan's Principle was very narrow, so I</p> <p>24 was not involved in dealing with the application</p> <p>25 of Jordan's Principle. However, I was involved in</p>

Page 7

1 my previous function in dealing with a lot of
2 situation where children needed services that were
3 not necessarily available in their communities or
4 on their federal program, and trying to find
5 solution. But not necessarily under Jordan's
6 Principle as a matter of work, finding a solution
7 within existing programs and authorities, or
8 sometimes partnerships.

9 13 Q. Okay. So I would be
10 correct, though, in saying that you are fully
11 familiar with the Human Rights process in this
12 particular case, the various decisions and the
13 hearings that have been held?

14 A. Fully familiar might be,
15 like, very specific as a description. There is a
16 lot in all of these decision over time.

17 14 Q. Fair enough.

18 A. So there is some aspect
19 of these decision that I'm much more familiar
20 with.

21 15 Q. Now I would like to focus
22 on the period from January of 2016 to May of 2017.
23 I understand that during that period you were
24 responsible for Health Canada's implementation of
25 the Tribunal's orders with respect to Jordan's

Page 8

1 Principle?

2 A. Yes, this is accurate. I
3 was involved into assessing the merit decision and
4 determining what will be the course of action in
5 terms of dealing with the application of Jordan's
6 Principle.

7 16 Q. And was it your belief
8 during that period, January of 2016 to May of
9 2017, that Canada had complied with the Tribunal's
10 orders regarding Jordan's Principle?

11 A. Yes, it was. And our
12 understand -- my understanding at the time of what
13 was required by the Tribunal order has proven to
14 not be accurate following future -- later decision
15 from the Tribunal, where the Tribunal told us that
16 the definition we were still using was not broad
17 enough.

18 17 Q. Right. So the Tribunal
19 found that in fact you weren't in compliance with
20 their order?

21 A. The Tribunal got much
22 more precise on what was the definition that they
23 wanted the government to follow in terms of the
24 application of Jordan's Principle, and determined
25 that the approach we had taken between the merit

Page 9

1 decision and the next order was not appropriate.

2 18 Q. And that was the
3 Tribunal's decision of May 2017.

4 A. Exactly.

5 19 Q. Right. Okay. And Canada
6 brought an application for judicial review of that
7 May 2017 decision, correct?

8 A. Some aspect of it, it's
9 accurate. There was an attempt to work with the
10 parties to address some of the technical
11 dimension, namely the consultation with healthcare
12 providers, and we were not successful, so the
13 decision was to file an application for judicial
14 review to try to get this dimension resolved.

15 20 Q. But subsequently, you
16 represented Canada in negotiations with the Caring
17 Society to achieve amendments to that decision to
18 satisfy your operational concerns and
19 requirements, correct?

20 A. Contrary to what happened
21 before the filing of the review, the parties were
22 interested to discuss these detail after. And we
23 found, I would say, an acceptable resolution that
24 provides safety to the decisionmaking around
25 Jordan's Principle for the children.

Page 10

1 21 Q. By working together.

2 A. Yes. This is accurate.

3 22 Q. And then as a result, the
4 judicial review was withdrawn?

5 A. This was, I think, a
6 decision of the parties that we had found
7 appropriate compromise, and then we would drop
8 judicial review, yes.

9 23 Q. Thank you. Could I get
10 you to look now at paragraph 4 of your affidavit?
11 This is the first affidavit. In that paragraph
12 you say:

13 "I have reviewed the
14 Canadian Human Rights
15 Tribunal's Ruling and
16 Order on compensation..."

17 The order that's subject to
18 the judicial review in this case.

19 "... and have determined
20 that ISC requires
21 authority from Cabinet in
22 order to determine what
23 steps Canada will take in
24 response."

25 Now, you will agree with me,

Page 11

1 of course, that we had an election and a new
2 government has been elected, albeit a minority?

3 A. Yeah, we were at the edge
4 of an election being launched at the time where
5 the September 6th decision came.

6 24 Q. And Cabinet will be
7 formed, at least the Prime Minister's announced
8 that he will be forming or announcing his Cabinet
9 on November 20th?

10 A. Yes, with the same
11 understanding that next week on November 20th, we
12 should have a new Cabinet.

13 25 Q. And would I be correct in
14 assuming that you and the department would be
15 ready to brief the new Cabinet and any new
16 responsible Ministers about the ruling immediately
17 after that?

18 A. Immediately the
19 announcement of the new Minister for our
20 department, our role as senior official will be to
21 brief the Minister on all important and active
22 files. This will of course include this file.

23 26 Q. Right. And in that case,
24 I assume again, and would I be correct in
25 assuming, that you have started preparing ideas at

Page 12

1 least? I'm not asking precisely what, as to how
2 implementation might take place or what needs to
3 be done next to put to the Minister and Cabinet?

4 A. We have started to work
5 -- we have worked on preparing briefing, which is
6 about the assessment of the order itself, the
7 background of all the situation, because we cannot
8 presume who will be the Minister at the time and
9 what might be the way forward.

10 27 Q. Options for moving
11 forward.

12 A. Yeah. We will discuss
13 with the Minister the views in terms of what could
14 be the next step.

15 28 Q. Now, have you taken any
16 steps to identify the person who would enter into
17 discussions with AFN and the Caring Society to
18 talk about compensation processes if that becomes
19 necessary?

20 A. No. We haven't
21 identified a specific person as indicated in my
22 affidavit. At this time we do not have the
23 mandate and the authority, so when we have
24 addressed these questions, then we can determine
25 what will be the course of action and who will be

Page 13

1 the person.

2 29 Q. Okay. And how long after
3 November 20th would it take, do you think, to
4 organize that and get some instructions from your
5 Minister and/or Cabinet?

6 A. I cannot presume what
7 will be the timing for us to access Cabinet and
8 get decision and direction on this question.

9 30 Q. Now, I understand that
10 the Prime Minister, Minister Bennett, who was the
11 Minister or may again be the Minister, and
12 Minister O'Regan, have all said that the victims
13 of discrimination should be compensated.

14 I also understand that the
15 leaders of the New Democratic Party, the Bloc, and
16 the Green Party, as well as Mr. Scheer eventually,
17 on behalf of the Conservative Party, have also
18 agreed that these children who were the victims of
19 discrimination as found by the Tribunal should be
20 compensated. Is that correct?

21 A. I have knowledge that a
22 number of member of the government have pronounced
23 with the fact that children that have been victim
24 of discriminatory policy from the government in
25 the past should be compensated, and that we were

Page 14

1 to work toward providing the right services to
2 children and family.

3 31 Q. In the future?

4 A. In the future.

5 32 Q. What steps have been
6 taken to deal with the issues of the past
7 discrimination, should Cabinet and the ministers
8 instruct you to move forward on the basis of
9 compensation?

10 A. Sorry. Can you repeat
11 the question?

12 33 Q. All right. If the
13 ministers and/or Cabinet instruct you to proceed
14 with some kind of compensation, what steps have
15 you taken to date in anticipation of those
16 instructions?

17 A. As I said before, we have
18 reviewed the September 6th decision, what are the
19 specific orders in terms of who need to be
20 compensated according to the order. We have done
21 an assessment of what might be the financial
22 application of that, and there is some detail
23 about that in my affidavit.

24 And we have identified the
25 information that we have in the department about

Page 15

1 how it will proceed. We have to look also, and
2 this is described in my affidavit, about the other
3 example of broad compensation that happened in
4 recent past, and how they have operated. There
5 are various models. So this is the kind of work
6 we have done so far.

7 34 Q. All right, in
8 anticipation of instructions you might receive?

9 A. In anticipation that we
10 have a Tribunal order that gives us specific
11 action to take, and our job is to assess how this
12 could be made possible.

13 35 Q. Now, in paragraph 5 of
14 your affidavit, you say that the Tribunal ordered
15 Canada to pay this maximum, you are referring to
16 the \$40,000, to a number of categories of
17 individual. But you will agree with me that
18 Canada is not required to pay anything until the
19 Tribunal issues an order with regard to a
20 compensation process, correct?

21 A. The Tribunal order from
22 September 6th indicated that the Tribunal will
23 rule after a future submission from the parties on
24 the process, and this is probably at the time
25 where we would get some specific instruction about

Page 16

1 how this should go about. In the past, however,
2 there has been orders where the Tribunal was very
3 precise in terms of date and these timeline were
4 really, really short. So I cannot presume where
5 the Tribunal would go, but this is where we would
6 know more about how this would proceed.

7 36 Q. Right. But you will
8 agree with me that no money actually has to be
9 paid out to anybody until the compensation process
10 has been either agreed on by the parties or
11 ordered by the Tribunal.

12 A. There is no payments that
13 are required at this time until we have a future
14 ruling from the CHRT based on the September 6th
15 decision.

16 37 Q. Now, in paragraph 5(a),
17 you refer to one of the categories of individuals
18 who are entitled to compensation as being:

19 "First Nations children
20 living on reserve and in
21 the Yukon who were
22 removed from their
23 families or communities,
24 necessarily or
25 unnecessarily."

Page 17

1 Could I get you to take a look
2 at paragraph 249 of the actual Tribunal decision?
3 Do you have that? I notice, actually, it's not in
4 your motion record, Mr. Frater.

5 A. I do not have a copy of
6 the order. Thank you. 249?

7 38 Q. 249, please. Take a look
8 at that, and then I will ask my question.

9 A. Okay.

10 39 Q. Now if you want to go
11 back to the beginning of that paragraph, in my
12 version it's the bottom of page 83 of the
13 decision. And I would suggest to you that your
14 statement in paragraph 5(a) of your affidavit is
15 overly broad because the Tribunal specified that
16 this group of victims was:

17 "First Nations children
18 living on reserve and in
19 the Yukon territory who
20 was as a result of abuse
21 were necessarily
22 apprehended from their
23 homes but placed in care
24 outside of their extended
25 families and

Page 18

1 communities." (As read)
2 Correct?

3 A. So you are trying to
4 paraphrase paragraph 239 -- 249?

5 40 Q. Yes. Well, I was reading
6 from 249, I believe.

7 A. Yes.

8 41 Q. So that is the category
9 of --

10 A. This is the order that
11 was issued on September 6th, 2000.

12 42 Q. And I'm suggesting to you
13 that your statement in paragraph (a) is overly
14 broad in terms of the children involved, because
15 it doesn't define it by children placed in care
16 outside their extended families and communities.

17 A. The -- my affidavit is a
18 summary of the order, but it doesn't replace the
19 content of the order in terms of how we need to
20 act. So, and it doesn't pretend to be a
21 translation of the order here.

22 43 Q. All right. So we have to
23 go back to the order to be absolutely certain
24 about which categories of children are to be
25 compensated under the order?

Page 19

1 A. Of course. The order is
2 the frame for compensations that have been given
3 by the Tribunal.
4 44 Q. Right. Now at paragraph
5 6 of your affidavit, you say:
6 "Canada is required to
7 report back to the
8 Tribunal by December 10,
9 2019, on a compensation
10 process agreed by the
11 complainants."
12 Are you -- I put it to you
13 that the Tribunal wants you to report back if we
14 reach an agreement, but if agreement hasn't been
15 reached, the parties would make submissions on a
16 compensation process?
17 A. So could you repeat your
18 question?
19 45 Q. Well, I'm having a little
20 trouble with paragraph 6, because I put it to you
21 that what the order says that if the parties agree
22 on a compensation process, they will come back to
23 the Tribunal with that compensation process and
24 present it to the Tribunal by December 10th.
25 Correct?

Page 21

1 interest."
2 First of all, I think we have
3 agreed that the current order doesn't require the
4 government to actually pay any money at the
5 moment.
6 A. There is nothing in the
7 order that require paying of money between now and
8 December 10th -- 9th.
9 48 Q. Actually --
10 A. Could you just confirm
11 what is the date of December? Just to make sure.
12 49 Q. It is December 10th.
13 A. December 10th.
14 50 Q. Correct. Or until such
15 time as either the parties who agree to a
16 compensation process or the Tribunal orders a
17 compensation process.
18 A. Yeah, and we, based on
19 previous experience, the Tribunal sometimes have
20 ordered executive decisions pretty quickly.
21 51 Q. Well, but at the moment,
22 you don't have to pay any money to anybody?
23 A. There is no request to do
24 any payment at this point.
25 52 Q. Now, in paragraphs 17 to

Page 20

1 A. Yeah. My understanding,
2 however, is that any party can go back to the
3 Tribunal at any time with their own proposal to
4 the Tribunal.
5 46 Q. Exactly. So if the
6 parties don't reach an agreement, the various
7 parties would each make their own submissions to
8 the Tribunal as to what the process should be.
9 A. I would say beside
10 Canada, the other parties have the discretion to
11 make a submission or not.
12 47 Q. Right. Okay. Now in
13 paragraph 8 of your affidavit you say,
14 "Given the scope and
15 impact of the Tribunal's
16 decision, I believe that
17 commencing the
18 compensation process
19 before the Tribunal's
20 decision can be
21 judicially reviewed is
22 unfair to the claimants,
23 to ISC and the government
24 more generally, and so is
25 not in the public

Page 22

1 20 of your affidavit, you talk about Jordan's
2 Principle and steps that the department ISC has
3 taken to deal with the various discriminatory
4 conduct that the Tribunal has found?
5 A. Yeah, it summarizes a
6 number of specific action that have been taken
7 over time to address the service issues that were
8 identified by the Tribunal over time.
9 53 Q. And you will agree with
10 me that none of those steps address the past
11 discrimination. They are all looking forward to
12 address issues that come up.
13 A. Well, some orders did
14 address the past of the systematic discrimination
15 issues. For example, the Tribunal have ordered to
16 reimburse agencies for past expenditures that
17 where they would have incurred a likely deficit in
18 their operation. The Tribunal has ordered, and
19 even Canada went beyond a review of cases of
20 Jordan's Principle that might have been denied,
21 and we did. So there was a number of actions that
22 look at the past.
23 54 Q. All right. But by and
24 large, these are steps that you have implemented
25 for the future to deal with discriminatory

Page 23

1 practices?

2 A. Yeah, most of the action
3 taken by Canada since 2016 has been about
4 reforming the Child and Family Services Program
5 and funding models for the Child and Family
6 Services agencies, as well as implementing
7 Jordan's Principle.

8 55 Q. Thank you. Now going
9 back to paragraph 2 of your affidavit. Sorry to
10 jump around a bit. You say in the last sentence
11 of that paragraph,

12 "As a result, I
13 understand the two groups
14 within ISC that are most
15 immediately affected by
16 the Tribunal's order."

17 Which two groups are those?

18 A. The two sectors in
19 Indigenous Services Canada that are involved in
20 this, there is the Child and Family Services
21 reform sector, and there is the First Nation and
22 Inuit Health Branch sectors. So those are two
23 sectors that are actively involved in
24 implementation of the order, and addressing
25 deficiencies that were identified over time by the

Page 25

1 things and actually working on a compensation
2 process, if you were to do that.

3 A. I don't have that
4 information. I haven't performed any assessment
5 to determine this at this point. We have people
6 that are doing policy work on various subject,
7 various aspects in these sectors, but we haven't
8 done an assessment of how many people we would
9 need to put on such a team.

10 59 Q. All right. And have you
11 ever visited the offices of the Caring Society?

12 A. Yes. I did visit the
13 office of the Caring Society.

14 60 Q. And are you aware that
15 the Caring Society has two full-time and four
16 part-time employees?

17 A. No, I was not aware of
18 this.

19 61 Q. But you would agree with
20 me that the Caring Society operates with a
21 relatively small staff?

22 A. It's definitely a small
23 organization.

24 62 Q. And you are familiar with
25 the various activities of the Caring Society, are

Page 24

1 Tribunal.

2 And also I would say a number
3 of issues that may not have got Tribunal
4 attention, but were identified between the parties
5 as reforms that needed to be undertaken.

6 56 Q. And would these two
7 groups also be involved in the development of an
8 implementation process if that were to be done?

9 A. The expertise around
10 Child and Family Services or Jordan's Principle is
11 a sector.

12 57 Q. And how many people are
13 employed approximately in these two sectors?

14 A. The sectors are, for the
15 First Nation Branch we probably have around 2,500
16 employees, but most of them are not involved in
17 Jordan's Principle. The group that support
18 Jordan's Principle is smaller than that.

19 And for the Child and Family
20 Services reform group, I don't have the exact
21 numbers. We are talking about a couple of
22 hundreds, but I don't have the number exactly.

23 58 Q. That's fine. And of
24 those, how many people would be involved in the
25 sort of -- I would think it was the policy side of

Page 26

1 you?

2 A. I wouldn't say that I'm
3 familiar with all the activities, but I'm familiar
4 with some. I'm familiar with some of the work of
5 the Dr. Blackstock in terms of reaching out,
6 working with children, promoting, conferencing.
7 Of course she's a highly visible person.

8 63 Q. And you would agree with
9 me that the Caring Society is engaged in many more
10 activities than just this Human Rights Tribunal
11 case?

12 A. My understanding is that
13 it's a very active organization, and Dr.
14 Blackstock, the leader of the organization, is
15 very active.

16 64 Q. Now, in paragraph 7 of
17 your affidavit you say:

18 "I'm advised, based on
19 the department's
20 interpretation of the
21 Orders, that immediate
22 implementation would
23 require a significant
24 investment of human and
25 financial resources."

1 What information do you rely
2 on for that assessment?
3 A. As it's indicated in my
4 affidavit, we have done general costing of what it
5 might mean in a number of individual that could
6 end up being compensated under the order of the
7 Tribunal of September 6th, looking at the various
8 class that are identified in the detailed order.

9 So we have a size of -- we
10 have a sense of the size of the class, of the
11 group, and we were able to assess in comparison to
12 other large settlement or resolution like that,
13 and compensation process that happen in recent
14 past, what it would take to address such process.

15 65 Q. So?

16 A. So significant here is
17 the general number. I can get more specific, for
18 example, under the residential school settlement
19 process, at the peak it was -- there was an
20 expenditure of 60 million dollar a year to manage
21 a secretary, to do the education and the payment
22 of the claim.

23 There is different process,
24 but this gives us an indication that it's a
25 significant undertaking when you look at broad

1 compensation like that.

2 66 Q. But you are referring to
3 the actual payment of the compensation and the
4 administration of the structure developed to pay
5 the compensation?

6 A. Yeah. And this is not --
7 it's not an indication that it would be as such a
8 structure that we'd require in that case, but it
9 gives an element of comparison. And we look at
10 different models that use alternative model
11 outside agencies to do the payment, and we get to
12 a significant amount, whatever model would be used
13 in the future for our compensation like that.

14 67 Q. So it's fair to say that
15 you in the department have had some considerable
16 experience in developing an administration --
17 administering, pardon me, compensation schemes?

18 A. There is some people that
19 are currently in the department that have been
20 involved in compensation process in the past.
21 Surely, yes.

22 68 Q. And I assume that their
23 expertise and knowledge would be useful in
24 developing a compensation scheme in this case as
25 well.

1 A. We would rely on people
2 that have expertise in doing this, as well as
3 engagement with the involved parties to determine
4 the best course of action.

5 69 Q. Now in paragraph 7, you
6 also say:

7 "The public service is
8 not in a position to
9 seek -- "

10 A. Sorry. Can you repeat
11 the number? Seven? Thank you.

12 70 Q. Seven, sorry. Second
13 half of that paragraph:

14 "The public service is
15 not in a position to seek
16 the required authority to
17 pursue meaningful
18 discussions with the
19 Assembly of First Nations
20 and the First Nations
21 Child and Family Caring
22 Society prior to
23 December 10th as ordered
24 by the Tribunal."

25 And that's because typically

1 you say these decisions are made by the Cabinet.

2 A. Yes.

3 71 Q. All right. But by --

4 A. Well, our assessment was
5 that we did not have the authority to proceed with
6 the discussion because we did not have a mandate
7 to do such thing at this time. It's something
8 that we do systematically each time there is a new
9 undertaking, not only coming from the Tribunal,
10 but part of our work, generally speaking. We look
11 at what are the authority of the department to
12 proceed with some work.

13 In the past we have, I think,
14 a good track record working with the parties under
15 this merit ruling, and in terms of engaging and
16 consulting, finding a resolution, compromise,
17 understanding issues of each other. So we have
18 this, but we always do that when we have the
19 authority. In few instances in the past where we
20 did not have the authority, we did inform the
21 parties that until we have such authority, we
22 would be more on the listening mode and getting
23 their views, their perspective.

24 But to be engaged into a fair
25 and transparent way with the parties, we need to

Page 31

1 have a mandate. Otherwise we are asking our
2 official in the department to do work without
3 proper authorities. And this is not necessarily
4 consistent with the way we are usually working
5 with.

72 Q. But once you have a
7 Cabinet appointed, which will be November 20th,
8 and you have had an opportunity to brief up, you
9 should be able to obtain instructions to either
10 proceed or not proceed, correct?

11 A. We will for sure work
12 with the new Minister following the appointment to
13 determine the best course of action.

73 Q. Now, in paragraph 8 you
14 say,

15 "Given the scope and
16 impact of the Tribunal's
17 decision, I believe that
18 commencing the
19 compensation process
20 before the Tribunal's
21 decision can be
22 judicially reviewed is
23 unfair to the claimants,
24 to ISC and to the
25

Page 33

1 subgroup would be really easy to identify and
2 payment could take really short because the
3 Tribunal already determined what is the amount of
4 payment. So there is not a process of assessment
5 here. You need someone that is identified as a
6 claimant that legitimately went through Child and
7 Family Services care, and the payment could be
8 issued.

9 So for some of it, not all,
10 the complexity of issuing payment is really,
11 really simple. For some others it's much more
12 complicated. So we can see a situation where some
13 payment could be done really quickly and some
14 others would take more time.

75 Q. Right. But none of that
16 comes up until you have an order with a
17 compensation process that requires you to make
18 payments.

19 A. Can you repeat the
20 question?

76 Q. I said: None of that
21 arises until you have a compensation process in
22 place and the Tribunal issues a second order with
23 respect to actual payment?
24

25 A. My understanding is as

Page 32

1 government more
2 generally, and not in the
3 public interest." (As
4 read)

5 I'm having some trouble. Why
6 is it unfair to everybody to at least start
7 talking about a compensation process that might be
8 implemented? After all, you might be unsuccessful
9 in your judicial review. You might be
10 unsuccessful in your stay. How it can be unfair?

11 A. So the paragraph 8
12 doesn't say that having a discussion is unfair.
13 It's undertaking the compensation process that is
14 unfair. And if you want, I can explain to you
15 why. First, if there is a judicial review, and in
16 the future --

74 Q. But you are not -- you
18 are not being asked to pay any money yet, correct?

19 A. We are not asked to pay
20 any money yet. And my point here on paragraph 7
21 is starting the payment. And like I said before,
22 it did happen that the Tribunal order payment in a
23 really short term of some measures. And in the
24 order of September 6th, if you look at the detail,
25 the various class, some of the class, some of the

Page 34

1 soon as December 10th, the Tribunal can issue
2 order and ruling in terms of how the compensation
3 could proceed, should proceed.

77 Q. Unless the parties ask
5 for an extension of that December 10th date.

6 A. If there is an extension,
7 if the Tribunal decision can come later, you are
8 right.

78 Q. Thank you. I think if we
10 could just take a break for a moment, please. I
11 would like to revisit some of my questions, if
12 that's okay with everyone.

13 --- Recess taken at 10:40 a.m.

14 --- On resuming at 10:54 a.m.

15 MS. McISAAC: Back on the
16 record. Thank you, Mr. Perron. Those are all of
17 my questions, but I believe some of the other
18 parties will have questions for you as well.
19 Thank you.

20 THE WITNESS: Thank you.

21 --- Upon recessing at 10:55 a.m.

22 --- On resuming at 11:10 a.m.

23 MR. WUTTKE: It's Stuart
24 Wuttke, Thomas Milne for the Assembly of First
25 Nations, but before we ask our questions I

Page 35

1 understand that, just to confirm, that the Chiefs
2 of Ontario and NAN and the Commission will not be
3 asking any questions.

4 MS. DEARMAN: I can confirm
5 that on the behalf of Chiefs of Ontario. No
6 questions.

7 MS. WALSH: Jessica Walsh for
8 the Canadian Human Rights Commission. I confirm
9 the Commission will not be asking any questions
10 today.

11 MS. CHURCHILL: And on behalf
12 on NAN, Molly Churchill. No questions for NAN.
13 EXAMINATION BY MR. WUTTKE

14 MR. WUTTKE: Thank you, Mr.
15 Perron. My name is Stuart Wuttke. I'm with the
16 Assembly of First Nations, and I have a few
17 questions to ask you. First of all, I would like
18 to thank you for taking time to be with us today.

19 THE WITNESS: Pleasure. Thank
20 you very much.

21 MR. WUTTKE:

22 79 Q. So at the outset, you
23 mentioned that there are a number of individuals
24 in the department that have experience in
25 compensation schemes. Do you in particular have

Page 36

1 any experience in those compensation schemes you
2 mentioned?

3 A. You are talking about
4 myself?

5 80 Q. Yes.

6 A. Large scale in
7 compensation, no. I was involved in settlement of
8 small issues. Smaller issues, not small. They
9 were important, but did not include large groups
10 of people.

11 81 Q. Thank you. Now at
12 paragraph four of your affidavit, you state that
13 essentially that ISC or your department requires
14 Cabinet approval before they do anything, is that
15 correct?

16 A. Well, I think it would be
17 more specific than that. In that particular case
18 we have reviewed the orders. And the order orders
19 us to develop a model of compensation and
20 undertake a compensation based on some specific
21 direction provided by the Tribunal.

22 We have assessed if we have in
23 the department, whether legislative or policy
24 authority, to undertake such activities. And
25 under both the Child and Family Services Program

Page 37

1 and Jordan's Principle Child First Initiative
2 program, we do not have an element of authority
3 that will allow us to undertake activity called
4 compensation.

5 So it means that, and it's the
6 case for any undertaking from the department, we
7 need to look at what we have authority. And if we
8 don't and there is a need to do it, we have to go
9 back to Cabinet to seek proper policy authority.
10 And if there is financial implication that are
11 beyond the capacity of the financial, the
12 department, what has been already appropriated,
13 seeking a source of fund to undertake this work.

14 So on both side under the
15 program activity, authority, and the financial
16 side, the order as defined, we did not have the
17 authority to undertake it like that. So we have
18 to seek authority from Cabinet.

19 82 Q. Thank you. And you
20 mentioned Jordan's Principle. Would you agree
21 that the department did not go back to Cabinet
22 when it expanded the definition of Jordan's
23 Principle?

24 A. We sought expansion of
25 authority, yes.

Page 38

1 83 Q. You did seek?

2 A. When it was beyond the
3 authority that were granted before, we seek an
4 adjustment of authority, yes. So there was
5 instances where some of the order of the Tribunal
6 brought us into places where we already had the
7 authority, and there is a place where I do
8 remember we did not have the authority and we had
9 to seek adjustment to the decision from Cabinet in
10 terms of what we were allowed to do.

11 84 Q. Okay, let's parcel that
12 out for a second.

13 So when -- at first the
14 department was operating on a definition of
15 Jordan's Principle that was not in line with what
16 Parliament had expressed. Would you agree with
17 that?

18 A. You are referring to the
19 pre-2016?

20 85 Q. Yes.

21 A. My understanding, and I
22 said that before in term of answer, I was not
23 involved in Jordan's Principle. My understanding,
24 however, there was actually a Cabinet authority
25 provided to define how Jordan's Principle at the

Page 39

1 time was to be implemented.

2 86 Q. Yes. So Jordan's
3 Principle was being provided. However, the
4 Tribunal had stated that that definition that was
5 used by the department was overly restrictive.

6 A. Exactly. In 2016 in the
7 merit decision, the Tribunal indicated that the
8 definition used -- and the government needed to
9 implement the full breadth of Jordan's Principle.

10 87 Q. So in 2016, shortly after
11 the order, did the department seek Cabinet
12 approval to do expand Jordan's Principle to
13 address the decision in 2016?

14 A. Authority was sought, I
15 think, for an expansion of the definition
16 following the first order, which I don't remember
17 the date exactly, of noncompliance around Jordan's
18 Principle. The indication of the Tribunal at that
19 time was to expand further, and we sought
20 authority from Cabinet to implement the initiative
21 that was called at the time Child First
22 Initiative, Jordan's Principle implementation,
23 yes.

24 88 Q. At paragraph 7 you state
25 that in normal circumstances, how did you put

Page 40

1 it -- essentially, under normal circumstances,
2 decisions such as compensation are to be made by
3 Cabinet. Now would you agree that Cabinet did
4 provide direction to the department with respect
5 to the Indian Residential School Settlement
6 Agreement, the Sixties Scoop, and the Day Scholar
7 Settlement?

8 A. Likely, but I was not
9 involved in these initiatives.

10 89 Q. Would you agree that
11 settlement discussions are quite different from
12 what happened in this case, where you actually
13 have an order by a panel?

14 A. Could you repeat the
15 question?

16 90 Q. Would you agree that
17 settlement discussions that are provided by
18 Cabinet such as the Indian Residential School
19 Settlement Agreement, the Sixties Scoop, Days
20 Scholars, it's quite different from what we have
21 in this case, where a Tribunal has made an order?

22 A. My understand is that
23 whether it's a settlement or it's implementing the
24 order, officials that will be carrying the work to
25 work with the parties to find a way forward in

Page 41

1 this needs a mandate that is given by Cabinet that
2 say, here is the parameter under which you can
3 negotiate or develop a plan. And this is, in both
4 case, there is a need for a mandate.

5 91 Q. Yes. And you would agree
6 that the order right now is not the final
7 settlement order?

8 A. My understanding is that
9 the order is very specific about some of the
10 dimension of the compensation, but there is an
11 indication from the Tribunal that they want -- or
12 they expect submissions from the parties. And
13 then they will -- the panel will plan an issue,
14 likely a new order to define what will be the
15 compensation approach.

16 There is even a component of
17 the order from September 6th that invite the
18 parties to submit additional request for other --
19 I don't have the language, exactly. Other class
20 of recipients or claimants that should be
21 considered.

22 92 Q. Would you agree though
23 that the order speaks to the parties essentially
24 working together to develop a compensation scheme,
25 if possible?

Page 42

1 A. The order talks about
2 both, working together to develop a process to
3 implement, but the parameter of the order in terms
4 of what the compensation is to be about, in term
5 of who should be compensated, the amount, some of
6 the high-level criteria, are already defined by
7 Tribunal.

8 93 Q. Would you agree that
9 meetings with respect to compensation have
10 occurred in several occasions in the past between
11 the department and the parties?

12 A. There is in the past,
13 before the Tribunal order there was an attempt to
14 try to advance work on several outstanding issues,
15 trying to do it collaboratively. And in some
16 places we were successful, but I understand we
17 haven't reached a common ground on compensation.

18 94 Q. But it was brought up at
19 previously meetings?

20 A. It was discussed between
21 the parties, yes.

22 95 Q. And would you also agree
23 that since the Tribunal made its decision in 2016,
24 and to basically January 2016, compensation has
25 been an outstanding item?

Page 43

1 A. Yeah, it was identified
2 by the Tribunal as an element that will be subject
3 of a future decision.

4 96 Q. I'm sorry to jump back.
5 At paragraph 6, you mention the December 10th
6 date. You state that:

7 "Canada is required to
8 report back to the
9 Tribunal by December
10 the 10th on a
11 compensation process
12 agreed by the
13 complainants. Failure to
14 reach an agreement will
15 result in a panel
16 ordering one of its own
17 creation."

18 Now, with respect to that, has
19 Canada contemplated asking for an extension of
20 that December 10th deadline?

21 A. Yes, this was part of the
22 initial assessment to determine how we can
23 proceed. The understanding, however, was that
24 going to an extension will not be sufficient. We
25 needed -- if there was concern about the decision

Page 44

1 itself, we needed to go through a judicial review
2 within 30 days after the order in order to protect
3 the right of Canada and the government going
4 forward to bring this forward in court. So this
5 was considered, yes, and I understand that our
6 legal counsel recently informed the parties that
7 we would be asking the Tribunal for an extension
8 of that date.

9 97 Q. So within that 30-day
10 period, were you aware that should Canada receive
11 consent of the parties, that a simple extension
12 could have been made to the Federal Court by way
13 of letter?

14 A. I think this was
15 mentioned that this was a possibility, yes.

16 98 Q. And the department chose
17 not to explore that possibility, is that correct?
18 With the parties.

19 A. I'm not sure about the
20 verb you use, like "chose," but the fact is that
21 we haven't, so I assume that the conclusion is the
22 same.

23 99 Q. Thank you. At paragraph
24 13 of your affidavit, you speak about the
25 department working with the parties. Never mind.

Page 45

1 You already answered that question, so I will move
2 on to the next one.

3 With respect to the section at
4 paragraph 17 to essentially -- to 31. On the
5 reforms to the Child and Family Services,
6 compliance with respect to Jordan's Principle, and
7 steps taken to address systemic discrimination.

8 AFN won't be speaking
9 questions about this, other than we do agree that
10 none of these paragraphs actually address
11 compensation?

12 A. These paragraphs address
13 the systemic discrimination that have been
14 identified by the Tribunal, and all these measures
15 were to address systemic discrimination. Now, the
16 compensation is an individual compensation that is
17 directed by the Tribunal, so we have a view that
18 Canada's work towards addressing the systemic
19 issue related to the Child and Family Services
20 programming, as well as implementing the broad
21 definition of Jordan's Principle, which were two
22 of the systematic deficiencies that were clearly
23 made in the merit decision of 2016.

24 100 Q. That's correct. But you
25 would agree that they don't speak to compensation

Page 46

1 as ordered in the last order by the Tribunal?

2 A. They don't talk about
3 compensation as defined in the order of
4 September 6, 2019.

5 101 Q. Thank you.

6 A. Sorry. I think I've used
7 the word in English, "systematic." I would like
8 to say systemically. Sorry. For the record.

9 102 Q. Moving on to paragraph 42
10 of your affidavit. In this section you talk about
11 potential harm to Canada's relationship with the
12 claimants. You mention that the parties will have
13 to initiate discussions. Would you agree that the
14 order is only to discuss compensation process at
15 this time?

16 A. The order has an element
17 of discussion about the compensation process, but
18 there is a specific in the order about who should
19 be compensated and how they should be compensated
20 under which criteria. So it's more than ordering
21 only discussion.

22 103 Q. You also mention in this
23 paragraph, you know, further orders. You would --
24 would you agree that Canada already expects that
25 further orders with respect to regarding the

Page 47

1 definition of -- such as the definition of First
2 Nation Child is still ahead?

3 A. The Tribunal told us
4 before that this decision will be coming, yes.
5 104 Q. So you are not surprised
6 that further orders will be forthcoming from the
7 Tribunal?

8 A. The Tribunal has been
9 very diligent to keep the parties informed about
10 long term relief measures and additional orders
11 that become where they will have to then make
12 decisions. I know that some of our staff have
13 participated into hearings around these subject.
14 I know that the Department of Justice has made
15 representation on these question. So it's
16 expected that the Tribunal will come and have
17 ordered a decision on the definition of who is a
18 First Nation Child, and small -- I think there is
19 an element on capital and small agencies, and also
20 continued the oversight over the orders.

21 105 Q. At paragraph 43, you
22 basically provide a scenario here, and I would
23 suggest it's a speculative scenario. But you
24 mention that ISC would have to initiate
25 communications about its compensation process.

Page 49

1 final decision on that, it's probably preferable
2 to wait for a final decision before we initiate
3 outreach to the potential claimants, so we don't
4 create false expectation or disappointment in the
5 long run.

6 106 Q. You would agree, though,
7 that the communications in those plans is a
8 process that would normally be developed in your
9 communications discussions with the Caring Society
10 and Assembly of First Nations?

11 A. Obviously this is -- the
12 best way to proceed is to do it in partnership
13 with the parties interested and probably other
14 groups, because in such a process we would
15 probably need the participation of Child and
16 Family Services agencies themselves, because they
17 have some of the recourse and some of the
18 information. So it will involve a large group of
19 people.

20 My comments earlier was on the
21 claimants, their families, but there is also all
22 the other parties that will have to contribute to
23 such of a process.

24 107 Q. Yes, but you would agree
25 that an actual notice plan will have to be

Page 48

1 In your opinion, who would ISC
2 have to communicate this process with?

3 A. I think the claimants
4 needs to be informed. Maybe it's not going to be
5 ISC directly. It might be done in different
6 fashion, but they will have to be informed about
7 the way they can submit a claim, how the payment
8 will be issued, what will be the process. In
9 order to execute an order around compensation, you
10 would have to reach those who are the most
11 interested by this in a short fashion to let them
12 know how this is going to go in terms of timelines
13 as well.

14 Our concern, however, is that
15 if through the judicial review process the order
16 was to change, this will cause a lot of challenge
17 for these individual that might be told that the
18 compensation will proceed in a certain way, and
19 then having to change this communication rightly
20 after if there is a decision of the court to
21 change the order.

22 So this is one of our main
23 concern. And if you read my affidavit in full,
24 you will see that one of my main concern was if we
25 don't have stable order and if we haven't got the

Page 50

1 developed, provided by the Tribunal, before any
2 communications are made to the claimants?

3 A. The Tribunal already by
4 the order communicates some information about what
5 will be the process. But we need, according to
6 the order of September 6th, to get back to the
7 Tribunal to get the panel to vet and issue a
8 following order about the compensation process.
9 You are right.

10 108 Q. Paragraph 44 of your
11 affidavit, you state -- you basically mention that
12 if the process was stopped due to a judicial
13 review, if the process of compensation was
14 stopped, this would be very damaging to ISC's
15 relationship with First Nations people. Can you
16 please explain what you mean by this statement?

17 A. We are working with First
18 Nation people with communities with various group
19 all the time on various subject. And one thing
20 that we are asking our staff and our teams is to
21 be very transparent and truthful and try to stay
22 course when they make commitments. Here we are in
23 a situation where there is a potential through a
24 judicial review in future court decision that some
25 of the parameter or the engagement process might

Page 51

1 be modified over time by a court decision.

2 So as an administer, I'm
3 concerned that we engage into a process whereby we
4 say something one day that is really important and
5 sensitive, because Canada has made clear in the
6 past that compensation for those who were victim
7 of discrimination based on past policy, these
8 children, needed to be compensated.

9 But through the course of a
10 court decision, having to go back to them and say
11 well, this is the parameter of change. So this is
12 my concern, and this is what I try to express in
13 the affidavit. And suggesting that a stay was
14 probably better until we know the conclusion of
15 the judicial review process.

16 109 Q. Would you also agree that
17 it's very damaging to ISC's relationship with
18 First Nations people, that it has taken several
19 years to get to this point?

20 A. Could you repeat the
21 question?

22 110 Q. Would you agree that it's
23 very damaging to ISC's relationship with First
24 Nations people that it has taken seven years to
25 get to this point in compensation, and also

Page 53

1 relationship. And that movement is being made to
2 get to a formal reform of the way Child and Family
3 Services operates in various part of the country.

4 With the bill C92 as well,
5 which is an important step to create a condition
6 for reform, I'm confident that we have made some
7 progress there to give back control to First
8 Nation, particularly of their Child and Family
9 Services, rather than a program being directed by
10 government policy funding arrangement and
11 agencies. Over time we will get First Nation
12 taking over the system and these services much
13 more under their control.

14 111 Q. All right, thank you.
15 And has the department received any inquiries
16 about the compensation at this time?

17 A. I'm aware of some
18 inquiries coming to the phone line for Jordan's
19 Principle, but the number has not been very high.
20 Initially we were concerned that staff that are
21 supposed to answer calls from individual that
22 needs services will be impacted by people calling
23 to know how they can be compensated. But the
24 number of them fairly low, according to the report
25 I received a couple of weeks ago.

Page 52

1 reforms to the First Nation Child program?

2 A. Several important steps
3 have been taken to reform and address a systemic
4 issue in the management of the Child and Family
5 Services Program. For example, as you can see in
6 my affidavit, funding has more than doubled. We
7 are going to reach 1.3 billion dollars this year,
8 while we were around 600 million dollars 4 years
9 ago. So money is not everything, but it's
10 important. So some of the problem that came with
11 the way the program was structured has been in
12 part addressed.

13 We are moving toward formal
14 reform of the funding methodology. We are at this
15 time funding actual level of cost for the
16 agencies, even in addition providing money to the
17 communities for prevention activities. So a
18 number of systemic issues that were billed in the
19 old program have been addressed seriously, in
20 part. There is more work to do.

21 So there is a work that have
22 been done in the last -- since the merit decision
23 of 2016. So hopefully, while the relationship
24 cannot be perfect at all time, there is progress
25 that have been achieved around that poor

Page 54

1 112 Q. All right, thank you.
2 And just in relation to this paragraph, with
3 respect to filing judicial review, would you agree
4 that -- sorry. I just lost my place. We can move
5 on to paragraph 44. Sorry. I was on that
6 paragraph.

7 Now, in paragraph 44 you
8 mention -- if you want to look at paragraph 44,
9 you make a statement that:

10 "Given the sensitive
11 nature of this task, and
12 for the reasons stated
13 above, it would be very
14 challenging to start
15 implementing the
16 Tribunal's orders without
17 certainty."

18 What do you mean by the
19 sensitive nature of this task?

20 A. So the sensitive nature
21 of this task. The Tribunal order asked us to
22 indicate that we need to compensate children, or
23 now some of them are adults, that went through the
24 Child and Family Services, that were taken care
25 of, removed from their home and families under

Page 55

1 certain parameters. I understand from past
2 interaction with some, with documentation I read,
3 that this could be a very traumatic event.

4 So asking them at one point to
5 submit a claim, or participating to a process to
6 receive compensation. If the orders are at risk
7 to be changed through a future court decision,
8 it's very sensitive. So you don't want -- I don't
9 want to think that we would put people into a
10 situation that can bring back past trauma. And in
11 the course of that process, tell them that they
12 did that, and now the rule of the games are
13 changing because there was a deferred court
14 decision.

15 So my assessment was that if
16 we go through this process, we will have to bring
17 safety around that, we will have to bring support
18 as we did for other processes like that. But at
19 the same time, we need to have some certainty that
20 the process is going to unfold as planned
21 initially. If there is a risk that parameter
22 changed through course, we have to try to minimize
23 the impact on the individual. And this is a
24 concern I had, and this is what I express in my
25 affidavit, that if we start the process it should

Page 56

1 be on solid ground and limited risk that
2 parameters change over time.

3 113 Q. Would you agree that the
4 claims process, the applications form, all
5 parameters with respect to having sensitivities to
6 ensure that victims are not re-victimized by the
7 process is an element that would have been
8 addressed in your consultations with the AFN and
9 Caring Society?

10 A. It's the kind of element
11 that are being addressed through developing a
12 compensation process, you are right. However, in
13 that case some of the parameter are already
14 defined, so we have to work from there. It's not
15 like we are doing consultation and there is no way
16 of starting from a clean page. There is some
17 parameters and rules that have been set by the
18 Tribunal, and these are the ones that if a future
19 decision of the Federal Court was to change that,
20 would that have an impact on the individual parts
21 getting to the process.

22 And this is, the only purpose
23 of the affidavit here was to say if these are to
24 change in the future, we might be better to take a
25 pause and wait for certainty before we start this.

Page 57

1 114 Q. But again, you would
2 agree that the discussions regarding the claims
3 process, developing the claims form, hasn't
4 occurred yet?

5 A. It did not.

6 115 Q. Thank you. I believe
7 those are all the questions of the Assembly of
8 First Nations. I do have one potential
9 undertaking. In your discussion about getting
10 Cabinet approval to change Jordan's Principle
11 shortly after 2016, could we get an undertaking to
12 see those instructions? If they are not Cabinet
13 secretaries?

14 MR. FRATER: Sorry. It's
15 cross-examination. They probably are Cabinet
16 secrecy, but there's no undertakings on
17 cross-examination. It's not discovery.

18 MR. WUTTKE: All right.

19 MR. FRATER: No
20 re-examination.

21 --- Whereupon the cross-examination concluded
22 at 11:40 a.m.
23
24
25

A	administration 28:4,16	42:5	assessed 6:22 36:22	belief 8:7
a.m 1:10 3:3 34:13	adults 54:23	and/or 13:5 14:13	assessing 8:3	believe 18:6 20:16
34:14,21,22 57:22	advance 42:14	announced 11:7	assessment 12:6	31:18 34:17 57:6
A.S.A.P 1:23	advised 26:18	announcement 11:19	14:21 25:4,8 27:2	benefits 6:3
abeyance 3:23	affidavit 1:8 3:12	announcing 11:8	30:4 33:4 43:22	Bennett 13:10
ability 58:9	3:19 4:12 5:5	answer 38:22 53:21	55:15	best 29:4 31:13
able 27:11 31:9	10:10,11 12:22	answered 45:1	Assistant 5:15,22	49:12 58:8
absolutely 18:23	14:23 15:2,14	anticipation 14:15	associate 5:10,13	better 51:14 56:24
abuse 17:20	17:14 18:17 19:5	15:8,9	assume 11:24 28:22	beyond 22:19 37:11
acceptable 9:23	20:13 22:1 23:9	anybody 16:9 21:22	44:21	38:2
access 13:7	26:17 27:4 36:12	APPEARANCES	assuming 11:14,25	bill 53:4
accurate 3:10 6:17	44:24 46:10 48:23	1:12	attempt 9:9 42:13	billed 52:18
8:2,14 9:9 10:2	50:11 51:13 52:6	Applicant 1:3,13	attention 24:4	billion 52:7
accurately 58:9	55:25 56:23	application 6:24	Attorney 1:3 3:13	Binnie 1:13
achieve 9:17	affidavits 3:8 4:1	8:5,24 9:6,13	authorities 7:7 31:3	bit 23:10
achieved 52:25	4:11	14:22	authority 10:21	Blackstock 26:5,14
act 18:20	AFN 12:17 45:8	applications 56:4	12:23 29:16 30:5	Bloc 13:15
action 8:4 12:25	56:8	appointed 31:7	30:11,19,20,21	bottom 17:12
15:11 22:6 23:2	agencies 22:16 23:6	appointment 31:12	36:24 37:2,7,9,15	Brach 24:15
29:4 31:13	28:11 47:19 49:16	apprehended 17:22	37:17,18,25 38:3	branch 5:18,24
actions 22:21	52:16 53:11	approach 4:22 8:25	38:4,7,8,24 39:14	23:22
active 11:21 26:13	ago 52:9 53:25	41:15	39:20	breadth 39:9
26:15	agree 10:25 15:17	appropriate 9:1	available 7:3	break 34:10
actively 23:23	16:8 19:21 21:15	10:7	aware 25:14,17	brief 11:15,21 31:8
activities 25:25	22:9 25:19 26:8	appropriated 37:12	44:10 53:17	briefing 12:5
26:3,10 36:24	37:20 38:16 40:3	approval 36:14		bring 44:4 55:10,16
52:17	40:10,16 41:5,22	39:12 57:10	B	55:17
activity 37:3,15	42:8,22 45:9,25	approximately	back 17:11 18:23	broad 8:16 15:3
actual 17:2 28:3	46:13,24 49:6,24	24:13	19:7,13,22 20:2	17:15 18:14 27:25
33:24 49:25 52:15	51:16,22 54:3	arises 33:22	23:9 34:15 37:9	45:20
addition 52:16	56:3 57:2	arrangement 53:10	37:21 43:4,8 50:6	brought 9:6 38:6
additional 41:18	agreed 13:18 16:10	ASAP 1:9	51:10 53:7 55:10	42:18
47:10	19:10 21:3 43:12	asked 32:18,19	background 4:10	
address 9:10 22:7	agreement 19:14	54:21	12:7	C
22:10,12,14 27:14	19:14 20:6 40:6	Aski 1:6,22	Barbara 1:15	C92 53:4
39:13 45:7,10,12	40:19 43:14	asking 12:1 31:1	based 16:14 21:18	Cabinet 10:21 11:6
45:15 52:3	ahead 47:2	35:3,9 43:19 44:7	26:18 36:20 51:7	11:8,12,15 12:3
addressed 12:24	albeit 11:2	50:20 55:4	basically 42:24	13:5,7 14:7,13
52:12,19 56:8,11	allow 37:3	aspect 7:18 9:8	47:22 50:11	30:1 31:7 36:14
addressing 23:24	allowed 38:10	aspects 25:7	basis 14:8	37:9,18,21 38:9
45:18	alternative 28:10	Assembly 1:5,17	Bay 1:24	38:24 39:11,20
adjustment 38:4,9	amendments 9:17	29:19 34:24 35:16	beginning 17:11	40:3,3,18 41:1
administer 51:2	AMNESTY 1:6	49:10 57:7	behalf 1:13,14,17	57:10,12,15
administrating	amount 28:12 33:3	assess 15:11 27:11	1:18,20,22 13:17	called 5:19 37:3
28:17			35:5,11	39:21

calling 53:22 calls 53:21 Canada 1:3,5,16 4:19 5:8,18,20 8:9 9:5,16 10:23 15:15,18 19:6 20:10 22:19 23:3 23:19 43:7,19 44:3,10 46:24 51:5 Canada's 3:13 4:13 4:22 5:23 7:24 45:18 46:11 Canadian 1:5,19 10:14 35:8 capacity 37:11 capital 47:19 care 17:23 18:15 33:7 54:24 Caring 1:5,15 3:21 3:22 4:16 9:16 12:17 25:11,13,15 25:20,25 26:9 29:21 49:9 56:9 carrying 40:24 case 7:12 10:18 11:23 26:11 28:8 28:24 36:17 37:6 40:12,21 41:4 56:13 cases 22:19 categories 15:16 16:17 18:24 category 18:8 cause 48:16 certain 18:23 48:18 55:1 certainty 54:17 55:19 56:25 CERTIFY 58:8 challenge 48:16 challenging 54:14 change 48:16,19,21 51:11 56:2,19,24 57:10	changed 55:7,22 changing 55:13 Chiefs 1:6,21 35:1 35:5 Child 1:5,15 3:20 23:4,5,20 24:10 24:19 29:21 33:6 36:25 37:1 39:21 45:5,19 47:2,18 49:15 52:1,4 53:2 53:8 54:24 children 7:2 9:25 13:18,23 14:2 16:19 17:17 18:14 18:15,24 26:6 51:8 54:22 chose 44:16,20 CHRT 16:14 Churchill 1:22 35:11,12 circumstances 39:25 40:1 claim 27:22 48:7 55:5 claimant 33:6 claimants 20:22 31:24 41:20 46:12 48:3 49:3,21 50:2 claims 56:4 57:2,3 class 27:8,10 32:25 32:25 41:19 clean 56:16 clear 51:5 clearly 45:22 collaboratively 42:15 come 19:22 22:12 34:7 47:16 comes 33:16 coming 30:9 47:4 53:18 commencing 3:2 20:17 31:19 comments 49:20 Commission 1:6,19	35:2,8,9 commitments 50:22 common 42:17 Commons 6:14 communicate 48:2 communicates 50:4 communication 48:19 communications 47:25 49:7,9 50:2 communities 7:3 16:23 18:1,16 50:18 52:17 comparison 27:11 28:9 compensate 54:22 compensated 13:13 13:20,25 14:20 18:25 27:6 42:5 46:19,19 51:8 53:23 compensation 3:18 5:1 10:16 12:18 14:9,14 15:3,20 16:9,18 19:9,16 19:22,23 20:18 21:16,17 25:1 27:13 28:1,3,5,13 28:17,20,24 31:20 32:7,13 33:17,22 34:2 35:25 36:1,7 36:19,20 37:4 40:2 41:10,15,24 42:4,9,17,24 43:11 45:11,16,16 45:25 46:3,14,17 47:25 48:9,18 50:8,13 51:6,25 53:16 55:6 56:12 compensations 19:2 complainants 19:11 43:13 complexity 33:10	compliance 4:14 8:19 45:6 complicated 33:12 complied 8:9 component 41:16 compromise 10:7 30:16 concern 43:25 48:14,23,24 51:12 55:24 concerned 51:3 53:20 concerns 9:18 concluded 57:21 conclusion 44:21 51:14 CONDENSED 1:11 condition 53:5 conduct 22:4 conferencing 26:6 confident 53:6 confirm 3:6 4:1 21:10 35:1,4,8 consent 44:11 Conservative 13:17 considerable 28:15 considered 41:21 44:5 consistent 31:4 consultation 9:11 56:15 consultations 56:8 consulting 30:16 contains 4:12 contemplated 43:19 content 18:19 continued 47:20 Contrary 9:20 contribute 49:22 control 53:7,13 copy 17:5 corporate 5:23 correct 4:5 5:11	7:10 9:7,19 11:13 11:24 13:20 15:20 18:2 19:25 21:14 31:10 32:18 36:15 44:17 45:24 cost 52:15 costing 27:4 counsel 3:25 44:6 country 53:3 couple 24:21 53:25 course 8:4 11:1,22 12:25 19:1 26:7 29:4 31:13 50:22 51:9 55:11,22 court 1:1,2 3:8 44:4 44:12 48:20 50:24 51:1,10 55:7,13 56:19 58:16 create 49:4 53:5 creation 43:17 criteria 42:6 46:20 cross-examination 1:8 3:7 57:15,17 57:21 cross-examining 4:24 current 21:3 currently 5:9 28:19
D				
				damaging 50:14 51:17,23 date 14:15 16:3 21:11 34:5 39:17 43:6 44:8 dated 3:12 David 1:14 day 40:6 51:4 days 40:19 44:2 deadline 43:20 deal 14:6 22:3,25 dealing 6:24 7:1 8:5 Dearman 1:20 35:4 December 5:11 6:15 19:8,24 21:8

21:11,12,13 29:23 34:1,5 43:5,9,20 decision 6:9 7:16,19 8:3,14 9:1,3,7,13 9:17 10:6 11:5 13:8 14:18 16:15 17:2,13 20:16,20 31:18,22 34:7 38:9 39:7,13 42:23 43:3,25 45:23 47:4,17 48:20 49:1,2 50:24 51:1,10 52:22 55:7,14 56:19 decisionmaking 9:24 decisions 4:18 7:12 21:20 30:1 40:2 47:12 deferred 55:13 deficiencies 23:25 45:22 deficit 22:17 define 18:15 38:25 41:14 defined 37:16 42:6 46:3 56:14 definitely 25:22 definition 8:16,22 37:22 38:14 39:4 39:8,15 45:21 47:1,1,17 Democratic 13:15 denied 22:20 department 5:16 5:18,19 11:14,20 14:25 22:2 28:15 28:19 30:11 31:2 35:24 36:13,23 37:6,12,21 38:14 39:5,11 40:4 42:11 44:16,25 47:14 53:15 department's 26:19	deputy 5:10,13,15 5:23 described 15:2 description 7:15 detail 4:17 9:22 14:22 32:24 detailed 27:8 determine 10:22 12:24 25:5 29:3 31:13 43:22 determined 8:24 10:19 33:3 determining 8:4 develop 36:19 41:3 41:24 42:2 developed 28:4 49:8 50:1 developing 28:16 28:24 56:11 57:3 development 24:7 different 27:23 28:10 40:11,20 48:5 diligent 47:9 dimension 9:11,14 41:10 directed 45:17 53:9 direction 13:8 36:21 40:4 directly 48:5 Director 6:2 disappointment 49:4 discovery 57:17 discretion 20:10 discriminated 5:2 discrimination 13:13,19 14:7 22:11,14 45:7,13 45:15 51:7 discriminatory 13:24 22:3,25 discuss 9:22 12:12 46:14 discussed 42:20	discussion 4:7 30:6 32:12 46:17,21 57:9 discussions 12:17 29:18 40:11,17 46:13 49:9 57:2 documentation 55:2 doing 25:6 29:2 56:15 dollar 27:20 dollars 52:7,8 doubled 52:6 Dr 26:5,13 drop 10:7 due 50:12 <hr/> E <hr/> earlier 49:20 easy 33:1 edge 11:3 education 27:21 either 16:10 21:15 31:9 elected 11:2 election 11:1,4 element 28:9 37:2 43:2 46:16 47:19 56:7,10 employed 24:13 employees 24:16 25:16 engage 51:3 engaged 26:9 30:24 engagement 29:3 50:25 engaging 30:15 English 46:7 ensure 56:6 enter 12:16 entitled 16:18 essentially 36:13 40:1 41:23 45:4 event 55:3 eventually 13:16	everybody 32:6 exact 24:20 exactly 3:16 5:25 9:4 20:5 24:22 39:6,17 41:19 EXAMINATION 2:4,5 3:5 35:13 example 15:3 22:15 27:18 52:5 execute 48:9 executive 21:20 existing 4:14 7:7 expand 39:12,19 expanded 37:22 expansion 37:24 39:15 expect 41:12 expectation 49:4 expected 47:16 expects 46:24 expenditure 27:20 expenditures 22:16 experience 21:19 28:16 35:24 36:1 expertise 24:9 28:23 29:2 explain 32:14 50:16 explore 44:17 exploring 4:16 express 51:12 55:24 expressed 38:16 extended 17:24 18:16 extension 34:5,6 43:19,24 44:7,11 <hr/> F <hr/> fact 4:15 8:19 13:23 44:20 Failure 43:13 fair 7:17 28:14 30:24 fairly 53:24 fall 5:20 false 49:4	familiar 7:11,14,19 25:24 26:3,3,4 families 16:23 17:25 18:16 49:21 54:25 family 1:5,15 3:21 14:2 23:4,5,20 24:10,19 29:21 33:7 36:25 45:5 45:19 49:16 52:4 53:2,8 54:24 far 15:6 fashion 48:6,11 federal 1:2 6:13 7:4 44:12 56:19 file 1:1 3:8 6:18 9:13 11:22 filed 3:12 files 11:22 filing 9:21 54:3 final 41:6 49:1,2 financial 14:21 26:25 37:10,11,15 find 7:4 40:25 finding 7:6 30:16 fine 24:23 first 1:5,5,15,17 3:11,20 5:4 10:11 16:19 17:17 21:2 23:21 24:15 29:19 29:20 32:15 34:24 35:16,17 37:1 38:13 39:16,21 47:1,18 49:10 50:15,17 51:18,23 52:1 53:7,11 57:8 focus 6:23 7:21 follow 8:23 following 8:14 31:12 39:16 50:8 foregoing 58:10 form 56:4 57:3 formal 52:13 53:2 formed 11:7 forming 11:8
--	--	--	---	---

forthcoming 47:6 forward 12:9,11 14:8 22:11 40:25 44:4,4 found 8:19 9:23 10:6 13:19 22:4 four 25:15 36:12 frame 19:2 Frater 1:13 4:4 17:4 57:14,19 full 39:9 48:23 full-time 25:15 fully 7:10,14 function 7:1 fund 37:13 funding 23:5 52:6 52:14,15 53:10 further 39:19 46:23 46:25 47:6 future 5:1 8:14 14:3 14:4 15:23 16:13 22:25 28:13 32:16 43:3 50:24 55:7 56:18,24	good 30:14 government 8:23 11:2 13:22,24 20:23 21:4 32:1 39:8 44:3 53:10 government's 6:13 granted 38:3 Green 13:16 ground 42:17 56:1 group 17:16 24:17 24:20 27:11 49:18 50:18 groups 23:13,17 24:7 36:9 49:14	43:1 45:14 identify 12:16 33:1 immediate 26:21 immediately 11:16 11:18 23:15 impact 20:15 31:17 55:23 56:20 impacted 53:22 implement 39:9,20 42:3 implementation 6:13 7:24 12:2 23:24 24:8 26:22 39:22 implemented 22:24 32:8 39:1 implementing 23:6 40:23 45:20 54:15 implication 37:10 important 11:21 36:9 51:4 52:2,10 53:5 include 11:22 36:9 incurred 22:17 INDEX 1:11 2:1 Indian 40:5,18 indicate 54:22 indicated 12:21 15:22 27:3 39:7 indication 27:24 28:7 39:18 41:11 Indigenous 5:8,20 23:19 individual 15:17 27:5 45:16 48:17 53:21 55:23 56:20 individuals 16:17 35:23 inform 30:20 information 14:25 25:4 27:1 49:18 50:4 informed 44:6 47:9 48:4,6 initial 43:22	initially 53:20 55:21 initiate 46:13 47:24 49:2 initiative 37:1 39:20,22 initiatives 40:9 inquiries 53:15,18 instances 30:19 38:5 instruct 14:8,13 instruction 15:25 instructions 13:4 14:16 15:8 31:9 57:12 interaction 55:2 interest 21:1 32:3 interested 9:22 48:11 49:13 INTERNATION... 1:6 interpretation 26:20 Inuit 23:22 investment 26:24 invite 41:17 involve 49:18 involved 6:12,18,24 6:25 8:3 18:14 23:19,23 24:7,16 24:24 28:20 29:3 36:7 38:23 40:9 irrelevant 4:23 ISC 5:9 10:20 20:23 22:2 23:14 31:25 36:13 47:24 48:1 48:5 ISC's 50:14 51:17 51:23 issue 34:1 41:13 45:19 50:7 52:4 issued 6:6 18:11 33:8 48:8 issues 14:6 15:19 22:7,12,15 24:3	30:17 33:23 36:8 36:8 42:14 52:18 issuing 33:10 item 42:25
J				
				January 7:22 8:8 42:24 Jessica 1:18 35:7 job 15:11 Jordan's 6:6,14,19 6:23,25 7:5,25 8:5 8:10,24 9:25 22:1 22:20 23:7 24:10 24:17,18 37:1,20 37:22 38:15,23,25 39:2,9,12,17,22 45:6,21 53:18 57:10 judicial 3:23 9:6,13 10:4,8,18 32:9,15 44:1 48:15 50:12 50:24 51:15 54:3 judicially 20:21 31:23 jump 23:10 43:4 Justice 47:14
K				
				K1P 1:24 keep 47:9 kind 14:14 15:5 56:10 know 16:6 46:23 47:12,14 48:12 51:14 53:23 knowledge 13:21 28:23
L				
				language 41:19 large 22:24 27:12 36:6,9 49:18 launched 11:4 leader 26:14 leaders 13:15

<p>legal 44:6 legislative 36:23 legitimately 33:6 let's 38:11 letter 44:13 level 52:15 Liang 58:16 limited 56:1 line 38:15 53:18 listening 30:22 little 19:19 living 16:20 17:18 long 13:2 47:10 49:5 look 5:4 10:10 15:1 17:1,7 22:22 27:25 28:9 30:10 32:24 37:7 54:8 looking 22:11 27:7 lost 54:4 lot 7:1,16 48:16 low 53:24</p> <hr/> <p>M</p> <p>M5H 1:24 main 48:22,24 manage 27:20 management 52:4 mandate 12:23 30:6 31:1 41:1,4 Marion 58:16 matter 7:6 Max 1:13 maximum 15:15 McIsaac 1:15 2:4 3:5 4:6,8 34:15 mean 27:5 50:16 54:18 meaningful 29:17 means 37:5 measures 32:23 45:14 47:10 meetings 42:9,19 member 13:22 mention 43:5 46:12</p>	<p>46:22 47:24 50:11 54:8 mentioned 35:23 36:2 37:20 44:15 merit 6:9 8:3,25 30:15 39:7 45:23 52:22 methodology 52:14 mid-December 5:13 million 27:20 52:8 Milne 1:17 34:24 mind 44:25 minimize 55:22 minister 5:10,13,16 5:23 11:19,21 12:3,8,13 13:5,10 13:10,11,11,12 31:12 Minister's 11:7 ministers 11:16 14:7,13 minority 11:2 mode 30:22 model 28:10,12 36:19 models 15:5 23:5 28:10 modified 51:1 Molly 1:22 35:12 moment 21:5,21 34:10 money 16:8 21:4,7 21:22 32:18,20 52:9,16 motion 3:14,20,22 4:24 6:15 17:4 motions 4:3,20 move 14:8 45:1 54:4 movement 53:1 moving 12:10 46:9 52:13</p> <hr/> <p>N</p>	<p>name 35:15 NAN 35:2,12,12 narrow 6:23 Nation 1:6,22 23:21 24:15 47:2,18 50:18 52:1 53:8 53:11 Nations 1:5,5,15,17 3:20 16:19 17:17 29:19,20 34:25 35:16 49:10 50:15 51:18,24 57:8 nature 4:13 54:11 54:19,20 necessarily 7:3,5 16:24 17:21 31:3 necessary 12:19 need 14:19 18:19 25:9 30:25 33:5 37:7,8 41:4 49:15 50:5 54:22 55:19 needed 7:2 24:5 39:8 43:25 44:1 51:8 needs 12:2 41:1 48:4 53:22 negotiate 41:3 negotiations 9:16 Never 44:25 new 5:19 11:1,12 11:15,15,19 13:15 30:8 31:12 41:14 Nishnawbe 1:6,22 non-insured 6:2 noncompliance 4:19 39:17 normal 39:25 40:1 normally 49:8 note 4:12,21 notice 17:3 49:25 November 1:10 3:2 3:19 11:9,11 13:3 31:7 number 4:12 13:22 15:16 22:6,21</p>	<p>24:2,22 27:5,17 29:11 35:23 52:18 53:19,24 numbers 24:21</p> <hr/> <p>O</p> <p>O'Regan 13:12 obtain 31:9 Obviously 49:11 occasions 42:10 occurred 42:10 57:4 October 1:8 3:12 Off-record 4:7 office 25:13 offices 1:9 25:11 official 11:20 31:2 officials 40:24 okay 5:21 7:9 9:5 13:2 17:9 20:12 34:12 38:11 old 52:19 once 31:6 ones 56:18 Ontario 1:6,9,21,24 1:24 3:1 35:2,5 operated 15:4 operates 25:20 53:3 operating 38:14 operation 22:18 operational 9:18 opinion 48:1 opportunity 31:8 opposed 4:19 5:1 Options 12:10 order 3:14 8:13,20 9:1 10:16,17,22 12:6 14:20 15:10 15:19,21 17:6 18:10,18,19,21,23 18:25 19:1,21 21:3,7 23:16,24 27:6,8 32:22,24 33:16,23 34:2 36:18 37:16 38:5</p>	<p>39:11,16 40:13,21 40:24 41:6,7,9,14 41:17,23 42:1,3 42:13 44:2,2 46:1 46:3,14,16,18 48:9,9,15,21,25 50:4,6,8 54:21 ordered 15:14 16:11 21:20 22:15 22:18 29:23 46:1 47:17 ordering 43:16 46:20 orders 4:14,23 6:6 6:9 7:25 8:10 14:19 16:2 21:16 22:13 26:21 36:18 36:18 46:23,25 47:6,10,20 54:16 55:6 organization 25:23 26:13,14 organize 13:4 Ottawa 1:9,24 3:1 outreach 49:3 outset 35:22 outside 17:24 18:16 28:11 outstanding 42:14 42:25 overly 17:15 18:13 39:5 oversight 47:20</p> <hr/> <p>P</p> <p>P 1:14 page 2:2 17:12 56:16 paid 16:9 panel 40:13 41:13 43:15 50:7 paragraph 5:4 10:10,11 15:13 16:16 17:2,11,14 18:4,13 19:4,20</p>
---	---	--	--	--

<p>20:13 23:9,11 26:16 29:5,13 31:14 32:11,20 36:12 39:24 43:5 44:23 45:4 46:9 46:23 47:21 50:10 54:2,5,6,7,8 paragraphs 21:25 45:10,12 parameter 41:2 42:3 50:25 51:11 55:21 56:13 parameters 55:1 56:2,5,17 paraphrase 18:4 parcel 38:11 pardon 28:17 Parliament 38:16 part 6:22 30:10 43:21 52:12,20 53:3 part-time 25:16 participated 47:13 participating 55:5 participation 49:15 particular 7:12 35:25 36:17 particularly 53:8 parties 9:10,21 10:6 15:23 16:10 19:15 19:21 20:6,7,10 21:15 24:4 29:3 30:14,21,25 34:4 34:18 40:25 41:12 41:18,23 42:11,21 44:6,11,18,25 46:12 47:9 49:13 49:22 partnership 49:12 partnerships 7:8 parts 56:20 party 13:15,16,17 20:2 passed 6:15 pause 56:25</p>	<p>pay 15:15,18 21:4 21:22 28:4 32:18 32:19 paying 21:7 payment 21:24 27:21 28:3,11 32:21,22 33:2,4,7 33:10,13,24 48:7 payments 16:12 33:18 peak 27:19 people 24:12,24 25:5,8 28:18 29:1 36:10 49:19 50:15 50:18 51:18,24 53:22 55:9 perfect 52:24 performed 25:4 period 7:22,23 8:8 44:10 Perron 1:8 2:3 3:4 3:7 4:9 34:16 35:15 Perron's 4:1 person 12:16,21 13:1 26:7 perspective 30:23 phone 53:18 place 4:15 12:2 33:23 38:7 54:4 placed 17:23 18:15 places 38:6 42:16 plan 41:3,13 49:25 planned 55:20 plans 49:7 please 5:5 17:7 34:10 50:16 Pleasure 35:19 point 21:24 25:5 32:20 51:19,25 55:4 policy 13:24 24:25 25:6 36:23 37:9 51:7 53:10 poor 52:25</p>	<p>position 4:17 29:8 29:15 possibility 44:15,17 possible 15:12 41:25 potential 46:11 49:3 50:23 57:8 practices 23:1 pre-2016 38:19 precise 8:22 16:3 precisely 12:1 preferable 49:1 preparing 11:25 12:5 present 19:24 presume 12:8 13:6 16:4 pretend 18:20 pretty 21:20 prevention 52:17 previous 7:1 21:19 previously 42:19 Prime 11:7 13:10 Principle 6:7,14,19 6:23,25 7:6 8:1,6 8:10,24 9:25 22:2 22:20 23:7 24:10 24:17,18 37:1,20 37:23 38:15,23,25 39:3,9,12,18,22 45:6,21 53:19 57:10 prior 5:14,21 6:1 29:22 probably 15:24 24:15 49:1,13,15 51:14 57:15 problem 52:10 proceed 14:13 15:1 16:6 30:5,12 31:10,10 34:3,3 43:23 48:18 49:12 proceeding 58:10 process 7:11 15:20 15:24 16:9 19:10</p>	<p>19:16,22,23 20:8 20:18 21:16,17 24:8 25:2 27:13 27:14,19,23 28:20 31:20 32:7,13 33:4,17,22 42:2 43:11 46:14,17 47:25 48:2,8,15 49:8,14,23 50:5,8 50:12,13,25 51:3 51:15 55:5,11,16 55:20,25 56:4,7 56:12,21 57:3 processes 12:18 55:18 program 6:3 7:4 23:4 36:25 37:2 37:15 52:1,5,11 52:19 53:9 programming 45:20 programs 7:7 progress 52:24 53:7 promoting 26:6 pronounced 13:22 proper 31:3 37:9 proposal 20:3 protect 44:2 proven 8:13 provide 40:4 47:22 provided 36:21 38:25 39:3 40:17 50:1 providers 9:12 provides 9:24 providing 14:1 52:16 public 20:25 29:7 29:14 32:3 purpose 56:22 pursuant 4:18 pursue 29:17 put 12:3 19:12,20 25:9 39:25 55:9</p>	<p>Q Q.C 1:13 Queen 1:9,24 question 13:8 14:11 17:8 19:18 33:20 40:15 45:1 47:15 51:21 questions 4:10 12:24 34:11,17,18 34:25 35:3,6,9,12 35:17 45:9 57:7 quickly 21:20 33:13 quite 40:11,20</p> <hr/> <p>R re-examination 57:20 re-victimized 56:6 reach 19:14 20:6 43:14 48:10 52:7 reached 19:15 42:17 reaching 26:5 read 6:5,8,9 18:1 32:4 48:23 55:2 reading 18:5 ready 11:15 really 16:4,4 32:23 33:1,2,10,11,13 51:4 reasons 54:12 receive 15:8 44:10 55:6 received 53:15,25 Recess 34:13 recessing 34:21 recipients 41:20 record 4:15,18 17:4 30:14 34:16 46:8 recourse 49:17 refer 3:18,21 5:9 16:17 referred 6:18 referring 15:15 28:2 38:18</p>
--	---	---	--	--

reform 23:21 24:20 52:3,14 53:2,6 reforming 23:4 reforms 24:5 45:5 52:1 regard 15:19 regarding 4:22 8:10 46:25 57:2 reimburse 22:16 related 45:19 relation 54:2 relationship 46:11 50:15 51:17,23 52:23 53:1 relatively 25:21 relied 4:2 relief 47:10 rely 27:1 29:1 remember 38:8 39:16 removed 16:22 54:25 repeat 14:10 19:17 29:10 33:19 40:14 51:20 replace 18:18 report 19:7,13 43:8 53:24 Reporter 58:16 Reporting 1:9,23 representation 47:15 representations 4:13,22 represented 9:16 request 21:23 41:18 require 21:3,7 26:23 28:8 required 8:13 15:18 16:13 19:6 29:16 43:7 requirements 9:19 requires 10:20 33:17 36:13 reserve 16:20 17:18	residential 27:18 40:5,18 resolution 9:23 27:12 30:16 resolved 9:14 resources 26:25 respect 4:2,11 7:25 33:24 40:4 42:9 43:18 45:3,6 46:25 54:3 56:5 respecting 6:6 Respondent/ 1:14 1:17,18,20,22 Respondents 1:7 response 3:20 10:24 responsible 7:24 11:16 restrictive 39:5 result 10:3 17:20 23:12 43:15 resuming 34:14,22 review 3:23 9:6,14 9:21 10:4,8,18 22:19 32:9,15 44:1 48:15 50:13 50:24 51:15 54:3 reviewed 10:13 14:18 20:21 31:23 36:18 revisit 34:11 right 5:14 6:11 8:18 9:5 11:23 14:1,12 15:7 16:7 18:22 19:4 20:12 22:23 25:10 30:3 33:15 34:8 41:6 44:3 50:9 53:14 54:1 56:12 57:18 rightly 48:19 Rights 1:6,19 3:14 7:11 10:14 26:10 35:8 risk 55:6,21 56:1 Robert 1:13	role 11:20 rule 15:23 55:12 rules 56:17 ruling 3:18 10:15 11:16 16:14 30:15 34:2 run 49:5 <hr/> S <hr/> safety 9:24 55:17 satisfy 9:18 saying 6:11 7:10 says 19:21 scale 36:6 scenario 47:22,23 Scheer 13:16 scheme 28:24 41:24 schemes 28:17 35:25 36:1 Scholar 40:6 Scholars 40:20 school 27:18 40:5 40:18 Scoop 40:6,19 scope 20:14 31:16 second 3:19 29:12 33:23 38:12 secrecies 57:13 secrecy 57:16 secretary 27:21 section 45:3 46:10 sector 5:18 23:21 24:11 sectors 23:18,22,23 24:13,14 25:7 see 33:12 48:24 52:5 57:12 seek 29:9,15 37:9 37:18 38:1,3,9 39:11 seeking 37:13 senior 5:15 11:20 sense 27:10 sensitive 51:5 54:10 54:19,20 55:8	sensitivities 56:5 sentence 23:10 September 3:15 11:5 14:18 15:22 16:14 18:11 27:7 32:24 41:17 46:4 50:6 seriously 52:19 service 22:7 29:7,14 services 1:9,23 5:8 5:20,24 7:2 14:1 23:4,6,19,20 24:10,20 33:7 36:25 45:5,19 49:16 52:5 53:3,9 53:12,22 54:24 set 56:17 settlement 27:12,18 36:7 40:5,7,11,17 40:19,23 41:7 seven 29:11,12 51:24 short 16:4 32:23 33:2 48:11 shortly 39:10 57:11 side 24:25 37:14,16 significant 26:23 27:16,25 28:12 simple 33:11 44:11 Sinéad 1:20 situation 7:2 12:7 33:12 50:23 55:10 Sixties 40:6,19 size 27:9,10 skill 58:9 small 25:21,22 36:8 36:8 47:18,19 smaller 24:18 36:8 Society 1:5,15 3:21 3:22 4:16 9:17 12:17 25:11,13,15 25:20,25 26:9 29:22 49:9 56:9 solid 56:1 solution 7:5,6	SONY 1:8 2:3 3:4 soon 34:1 sorry 14:10 23:9 29:10,12 43:4 46:6,8 54:4,5 57:14 sort 24:25 sought 37:24 39:14 39:19 source 37:13 speak 44:24 45:25 speaking 30:10 45:8 speaks 4:25 41:23 specific 7:15 12:21 14:19 15:10,25 22:6 27:17 36:17 36:20 41:9 46:18 specified 17:15 speculative 47:23 stable 48:25 staff 25:21 47:12 50:20 53:20 start 4:10 32:6 54:14 55:25 56:25 started 11:25 12:4 starting 6:19 32:21 56:16 state 36:12 39:24 43:6 50:11 stated 39:4 54:12 statement 17:14 18:13 50:16 54:9 stay 3:14 4:23 32:10 50:21 51:13 step 12:14 53:5 steps 10:23 12:16 14:5,14 22:2,10 22:24 45:7 52:2 stopped 50:12,14 Street 1:9,24,24 structure 28:4,8 structured 52:11 Stuart 1:17 34:23 35:15
---	---	--	--	--

X	13 7:9 44:24	30 13:9 44:2	60 25:14 27:20	9
Y	14 1:10 3:2 7:17	30-day 44:9	600 52:8	9 6:1
Yeah 11:3 12:12	15 7:21	31 14:3 45:4	61 25:19	90 40:16
20:1 21:18 22:5	16 6:20 8:7	32 14:5	613 1:25	900-333 1:24
23:2 28:6 43:1	17 8:18 21:25 45:4	33 14:12	62 25:24	91 41:5
year 27:20 52:7	18 9:2	34 15:7	63 26:8	92 41:22
years 51:19,24 52:8	19 3:9 9:5	35 2:5 15:13	64 26:16	93 42:8
Yukon 16:21 17:19	1J9 1:24	36 16:7	65 27:15	94 42:18
	2	37 16:16	66 28:2	940 1:9
Z	2 3:11 5:4 23:9	38 17:7	67 28:14	940-100 1:24
0	2,500 24:15	39 17:10	68 28:22	95 42:22
1	20 9:15 22:1	4	69 29:5	96 43:4
1 3:6	2000 18:11	4 3:25 10:10 52:8	6th 3:15 11:5 14:18	97 44:9
1.3 52:7	2007 6:16	40 18:5	15:22 16:14 18:11	98 44:16
10 6:5 19:8	2011 5:22	40,000 15:16	27:7 32:24 41:17	99 44:23
10:00 1:10 3:3	2012 5:22	41 18:8	50:6	9th 21:8
10:40 34:13	2016 6:10,19 7:22	416 1:25	7	
10:54 34:14	8:8 23:3 39:6,10	42 18:12 46:9	7 5:14 26:16 29:5	
10:55 34:21	39:13 42:23,24	43 18:22 47:21	32:20 39:24	
100 1:9 45:24	45:23 52:23	44 19:4 50:10 54:5	70 29:12	
101 46:5	2016,could 57:11	54:7,8	71 30:3	
102 46:9	2017 5:11,13,20	45 19:19	72 31:6	
103 46:22	7:22 8:9 9:3,7	46 20:5	73 31:14	
104 47:5	2019 1:8,10,23 3:2	47 20:12	74 32:17	
105 47:21	3:12,15,19 19:9	48 21:9	75 33:15	
106 49:6	46:4	49 21:12	76 33:21	
107 49:24	20th 11:9,11 13:3	5	77 34:4	
108 50:10	31:7	5 4:9 15:13	78 34:9	
109 51:16	21 10:1	5(a) 16:16 17:14	79 35:22	
10th 19:24 21:8,12	22 10:3	50 21:14	8	
21:13 29:23 34:1	23 10:9	51 21:21	8 3:19 5:21 20:13	
34:5 43:5,10,20	239 18:4	52 21:25	31:14 32:11	
11 6:11	24 11:6	53 22:9	80 36:5	
11:10 34:22	249 17:2,6,7 18:4,6	54 22:23	81 36:11	
11:40 57:22	25 11:13	55 23:8	82 37:19	
110 51:22	26 11:23	56 24:6	83 17:12 38:1	
111 53:14	27 12:10	564-2727 1:25	84 38:11	
112 54:1	28 12:15	57 24:12	85 38:20	
113 56:3	29 13:2	58 24:23	86 39:2	
114 57:1	296 6:15	59 25:10	861-8720 1:25	
115 57:6	2R2 1:24	6	87 39:10	
12 6:20	3	6 5:7 19:5,20 43:5	88 39:24	
	3 1:8 2:3,4 3:12,17	46:4	89 40:10	

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT

-and-

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

RESPONDENTS

AFFIDAVIT OF SONY PERRON

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

1. I am the Associate Deputy Minister of Indigenous Services Canada ("ISC"). I have been in my current position since December 18, 2017. Before that, I was the Senior Assistant Deputy Minister of the First Nations and Inuit Health Branch at Health Canada. I worked at Health Canada in various capacities over 16 years before joining ISC in 2017.
2. In my current capacity I work with the various sectors of ISC to implement the CHRT's orders in this matter. In my previous role, I was ultimately responsible for the First Nations and Inuit Health Branch's implementation of Jordan's Principle. As a result, I understand the two groups within ISC that are most immediately affected by the Tribunal's orders.
3. Unless otherwise stated, I have personal knowledge of everything I say in this affidavit. Where my information came from someone else, I identify the source of my information and I believe the information to be true.

4. I have reviewed the Canadian Human Rights Tribunal's ("Tribunal") Ruling and Order on compensation in 2019 CHRT 39 and have prepared an earlier affidavit dated October 3, 2019 in support of the Attorney General of Canada's ("Canada") application for a stay of the Tribunal's Order pending a judicial review. I understand from my review of the Order, that at anytime after December 10, 2019, the Tribunal could order a process for paying the compensation beginning immediately.
5. I have also reviewed the Motion filed by the First Nation Child and Family Caring Society of Canada (the "Caring Society") seeking an Order placing Canada's application for judicial review in abeyance pending the Tribunal making its order regarding the process for paying compensation, including the affidavit of Dr. Cindy Blackstock dated October 24, 2019.

Canada's Challenge to the Compensation Ruling

6. Canada has significant concerns regarding the reasonableness of the Compensation Ruling and, as set out in my earlier affidavit in support of our stay motion, is of the view that it should not be required to commence building a process for compensation before the judicial review is complete.
7. The fact that Canada might not agree with the Tribunal's Compensation Ruling does not undermine Canada's commitment to improving the lives of First Nations children and remedying the discriminatory practices that were at the heart of the claim before the Tribunal.
8. The decision to seek a stay pending the hearing of the judicial review was based not only on the potential for irreparable harm in implementing the Compensation Ruling, but on the practical reality that an election was called days after its release, leading to the implementation of the Caretaker Convention.
9. During this time, government departments, including ISC, are expected to operate in a way that preserves the authority and ability of the government

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

Prejudice in Holding the Judicial Review in Abeyance

10. I believe that holding the judicial review in abeyance pending the Tribunal issuing an order on the compensation process would prejudice Canada's position. The nature of that prejudice is addressed in my October 3, 2019 affidavit filed in support of our stay motion at paragraphs 32- 45.
11. As detailed therein, the task of developing a process for the payment of individual compensation is a large, complex and expensive task from both a human resource and budgetary perspective. It is in the interest of justice to allow Canada to challenge the reasonableness of the Tribunal's Compensation Ruling before initiating a process that will engage a large number of people and significant expenditures of resources.
12. Allowing the judicial review to proceed would not impact the availability of services to First Nations children. There will be no interruption or suspension of essential services to these children. As detailed in my earlier affidavit of October 3, 2019, the systemic remedies that Canada has put in place since the Merits Decision was released are extensive and engineered to ensure that all First Nations children have access to the essential services and supports they need.
13. The increases to funding and available services ensure that immediate needs of First Nations children are met. I am not aware of any impacts on services for First Nation children that would result from having the

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

Canada's Response to the Merits Decision and Subsequent Rulings

14. Canada has taken significant steps to address the Tribunal's finding of systemic discrimination in the Merits Decision. The suggestion in paragraphs 15 and 16 of Dr. Blackstock's affidavit that Canada's response to the Merits Decision has been inadequate, is not a fair characterization of Canada's response.
15. Budget 2016 committed \$634 million over 5 years beginning in 2016-17 to support both the immediate needs of First Nations children and to begin a process of reform to strengthen the First Nations Child and Family Services Program as articulated in Cassandra Lang's January 25, 2017 affidavit (without exhibits), attached as Exhibit "A".
16. The actions described in Budget 2016 also committed Canada to reforming the First Nations Child and Family Services (FNCFS) Program. The actions included investments that were informed by recommendations included in *Wen:De: The Journey Continues*, which was the final report emanating from National Policy Review on First Nations Child and Family Services research project on the development and costing of a new funding regime for First Nations child and family services programs.
17. *Wen:De* recommended that a new funding stream should be implemented for wellness, least disruptive measures and prevention, and costed these needs for agencies to be \$34.7 million. Budget 2016 provided more than \$153.5 million over five years, with \$40 million ongoing to agencies in new funding for prevention activities. As such, Budget 2016 allowed for the implementation of prevention funding across the country, and additional funding for agency salaries and rent.

18. *Wen:De* was accepted by the Tribunal as a valuable resource to remedying the discrimination, and it is reasonable that the Department relied on these recommendations when determining what would be in the best interests of First Nations children and families when it was preparing Budget 2016.
19. After the release of the Merits Decision and Budget 2016, Canada began the work of implementing the Tribunal's rulings while addressing new concerns raised by the Parties. These efforts are itemized in Canada's October 31, 2016, response to the Tribunal (attached without exhibits as Exhibit "B"), Cassandra Lang's January 25, 2017, affidavit, and Paula Isaak's May 24, 2018 affidavit (attached without exhibits as Exhibit "C").
20. With respect to Dr. Blackstock's reference at paragraph 15 to Canada's continued use of impugned funding formulas, the reason the formula continues to be used is that ISC has not yet completed its work with the parties and other stakeholders on a comprehensive new funding methodology. However, ISC has made significant additional investments to increase the overall funding received by agencies and service providers. Pursuant to the Tribunals' orders, ISC is paying actual costs incurred by the agencies in prevention and other areas. These investments have improved agencies' ability to ensure the safety and well-being of First Nations children and their families.
21. Canada explained the funding process to the Tribunal in previous correspondence dated April 27, 2018, and June 8, 2018; attached to this affidavit at Exhibits "D" and "E" respectively. We explained that ISC provided agencies with an initial allocation of \$535 million that was based on the methodology for Budget 2016 to ensure that funds were given to the agencies in a timely manner, but also that additional funding was provided in response to the Merits Decision.

22. Canada funded the Assembly of First Nations to conduct engagement to better define the needs of service providers. ISC also provided additional funding to small agencies to respond to the Tribunal's concerns that small agencies did not receive adequate funding.
23. ISC provided \$3.475 million in October 2016, as detailed in Canada's October 31, 2016 update to the Tribunal, to agencies to identify their distinct needs and circumstances and to develop and implement culturally based visions and programs. These needs assessments were the basis for the research completed by the Institute of Fiscal Studies and Democracy (IFSD) in their Phase One report, which Canada has provided \$1.6 million to support. With the launch of IFSD's second phase of research, Canada will have provided over \$3.5 million in support to develop options to reform the funding model.
24. Canada worked to establish tri-partite tables in regions where they did not exist, such as in the Yukon, and continued to fund tri-partite tables, which include regional and local First Nations representation in each jurisdiction, with a focus on reforming the program.
25. With regards to Jordan's Principle, during the summer of 2016 Canada announced up to \$382.5 million in funding over three years (2016/17 – 2018/19) for the Jordan's Principle – A Child-First Initiative (the "Initiative"). Over the three years, the definition of Jordan's Principle and eligibility criteria for Initiative funding expanded considerably, as a result of the definitional changes made by the Tribunal in its 2016 and 2017 Rulings following its Merits decision.
26. The complaint before the Tribunal as it pertained to Jordan's Principle was about ensuring that the situation of Jordan River Anderson, a First Nations child who died in hospital at 5 years old in 2005 after being caught up in a jurisdictional dispute between the federal government and the Manitoba

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

27. Since the release of the Merits Decision, Canada has focussed its efforts on implementing the Tribunal's orders on Jordan's Principle to ensure the services available to First Nations children are at least consistent with those available to other children in Canada regardless of where the child lives. In fact, Canada has applied a principle of substantive equality in considering requests, which often means going beyond the level of services provided by other governments in Canada. Canada is also considering cultural appropriateness and safeguarding the best interests of the child in its determination of Jordan's Principle requests.
28. Canada has revised its practices as the definition and scope of Jordan's Principle was expanded by the Tribunal in subsequent rulings following the Merits Decision. The principle adopted by the House of Commons and attached as Exhibit "F", was intended to prevent jurisdictional disputes between levels governments from delaying or preventing the provision of services to on reserve First Nations children. The application of Jordan's Principle now includes cases
 - i. where there is no jurisdictional dispute between governments;
 - ii. involving some children living both on and off reserve;
 - iii. where the child is not suffering a serious medical condition, but is seeking services and products for any health, social or educational need; and
 - iv. where the child is seeking funding for services and products that would not be provided to other Canadian children receiving publicly-funded services (through the application of the principle of substantive equality).

29. In January 2018, Canada held an Emergency Meeting on First Nations, Métis Nation, and Inuit Child and Family Services to address the severe over-representation of Indigenous children in child welfare systems. This meeting included leaders from the Assembly of First Nations, Inuit Tapiriit Kanatami, Métis National Council, regional Indigenous leadership, federal, provincial and territorial government representatives and youth delegates who had been in the foster care system as well as representatives of all Parties to the complaint and child and family services agencies. Canada committed to six points of action, including the development of Indigenous child and family services legislation.
30. Budget 2018 committed an additional \$1.4 billion over 6 years and ongoing to address funding pressures facing First Nation Child and Family Services agencies, while increasing prevention resources for communities. Jordan's Principle funding has also increased, with \$679 million budgeted from 2016-2019 and \$1.2 billion committed from 2019-2022.
31. This included the introduction of a new funding stream called the Community Well-being and Jurisdiction Initiative (CWJI). The new CWJI funding stream grew out of the funding that Canada invested in community prevention and well-being activities. Budget 2018 provided First Nations communities with \$105 million for 2018-2019 and increasing over a five year period. This new funding stream is designed to support First Nation communities directly, not agencies, to lead the development and delivery of prevention services and for First Nations communities to assert greater control over the well-being of their children and families. This funding supports the transfer of jurisdiction and resources out of the agency system, and puts the power in the hands of First Nations communities. The distribution of CWJI funding by jurisdiction was developed based on recommendations from the Consultation Committee on Child Welfare, a consultation forum in which the parties regularly consult on short, medium and long-term relief. Communities in each jurisdiction decided how funds

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

32. On June 21, 2019, Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*, received Royal Assent. It is scheduled to come into force on January 1, 2020. The Act affirms the rights of First Nations, Inuit and Métis to exercise jurisdiction over child and family services, contributes to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and establishes national principles such as best interests of the child, cultural continuity and substantive equality to help guide the provision of child and family services in relation to Indigenous children. This legislation, while not the result of an order from the Tribunal, demonstrates Canada's firm commitment to reform, including deconstructing the colonial system that created the discriminatory practices. Joanne Wilkinson detailed these efforts in her April 16, 2019, affidavit submitted to the Tribunal.
33. Additionally, in Budget 2019, an additional \$1.2 billion over three years (2019/20 – 2021/22) was committed to further support Jordan's Principle. The Caring Society and other CHRT Parties provided input into the establishment and monitoring of the Initiative's public communications, operational procedures and data collection. Approximately forty million dollars annually is provided to mainly First Nations organizations across Canada to identify children in need and support their access to services through Jordan's Principle funding.
34. Finally, Canada understands that working with the parties, and with First Nations more broadly to advance these issues takes time and resources.


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

Conclusion

35. All of these actions taken demonstrate Canada's commitment to reform its funding approaches in First Nations child and family services and Jordan's Principle. This work is ongoing as Canada strives to develop and implement funding programs that ensure the needs and best interests of First Nations children are met. Canada is asking that the Federal Court consider our arguments regarding the Compensation Decision before requiring Canada to engage in the lengthy and complex task of developing a process for paying compensation in cooperation with the parties and under the direction of the Tribunal.
36. I make this affidavit in support of the Attorney General's response to the Caring Society motion to hold our judicial review application in abeyance and for no other purpose.

SWORN BEFORE ME
at the City of Gatineau,
in the Province of Quebec

This 8th day of November, 2019

 # 296082-6
A COMMISSIONER, ETC.
Daniela Gasca


Sony Perron

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

A handwritten signature in black ink, appearing to read "Sanderson", is written over a horizontal line.

A Commissioner, etc.

Tribunal File No. T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA
and NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT OF CASSANDRA LANG

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

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

2. I have reviewed the Canadian Human Rights Tribunal's (Tribunal) ruling dated January 26, 2016 and the September 14, 2016 ruling with respect to remedy. I have also reviewed the September 30, 2016 and October 31, 2016 compliance reports filed by INAC in response to the September 14, 2016 order. In my capacity as Director, I oversaw the drafting of these compliance reports, which are attached as **Exhibits "1" and "2"** respectively. I have also reviewed the written submissions filed with the Tribunal by Canada on May 24, 2016 and July 6, 2016.
3. The compliance reports and submissions, along with this affidavit, detail Canada's efforts to comply with the Tribunal's orders on immediate relief made to date. These efforts are discussed in greater detail below.

Funding Compliance

4. The Budget 2016 investments of \$634.8 million over five years represented a first step in addressing funding gaps in the Program. This year, \$71.1 million in new funding was allocated to support the Program. As of December 2016, approximately 75% of this funding has flowed to agencies. The remaining 25% will be spent prior to March 31, 2017. Budget 2016 funding is allocated as set out on page 6 of Canada's September 30, 2016 compliance report. To date, an additional approximately \$20 million has been allocated to agencies to respond to pressures identified in late 2015-16 and 2016-17. Examples of agency pressures include maintenance pressures, other deficits and payments resulting from the impacts of provincial reforms.
5. To respond to the Tribunal's September 14, 2016 orders to increase prevention services for families at risk, as well as adjust the funding approach for small agencies, INAC made further investments to the funding set out in paragraph 4 above. In the fourth quarter of the 2016-17 fiscal year, additional funding (that is, funding beyond Budget 2016 investments or funding for agencies pressures) for these two items total approximately \$1.9 million. The funding will be ongoing and adjusted to reflect actual needs as they are identified by agencies.

6. INAC is engaging with all its partners across the country to further explore different models to respond to the increased need for prevention services. Examples raised by partners that INAC is considering include reimbursing or funding agencies based on actual costs (similar to what is done in the case of maintenance) and supporting communities in their efforts to provide prevention programming. INAC has also asked agencies, including small agencies, to provide the Department with further information about their actual needs and distinct circumstances, as outlined below.
7. On October 28, 2016, INAC offered First Nations delegated agencies funding to provide the Department with information about their actual needs and distinct circumstances. Agencies were invited to submit individual reports or to work together or through existing mechanisms (e.g., involvement in regional tripartite working tables) to provide this information. Attached as **Exhibit 3** is the October 28, 2016 letter to agencies.
8. To date, approximately 80 agencies in British Columbia, Alberta, Manitoba, Ontario, Quebec and the Atlantic provinces have begun the process of seeking funds to provide INAC with information on their needs, including areas identified by the Tribunal as needing reform. INAC has asked to receive the reports from agencies on their needs by the end of June 2017, however, some agencies have indicated that they will need more time to provide the information.
9. Investments of approximately \$1.975 million have been allocated to regions for this fiscal year to support agencies to identify their actual needs and distinct circumstances, with additional funds being available should other agencies confirm they are interested in responding to INAC's request. These funds are in addition to the funds outlined in paragraph 4 above. Further, the letter sent by INAC provided agencies with a funding opportunity to implement a cultural vision for their programming (e.g., implementation of Touchstones of Hope, development of culturally based tools for communities). To date, a number of agencies in British Columbia have expressed an interest in doing this work and

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

10. Discussions are ongoing with agencies in other regions of the country about the funding opportunity to develop a cultural vision.
11. As ordered by the Tribunal on September 14, 2016, INAC has committed “to not reduce or further restrict funding” for agencies, as set out on page 2 of its October 31, 2016 compliance report.

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

12. As set out in its September and October 2016 compliance reports, Canada has taken steps to comply with the Tribunal’s orders. However, any further reform must be undertaken in collaboration with Canada’s partners. This work is underway.
13. To that end, Canada continues to develop and implement a multi-pronged engagement process to gather information on agency needs and work collaboratively towards medium and long-term reform with our partners, including First Nations, their leadership and political organizations, the National Advisory Committee, First Nations child and family services agencies, provinces and Yukon, and youth who have aged out of care, to name a few.
14. This engagement approach includes appointing a Minister’s Special Representative to gather advice and perspectives from a range of partners across the country. It also involves establishing the National Advisory Committee on First Nations Child and Family Services Program Reform (see Annex F to Canada’s October 31, 2016 submission). Since the filing of the October 31, 2016 report, progress has been made in each of these areas. A brief update is provided below.

15. The Minister's Special Representative, Dr. Cynthia Wesley-Esquimaux, has been meeting and continues to meet with a broad range of partners, including: First Nations Child and Family Services agencies, First Nations leadership, community members and youth, community organizations and provincial/territorial governments. Through these meetings, the Minister's Special Representative is able to hear directly about promising practices in child welfare protection and prevention. Her Statement of Work is attached as **Exhibit 4**.
16. In addition to an announcement on October 27, 2016, the Minister's Special Representative was introduced in a letter to partners from the Minister on October 26, 2016, and through further communications as part of the regional visits. Dr. Wesley-Esquimaux's first official regional engagement visit was in British Columbia from November 21-30, 2016. During that visit, the Minister's Special Representative and senior officials from INAC met with representatives from First Nations leadership and communities, elder advisors, the province, the provincial advocate's office, First Nations Child and Family Services agencies, and youth advisory committees and networks.
17. A regional visit to Alberta took place on January 15-20, 2017 where she met with First Nation Chiefs, youth, community members, agency representatives and the provincial government.
18. Other visits are planned for: Ontario (January 23-26, 2017), New Brunswick, Nova Scotia and Prince Edward Island (February 6-10, 2017), Quebec (February 20-24, 2017), Saskatchewan (February 27-March 2, 2017), Yukon (March 6-8, 2017), Manitoba (March 13-17, 2017) and Newfoundland and Labrador (March 20-21, 2017). The Minister's Special Representative is also speaking to individuals who contact her to share their concerns and views. Individuals can contact the Minister's Special Representative through the department.
19. The input and perspectives shared to date are providing the Minister of INAC with a broad range of ideas and options to fully reform the Program in order to respond to the Tribunal's orders. As a result of these initial discussions, INAC is

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

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

20. Funding of approximately \$2.44 million has been allocated to support regional engagement and reform activities. Regional tripartite meetings are being supported across the country. For example, there was a tripartite meeting in Saskatchewan on January 11, 2017 and in Manitoba on January 13, 2017 to discuss and plan for the Minister's Special Representative's regional visits with regional program stakeholders.
21. Funding is also being provided to Indigenous Regional Organizations and other key partners to undertake activities for engagement and to support input for reform, such as: reviewing existing regional reports (e.g., studies and recommendations by regional organizations, provincial advocates and others which may set out specific suggestions for approaches to prevention or other areas of need for agencies or communities) and prioritizing and advising on how to implement the recommendations in these reports; drawing on Indigenous methodologies to engage with First Nations communities, families and others from across the region; and providing evidence-based advice to inform the reform process. For example, the Assembly of Manitoba Chiefs is receiving funding in Manitoba, and the First Nations of Québec and Labrador Health and Social Services Commission is being funded to coordinate engagement in Quebec.

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

22. INAC is working with the Province of Ontario and First Nations regarding the distribution of funding and planning for broader engagement on the reform and development of new options for the *1965 Agreement*. INAC worked with the provincial Ministry of Children and Youth Services and the Social Services Coordination Unit at the Chiefs of Ontario on a one-time way to fund immediate relief investments for Ontario for 2016-17 in the amount of approximately \$5.8 million. The Chiefs of Ontario presented INAC and the province with the amount that each community would receive and Ontario disbursed the funds on behalf of Canada so that communities could fund prevention activities.
23. Building on these discussions, a technical tripartite meeting of directors of social services from INAC, the province of Ontario and Indigenous Regional Organizations took place in Ontario on January 13, 2017. At this meeting, the tripartite group identified the following items for further discussion: review of the *1965 Agreement*, Band Representatives, mental health, scoping an Ontario-specific study, remoteness and a framework for a long-term policy and funding approach. Following this meeting, Terms of Reference will be agreed to by Ontario, INAC and First Nations representatives to guide future collaborative efforts of this group and a follow-up meeting is planned for February 15, 2017.
24. In response to the Affidavit of Deputy Grand Chief Denise Stonefish concerning funding for mental health, Band Representatives and an Ontario Special Study, INAC is working in partnership with Ontario, provincial Indigenous Regional Organizations and individual First Nations to examine these issues, as set out in paragraph 23 above. The issue of funding for and the role of Band Representatives or equivalent capacity supports for regional representative organizations has also been raised by First Nations in other provinces and must be examined as part of the larger national engagement process as well. The issue of mental health must be examined in partnership with other federal departments,

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

25. In response to the Affidavits from Nishnawbe Aski Nation on agency deficits, under the *1965 Agreement*, INAC has a reimbursement-based transfer-payment relationship with the province of Ontario and not with individual agencies. The agencies have a direct funding relationship with the Government of Ontario, per its responsibilities under the *Child and Family Services Act*. INAC reimburses the Government of Ontario for approximately 93% of provincially approved agency expenditures eligible under the *1965 Agreement*, including a 10% federal holdback pending audit of submitted expenses. The province of Ontario provides INAC with financial statements related to services eligible under the *1965 Agreement* for registered First Nations children in care normally resident on reserve.
26. INAC is working with these agencies, including as outlined in paragraph 7, to assist them to provide the Department with information about their actual needs. Also, as part of tripartite meetings between INAC, the province of Ontario and First Nations Indigenous Regional Organizations, discussions are underway about how to work together to better understand and respond to agency and community needs across the province of Ontario.
27. In addition, INAC has had preliminary discussions with the leadership of the Nishnawbe Aski Nation regarding their needs and proposals for a study on remoteness, which could include gathering remoteness data and/or developing a remoteness quotient that could be applied to meet the needs of agencies in remote regions. These discussions are ongoing.

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

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

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

29. The Terms of Reference specify that the Committee includes a national chair, three representatives from the federal government, one representative from the Assembly of First Nations, one representative from the First Nations Child and Family Caring Society, 10 First Nations child and family services agency directors (one from each of the Assembly of First Nations's regions), one First Nations youth representative and one First Nations Elder representative.
30. In response to the Affidavit of Jonathan Thompson concerning the expertise of this Committee and its role in the engagement process, the Terms of Reference for the National Advisory Committee have been approved. The Committee will play an important role in providing an avenue for expert advice on agency funding needs and all of the other issues set out in the Terms of Reference. The first meeting will be on January 24 and 25, 2017. The Terms of Reference are attached as **Exhibit 5**.
31. INAC has provided funding of approximately \$440,000 to the Assembly of First Nations for staff and supports to provide policy advice and do research, outreach and communications on social policy issues, including First Nations child and family services, as well as participate in the Committee. INAC has also provided funding of approximately \$118,000 to the Assembly of First Nations to conduct research and carry out a survey of service providers to determine the range of services provided, the optimal level of service, the costs associated with providing equitable services and to develop a funding formula or economic model for First Nations family and child services. In addition, INAC has allocated approximately \$149,000 to support the First Nations Family and Caring Society to support their participation in the Committee and related processes. The funding agreement has not yet been signed by the organization.

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

32. As part of national engagement activities, INAC is engaging with its partners to design a National Youth Summit. The current concept for the Summit is to focus on hearing directly from youth who have been in care about their experiences and perspectives on what needs to change. A planning meeting for the Summit, involving approximately 30 youth from across the country, is being planned for February 13 and 14, 2017.
33. The Minister of INAC will also be meeting with provincial/territorial child advocates on January 25 or 26, 2017. In addition, INAC is also working with Employment and Social Development Canada and the provinces and territories to share information through a Federal/Provincial/Territorial Working Group on Indigenous Children and Youth and Care, and to prepare for the meeting of federal/provincial/territorial Ministers Responsible for Social Services, scheduled for February 2 and 3, 2017. The Minister will attend this meeting to discuss the issue of Indigenous Children and Youth in Care with National Indigenous Organizations and provincial/territorial Ministers Responsible for Social Services. All of these discussions are in support of reform of First Nations child and family services.

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

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

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

35. In response to the Affidavits of John Loxley and Jonathan Thompson expressing their concerns about INAC's ability to analyze the information received on agency needs, INAC will be seeking expert assistance in the interpretation of this information. INAC is also gathering information about agency needs through engagement in the regional tripartite tables and the National Advisory Committee.
36. In response to the Affidavit of Dr. Cindy Blackstock regarding agency deficits at Mi'kmaw Family and Children's Services of Nova Scotia (paragraph 32), INAC provided the agency with \$400,000 in immediate relief as per Budget 2016 calculations, as well as an additional \$5.1 million to respond to their estimate of the funding required to cover pressures, including funding needs related to provincial legislative changes. Attached as **Exhibits 6 and 7** are copies of the agency's estimate of their needs and INAC's agreement with the agency to fund those needs.
37. In response to the Affidavit of John Loxley regarding funding calculations for Gitxsan in British Columbia, the funding amount of \$1,356,388 (represents existing plus new funding at full implementation) was reached by inserting data for the agency into the funding calculation sheet. This total is then adjusted because of agency size and the phasing in of new funds over five years. With the adjustments that take place because of agency size, the total is \$1,291,968, at full implementation of Budget 2016 funding. To determine funding for year one (2016-17), new funding of \$215,347 (which is 40% of the allocation of new funding at full implementation of \$538,369) was added to the 2015-16 funding amount (\$737,384), resulting in an allocation of \$952,731. Based on discussions

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

38. In response to paragraph 4 of Dr. Blackstock’s second Affidavit alleging that a particular document (attached as Exhibit A to her affidavit) had not been included in INAC’s September 30, 2016 compliance report, this document was submitted as part of its October 31, 2016 compliance report (Annex G, page 78), as it was a product of a regional discussion.
39. In response to paragraph 40 of Dr. Blackstock’s first Affidavit referencing a motion in the House of Commons calling for an investment of \$155 million in new funding for the delivery of child welfare services for First Nations children, Canada has invested an additional approximately \$95 million in funding for 2016-17. As outlined in paragraph 7, INAC is also seeking information from agencies about their actual needs and distinct circumstances to inform the reform of funding for the Program.

Medium and Long-Term Relief

40. In relation to immediate relief, INAC’s Budget 2016 and additional investments have increased to approximately \$95 million for 2016-17 to respond to the Tribunal’s orders to meet agency and other organizations’ needs. With these new funds, all regions are now and will continue to be supported with prevention-based funding.
41. Longer-term reform will involve exploring the development of national standards and legislation, and models where First Nations assume jurisdiction over child and family services. INAC is also engaging with all its partners to gather evidence on how to address other gaps, such as capital needs, legal fees and remoteness. Engagement activities to inform agency funding reform will continue through

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


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

Kim Piché
 A Commissioner for Taking Affidavits

Cassandra Lang
 Cassandra Lang



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

A handwritten signature in black ink, appearing to read "Samuel", is written over a horizontal line.

A Commissioner, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Child Pop. (0-18) Core Adjustment

100	12.50%
200	25.00%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. How it is immediately addressing funding for legal fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. How immediate relief funding is being distributed in Ontario

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

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

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

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

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

See response in Part B, section 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In Ontario:

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

- May 25, 2016. INAC Director of Education and Social Programs Directorate, Ontario Region, met with Province of Ontario's Deputy Minister of Ministry of Indigenous Relations and Reconciliation, the A/Deputy Minister Ministry of Children and Youth Services, the Deputy Minister of the Ministry of Community and Social Services, and the Deputy Minister of the Ministry of
- May 31, 2016. INAC Regional Director General of Ontario met with Chiefs of Ontario
- July 15, 2016. INAC regional and headquarter officials met with MBQ First Nation
- September 22, 2016. INAC Regional Director General of Ontario and the Director General of Child and Family Services met with Ontario (Ministry of Indigenous Relations and Reconciliation and Ministry of Children and Youth Services) and Regional Chief Day, Chiefs of Ontario

In Manitoba:

- February 12, 2016. Meeting with FNCFS Regional Advisory Committee (RAC). RAC is the regional tripartite table
- March 16-17, 2016. Regional Advisory Committee's FNCFS all agency meeting
- March 31, 2016. Northern FNCFS Authority's Agency Relations meeting. Provided CHRT update (no attachment)
- April 6, 2016. Northern FNCFS Authority's Collaborative Working Group meeting; provided CHRT update (no attachment)
- May 2, 2016. Meeting with Southern First Nations Network of Care, included update on CHRT (no attachment)
- May 17, 2016. Meeting with Awasis Agency of Manitoba, included discussion of Budget 2016 adjustments and way forward (no attachment)
- June 23, 2016. Meeting with FNCFS agency finance directors, included discussion of Budget 2016 and immediate relief details (no attachment)
- June 27, 2016. Regional Advisory Committee meeting
- July 22, 2016. Federal/Provincial update meeting, included discussion of CHRT, regional approach and Budget 2016 (no attachment)
- July 25, 2016. Regional Advisory Committee meeting, including Regional Engagement Strategy.

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

In Quebec:

- April 25, 2016. Meeting with First Nations of Quebec and Labrador Health and Social Services Commission ("the Commission") and INAC on CHRT, Jordan's Principle and additional funding (no attachment)
- May 3, 2016. Regional Roundtable meeting. INAC presented to FNCFS agencies, the Commission, and Quebec's *ministère de la Santé et Services Sociaux* (MSSS) on CHRT, Jordan's Principle and additional funding
- July, 2016. Health Canada meeting with regional partners including INAC, Commission, and MSSS on Jordan's Principle - Child First Initiative (no attachment)
- August 29, 2016. Meeting with the Commission and INAC regarding child and family services engagement (no attachment)
- Week of September 21, 2016. Health Canada meeting with First Nations Health Directors on Jordan's Principle - Child First Initiative (no attachment)
- September 22, 2016. Meeting with Health Canada and INAC (Quebec Region), discussions on syncing programs, Jordan's Principle - Child First Initiative (no attachment)
- September 28, 2016. Meeting with Health Canada, INAC, MSSS. Presentation to MSSS on Jordan's Principle - Child First Initiative
- September 30, 2016. Meeting with Health Canada, INAC (Quebec Region), and Tshakapesh, an institute that serves the Innus of the Basse Côte Nord with learning programs and services (no attachment)
- October 4, 2016. Meeting with MSSS and INAC to discuss child and family services engagement and Jordan's Principle - Child First Initiative (no attachment)
- October 6, 2016. Meeting with Health Canada, INAC (Quebec Region), and *Commission de l'éducation des Premières Nations* (CEPN) (no attachment)

In British Columbia:

- May 12, 2016. Meeting with the Transition Funding Working Group, which is made up of the executive of the Directors Forum and INAC. Discussion focused on the distribution of immediate funding remedies and Jordan's Principle. Most FNCFS agencies were present.
- June 15 -16, 2016. Meeting with Ministry of Children and Family Development (MCFD), INAC BC Region and INAC Headquarters on quarterly bi-lateral accountability framework Committee meeting in Vancouver, BC (no attachment)

- July 14, 2016. Meeting with Ministry of Children and Family Development (MCFD), Northwest Inter-Nation Child and Family Services (Delegated Aboriginal Agency) and INAC for their Joint Advisory Committee meeting in Terrace, BC (no attachment)
- August 23, 2016. Meeting with Ministry of Children and Family Development (MCFD), Splatstsin Stsmamlt Services, and INAC for a Child and Family Services Operational meeting in Enderby, BC (no attachment)
- September 8, 2016. Meeting with the Transition Funding Working Group, similar discussion to above (no attachment)
- September 29, 2016. Meeting with Ministry of Children and Family Development (MCFD), Knucwentwecw Child and Family Services, INAC Treaties and Aboriginal Government- Negotiations West (TAG-NW), and INAC BC Region for a Treaty table working group meeting in Vancouver, BC (no attachment)
- September 29, 2016. Meeting with Tripartite Working Group (INAC, First Nations Leadership Council, and Ministry of Child and Family Development (MCFD) to begin tripartite relationship on objectives relating to improvement of the Child and Family Services Program in British Columbia. (no attachment)
- October 4, 2016. Meeting with Ministry of Children and Family Development (MCFD), Southern Stl'atl'imx Health Council and INAC BC Region for an information meeting in Vancouver, BC (no attachment)
- INAC has attended, and will continue to attend the remainder of the 2016-2017 Regional Caucus Sessions being held by the First Nations Health Council in British Columbia. This year's sessions include discussions related to the social determinants of health, including First Nation child and family services and child well-being more generally. INAC will continue to work with the First Nations Health Council in support of engagement in British Columbia (no attachment)

In Newfoundland and Labrador:

- June 14, 2016. Meeting with Innu Round Table Secretariat (Director and Representative), INAC, and NL province in Goose Bay, NL. Discussions included prevention services and development of Innu proposal
- June 15, 2016. Meeting with INAC and Miawpukek First Nation in Goose Bay, NL to discuss immediate relief funding and prevention proposal
- June 16, 2016. Meeting with Province of Newfoundland and Labrador in St-John's NL to discuss child and family services (no attachment)
- October 5-6, 2016. Meeting with Innu Round Table Secretariat (Director and Representative), INAC, and NL province in St-John's, NL. For October 6,

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

In New Brunswick:

- February 10, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery (no attachment)
- May 25, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery.
- July 20, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery
- October 3, 2016. Aggregation Working Group meeting with INAC, NB Province, consultant for First Nations, and the Directors from the three-agency model (Mi'kmaq Agency, Maliseet Agency, Elsipogtog Agency) representing the 10 First Nation organizations. Meeting was held in Fredericton, NB. Discussion was on transition to the aggregated model and status update of each agency to meet community-based needs for service delivery

In Alberta:

- April 29, 2016. Letter to all Alberta First Nations Chief and Council regarding Canadian Human Rights Tribunal Decision and Budget 2016
- May 2, 2016. Meeting with Alberta FNCFS agencies. Cover letter provided to all Alberta FNCFS agencies regarding Budget 2016 and CHRT ruling; presentation provided on Budget 2016 and immediate relief
- August 23, 2016. Meeting with INAC Alberta Region Regional Director General and Alberta Grand Chiefs on child and family services and CFS engagement (no attachment)

In Nova Scotia:

- May 26, 2016. Tripartite meeting with INAC regional office and HQ, Nova Scotia province, and Mi'kmaw Family and Children Services Agency in Dartmouth, NS. Meetings focused on the provincial legislative changes and the impacts on the agency's operations and the revised budget the agency had to submit to INAC for additional funding support (which was approved). Immediate relief was also addressed. Note: Mi'kmaw Family and Children Services Agency holds the tripartite meeting minutes (no attachment)
- August 9, 2016. Tripartite meeting with INAC regional office and HQ, Nova Scotia province, and Mi'kmaw Family and Children Services Agency in Eskasoni, NS. Meetings focused on the provincial legislative changes and the impacts on the agency's operations and the revised budget the agency had to submit to INAC for additional funding support (which was approved). Immediate relief was also addressed. Note: Mi'kmaw Family and Children Services Agency holds the tripartite meeting minutes (no attachment)

In Yukon:

- April 13, 2016. Manager from INAC's Yukon Regional Office met with the of Director Family and Children's Services Branch, Government of Yukon to discuss the additional funding for new or enhanced CFS prevention programs (no attachment)
- Week of August 8, 2016. Follow up meeting with a Manager from INAC's Yukon Regional Office, the Government of Yukon's Director of Family and Children's Services Branch, Assistant Deputy Minister, Corporate Services and Manager, Cost Recovery (no attachment)
- October 14, 2016. Meetings with various representatives and regional INAC staff on opportunities for prevention pilot projects; CFS Agency-level data sharing; funding support/cost sharing for Case Management Systems, and options for regional engagement (no attachment)

In Saskatchewan:

- Discussions are forthcoming.

In Prince Edward Island:

- Discussions are forthcoming.

Other:

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

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

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

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

Jordan's Principle

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

Headquarters

- May 9, 2016. Assistant Deputy Ministers for HC and INAC sent a joint letter to Provinces and Territories with respect to Canada's acceptance of the January 26, 2016 decision and the need to engage in the reform of the First Nations Child and Family Services Program and in implementing Jordan's Principle.
- June 9, 2016. Assistant Deputy Ministers for HC and INAC met with Interlocutor for First Nations and Métis Relations, Government of Saskatchewan, to discuss the engagement process and how it aligns with other federal priorities for Indigenous People. This meeting was an opportunity to discuss how INAC and Health Canada are working in partnership with other government departments and various stakeholders on Jordan's Principle and Child and Family Services.
- July 6, 2016. Assistant Deputy Ministers for HC and INAC sent a letter to Provinces and Territories to inform them of the news release that provided further details on the revised application of Jordan's Principle. The letter also emphasized the need to engage to discuss next steps.

In the Atlantic:

- July 5, 2016. Primary Care Update – Presentation to Health Directors.
- July 5-6, 2016. Meeting of APC Regional Health Directors.
- July 7, 2016. Presented to Atlantic Health Directors Meeting, and All Chiefs Forum.

- August 4, 2016. Health Canada's Atlantic Regional Executive followed up with info package.
- August 24, 2016. Met with Chief, First Nation Co-Chair, Assembly of First Nations Health Partners, to agree on next steps.
- August 29, 2016. (Nova Scotia) Presented Jordan's Principle-Child First Initiative to the Health Committee of the Canada-NS-Mi'kmaq Tripartite Forum. Included provincial representatives from Aboriginal Affairs and Health.
- September 1, 2016. Presented to Atlantic First Nations Health Partnership's (AFNHP) Public Health and Primary Care Committee (no attachment) and (September 15) NIHB Committee.
- September 9, 2016. Convened special Atlantic First Nations Health Partnership teleconference to present Jordan's Principle-Child First Initiative and Service Coordination function.
- September 15, 2016. Presentation to the Non-Insured Health Benefits Committee on Jordan's Principle.
- September 20, 2016. Held regular Atlantic First Nations Health Partnership f-2-f meeting including an agenda item on Jordan's Principle-Child First Initiative focusing on making a decision on Service Coordination implementation in region.
- September 28, 2016. Presented Jordan's Principle-Child First Initiative to Atlantic All Chiefs and Councils meeting.
- October 6, 2016. Health Canada (Newfoundland) presented JP-CFI to Innu Round Table including provincial officials from Aboriginal Affairs, Child and Family Service, and Health.
- October 12, 2016 – Health Canada (PEI) presented JP-CFI at Canada-PEI-Mi'kmaq Health Policy and Planning Forum and the Child and Family Services Policy and Planning Forum. Provincial Child and Family Services, Health, and Aboriginal Affairs officials in attendance.

In Quebec:

- April 25, 2016. Bilateral meeting on Jordan's Principle – Child First Initiative between INAC and First Nations of Quebec and Labrador Health and Social Services Commission. (no attachment)
- May 2, 2016. Regional Roundtable meeting with First Nations Child and Family Service agencies, the Commission, and Quebec's ministère de la Santé et Services Sociaux (MSSS) on Canadian Human Rights Tribunal, Jordan's Principle and formula funding. (no attachment)

- July 11, 2016. FNIHB-QC Regional Executive connected with INAC-QC Regional Director on engagement strategy. (no attachment)
- July 19, 2016. FNIHB-QC Regional Executive held discussions with the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) Director General and INAC-HQ Regional Director. (no attachment)
- July 27, 2016. FNIHB-QC Regional Executive had call with INAC-QC Regional Director and the Ministère de la Santé et des Services Sociaux (MSSS) Associate Deputy Minister to present the new approach and engagement strategy. INAC-QC connected with the Secrétariat aux affaires autochtones Associate Deputy Minister during the same week. (no attachment)
- August, 2016:
 - o Connected with regional partners (INAC, First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC or "la Commission"), Ministère de la Santé et des Services sociaux, Province). (no attachment)
 - o Bilateral discussions on Jordan's Principle engagement. (no attachment)
- September 19, 2016. Bilateral discussion between FNIHB-QC Regional Executive and the FNQLHSSC Director General about engagement, service coordination and the role the FNQLHSSC want to play. (no attachment)
- September 21, 2016. FNIHB-QC Regional Executive presented the initiative and associated funding to First Nations Health Directors Network of Quebec. (no attachment)
- September 22, 2016. Meeting between FNIHB-QC and INAC-QC staff to discuss programs involved with Jordan's Principle. (no attachment)
- September 22, 2016. INAC/Health Canada/Province presentation on Jordan's Principle – Child First Initiative. (JP overview presentation)
- September 28, 2016. Meeting with Ministère de la Santé et des Services sociaux, Health Canada, and INAC (Quebec Region) on Jordan's Principle and regional needs. (JP overview presentation)
- September 30, 2016. Meeting with Ministère de la Santé et des Services sociaux and INAC to discuss child and family services engagement and Jordan's Principle. (JP overview presentation)
- September 30, 2016. Meeting with FNIHB-QC, INAC-QC and Tshakapesh, an institute that serves the Innus of the Basse Côte Nord with learning programs and services. (no attachment)

- October 4, 2016. Meeting with Ministère de la Santé et des Services sociaux and INAC to discuss child and family services engagement and Jordan's Principle – Child First Initiative. (no attachment)
- October 6, 2016. Meeting with Health Canada, INAC (Quebec Region), and *Commission en Éducation des Premières Nations* (CEPN) (no attachment)
- October 11, 2016. Discussion between Regional Executive (Health Canada) and First Nations of Quebec and Labrador Health and Social Services Commission on the role it wants to play, the use of regional funding and next steps (no attachment)
- October 12, 2016. Discussion between FNIHB-QC Regional Executive and the FNQLHSSC Board of Directors about the use of funding and deployment of the strategy in the region.
- October 26, 2016. First tripartite meeting between the partners to create a Coordination Committee. (no attachment)

In Ontario:

- July 7, 2016. First Nations and Inuit Health Branch presented to Chiefs of Ontario (COO), Social, Health, Education & Justice (SHE&J) Committee on Jordan's Principle. (JP overview presentation)
 - July 22, 2016. First Nations and Inuit Health Branch presented to Chiefs of Ontario Health Coordination Unit (HCU) on Jordan's Principle. (no attachment)
 - August 16, 2106. Discussion on Jordan's Principle at INAC-HC Joint Workplan meeting; identified areas for ongoing collaboration. (no attachment)
 - September 7, 2016. First Nations and Inuit Health Branch presented to Trilateral First Nations Health Senior Officials Committee (TFNHSOC) Mental Health & Addictions Working Group (MHAWAG) on Jordan's Principle-Child First Initiative and identified gap in medical transportation to treatment facilities not on provincial Drug and Alcohol Registry of Treatment list. (no attachment)
- October 6, 2016. First Nations and Inuit Health Branch presented to Independent First Nations (IFN) on Jordan's Principle – Child First Initiative and requested input/feedback on methods to obtaining/evaluating what type and level unmet needs.
- October 6, 2016. Discussion with province, Ministry of Health and Long Term Care, on future collaboration between their Jordan's Principle projects and federal Jordan's Principle. Further discussion scheduled for late October. (no attachment)

- October 18, 2016. First Nations and Inuit Health Branch to present to Chiefs of Ontario Health Coordination Unit to discuss Service Coordinator and options for implementation.

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

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

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

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

In Manitoba:

- June 27, 2016. Meeting of First Nations Child and Family Services Regional Advisory Committee. Jordan's Principle – Child First Initiative was discussed. (no attachment)
- July, 2016:
 - o Meeting of Regional Advisory discussed Jordan's Principle – Child First Initiative - Assembly of Manitoba Chiefs, Southern Chiefs, province (no attachment)
- July & August 2016. Health Canada conducted an Environmental Scan through the Home Care Program which was sent to all 63 communities to identify children with needs. 80% of communities responded. (no attachment)
- August 1, 2016. Health Canada met with Dakota Plains by teleconference to discuss Jordan's Principle. (no attachment)
- September 16, 2016. INAC invited to participate in Health Canada meeting with Specialized Services for Children and Youth. Provincially funded organization.

- September 26, 2016. Meeting with multi-sectoral working group on Jordan's Principle (Terms of Reference Officials Working Group) includes First Nation, provincial and federal partners. Initial engagement discussion and how to coordinate service delivery between all partners. (no attachment)
- September 2016. The First Nations Child and Family Services program engagement discussions and planning at the regional advisory committee have included Jordan's Principle – Child First Initiative. INAC has received a proposal from the Assembly of Manitoba Chiefs to lead the First Nations Child and Family Services regional engagement activities, Jordan's Principle – Child First Initiative engagement activities are recognized in this proposal. The proposal highlights the need to have ongoing communications between the two engagement processes to ensure linkage are identified and addressed. (no attachment)
- September/October 2016. Health Canada engagement meetings at First Nations community level: (no attachments)
 - o Manto Sipi – September 13, 2016
 - o Wuskwi Siphk – September 21, 2016
 - o Pinaymootang – September 12, 2016
 - o Waywayseecapo – October 4, 2016
 - o Poplar River – October 6, 2016
 - o Four Arrows Regional Health - October 12, 2016
 - o West Region Tribal Health – October 25, 2016
 - o Tootinawaziibeeng – October 27, 2016
 - o Lake St. Martin – October 28, 2016
- September 23, 2016. Health Canada engagement with First Nations and Inuit Health Branch Children and Youth Advisory Committee. (no attachment)
- September 26, 2016. Meeting with multi-sectoral working group on Jordan's Principle (Terms of Reference Officials Working Group) includes First Nation, provincial and federal partners. Initial engagement discussion and how to coordinate service delivery between all partners. (no attachment)
- October 18-20, 2016 - Regional meeting with Health Directors, Public Health, Home & Community Care Nurses (one day to focus on JP-CFI initiatives).

In Saskatchewan

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

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

- August 12, 2016. First Nations and Inuit Health Branch and INAC met with provincial reps from Interlocutor of First Nations and Metis Relations, and Ministries of Health, Social Services, and Education re: new approach. Two provincial leads were identified for Jordan's Principle – Child First Initiative and provincial reps agreed to seek mandate to participate in former tripartite Joint Working Group. Provincial reps expressed support for using established agencies to deliver Enhanced Service Coordination.
- August 30, 2016. First Nations and Inuit Health Branch presented to Senior Technical Advisory Group (STAG, health directors) who created committee of Health Directors/ Federation of Sovereign Indigenous Nations staff to engage in bilateral discussions with First Nations and Inuit Health Branch (with intention of engaging Province and INAC to reinstitute tripartite Joint Working Group). Health Directors need more detailed discussion re: Enhanced Service Coordination before endorsing Early Childhood Intervention Program agencies to fulfill those roles.
- August 2016. First Nations and Inuit Health Branch presented to First Nations Indian Child and Family Service (ICFS) directors who proposed to have Indian Child and Family Service reps on new First Nations Jordan's Principle – Child First Initiative committee and bilateral implementation discussions with First Nations and Inuit Health Branch -Saskatchewan.
- September 12, 2016. Kinistin. Attended the Parent and Child Fall Celebration with information.
- September 13 and 14, 2016. Saskatchewan Indian Institute of Technologies Home Visiting class. Spend an hour discussing services.
- September 21, 2016. Yorkton Tribal Council with Parkland, Southeast Cornerstone and Regina Early Childhood Intervention Program.
- September 22, 2016. Peter Ballantyne Cree Nation Pelican Narrows.
- September 29, 2016. Ministries of Education and Social Services, the Office of the Provincial Interlocutor and Government Relations, and Executive Council.

In Alberta:

- July 7, 2016. All Chiefs sent communication re: Jordan's Principle – Child First Initiative funding announcement.
- July 20, 2016. Discussion with provincial Assistant Deputy Minister's: Justice, Health, Education, Aboriginal Relations, Human Services. (no attachment)
- August 8, 2016. Director of Nursing sent out communication to all Health staff (Health Directors, Nurse Managers).

- August 11, 2016. Regional Executive (Health Canada) met with the Treaty 7 organization and Health Directors.
- August 23, 2016. Health Canada and INAC met with the three Grand Chiefs (Treaty 6, 7, and 8). (no attachment)
- August 24, 2016. Regional Executive (Health Canada) met with the Treaty 6 organization.
- September 6, 2016. Regional Executive (Health Canada) met with the Treaty 8 organization.
- September 12, 2016. Regional Collaborative Service Delivery Meeting.
- September 27, 2016. Discussion at Mental Health/Addictions Health Co-Management Subcommittee meeting.
- September 28, 2016. Further meetings with Treaty 8 Chief Executive Officer and Health Director and Treaty 8 Health Commission meeting.
- September 2016. Discussion at Non-Insured Health Benefits Health Co-Management Subcommittee meeting.
- October 5, 2016. Meeting with Alberta Assistant Deputy Minister of Human Services and other provincial partners to discuss and understand provincial “normative standard”:
- October 5, 2016. Presentation and dialogue at Health Co-Management Co-Chairs Subcommittee meeting.
- October 6, 2016. Presentation and dialogue at regional Child and Family Services Engagement Process: Senior Officials Steering Committee.
- October 11, 2016. First Nations and Inuit Health Branch and INAC presentation and dialogue at Regional Middle Managers Committee.
- October 11, 2016. Discussion at Health Co-Management Children & Youth Subcommittee meeting.
- October 13, 2016. In Camera Dialogue at Health Co-Management Meeting regarding Enhanced Service Coordination function.
- October 26, 2016. (Deferred from October 14, 2016) Presentation and dialogue at a Special Health Co-Management meeting.

In British Columbia:

- June 15-16, 2016. Quarterly Bilateral Accountability Framework meeting between Ministry of Child and Family Development, and INAC discussed Jordan's Principle – Child First Initiative. (no attachment)
- September 29, 2016. Ministry of Child and Family Development, *Knucwentwecw* Society, and INAC discuss Jordan's Principle– Child First Initiative. (no attachment)
- September 28, 2016. First Nations Health Authority (FNHA): conference call to discuss initial steps that begin to link FNHA with INAC and subsequently Health Canada regarding role that FNHA has in administration of Jordan's Principle – Child First Initiative. (no attachment)
- October 4, 2016. Ministry of Child and Family Development, *Stl'atl'imx* Health Council, and INAC – overview of Jordan's Principle– Child First Initiative. (no attachment)
- Dates To Be Determined: Tripartite Working Group (INAC, Ministry of Children and Family Development and First Nations Leadership Council) has identified in its DRAFT Action Framework a commitment to work together to ensure full implementation of Jordan's Principle in BC. (no attachment)

In Yukon:

- September 16, 2016: Jordan's Principle – Child First Initiative information shared by Health Canada with all territories at an Assistant Deputy Minister level meeting. (no attachment)
- September 26, 2016: Health Canada's Northern Regional Executive and INAC's Regional Director General met with Government of Yukon and Council for Yukon First Nations to discuss next steps with respect to the implementation of Jordan's Principle – Child First Initiative. Discussions will be ongoing. (no attachment)

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

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

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

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

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

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

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

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

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

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

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

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

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

A handwritten signature in black ink, appearing to read "Samuel", is written over a horizontal line.

A Commissioner, etc.

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Affidavit of Paula Isaak

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

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

2. In my capacity as Assistant Deputy Minister of ESDPP, I have read the February 1, 2018 ruling (“Ruling”) of the Canada Human Rights Tribunal (“the Tribunal”), and have personal knowledge of Canada’s efforts to comply with the Tribunal’s orders.
3. On February 1, 2018, Canada released a statement from Minister Philpott stating that Canada is committed to fully complying with all of the Orders made by the Tribunal. Attached to this Affidavit as **Exhibit “A”** is the ministerial statement. In my capacity as the Assistant Deputy Minister of ESDPP, I am committed to implementing the Orders made by the Tribunal, in consultation with the Parties.
4. On February 27, 2018, Canada committed to spend \$1.4 billion over 6 years, starting in 2017-18, to address funding pressures facing First Nations child and family service agencies, while also increasing prevention resources for communities so that children are safe and families can stay together. Attached as **Exhibit “B”** are relevant pages from the 2018 budget on funding for the First Nations Child and Family Services program.

Modifications to the Orders

5. At paragraph 445 of the Ruling, the Tribunal encouraged the Parties to seek any clarification or modification of the Orders. Canada consulted with the parties on proposed modifications to the orders, and reached consensus on those related to Band Representatives, mental health and analyzing agency needs. The list below sums up the actions taken:
 - a) On February 13, 2018, after receiving a joint submission by the Parties on proposed language, the Tribunal amended the Orders on Band Representatives and mental health in Ontario. Schedule A: Annex to Ruling 2018 CHRT 4 is attached as **Exhibit “C”**.
 - b) In March and April of 2018, Canada consulted with the Parties on additional proposed modifications.
 - c) On April 9, 2018, based on the results of these consultations and an agreement on how to approach the orders related to analyzing agency needs, Canada submitted new proposed timelines to the Tribunal for paragraphs 421, 408, 409, 419, 441 and part of 421. The timelines were based on a proposal from the Institute of Fiscal Studies and Democracy (“IFSD”) to do a cost analysis of agency needs, who were selected to do the work based on the recommendation of the Parties. **Exhibit “D”** includes a copy of this letter and its attachments. This letter also included that the IFSD’s research would be subject to the Tri-Council Policy Statement on Ethical Conduct for Research involving humans and “Ownership, Control, Access and Possession” (OCAP) principles.
 - d) On April 19, 2018 the Tribunal advised the parties that it was amending its Orders regarding paragraphs 408, 409, 419, part of 421 and 444 to reflect the Parties’ amendments proposal and plan. Attached as **Exhibit “E”** is a copy of the Tribunal’s correspondence on that matter.

- e) In its April 9, 2018 letter to the Tribunal, Canada had also proposed revised language for additional paragraphs regarding the alternative system and timelines for the payment of actual costs (410, 416, 420, 411, 417 and part of 421).
- f) The Tribunal has not yet made an order on these proposals, and on April 19 directed Canada to provide a response to questions concerning the proposed amendments to these orders. On April 27, 2018 Canada provided a response to that direction. Attached as **Exhibit “F”** is a copy of the response. Following Canada’s response, both the Nishnawbe Aski Nation (“NAN”) and the Caring Society have raised further questions, and the Tribunal has given Canada until June 8, 2018 to respond.

Analysis of Needs Assessments and Cost Analysis Research

6. At paragraphs 408, 409, 418, 419, and 421 of its Ruling, the Tribunal ordered Canada to analyze the needs assessments completed by First Nations agencies and to do a cost analysis of those needs, including the real needs of small First Nations agencies. The Tribunal also ordered Canada to provide a reliable data collection, analysis, reporting methodology, and ethical guidelines. With respect to these Orders, Canada reports as follows:
 - a) Following the release of the Ruling, Canada sent a letter to all agencies underscoring its commitment to improving how agency funding works, and to explain how it would be implementing the Orders. This letter also asked agencies who had not yet submitted their needs assessments to provide them to ISC as soon as possible to support this work. Attached to this affidavit as **Exhibit “G”** are the February 1, 2018 templates of letters that went to First Nations agencies, small agencies, and agencies in Ontario.
 - b) On January 22, 2018, Canada shared its preliminary analysis of the completed needs assessments with the Parties. This email and analysis are attached to this affidavit as **Exhibit “H”**.
 - c) On February 5, 2018, I sent a draft work plan to the Parties, including proposed activities and timelines, for the needs assessment research, as well as for the development of alternative funding system and accountability framework.
 - d) On February 12, 2018, on my behalf, Margaret Buist, Director General of the Children and Families Branch of ISC, sent draft statements of work to the Parties. These statements of work were to be used to guide the work of expert consultants on the analysis of the needs assessments and the broader cost analysis of agency needs, as well as for an assessment of agency information management and information technology (“IM/IT”) needs.
 - e) Canada shared all of the completed needs assessments with the Parties via email on February 21, 2018.

- f) On February 28, 2018, I sent an updated statement of work, based on comments from the Parties, for the needs assessment research and shared the Curriculum Vitae received from KPMG, who was invited to develop a proposal for this project based on their expertise doing similar work for the province of Ontario, their national reach and their ability to meet proposed timelines.
- g) On March 2, 2018, I sent draft Ethical Research Guidelines to guide the needs assessment research and cost analysis of agency needs to the Parties.
- h) On March 1 and 2, 2018, Foxwise Technologies, a company that was proposing to do the work on IM/IT needs, presented to the National Advisory Committee on First Nations Child and Family Services Program Reform (NAC).
- i) Following discussions with the Parties and the NAC, ISC agreed to explore other experts/consultants for the needs assessment work, and to seek input on who and how to do an assessment of agency IM/IT needs.
- j) On March 5, 2018, Canada submitted a progress report to the Tribunal with draft ethical research guidelines and a statement of work for the analysis of agency needs, which are attached as **Exhibit "I"**.
- k) From March 8, 2018 to March 26, 2018, ISC met and corresponded with the First Nations Child and Family Caring Society (Caring Society), the Assembly of First Nations, and IFSD regarding the proposal that the IFSD undertake the needs assessment and cost analysis of agency needs research.
- l) On March 28, 2018, a final proposal and updated timelines for completion were received from IFSD.
- m) On April 3, 2018, Canada shared the IFSD proposal and timelines with the Parties.
- n) On April 9, 2018, Canada shared the IFSD proposal and timelines with the Tribunal, as referenced in paragraph 5(c) and attached as **Exhibit "D"**.
- o) Canada is providing funding for the IFSD research, through the Assembly of First Nations, in the amount of \$2.091 million dollars.
- p) On April 10, 2018, Kevin Page, President and CEO of IFSD, submitted a phase 1 report, which included reference to the fact that the data collected through the existing needs assessment exercise was insufficient to do a comprehensive cost analysis of agency needs. This report and its annexes are attached to this Affidavit as **Exhibit "J"**.
- q) The IFSD's work is ongoing. Throughout May 2018, they are holding workshops with First Nations Child and Family Services ("FNCFS") agency representatives on budgeting and financing. These workshops are being held in Ottawa this month on: May 14-15, May 17-18, May 22-23, and May 24-25, 2018. All FNCFS agencies from

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

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

Development and Implementation of an Alternative Funding System

8. At paragraphs 410, 416, and 420 of the Ruling, the Tribunal ordered Canada to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, building repair services, the child service purchase amount and for small agencies. Regarding the implementation of these orders, Canada reports as follows:
 - a) As outlined above in paragraph 6(a), on February 1, 2018, Canada sent a letter explaining to First Nations child and family services agencies that ISC would pay their actual costs in all of the areas outlined in paragraph 8 above until an alternative system is in place.
 - b) All agencies received their initial allocation of funding on or before April 1, 2018. Canada's approach to paying an agency's actual costs until an alternative system is put in place was outlined in Canada's April 27, 2018 letter to the Tribunal, which is referenced in paragraph 5(f) and attached as **Exhibit "F"**. If agencies do not have sufficient funding to meet their needs in any of the areas listed in paragraph 8 above, they can submit a claim to have their actual costs covered.
 - c) In its May 3, 2018 report to the Tribunal, Canada committed to providing additional Budget 2018 funding to agencies by June 2018. At the May 10, 2018 meeting of the Consultation Committee, Canada began consultations with parties on how to allocate these funds across the country.
 - d) As outlined in paragraph 6(o) above, Canada is providing funding to the IFSD, through the Assembly of First Nations, to do a cost analysis of agency needs. This cost analysis will inform the development of an alternative funding system for First Nations agencies.
 - e) On April 9, 2018, Canada, in consultation with the Parties, proposed to the Tribunal that it would report on these Orders by October 12, 2018 and on the completion of the work by December 20, 2018. As outlined in paragraph 5(f), the Tribunal has asked Canada to respond to comments from the Parties on this and other proposed changes and has given Canada until June 8, 2018 to respond.

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

9. At paragraphs 411, 417, and 421, the Tribunal ordered Canada to provide funding to agencies on actual costs for prevention/least disruptive measures, building repairs, intake and investigation, legal fees, the child service purchase amount and for small agencies, retroactive to January 26, 2016 by April 2, 2018.
 - a) As noted above in paragraph 6(a), on February 1, 2018, Canada sent letters to FNCFS agencies to communicate that ISC will immediately begin to cover the actual costs in prevention/least disruptive measures, building repairs, intake and investigations, legal fees, child service purchase amounts, and small First Nations agencies' costs, retroactive to January 26, 2016. Copies of the templates for these letters are attached as **Exhibit "G"**, as referenced in paragraph 6(a) of my affidavit.
 - b) As outlined in its April 9, 2018 correspondence to the Tribunal, Canada has agreed to extend the Tribunal's ordered deadline of April 2, 2018 by nearly one year to March 31, 2019, to allow agencies time to gather information and submit claims.
 - c) As of May 18, 2018, Canada has received 10 claims for reimbursement from agencies, totaling about \$8.3 million dollars (note this includes one claim from an agency in Ontario for Band Representative Services). A summary of all claims received, including that it has taken on average between seven and nine business days to process them, is attached as **Exhibit "L"** of my affidavit.
10. Regarding paragraphs 412 and 413 of the Ruling, which ordered that Canada continue to provide funding based on actual costs for least disruptive measures/prevention, building repairs, intake and investigations, legal fees, child service purchase amounts, and small agencies to be reimbursed following the accountability framework and methodology agreed to by the parties or until another agreement is in place, Canada reports as follows:
 - a) As mentioned in paragraph 3 of this affidavit, Canada released a ministerial statement on February 1, 2018 stating that Canada is committed to fully complying with the Orders.
 - b) As mentioned in paragraph 4 of this affidavit, Canada made a \$1.4 billion dollar budgetary commitment. See **Exhibit "B"** referenced in paragraph 4 of this affidavit for information from the 2018 budget on funding for the First Nations Child and Family Services program.
 - c) As mentioned in paragraph 9 of this affidavit, Canada is reimbursing agencies actual costs in all of the areas ordered.

Communication with Agencies

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

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

- a) Following the February 1, 2018 letter to agencies, Regional Offices held calls or meetings with agencies regarding the implementation of paying retroactive actual costs. The larger group calls or meetings took place as follows:
 - i. New Brunswick: February 13, 2018 and February 27, 2018
 - ii. Newfoundland and Labrador: February 12, 2018 (Note: no request for meeting received from Miawpukek)
 - iii. Nova Scotia: February 23, 2018
 - iv. Prince Edward Island: February 27, 2018 (MCPEI joined with New Brunswick)
 - v. Ontario: February 27, 2018, with follow up on March 28, 2018
 - vi. Manitoba: February 26, 2018 and March 2, 2018 (Upcoming meeting with Southern Agency representatives May 1, 2018 and meeting with Northern Agency May 3, 2018)
 - vii. Quebec: February 21, 2018 and February 27, 2018
 - viii. Alberta: February 21, 2018, March 27, 2018 and March 28, 2018 (select agencies in March)
 - ix. Saskatchewan: February 16, 2018 and February 27, 2018, April 26, 2018
 - x. British Columbia: February 2, 2018 (call to each director), and March 6, 2018.
- b) On March 2, 2018, I sent a draft Recipient Guide on retroactive payments to the Parties. It included that Canada is asking agencies to submit as many requests for reimbursement of retroactive expenses as possible by September 30, 2018. Should agencies require more time, including to March 31, 2019, Canada will provide it.
- c) Canada received initial comments on the Recipient Guide from the Caring Society on March 14, 2018, and detailed comments on March 26, 2018.
- d) On April 9, 2018, I shared the revised Recipient Guide and Ontario Guide with the Parties.
- e) On April 18, 2018, further to consultation with the parties, Canada sent First Nations agencies the guides to assist with claiming retroactive expenses.
- f) On April 30, 2018, an email was sent to small agencies clarifying that their deficits will be covered as part of retroactive payments.
- g) Also on April 30, 2018, an email was sent to non-small agencies clarifying that deficits in the areas ordered by the Tribunal will be covered as part of retroactive payments.

- h) On May 1, 2018, an email was sent to all agencies with deficits in prevention noting that they are eligible for reimbursement and offering support to make a claim.
- i) Also on May 1, 2018 an email was sent to agencies with deficits in operations, noting that ISC would like to understand this deficit and noting areas eligible for retroactive reimbursement.
- j) On May 1, 2018, I emailed the Parties the final version of the guides. The email is attached to this affidavit as **Exhibit "M"**. The most recent National Recipient Guide is attached as **Exhibit "N"**; and the Ontario Region Recipient Guide is attached as **Exhibit "O"**.
- k) On May 17, 2018, these versions of the guides were sent to agencies, with a clarification noting that:

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

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

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

12. The Tribunal, at paragraphs 427 and 428 of the Ruling ordered Canada to fund Band Representative Services for Ontario First Nations at the actual cost of providing those services retroactively to January 26, 2016, and also ordered Canada not to deduct this funding from existing funding or prevention funding until such time as studies have been completed or a further order is made. Regarding the implementation of these Orders, Canada reports as follows:
 - a) The province of Ontario provides child and family services funding, programs and services. Canada is continuing to work through the Ontario Technical Table on Child and Family Well-Being, which includes representatives from First Nations, Canada and the province, to discuss the ongoing implementation of these Orders, as well as to begin discussions on how to fund Band Representatives on an ongoing basis.
 - b) On February 1, 2018, Canada sent a letter to First Nations and Tribal Councils in Ontario on the orders and to communicate that the Department will immediately begin to cover the actual costs of providing Band Representative services, including retroactively to January 2016. This letter is attached to this affidavit as **Exhibit "P"**.

- c) On February 14, 2018, Canada provided additional information and documentation to First Nations and Tribal Councils on retroactive payments and Band Representatives by email. Attachments included reimbursement forms, instructions, and declaration forms. This email is attached to this affidavit as **Exhibit “Q”**.
- d) On February 28, 2018, Canada also provided additional information and documentation to First Nations agencies in Ontario on retroactive payments and Band Representatives by email. The documents provided included declaration forms, reimbursement forms, and instructions. This email is attached to this affidavit as **Exhibit “R”**.
- e) As of May 18, 2018, Canada has received 23 claims for Band Representative Services, totaling about \$6.3 million dollars (note this includes one claim from an agency in Ontario for Band Representative Services. Two of the requests were combined to cover mental health and Jordan’s Principle. A summary of these claims is attached as **Exhibit “L”**, as outlined in paragraph 9(c) above. Note that amount referenced in paragraph 9(c) of \$8.3 million and the amount referenced in paragraph 12(e) of \$6.3 million total \$14.6 million. Exhibit “L” references a total of \$13.5 million, as the one claim from an agency for Band Representative Services is reported in both paragraphs 9(c) and 12(e).

Assessing Agency Deficits

- 13. At paragraph 429 of the Ruling, the Tribunal ordered Canada to identify which First Nation agencies, including the NAN agencies, referred to in the Ruling have child welfare or health services related deficits and to assess those deficits.
 - a) On May 3, 2018, Canada provided a copy of its deficit analysis to the Tribunal. This analysis included an agency deficit analysis. This analysis identified whether First Nations agencies had deficits, surpluses, or balanced positions for the 2016-2017 fiscal year.
 - b) On May 17, 2018, Canada met with NAN to discuss agency-specific deficits for NAN agencies, and agreed to continue to work together, including to support agencies to submit claims for deficits in the areas ordered by the Tribunal.
 - c) Canada is also working with First Nations agencies to address any deficits and develop a plan for any surpluses. For example, as outlined in paragraph 11 (f, g, h and i) Canada emailed agencies in April and May 2018, inviting them to submit retroactive claims for deficits.

Remoteness Quotient Research

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

- a) On September 8, 2017, NAN and ISC jointly submitted a progress report to the Tribunal on Phase I of the remoteness quotient research.
- b) On March 8, 2018, NAN and ISC submitted a progress report to the Tribunal on a plan for Phase II of the remoteness quotient research, which is attached to this affidavit as **Exhibit “S”**.
- c) On March 20, 2018, funds for Phase II were provided to NAN, in the amount of \$471K. The remainder of the funds will be provided in fiscal year 2018-2019.
- d) A draft of the Phase II report was provided to ISC in April 2018 and a final report will be provided in June 2018.
- e) A meeting with NAN and the researchers was held on May 17, 2018 to review the draft of the Phase II report.

Ontario Special Study

- 15. Since October 2017 the Technical Table Child and Family Well-Being in Ontario has been in agreement to move forward on a special study of issues related to First Nations on-reserve child welfare services in Ontario. Regarding the current progress of the Ontario Special Study, Canada reports as follows:
 - a) On November 28, 2017, Canada and the Chiefs of Ontario submitted a joint progress report to the Tribunal regarding a call for proposals for the Ontario Special Study.
 - b) On January 31, 2018, a further progress report was submitted by Canada and the Chiefs of Ontario to the Tribunal regarding the beginning of the Ontario Special Study.
 - c) On April 5, 2018, a further progress report was submitted to the Tribunal along with the environmental scan report and information on the engagement phase of the study. This progress report is attached to this affidavit as **Exhibit “T”**.
 - d) The next progress report is scheduled from Canada and the Tribunal to the Tribunal for July 31, 2018.

Reallocation

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

- a) On February 1, 2018, Ms. Buist sent an email to all Regional Directors General and Child and Family Services regional staff directing them to review the Ruling. This email is attached to this affidavit as **Exhibit “U”**.
- b) On February 8, 2018, Paul Thoppil, Chief Financial Officer, and I sent a directive by email to all departmental Assistant Deputy Ministers and Regional Directors General to advise they could no longer reallocate social programs funding, including housing, to cover shortfalls. This email is attached to this affidavit as **Exhibit “V”**.
- c) ISC developed a chart to evaluate past reallocations from other social programs. This chart confirmed social development programs have previously been in deficit positions and have received reallocations from other programs to cover those deficits. This chart is attached as **Exhibit “W”**.
- d) Since February 15, 2018, as ordered by the Tribunal, Canada has not permanently reallocated funds from social programs, including housing.
- e) ISC held a series of senior management discussions on the implementation of the these Orders:
 - i. On April 5, 2018 a meeting was held with Regional Social Directors;
 - ii. On April 6, 2018, a Regional Operations meeting was held with Regional Corporate Services Directors;
 - iii. On April 19, 2018 a meeting was held with Regional Directors General; and
 - iv. On May 1, 2018 a meeting was held of the Financial Management Committee, chaired by the Chief Financial Officer.
- f) On May 14, 2018, the analysis and implementation of these Orders was discussed at a departmental meeting of the Senior Management Committee, which included Regional Directors General and Regional Executives.

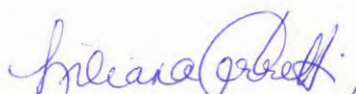
Development of a Consultation Protocol

- 17. Paragraph 431 of the Ruling ordered Canada to enter into a consultation protocol with the Parties. Regarding the implementation of a consultation protocol, Canada reports as follows:
 - a) On February 8, 2018, the Caring Society submitted a progress report to the Tribunal.
 - b) On March 2, 2018, the AFN submitted a draft of the proposed Consultation Protocol to the Tribunal.
 - c) On March 22, 2018, the signing of the Consultation Protocol by all parties was completed. The correspondence from Stuart Wuttke, General Counsel for the

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

- d) Also on March 22, 2018, an email was sent by Ms. Buist to all Regional Directors General and Regional Directors regarding the Consultation Protocol and directed those individuals to confirm they read and understood the document. Two information sheets prepared by the Caring Society were also included with this email. Ms. Buist's email is attached as **Exhibit "Z"**; the Consultation Protocol is **Exhibit "Y"**; and the Caring Society's information sheets are attached as **Exhibit "AA"**.
 - e) Draft terms of reference for a Consultation Committee have been circulated by the AFN for review and comments from the other Parties and Canada.
 - f) The Committee has agreed that the Caring Society and the AFN will chair the group, and the AFN will provide secretariat support. The Committee will meet at least four times a year.
 - g) On May 10, 2018, the first meeting of the Consultation Committee took place. The Consultation Committee Agenda is attached as **Exhibit "BB"** and the minutes as **Exhibit "CC"**. The Parties committed to provide input to the Assembly of First Nations by May 14, 2018 in order to finalize the Terms of Reference for the Committee. The final version has not yet been circulated.
18. I also wish to emphasize that the government is committed to consulting with the Parties in the implementation of these orders. Canada recognizes the valuable input the Parties have provided to ensure Canada's implementation of the orders is done in a way that best meets the needs of First Nations children and families. Canada looks forward to continuing to use the Consultation Committee as a way to discuss issues with the Parties, including related to any questions they may have about the contents of this affidavit.

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


Commissioner for Oaths

Quebec-188739-4


Paula Isaak

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

A handwritten signature in black ink, appearing to read "James D.", is written over a horizontal line.

A Commissioner, etc.



Department of Justice
Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice
Canada

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File: AR-800702
Notre dossier:

Your file:
Votre dossier:

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

April 27, 2018

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

Dear Ms. Dubois:

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

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

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

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

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

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

Canada

-2-

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

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

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

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

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

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

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

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

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

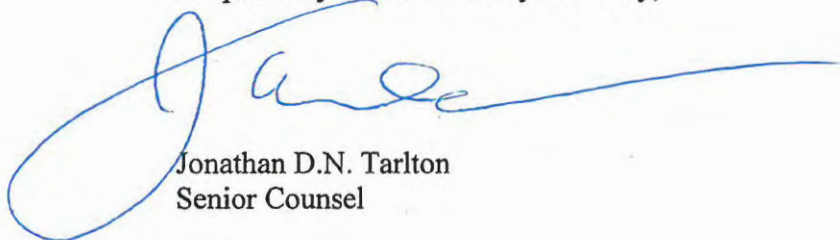
-3-

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

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

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

Respectfully submitted and yours truly,

A handwritten signature in blue ink, appearing to read 'Jonathan D.N. Tarlton', is written over a light blue rectangular background.

Jonathan D.N. Tarlton
Senior Counsel

JT/ab

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

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



A Commissioner, etc.



**Department of Justice
Canada**

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

**Ministère de la Justice
Canada**

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax (Nouvelle-Écosse) B3J 1P3

Telephone: (902) 426-5959
Facsimile: (902) 426-8796
E-Mail: jonathan.tarlton@justice.gc.ca

Our File: AR-800702
Notre dossier:

Your file:
Votre dossier:

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

June 8, 2018

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

Dear Ms. Dubois:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. 2 Small FNCFS Agencies

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

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

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

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

A.3 Amount of Budget 2018 Funds

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

A.4 Allocation of Budget 2018 Funds

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

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

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

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

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

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

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

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

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

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

B. Confirmation funds were transferred

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

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

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

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

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

C. 2 Process for Calculating Surpluses and Deficits

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

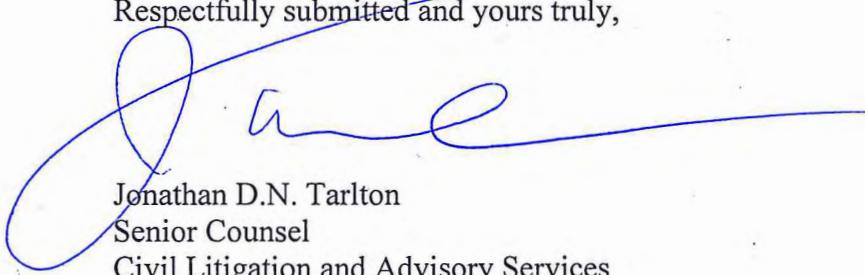
On the specific issue of the Saskatchewan Children's Special Allowances, 15 of the 16 Saskatchewan agencies reported separately on their CSA amounts; therefore, the CSA amounts were not taken into account when doing the assessment for these 15 agencies.

Remoteness

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

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

Respectfully submitted and yours truly,



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

JT/rv
Enclosures

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

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

A handwritten signature in black ink, appearing to read "Daniel", is written over a horizontal line.

A Commissioner, etc.



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

HOUSE PUBLICATIONS

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

For an advanced search, use Publication Search tool.

If you have any questions or comments regarding the accessibility of this publication, please contact us at accessible@parl.gc.ca.

<

December 12, 2007

>

[Order Paper and Notice Paper](#)[Journals](#)[Debates \(Hansard\)](#)[Status of House Business](#)[PDF](#)[Previous Page](#)[Table of Contents](#)[Next Page](#)

Wednesday, December 12, 2007 (No. 36)

PRIVATE MEMBERS' BUSINESS

DEFERRED RECORDED DIVISIONS

M-296 — December 5, 2007 — Deferred recorded division on the motion of Ms. Crowder (Nanaimo—Cowichan), seconded by Ms. Wasylycia-Leis (Winnipeg North), — That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.

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

Ms. Savoie (Victoria) — May 8, 2007

Mr. Martin (Sault Ste. Marie) — May 9, 2007

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

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

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

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

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

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

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

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

Ms. Savoie (Victoria) — April 17, 2007

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

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

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

ITEMS IN THE ORDER OF PRECEDENCE

No. 1

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

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

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

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

Ms. Savoie (Victoria) — April 17, 2007

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

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

No. 2

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

No. 3

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

No. 4

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

No. 5

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

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

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

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

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

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

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

No. 6

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

No. 7

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

No. 8

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

No. 9

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

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

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

No. 10

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

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

No. 11

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

No. 12

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

No. 13

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

No. 14

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

No. 15

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

No. 16

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

No. 17

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

Resuming debate on the motions in Group No. 1.

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

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

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

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

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

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

No. 18

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

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

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

No. 19

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

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

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

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

No. 20

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

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

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

ITEMS OUTSIDE THE ORDER OF PRECEDENCE

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

LIST FOR THE CONSIDERATION OF PRIVATE MEMBERS' BUSINESS

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

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

[Previous Page](#)[Table of Contents](#)[Next Page](#)

PRIVATE MEMBERS' BUSINESS

[Private Members' Business]

(1730)

[English]

Aboriginal Affairs

The House resumed from December 5 consideration of the motion.

[Expand]

The Deputy Speaker:

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

Call in the members.

(1755)

[Translation]

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

(Division No. 27)

YEAS

Members

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

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

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

Savoie
 Scarpaleggia
 Scheer
 Schellenberger
 Scott
 Sgro
 Shipley
 Siksay
 Simard
 Simms
 Skelton
 Smith
 Solberg
 Sorenson
 St-Cyr
 St-Hilaire
 St. Amand
 St. Denis
 Stanton
 Steckle
 Stoffer
 Storseth
 Strahl
 Sweet
 Szabo
 Telegdi
 Temelkovski
 Thi Lac
 Thibault (Rimouski-Neigette—Témiscouata—Les Basques)
 Thibault (West Nova)
 Thompson (New Brunswick Southwest)
 Thompson (Wild Rose)
 Tilson
 Toews
 Tonks
 Trost
 Turner
 Tweed
 Valley
 Van Kesteren
 Van Loan
 Vellacott
 Verner
 Vincent
 Wallace
 Wappel
 Warawa
 Warkentin
 Wasylcia-Leis
 Watson
 Wilfert
 Williams
 Wrzesnewskyj
 Yelich
 Zed
 Total: -- 262

NAYS

Nil

PAIRED

Nil

[Expand]

The Speaker:

I declare the motion carried

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

A handwritten signature in black ink, appearing to be "David D.", is written over a horizontal line.

A Commissioner, etc.

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Affidavit of Paula Isaak

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

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

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

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

3. On June 6, 2018, David Taylor, on behalf of the First Nations Child and Family Caring Society, sent a letter asking for additional information in relation to my May 24, 2018 affidavit and Valerie Gideon’s May 24, 2018 affidavits. This letter is attached to this affidavit as **Exhibit “A”**. On June 7, 2018, Maggie Wente sent a letter on behalf of the Chiefs of Ontario requesting additional information from Canada. This letter is attached to this affidavit as **Exhibit “B”**.
4. Attached to this affidavit as **Exhibit “C-1 to C-9”** are the responses to my affidavit of May 24, 2018, which were provided to the parties on June 19, 2018.

Proposed Consent Orders

5. In response to the Caring Society’s proposed list of draft consent orders, attached as Exhibit “D” to Affidavit #2 of Doreen Navarro, sworn June 7, 2018, Canada states that it has fully complied with the Ruling of February 1, 2018.
6. Canada offers the following reply to proposed draft orders 2(A), 2(B), and 2(C):
 - a) Canada agrees that an agency does not have to be in an overall deficit position in order to have its actual costs reimbursed for prevention/least disruptive measures, building repairs, intake and investigation, and legal fees. Canada will continue to pay actual costs, and does not demand that the agency be in a deficit position overall before reimbursement is made.
 - b) Canada can work with the parties to clarify this, including through our existing tools (e.g. recipient guide for the reimbursement of retroactive claims).
 - c) Since the February 1, 2018 Ruling, Canada has been reimbursing agencies as ordered by the Tribunal, regardless of whether the agency was or is in an overall deficit position between January 2016 and March 2018. As of June 14, 2018, Canada has received 39 claims for the orders related to agencies and for Band Representative Services, totaling over 18 million dollars.

- d) Canada has interpreted the Tribunal's February 1, 2018 order about actual costs to mean that it should reimburse agencies for actual costs incurred, i.e., an expenditure for which they do not already have a source of funds and therefore have incurred a cost.
 - e) Under the *Financial Administration Act*, Canada cannot reimburse expenses that have not been incurred. For example, Canada cannot pay for a legal expense that did not occur or for a prevention activity that did not happen. In addition, Canada cannot reimburse for a service already being paid for by another government or public entity, e.g., the Ontario government.
 - f) The above position - where public funds have already been provided for reimbursement of an expenditure, such that no "actual cost" was incurred - is consistent with the wording ISC has adopted in its reimbursement guides and forms.
 - g) Canada continues to be willing to discuss with any of the parties through the Consultation Committee or directly any issues related to the provision of actual costs.
7. Canada offers the following reply to proposed draft order 2(D):
- a) Canada is willing to consult the parties either through the Consultation Committee or directly and interested stakeholders (e.g. the National Advisory Committee on First Nations Child and Family Services Program Reform) on the development of an appeals process.
 - b) Currently, Canada has created an escalation process for decisions on potential denials and has shared this process with the parties for feedback.
8. Canada offers the following reply in response to proposed draft orders 2(E) and 2(F):
- a) In keeping with the February 1, 2018 Ruling and orders, Canada is paying small agencies' actual costs retroactive to January 2016 (when they did not have a source of funds and therefore had incurred costs). Canada is also paying all small agency costs moving forward until an alternative system is put in place.
 - b) Canada has increased funding through Budget 2018; provided retroactive payments; and is reimbursing actual costs for small agencies until such an alternative system is implemented.
 - c) Should a small agency feel it has unmet needs, Canada is encouraging them to contact the regional ISC office as soon as possible.
 - d) As previously mentioned in paragraph 5 above, Canada cannot reimburse agencies for costs that they have not actually incurred.
9. Canada offers the following information in response to proposed draft orders 2(G), 2(I), and 2(K):
- a) Canada has already shared the approach it used to analyze and report on the surpluses and deficits with the parties and included this information in our May 3 submission. It is further clarified in Exhibit "C1".

- b) Where federal funds were separated out in financial statements provided by agencies, we did not include other sources of funding in the calculation of a deficit or a surplus. Where an agency mixed their sources of funding, then a pro-rated approach was used.
 - c) Canada is willing to review the deficits/surplus analysis for agencies who did not report their sources of revenue. However, such agencies would be required to amend and resubmit their previous financial statements with specific sources of revenue identified.
- 10. Canada offers the following reply to proposed draft order 2(H):
 - a) ISC is willing to commit to working with Canada Revenue Agency and review how provinces and territories apply the Children's Special Allowances ("CSA") Act.
 - b) The CSA is a tax-free payment to child protection agencies and institutions to support the costs of "maintaining children in care." The monthly CSA payment is equal to the maximum Child Canada Benefit payment. Generally, the province/territory receives these funds on behalf of children for whom they are responsible, as they are deemed the legal guardian when children are in care, in order to defray costs.
 - c) It is important to note that in Manitoba there is litigation against the province regarding their use of the CSA which has been brought by six First Nations and Metis child and family services agencies (Animikii Ozoson Child and Family Services, Sandy Bay Child and Family Services, Peguis Child and Family Services, Southeast Child and Family Services, Michif Child and Family Services, and Metis Child, Family and Community Services).
- 11. Canada offers the following reply to proposed draft order 2(J):
 - a) Canada could consider reimbursing an agency's costs if that agency can show that it used funding it received from a First Nations or Tribal Council to pay for incurred expenses in any of the areas subject to the Tribunal's orders. For example, in a situation where a First Nation paid for an agency's prevention activities because the agency did not have sufficient federal funding to pay for the service itself.
 - b) If Canada were to reimburse an agency for an item or service that a First Nation or Tribal Council has paid for, then that agency will need to reach an agreement with the First Nation or Tribal Council regarding reimbursement of those funds.
 - c) Canada is committed to reviewing the specific situation of each agency to ensure that the Tribunal's orders are implemented in a way that assists agencies to achieve the best outcomes for First Nations children, families and communities.
- 12. Canada has already agreed that the Panel continue to retain jurisdiction over these orders until March 31, 2019 which is proposed in draft order 3(A), as per our correspondence dated April 9, 2018 and included in our May 3, 2018 submission.
- 13. In response to proposed draft order 3(B), Canada agrees to provide an update. Canada would like to move away from using the litigation process involving affidavits and cross-examinations to share information now that the Consultation Committee is in place.

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


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

Andrea Girelli, Barreau du
A Commissioner for Taking Affidavits *Quebec*

P. Isaak
Paula Isaak

188739-4

This is Exhibit "H" referred to in
the Affidavit of SONY PERRON,
sworn before me this 12th day of November, 2019

Daniela Cosca 
A Commissioner, etc. # 296082-6

Tribunal File No. T-1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

And

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Affidavit of Joanne Wilkinson

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

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

2. This affidavit provides information further to the May 24, 2018 affidavit of Paula Isaak in relation to how Canada continues to comply with the orders from February 1, 2018, in consultation with the Parties.
3. Canada has made significant investments in First Nations Child and Family Services (FNCFS) since the January 2016 Tribunal ruling. Prior to the Tribunal's orders, the FNCFS Program's total expenditures were \$680.9 million (2015-2016).¹ Since that time, Canada's investments for the program have grown to approximately \$1.2 billion in 2018-2019, almost double the program's investments. Over 98% of the funding is contribution funding going directly towards front line service delivery for First Nations children and families.
4. This growth in spending comes from the commitments made by Canada through Budget 2016 and Budget 2018 as well as additional funds the Department provided to address pressures for agencies. In February 2018, Canada committed to spend \$1.4 billion over 6 years, starting in 2017-2018, to address funding pressures facing First Nations Child and Family Services agencies, while also increasing prevention resources for communities so that children can be safe and families can stay together. These new funds are on top of investments made through Budget 2016 of \$634.8 million over five years and ongoing for the First Nations Child and Family Services (FNCFS) Program.
5. As reported in previous affidavits/submissions:
 - a) In 2016-2017, as part of Budget 2016 and a first step, Canada allocated an additional \$71.1 million to begin responding to the orders to meet the immediate needs of First Nations children and families. Canada also provided an additional approximately \$20 million to respond to funding pressures faced by agencies. Canada also began responding to the September 2016 Tribunal orders with respect to small agencies and additional funding in prevention.²
 - b) In 2017-2018, Canada continued to roll out year 2 of Budget 2016 investments of \$98.6 million (Canada's May 24, 2016 submission). Canada also made available Budget 2018 investments (which started in 2017-2018) of approximately \$70.3 million to begin responding to retroactive reimbursements of actuals (Canada's letter to the Tribunal June 8, 2018 Annex C).
 - c) In 2018-2019, Canada worked with partners to implement Budget 2018 investments. This includes Canada's commitment to ramp up funds to Year 5 of Budget 2016's funding and investments in remoteness. Canada also included a new dedicated stream of funding for Community Well-being and Jurisdiction Initiatives.

¹ This includes both Vote 1 and Vote 10 expenditures

² Cassandra Lang Affidavit January 25, 2017

6. As of April 5, 2019, Canada has paid over \$178.7 million towards funding actual and retroactive claims since February 2018.
7. Canada has also worked with the Parties to the complaint to set up a system for funding actual needs as ordered by the Tribunal. Canada has committed to continue paying actual needs until an alternative funding system is in place (for further details on these points, see below under “Development and Implementation of an Alternative Funding System and “Funding of Actual Costs, including Retroactive Reimbursements to January 26, 2016”).
8. The Consultation Committee on Child Welfare (“CCCW”) remains the primary forum for resolving issues relating to implementation of Tribunal orders. With the valuable input provided by the CCCW, ISC has been able to successfully implement several aspects of the Tribunal orders. The National Advisory Committee on First Nations Child and Family Services Reform (“NAC”) has also provided advice and support with respect to the implementation of the orders. These forums have also been effective for information-sharing on ISC activities and providing status updates.
9. I can offer the following information with respect to the Tribunal’s Orders from the Ruling on First Nations child and family services.

Analysis of Needs Assessments and Cost Analysis Research

10. At paragraphs 408, 409, 418, 419, and 421 of the Ruling, the Tribunal ordered Canada to analyze the needs assessments completed by First Nations agencies and to do a cost analysis of those needs, including the real needs of small First Nations agencies. The Tribunal also ordered Canada to provide a reliable data collection, analysis, reporting methodology, and ethical guidelines. With respect to these Orders, Canada reports as follows:
 - a) As outlined in Canada’s letter to the Tribunal on April 9, 2019 and its affidavit on May 3, 2018, ISC provided approximately \$2 million in funding, through the Assembly of First Nations (AFN), for the Institute of Fiscal Studies and Democracy (IFSD) to conduct an analysis of existing agency needs assessments, as well as a cost analysis of agency needs to support the development of an alternative funding model for First Nations child and family services agencies
 - b) On July 10, 2018 and September 19, 2018, IFSD provided an update on its research to the NAC. The AFN confirmed that these presentations would serve as the reports on Phase I and Phase II of the IFSD research.
 - c) On November 16, 2018, the AFN shared the IFSD Draft Interim Report. This report was discussed at the November 19, 2018 Consultation Committee on Child Welfare (“CCCW”) meeting.
 - d) On November 26, 2018, IFSD presented its draft report to the NAC.
 - e) On December 17, 2018, IFSD’s final report was received. Throughout the process, IFSD posted monthly online updates to stakeholders on the

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

- f) Both the CCCW partners and the IFSD report indicated that more work is required. The final IFSD report and the need for future research were discussed at the January 17, 2019, February 12, 2019 and April 2, 2019 meetings of the CCCW as well as the February 20-21, 2019 meeting of the NAC.
- g) Canada received IFSD's new proposal for future research, including the development of a funding model, on March 6, 2019. The proposed budget for the research is approximately \$1.7 million. This proposal is under review by Canada and discussions have been underway with the CCCW.
- h) Email exchanges were made between Dr. Blackstock and me regarding Canada's position on the final report and its expectations for future research. This email exchange was shared with the CCCW for the April 2, 2019 meeting and is attached to this affidavit as **Exhibit 1**.
- i) As outlined in the email exchanges and discussions at the CCCW, Canada acknowledges the comprehensive survey work undertaken by IFSD with First Nations Child and Family Services agencies across the country. The report is a good starting point for providing valuable information on agencies' needs and key gaps, and is a helpful piece of research to be considered in moving towards a new funding methodology. However, it did not include a full analysis of existing program funding as it only focuses on 2017-2018 financial information of agencies. For example, Budget 2018 investments and actuals are not included in the analysis nor are there any comparisons with other systems/models. The report also did not propose options for a new funding methodology or a funding approach. More work is needed to reflect the impacts of Budget 2018 investments and the payment of actuals for First Nation agencies, and to ensure a comprehensive approach to developing a new funding methodology.
- j) Some additional considerations that Canada also communicated include:
 - i. An open and transparent contracting process, given the scale of funding and that this is an unanticipated new phase in the research;
 - ii. An interest for Indigenous researchers to be included in the work;
 - iii. ISC's concerns on the proposed timeline for the additional research resulting in the establishment of a new funding methodology being delayed to 2020;
 - iv. Consideration on how the three studies (Ontario Special Study, Nishnawbe Aski Nation Remoteness Quotient, and IFSD) will need to be integrated into the new funding model for the Program;
 - v. ISC's full participation in the research to ensure an effective transition for implementation of the new funding model;
 - vi. How the research needs to be inclusive of First Nations, including those not served by FNCFS agencies, for example, over 80 First Nations in British Columbia are served by the provincial government.

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

Development and Implementation of an Alternative Funding System

- 11. At paragraphs 410, 416, and 420 of the Ruling, the Tribunal ordered Canada to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, building repair services, the child service purchase amount and for small agencies. As outlined above, further work is needed on the development of an alternative funding system. The IFSD submitted a new proposal for future research, including for the development of a funding model, on March 6, 2019. Canada is currently reviewing the proposal and trying to identify a source of funds with partners, including the CCCW and the NAC, on a long-term funding methodology. Although the approach for future research is still to be determined, Canada is of the view that forums such as the CCCW and the NAC are an effective approach in reaching a resolution and moving these issues forward.
- 12. Canada remains committed to continuing to pay on actuals until an alternative funding system is in place.
- 13. As addressed in the May 24, 2018 affidavit of Paula Isaak, all agencies received their initial allocation of funding on or before April 1, 2018. Where the initial allocation was not able to meet their needs in any of the areas ordered by the Tribunal, the agency was able to submit claims to have their actual costs covered (As per the 1965 Agreement, core funding for Ontario FNCFS agencies is flowed through the Ontario government).
- 14. In addition to the initial agency allocation, ISC provided funding from Budget 2018 (ramp-up funding) at the end of June 2018, to bring funding up to Year 5 Budget 2016 amounts. The Budget 2018 funding also enables funding adjustments for small agencies in the area of prevention on an ongoing basis. An email detailing the transfer of funds to regions on June 29, 2018 is attached to this affidavit as **Exhibit 2**. The email also reminds regional offices that if funding is not sufficient to meet agencies' needs, the agencies can submit a claim for retroactive reimbursement or payment on actuals (In Ontario region, immediate relief/prevention funding flows directly to Ontario First Nations).
- 15. Canada has also worked with partners to set up and implement a system for funding actual needs of agencies as ordered by the Tribunal. Since February 1, 2018 Canada has paid over \$178.7 million in both actual costs and retroactive reimbursements, as of April 5, 2019. More information follows below under

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

16. Tools to support agencies in making claims have been developed and shared with recipients. These include National Recipient Guides on Retroactive Payments; Guides on Operations and Prevention; and an Ontario Region Recipient Guide.
17. Throughout summer and fall 2018, Canada worked with the Parties through the CCCW as well as with the NAC to integrate comments and feedback into these documents. This was an effective approach in getting advice to improve the documents before sending updated versions to the agencies. Canada intends to continue consulting partners in developing any additional tools in the future. For example, on November 9, 2018, ISC sent the updated recipient guides based on feedback provided by the Parties. ISC also shared the track versions to demonstrate where the changes were made. The November 9, 2018 email and attachments of the recipient guides are attached (as well as other documents shared with the Parties) to my affidavit as **Exhibit 3**. On March 29, 2019 ISC also sent the guides for 2019-2020 to the CCCW for review and feedback. The email and a copy of the guides for 2019-20 are attached to my affidavit as **Exhibit 4**.
18. On June 7, 2018, Paula Isaak sent an email to the CCCW with a proposed process to guide the payment of actuals moving forward, and a related escalation process. A copy of Paula Isaak's June 7, 2018 email and attachments is attached to my affidavit as **Exhibit 5**.
19. By June 13, 2018, additional instructions were provided to regions with respect to the escalation protocol for requests relating to the reimbursement of retroactive and 2018-2019 actual claims costs, as well as any other situation requiring escalation. A copy of the email and attachments is attached to my affidavit as **Exhibit 6**. Based on recommendations from the Parties, the documents were revised and provided to regions on September 6, 2018. A copy of the email and attachments is attached to my affidavit as **Exhibit 7**.
20. Based on communication with the Parties in September 2018, ISC has also created an interim appeals process for dealing with FNCFS-related claims. The documents that are related to the interim appeals process are attached to my affidavit as **Exhibit 8**. Canada will continue to work with partners to update and adjust this process moving forward.
21. Canada also consulted with the Parties to update the Programs Terms and Conditions, which has allowed for greater flexibility and has expanded on eligibility for expenditures, including those related to capital/building repairs. Information about the updated Terms and Conditions was provided to agencies on January 21, 2019. A copy of the email and attachments is attached to my affidavit as **Exhibit 9**. The Terms and Conditions are also available online on ISC's

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

22. Canada has also worked with partners to develop reporting tools to track results related to prevention programming. The system benefits from our collective work to develop indicators and outcomes which are now included in the FNCFS Program's Terms and Conditions, and provides for an effective measurement of the positive impact of prevention activities. The following activities took place:
 - a) For 2018-2019, ISC developed an interim reporting tool to begin collecting information related to outcomes in the current Terms and Conditions. Documents related to program outcomes and indicators was shared with the Parties on July 3, 2018 and is attached to my affidavit (see #38 g or **Exhibit 24** as part of the attachments); the interim reporting tool for prevention was shared with the Parties on September 27, 2018 and is attached to my affidavit (See #38 u or **Exhibit 29** as part of the attachments); the interim prevention reporting tool for fiscal year 2018-2019 was shared with regions on October 30, 2018 for distribution to agencies and is attached as **Exhibit 10**. This was the minimum required to report on the new Budget 2018 funding.
 - b) FNCFS agencies and service providers have the opportunity to use the actuals funding process to hire temporary or permanent staff to help to support data collection and reporting activities.
 - c) Canada worked with partners to develop a more permanent online reporting system for prevention. The system was launched on April 1, 2019 for 2019-2020 and the information was shared with the CCCW on March 19, 2019. The email and attachments sharing this information is attached to my affidavit as **Exhibit 11**.
 - d) The enhancements of the new Data Management System (DMS) now allow for agencies to enter their prevention data online in a secure manner; reduces in the reporting burden on agencies and regions; collects accurate and robust data; and provides an online platform where agencies can access and assume ownership of their data. User Acceptance Testing was completed in February 2019 with participation from FNCFS agencies and ISC staff. This work is ongoing and ISC continues to support regions and agencies in using the new system.
23. For further information on the implementation of the orders between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at page 5 and Exhibit F.

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

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

24. At paragraphs 411, 417, and 421 of the Ruling, the Tribunal ordered Canada to provide funding to agencies on actual costs for prevention/least disruptive measures, building repairs, intake and investigation, legal fees, the child service purchase amount and for small agencies, retroactive to January 26, 2016 by April 2, 2018.
25. On July 24, 2018, Canada sent correspondence to all agencies encouraging them to submit their claims for retroactive reimbursement and for payment on actuals in the areas of expenditures in prevention, intake and investigation, legal fees, building repairs, child service purchase, as well as small agency expenses, at their actual costs, as ordered by the Tribunal. The correspondence notes that should they have pressures not covered by their initial allocation, ramp-up funding, or actuals that they should contact their ISC regional office. The email was developed based on input from the Parties. The July 24, 2018 email is attached to my affidavit as **Exhibit 12**.
26. As of April 5, 2019, one hundred and ninety two (192) requests for retroactive reimbursement have been received. \$106,128,730.59 has been paid and \$50,569,334.60 is being processed (within 15 day timelines). Two hundred and thirty five (235) requests for payment of actual 2018-19 costs have been received. \$72,601,171.77 has been paid and \$48,645,390.43 is being processed. The claims being processed include over 50 new claims which were received near the end of the fiscal year for 2018-2019. Thirty seven (37) requests for payment of actual 2019-20 costs have been received and are being processed for payment in the 2019-2020 fiscal year. The information is provided as part of a weekly report to the parties (see #38e or **Exhibit 23** as part of the attachments).
27. As of April 5, 2019, seven claims have been denied: two for retroactive costs, four for 2018-19 costs, and one which was claimed in advance for proposed 2019-20 costs. These recipients have been notified of their right to appeal, and have been informed of the process for doing so. One request for appeal was made for \$1,944,810 and a response (denial) was provided on March 15, 2019.
28. As previously addressed in Paula Isaak's affidavit of May 24, 2018, Canada agreed to extend the Tribunal's ordered deadline of April 2, 2018 by nearly one year to March 31, 2019 for payment on actual costs and retroactive reimbursements.
29. To continue to support this flexible approach for agencies and communities submitting claims, Canada has further extended its dates for submission of retroactive and actual claims costs. Correspondence was sent to agencies on March 29, 2019 to communicate the change. A sample of this correspondence (also shared with the CCCW) is attached as **Exhibit 13**. Retroactive claims for actual costs for Prevention and Operations and Band Representative Services for the period of January 26, 2016 to March 31, 2018 will now be accepted until

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

Assessing Agency Deficits

30. At paragraph 429 of the Ruling, the Tribunal ordered Canada to identify which First Nation agencies, including the NAN agencies, referred to in the Ruling have child welfare or health services related deficits and to assess those deficits.
31. For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see page 9 of Paula Isaak's May 24, 2018 affidavit.
32. On May 3, 2018, Canada submitted a report to the Tribunal, including 2016-2017 agency deficit analysis and Stage 1 agency cost analysis report from IFSD.
33. As reiterated in Paula Isaak's May 24, 2018 affidavit, emails were sent to agencies in April and May 2018 inviting them to submit retroactive claims for deficits. Canada has been working with First Nations agencies to address any deficits and develop a plan for any surpluses.
34. On December 18, 2018, ISC HQ confirmed in writing with regional offices that agencies do not need to be in a deficit to claim costs on actuals. As outlined in the recipient guides, funding for prevention, legal services, child service purchase amounts, intake and investigation, building repairs, and all costs for small FNCFS agencies is based on the actual needs of the children and families served by FNCFS agency as reflected by expenditures in these categories. A copy of this email is attached to my affidavit as **Exhibit 14.**
35. Canada is also currently working on a deficits analysis for 2017-2018 fiscal year. Once the analysis is complete it will be shared with the Parties.

Communication with Agencies

36. In paragraph 430 of the Ruling, the Tribunal ordered Canada to communicate to FNCFS Agencies any immediate relief ordered by the Tribunal. Regarding the implementation of communications with FNCFS agencies on matters pertaining to this Order, Canada reports the following communications between ISC Headquarters and recipients:
 - a) For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit from pages 6-8, including Exhibits M, N, and O.
 - b) Tools to support agencies in making claims have been developed and shared with recipients including National Recipient Guides on Retroactive

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

- c) Following a review of FNCFS agencies, letters were sent to three agencies on July 5, 2018 confirming their classification as “small agencies,” and advising of their resulting eligibility for retroactive and actual claims in all areas. Please note that these three agencies had previously been classified as large agencies at the time of the February 1, 2018 departmental mail out regarding the 2018 CHRT 4 ruling. A copy of these letters is attached to my affidavit as **Exhibit 15**.
- d) On July 18, 2018, an email was sent to seven agencies serving a child population of 800-1000, informing the agencies that due to the updated program definition, they had been newly classified as “small agencies” and were therefore eligible to make claims for actual costs in all areas. A copy of the email is attached to my affidavit as **Exhibit 16**.
- e) On July 24, 2018, an email developed with input from the Parties was sent to all FNCFS agencies encouraging them to submit claims and noting that if they had pressures not covered by their initial allocation, ramp-up, or actual costs, that they should contact their ISC regional office. A copy of this email is attached to my affidavit as **Exhibit 17**.
- f) Also on July 24, 2018, letters were sent to three agencies who were in the process of receiving delegation from the province of Ontario at the time of the February 1, 2018, orders (“pre-designated”) in Ontario indicating their eligibility for reimbursement of retroactive costs moving forward. On this date, letters were also sent to two agencies that were pre-designated during the retroactive period confirming their eligibility to make retroactive claims. A copy of these letters and attachments is attached to my affidavit as **Exhibit 18**.
- g) On October 16, 2018, emails were sent to all small FNCFS agencies verifying that all salaries are eligible for actual funding to a level comparable to the provincial wages and benefits, both retroactively back to January 26, 2016, and going forward. A copy of this email is attached to my affidavit as **Exhibit 19**.
- h) On October 18, 2018, emails were sent to all FNCFS agencies on the Children’s Special Allowance Act (CSA) informing them that ISC does not include the CSA in calculations of funding under the stacking limits policy, and asking them to report CSA separately from other revenue sources in their financial statements. As an example, a copy of the email that was sent to Alberta region agencies is attached to my affidavit as **Exhibit 20**.
- i) On November 9, 2018, updated recipient guides were sent to the regions and agencies. These include National Recipient Guides on Retroactive Payments; National Recipient Guide on the Payment of Actuals; Guides on Operations and Prevention; and multiple Ontario Region Recipient Guides. A copy of the email and updated recipient guides is attached to my affidavit as **Exhibit 3**.

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

Consultation with Partners

38. Paragraph 431 of the Ruling ordered Canada to enter into a consultation protocol with the Parties. Regarding the implementation of a consultation protocol, Canada reports as follows:
- a) For a detailed overview of actions taken to implement this order between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at pages 11-12, including Exhibits X, Y, Z, AA, BB, and CC.
 - b) Terms of Reference for the Consultation Committee Child Welfare (CCCW) have been developed. Agreement was reached on outstanding issues the week of July 23, 2018 and the Terms of Reference were approved at the August 2, 2018 CCCW meeting.
 - c) To date, CCCW meetings have been held on the following dates:
 - i. May 10, 2018;
 - ii. June 22, 2018;
 - iii. July 9, 2018;
 - iv. July 20, 2018 (teleconference);
 - v. August 2, 2018;
 - vi. September 5, 2018;
 - vii. October 23, 2018;
 - viii. November 19, 2018;
 - ix. December 11, 2018;
 - x. January 17, 2019;
 - xi. February 12, 2019; and
 - xii. April 2, 2019.
 - d) Further to copies of minutes of previous meetings already submitted to the Tribunal, minutes for the January 17, 2019 (final copy) and February 12, 2019 (draft copy) CCCW meetings are attached to my affidavit as **Exhibit 22**.
 - e) As part of ongoing transparency and information-sharing, ISC regularly provides activity and data reporting to the Parties of the Tribunal process

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

- f) On June 7, 2018, Paula Isaak sent an email to the CCCW with a proposed process to guide the payment of actuals moving forward, and a related escalation process. A copy of this email and attachments is attached to my affidavit as **Exhibit 5**.
- g) On July 3, 2018, Margaret Buist sent an email on behalf of Paula Isaak to the Parties with the updated, revised FNCFS Terms and Conditions and other related attachments (e.g. program outcomes and indicators). Feedback from CCCW members requested by July 18, 2018. A copy of this email and attachments is attached to my affidavit as **Exhibit 24**.
- h) On July 13, 2018, an email was sent on behalf of Paula Isaak to CCCW requesting feedback on draft text to be sent to agencies regarding funding issues that may exist after actuals and ramp-up allocations. A copy of the July 13, 2018 email is attached as **Exhibit 25**.
- i) Between July 17-20, 2018, the Caring Society, the AFN, COO, and the Department exchanged emails regarding the FNCFS Terms and Conditions.
- j) On July 20, 2018, Paula Isaak exchanged emails with the CCCW regarding the timelines for reporting on the revised outcomes and indicators for the FNCFS Program.
- k) On July 24, 2018, Paula Isaak provided responses to additional questions from the Caring Society and COO on the Terms and Conditions and provided an updated outcomes and indicators document for the FNCFS Program. A copy of this email and attachments is attached to my affidavit as **Exhibit 26**.
- l) Following up from discussions at the CCCW, letters were sent to pre-designated agencies in Ontario in accordance with paragraph 430 of the Ruling on July 24, 2018.
- m) On July 25, 2018, Paula Isaak sent the draft recipient guide for actual costs to the CCCW. The message also included a response to comments from the Caring Society on the escalation protocol and the proposed process for paying actuals going forward; comments were requested by August 10, 2018.
- n) On July 27, 2018, Paula Isaak sent an email to partners on compensation and timelines for determining data on number of children in care.
- o) On August 2, 2018, a document about FNCFS Capital was shared at the CCCW.
- p) On August 9, 2018, Margaret Buist sent an email to partners with follow-up to the August 2, 2018 CCCW meeting, including templates of letters sent to pre-designated agencies in Ontario.
- q) On August 17, 2018, Paula Isaak sent an email to partners with: an overview of the escalation protocol; a revised National Recipient Guide on

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

- r) On August 23, 2018, Paula Isaak sent an email to partners which included: the revised Ontario 2018-19 Draft Recipient Guide for Band Representative Services; the Ontario Guide for Prevention/Operations; and a draft letter to agencies asking them to separate out the Children's Special Allowance in their revenues, if possible. Comments were requested by August 31, 2018.
- s) On August 30, 2018, Paula Isaak sent an email to partners including the following information: a CWJI guidelines document; a document outlining the status of CWJI consultations; and updated Terms and Conditions (including an overview of Treasury Board Secretariat comments). Comments on the CWJI documents requested by September 7, 2018.
- t) On September 11, 2018, Paula Isaak emailed the partners the following documents:
 - i. Two agency funding agreements (including the CHRT Notice of Acceptance of Requests (NAR) and the CHRT Text Deviation);
 - ii. an interim appeals process flow chart;
 - iii. an interim appeals process checklist;
 - iv. a draft letter to small agencies on salary adjustments; and
 - v. a chart to track documents shared and input received.

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

- u) On September 27, 2018, Paula Isaak sent an email to the partners attaching the following documents (including revisions):
 - i. a letter to agencies on the Children's Special Allowance;
 - ii. a letter to small agencies regarding compensation for former employees;
 - iii. a sample denial letter and additional information on the interim appeals process;
 - iv. the interim prevention reporting tool; and
 - v. the estimated number of children in care for the FNCFS program.

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

- v) On October 5, 2018, I sent an email to partners informing them that Paula Isaak had been appointed President of the Canadian Northern Economic Development Agency, and that I would be assuming responsibility for the entire children and family services file, moving forward.
- w) On November 6, 2018, I sent an email to partners as follow-up to the October 23, 2018 CCCW meeting confirming commitments made at the meeting. This email also introduced Odette Johnston as acting Director General for the Children and Families Branch of ISC. This email is attached to my affidavit as **Exhibit 30**.
- x) On November 6, 2018, I sent an email to the Caring Society, responding to

questions on the weekly summary of agency claims.

- y) On November 9, 2018, I sent the Parties an information package including revised recipient guides, CWJI guides, and a tracker with documents that have been shared to date. This information package is attached to my affidavit as **Exhibit 3**.
- z) On November 20, 2018, the Deputy Minister and Associate Deputy Minister sent an email to all ISC staff, reporting on the implementation of CHRT orders, and emphasizing responsibilities regarding document preservation and provision in response to litigation.
- aa) On December 3, 2018, I sent an email to the Parties with updated agreements and a response to Caring Society comments. A copy of the email and attachments is attached as **Exhibit 31**.
- bb) On January 18, 2019, I sent an email to the Parties with the new FNCFS Program Terms and Conditions, including a response to outstanding comments/concerns received from the CCCW. A copy of the email and attachments is attached as **Exhibit 32**.
- cc) On January 21, 2019, I re-sent email to the Parties to respond to questions on legislation that were asked by the CCCW on November 19, 2018.
- dd) On March 19, 2019, I sent an email to the Parties regarding the new Data Management System for FNCFS agencies for reporting on prevention. A copy of this email and attachments is attached to my affidavit as **Exhibit 11**.
- ee) On March 29, 2019 for me sent an email to the Parties on the extension of deadlines past March 31, 2019 for retroactive and actual claims (extension are now December 31, 2019 and September 30, 2019 respectively). A copy of this email is attached as **Exhibit 13**.

Small Agencies

- 39. Canada has complied with the Tribunal's order to reimburse small agencies for their actual costs. Since the February 2018 order, Canada has been funding small agencies' actual costs and has retroactively reimbursed those agencies for their actual costs back to January 26, 2016.
- 40. Since February 2018, Canada has paid over \$35 million in actual costs and retroactive reimbursements for small agencies, including approximately \$24 million for retroactive payments and approximately \$11 million for actual payments.
- 41. Regions have supported agencies in their planning for actual needs. For example, in British Columbia region, ISC worked with all 20 small agencies to undertake a needs-based planning process to develop plans and implement the proposed activities in the communities they serve. Agency staff participated in workshops regarding legal, wage parity, prevention, renovations, and engagement exercises with their communities. Tools were developed in the region for the agencies to streamline the process of bringing information to their communities. ISC also

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

42. As reiterated in Paula Isaak's May 24, 2018 affidavit, Canada communicated to small agencies clarifying that their deficits are covered as part of retroactive payments. Emails were also sent to all agencies, including small agencies, encouraging them to submit their claims and requesting them to contact the region should they feel they have unmet needs.
43. Subsequent to the February 1, 2018 orders to fund actual costs for small agencies, the definition of small agencies was revised to include those with a child population of less than 1000, thereby increasing the number of agencies eligible to claim actual costs in all areas.
44. Following a review of FNCFS agencies letters were sent to select agencies confirming their classification as "small agencies" and advising them on their eligibility for retroactive and actual claims in all areas. See above, "Communications with Agencies" under d) and e).
45. Based on discussions with the CCCW, Canada agreed to retroactively reimburse salary increases and benefits for small agency staff back to January 26, 2016 to bring them in line with provincial counterparts. On October 16, 2018, emails were sent to all small FNCFS agencies verifying that all salaries are eligible for actual funding to a level comparable to the provincial wages and benefits, both retroactively back to January 26, 2016, and going forward.
46. Canada cannot reimburse agencies for costs that have not been actually incurred. Funding for the FNCFS Program falls under the Contribution Program entitled "Contributions to provide women, children and families with Protection and Prevention Services". The Directive on Transfer Payments (which is issued under subsection 7(1) of the *Financial Administration Act*), states that "the total amount of contribution funding paid to a recipient under a funding agreement does not exceed the eligible expenditures actually incurred by the recipient in completing the recipient's initiative or project, or such portion of these expenditures as was to be funded under the agreement."⁴

⁴ Directive on Transfer Payments <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14208§ion=html>

47. Canada's interpretation is consistent with the statutory provisions of the *Financial Administration Act*, which is the core legal framework that sets out the formal rules for the administration and management of the government.

Building Repairs and Capital Needs

48. Canada has complied with the Tribunal's order on building repairs. Since the February 2018 order, Canada has been funding actual costs of buildings repairs and has retroactively reimbursed agencies back to January 26, 2016.
49. Since February 2018, Canada has paid over \$15.4 million in actual costs and retroactive reimbursements for building repairs, although there may be other capital-related costs included in prevention or small agency claims for which details are not included in the claims forms.
50. In consultation with the Parties, Canada has also updated its Terms and Conditions to allow for greater flexibility and expand on eligibility for expenditures, including related to capital/building repairs. A copy of the Terms in Conditions is attached to this affidavit as **Exhibit 9**.

Remoteness Quotient Research Update

51. As noted at paragraphs 343-346 of the Ruling, the Tribunal has received updates concerning the development and implementation of a remoteness quotient ("RQ") for three FNCFS Agencies that serve Nishnawbe Aski Nation ("NAN") communities, including a process for obtaining expert advice. Regarding the status of this endeavour, Canada reports as follows:
- a) For a detailed overview of actions taken to implement these orders between February 1, 2018 and May 24, 2018, see pages 9 and 10 of Paula Isaak's May 24, 2018 affidavit, including Exhibit S.
 - b) On August 22, 2018, the Interim Remoteness Quotient Report was shared with the Assembly of First Nations for review by the Consultation Committee on Child Welfare and filed with the Tribunal by Falconers LLP on behalf of NAN and Canada.
 - c) On June 19, 2018, Margaret Buist sent an email to NAN requesting further information on the methodology and approach being used for calculating the remoteness quotient.
 - d) On June 22, 2018, the Revised Interim Report was received from the NAN consultant.
 - e) On July 4, 2018, Margaret Buist sent an email to NAN with comments and questions to address the final report on the child welfare remoteness quotient.
 - f) On July 25, 2018, NAN provided the first draft of the Final Report for Phase II of the Remoteness Quotient project to ISC.

- g) On September 5, 2018, NAN and Canada provided a further update to the Tribunal, indicating that a final draft has been submitted and is being reviewed with the researchers.
- h) On September 27, 2018, NAN and Canada provided an update to the Tribunal, indicating that a revised draft of the Final Report for Phase II of the Remoteness Quotient study was received from the researchers and is being reviewed.
- i) On November 26, 2018, NAN and Canada provided an update to the Tribunal, indicating that a revised version of Phase II of the Remoteness Quotient Final Report was received from the researchers and is being reviewed.
- j) On January 11, 2019, NAN and Canada provided an update to the Tribunal, indicating that some areas of the report require additional analysis and that a third-party reviewer was retained to support this work. This update is attached to my affidavit as **Exhibit 33**.
- k) On January 31, 2019, NAN and Canada provided an update to the Tribunal, indicating that work is progressing slower than anticipated and that NAN and Canada were hoping to finalize the report by early March 2019.
- l) On February 28, 2019, NAN and Canada provided an update to the Tribunal, indicating that the third party reviewer has completed their work, and that the Tribunal can expect a further update by March 29, 2019
- m) On March 29, 2019, NAN filed the Final Remoteness Quotient Report with the Tribunal.

Ontario Special Study

52. Since October 2017 the Technical Table Child and Family Well-Being in Ontario has been in agreement to move forward on a special study of issues related to First Nations on-reserve child welfare services in Ontario. Regarding the current progress of the Ontario Special Study, Canada reports as follows:
- a) For a detailed overview of actions taken to implement paragraphs 365-366 of the Ruling between February 1, 2018 and May 24, 2018, see Paula Isaak's May 24, 2018 affidavit at page 10 and Exhibit T.
 - b) On July 20, 2018, Canada and COO provided a progress report to the Tribunal on the Ontario Special Study.
 - c) On September 28, 2018, Canada and COO submitted an update to the Tribunal: the Ontario Technical Table has reviewed the draft submitted by Meyers Norris Penny, and does not consider the report to be complete at this time. COO and Canada continue to discuss the study and will provide a further update to the Tribunal in January 2019.
 - d) On January 2, 2019, Canada and COO submitted the scheduled update to the Tribunal on the Ontario Special Study. COO has retained a consultant to work with the Ontario Technical Table to address gaps in the existing report. The study is not considered to be complete at this time.

- e) On April 1, 2019, Canada reported to the Tribunal on the status of the Ontario Special Study, and indicated that COO and ISC continue to work together and will report back to the panel by May 13, 2019.

Long term reform – Enabling First Nations to exercise jurisdiction over child and family services

53. Canada is also taking significant steps towards long-term reform in Indigenous child welfare. On February 28, 2019, Bill C-92, an Act respecting First Nations, Inuit and Métis children, youth and families, was introduced in Parliament. A copy of the announcements is attached to my affidavit as **Exhibit 34** and **Exhibit 35**. The Bill is currently making its way through the Parliamentary process and seeks to:
 - a) affirm the jurisdiction of Indigenous peoples in relation to child and family services; and
 - b) set out principles (best interests of the child, cultural continuity, and substantive equality) applicable, on a national level, to the provision of child and family services in relation to Indigenous children.
54. The active engagement and commitment of Indigenous partners at all levels was central to the co-development of this proposed legislation. This engagement included 65 engagement sessions with nearly 2000 participants, including many CCCW and NAC members.
55. In the fall of 2018, engagement also occurred through a Reference Group with representation from the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council, and the Government of Canada. The Reference Group recommended the development of high-level federal legislation that would both affirm the inherent right of Indigenous peoples and also include broad principles to guide the delivery of Indigenous child and family services.
56. In-person engagement sessions were also conducted with Indigenous partners, provincial and territorial representatives on the proposed content of the Bill in January 2019. This included sessions with the CCCW and the NAC.
57. This Bill sets the stage for comprehensive reform and could be a powerful tool to support community-based prevention and the well-being of Indigenous children and families. The introduction of Bill C-92 represents an historic opportunity to break from the past and focus on the safety and well-being of children and youth.
58. To ensure a smooth transition and implementation of the Bill should it receive Royal Assent, ISC is exploring the co-development of distinction-based transition governance structures, with representation from Indigenous partners and Provinces and Territories. These governance structures, for example, could identify tools and processes to help increase the capacity of communities as they make progress toward assuming responsibility over child and family services. Such governance structures could also assess gaps and recommend mechanisms to

guide future funding methodologies.

59. Ultimately, the proposed legislation is a matter for Parliament. This work is consistent with paragraph 412 and 413 of the Tribunal's February 2018 ruling, which notes that in line with the spirit of UNDRIP, and reconciliation, the Panel's orders will remain in place until one of four things occur, the first of which is "Nation (Indigenous)-to-Nation (Canada) agreement respecting self-governance to provide its own child welfare services."

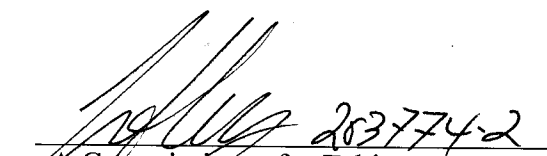
Retention of Jurisdiction

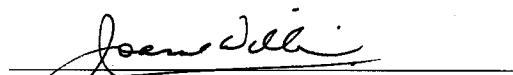
60. On October 30 and 31, 2018, Paula Isaak and Valerie Gideon were cross-examined before the Tribunal regarding their May 24, 2018 affidavits.
61. Following the cross-examinations on October 31, 2018, the Tribunal determined that Canada was no longer required to provide reporting affidavits.
62. Overall, Canada is in substantial compliance with all existing orders. A substantive amount of work has been completed to achieve compliance and significant resources have been devoted to satisfying the orders now, retroactively, and moving forward.
63. Canada is also moving forward on long-term reform initiatives such as the proposed legislation for enabling First Nations to exercise jurisdiction over child and family services. This is a critical element of the Government of Canada's six points of action to address the overrepresentation of Indigenous children and youth in care in Canada. More information on the progress on the six points of action is available on ISC's website:
<https://www.sac-isc.gc.ca/eng/1541188016680/1541188055649>
64. As was addressed to the Tribunal previously, Canada would like to move away from using the cumbersome litigation process involving affidavits and cross-examinations and rather continue the collaborative process to share information with partners. This approach is consistent with the Attorney General's Directive on Civil Litigation Involving Indigenous Peoples, in which the core objective is "to advance an approach to litigation that promotes resolution and settlement, and seeks opportunities to narrow or avoid potential litigation".⁵ Canada has dramatically increased investments and has made significant efforts in changing the program both for the immediate and long term. Canada has demonstrated that it has established a system that is able to respond to the needs of First Nations children and families. The Government also remains committed to continue consulting with the Parties on the implementation and monitoring of these orders.

⁵ <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html>

65. The Tribunal's adjudication of this matter has had a transformative impact on the lives of Indigenous children in Canada.
66. I swear this affidavit in support of Canada's submissions for no other or improper purpose.

AFFIRMED before me at the City of
Ottawa, Province of Ontario, on
April 16, 2019.


A Commissioner for Taking
Affidavits


Joanne Wilkinson

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT

-and-

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

RESPONDENTS

AFFIDAVIT OF VICTORIA AZEVEDO

I, Victoria Azevedo, of the City of Ottawa in the Province of Ontario, AFFIRM THAT:

1. I am employed by the Department of Justice as a legal assistant in the Civil Litigation Section, National Litigation Sector. I work for Robert Frater, Q.C., who is counsel on this file and, as such, I have knowledge of the matters deposed to in this affidavit and believe them to be true.
2. On March 15, 2019, in the lead up to the parties making submissions on compensation, the Attorney General of Canada (AGC) received questions on compensation from the Canadian Human Rights Tribunal Panel Chair via Registry Officer Ms. Dubois; a copy of the questions is attached to this affidavit as **Exhibit A**.
3. On October 9, 2019, the AGC received letter correspondence from Mr. Taylor, counsel for the First Nations Child and Family Caring Society requesting an adjournment of the AGC's stay motion, a copy of which is attached to this affidavit as **Exhibit B**.

4. On October 10, 2019, the AGC received letter correspondence from Mr. Wuttke, counsel for the Assembly for First Nations requesting an adjournment of the AGC's stay motion, a copy of which is attached to this affidavit as **Exhibit C**.
5. On October 11, 2019, the AGC received the Direction of Justice Favel adjourning the hearing of the stay motion, a copy of which is attached to this affidavit as **Exhibit D**.
6. On November 15, 2019, the AGC sent a letter to the Human Rights Tribunal requesting an extension of the December 10, 2019 deadline, a copy of which is attached to this affidavit as **Exhibit E**.

Affirmed before me at
the City of Ottawa
in the Province of Ontario
on November 22, 2019.



Commissioner for Taking Affidavits



Victoria Azevedo

This is Exhibit "A" referred to in
the Affidavit of VICTORIA AZEVEDO,
affirmed before me this 22 day of November, 2019



A Commissioner, etc.

Questions on compensation from the Panel:

1. In its final written submissions dated August 29, 2014, the AFN made the following remedial request:

viii. An Order that AANDC, AFN, FNCFCs and the Commission form an expert panel to establish appropriate individual compensation (pain and suffering as well as wilful acts of discrimination), for children, parents and siblings impacted by the discriminatory First Nation child welfare practices between 2006 and the date of the Tribunal's Order in this matter, which AFN and the FNCFCs participation will be funded by AANDC;

Does the AFN still request such a remedy? If so, why? The Panel fails to understand how this is feasible or even legal under the *CHRA* regime. This essentially is a creation of a separate Tribunal formed of the parties to do what Parliament has statutorily designated the Tribunal to do. Moreover, the decision-makers would be the parties which is another whole other problematic. Can the AFN elaborate further on this?

Would it be more appropriate to establish a Committee formed of the parties to identify the individual victims of the discriminatory practices and then, submit this to the Tribunal for compensation orders? If so, would it be appropriate to include the COO and the NAN given their specific expertise?

2. Does the NAN wish to make submissions and requests for remedies on the issue of compensation that are specific to the NAN communities?

3. The Panel notices the co-complainants have requested different ways to award remedies in regards to compensation of victims under the *CHRA*.

The Caring Society requested the compensation amounts awarded should be placed into an independent trust that will fund healing activities for the benefit of First Nations children who have suffered discrimination in the provision of child and family services. The Caring Society submits that an in-trust remedy that will lead to the establishment of a program of healing measures directed at persons who have been subjected to substandard child and family services is better suited to offering the children who have been taken into care since 2006 a meaningful remedy than awards of individual compensation could ever be. In this regard, the Caring Society specified that an analogy may be drawn to the component of the Indian Residential Schools Settlement that provided for the payment of amounts to a healing foundation for the purpose of setting up healing programs for the benefit of survivors.

The Panel is aware of the IAP process for residential schools' survivors and also knows there were both a healing foundation established and a fund for individual compensations for people that attended residential schools and then, there was an adjudication process for victims of abuse in the residential schools.


The AFN requested the financial compensation be awarded to the victims and their families directly with its assistance to distribute the funds rather than placed in a healing fund.

Why not do both instead of one or the other?

The Panel would not want to adopt a paternalistic approach to awarding remedies in deciding what to do with the compensation funds in the event a compensation is awarded to the victims.

Some children are now adults and may prefer financial compensation to healing activities. Some may want to start a business or do something else with their compensation. This raises the question of who should decide for the victims? The victims' rights belong to the victims do they not?

**This is Exhibit "B" referred to in
the Affidavit of VICTORIA AZEVEDO,
affirmed before me this 22 day of November, 2019**

A handwritten signature in blue ink, appearing to be "Shank", written over a horizontal line.

A Commissioner, etc.

CONWAY

Litigation/Litige

David P. Taylor
Direct Line: 613.691.0368
Email: dtaylor@conway.pro

Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

October 9, 2019

VIA ELECTRONIC FILING

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 1st floor
Ottawa, ON K1A 0H9

Attention: Federal Court - Registrar

Dear Sir/Madam:

RE: ATTORNEY GENERAL OF CANADA V FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL
COURT FILE T-1621-19

OUR MATTER ID: 5204-010

I am writing further to Justice Favel's October 7, 2019 Order that this application continue as a specially managed proceeding and referring the matter to Chief Justice Crampton for the appointment of a case management judge. We are counsel to the First Nations Child and Family Caring Society (the "**Caring Society**").

Pending the appointment of a case management judge, the next step currently scheduled for this matter is the hearing of Canada's motion for a stay of the Tribunal's September 6, 2019 Order. The motion is currently scheduled to be heard during the General Sitting on October 23, 2019. The Respondent Caring Society writes to request that Canada's motion be adjourned to a time to be determined by the case management judge, once appointed.

Conway Baxter Wilson LLP/s.r.l.

400 - 411 Roosevelt Avenue, Ottawa ON K2A 3X9

Tel: 613.288.0149 Fax: 613.688.0271

www.conway.pro

The human rights proceedings underlying the applicant's judicial review

This judicial review arises from a complaint under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (“CHRA”), and constitutes the fifth time that the Federal Court has been seized of this litigation.¹ The underlying complaint was filed in 2007 by the Caring Society and the Assembly of First Nations. Following a 72-day hearing, held over the course of 19 months, the Tribunal ruled that Canada’s on-reserve child welfare program and implementation of Jordan’s Principle discriminated against First Nations children and families contrary to section 5 of the CHRA.² The Tribunal ordered Canada to cease its discriminatory practices and reform the First Nations Child and Family Services Program (“FNCFS Program”) and the 1965 Canada-Ontario *Memorandum of Agreement Respecting Welfare Programs for Indians* to reflect the findings in its decision. Canada was also ordered to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s Principle. The Tribunal retained jurisdiction to make further determinations with respect to remedy and in order to ensure that its orders were effective. Canada did not seek judicial review of this decision.

While other matters have unfolded over the years, with the Tribunal making other orders dealing with immediate and long-term relief,³ compensation was not immediately addressed. The Tribunal indicated that it had questions for the parties, which it posed in March 2019. The parties exchanged lengthy and detailed written submissions, and the matter was heard over two days in April 2019.

The Tribunal ruled in the complainants’ favour on September 6, 2019.⁴ The order from which Canada seeks judicial review requires only one thing: that Canada consult the Caring Society and the Assembly of First Nations, so that the parties can return to the Tribunal with submissions respecting the compensation process by December 10, 2019. All other aspects of the Tribunal’s order “will find application once the compensation process [...] has been agreed to by the Parties or ordered by the Tribunal.”⁵

The Tribunal made it clear that, as part of this process, it welcomed “any comment/suggestion and request for clarification from any party in regards to moving forward with the compensation process and/or the wording and/or content of the orders.”⁶ Indeed, the Tribunal has made amendments to its orders in the past with respect to operational concerns raised by Canada.⁷

As should be clear from the summary above, the underlying litigation is incredibly complex and involves significant issues directly impacting the wellbeing, safety and best interests of First Nations children across the country. It also involves a number of existing decisions for which Canada has not sought, or has abandoned, judicial review.

¹ T-1753-08 (see 2010 FC 343); T-1008-10 (see 2011 FC 810); T-333-11 (discontinued on March 24, 2011); T-578-11/T-630-11 (see 2012 FC 445), T-918-17 (discontinued on November 30, 2017).

² 2016 CHRT 2.

³ 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017 CHRT 35 and 2018 CHRT 4. Of these, Canada only sought judicial review of 2017 CHRT 14; however, this judicial review was discontinued after the parties reached an agreement and the Tribunal amended its order on consent (see: 2017 CHRT 35).

⁴ 2019 CHRT 39.

⁵ 2019 CHRT 39 at p 83 (heading XIV).

⁶ 2019 CHRT 39 at para 270.

⁷ 2017 CHRT 35, 2018 CHRT 4 at Schedules “A” and “B”.

The need for a case management conference before Canada's stay motion is heard

This application for judicial review will be complex. Canada brings the application in the midst of the 43rd General Election, with public comments from the Prime Minister (including during the English Leaders' debate on October 7, 2019) and the Minister of Indigenous Services that contradict the relief sought in the materials Canada has filed with the Federal Court. It also seeks to have its request for a stay determined less than 48 hours after the polls close, before any Ministry will have been formed.

The Caring Society does not agree that Canada's stay hearing should be the first step in this application for judicial review. Canada has set this hearing for a General Sitting for an hour and a half; however, having consulted with the other respondents, the Caring Society does not agree that this matter can be dealt with in two hours or less. There are as many as seven parties to be heard on the matter of the stay alone. In any event, now that a case management judge is to be appointed, it is the case management judge who should determine Canada's stay motion, as well as other preliminary motions that arise.

The Caring Society intends to bring preliminary motions of its own with respect to this judicial review. First, the Caring Society will be bringing a motion to stay Canada's judicial review, or put it in abeyance, in order to allow the Tribunal to complete its orders with respect to the compensation process. Second, in the event this judicial review proceeds, the Caring Society will be bringing a motion for special costs in advance. The Caring Society is a not-for-profit organization with no litigation budget and has relied on *pro bono* counsel for many years in order to bring this matter forward.

Furthermore, if Canada is successful on its motion for a stay, the Caring Society will be seeking an expedited timeframe for the adjudication of this judicial review. First Nations children have become adults during this litigation. Indeed, First Nations children who started kindergarten the year the Caring Society filed its human rights complaint graduated from high school in June 2019. Children only get one childhood, and tens of thousands of First Nations children have spent their waiting for this litigation to bring them relief. Given the relationship between childhood development and the passage of time, we ask that the case management judge deal with all preliminary matters in order to ensure that this matter proceeds efficiently.

Please advise if there are any questions regarding the Caring Society's position or if further submissions are required.

Yours truly,



David P. Taylor

Copy to (via Email): Robert Frater, Q.C. and Max Binnie
Co-counsel for the applicant Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

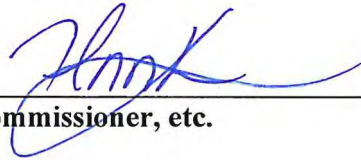
Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer and Molly Churchill
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

This is Exhibit "C" referred to in
the Affidavit of VICTORIA AZEVEDO,
affirmed before me this 22 day of November, 2019

A handwritten signature in blue ink, appearing to be "H. K.", written over a horizontal line.

A Commissioner, etc.

Assembly of First Nations

55 Metcalfe Street, Suite 1600
 Ottawa, Ontario K1P 6L5
 Telephone: 613-241-6789 Fax: 613-241-5808
 www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
 Ottawa (Ontario) K1P 6L5
 Téléphone: 613-241-6789 Télécopieur: 613-241-5808
 www.afn.ca

October 10, 2019

The Honourable Paul Favel
 Federal Court of Canada
 Thomas D'Arcy McGee Building
 90 Sparks Street, 1st Floor
 Ottawa, ON K1A 0H9

Via Electronic Filing

Dear Justice Favel:

Re: Application for Judicial Review – AGC v. FNCFCSC, et al. – Court Number T-1621-19

We represent the Respondent, Assembly of First Nations, and write with respect to the Order you issued on October 7, 2019 that the above-noted Application proceed as a specially managed proceeding, and that the matter be referred to the Chief Justice for the appointment of a case management judge.

It would appear that you may not have been aware of the applicant's notice of motion filed October 4, 2019, and returnable to this Honourable Court in Ottawa on October 23, 2019 at 9:30 am for a stay of execution of the Orders contained in the CHRT's ruling, 2019 CHRT 39. Given that a case management judge has not been appointed, it is our position that the motion be put over to the case management judge once one has been appointed and ask respectfully that you consider amending your Order accordingly.

The AFN agrees with the Respondent, First Nation Child and Family Caring Society's letter, filed with this Honourable Court on October 9, 2019 that the allotted time at a General Sitting to hear this motion is insufficient because the issues surrounding monetary compensation including the compensation process are complex. We believe a short adjournment is necessary in this matter to allow the parties an opportunity to propose a motions date wherein the issues surrounding the complaint, the evidence, and the Tribunal record can be fully explored and put before this Honourable Court for determination.

.../2

- 2 -

We are available to elaborate on the position above and welcome the opportunity to make submissions if necessary.

Sincerely,



Stuart Wuttke
General Counsel

Encl: Order issued October 7, 2019 (Hon. Justice Paul Favel)

Cc: Chief Justice, The Honourable Paul Crampton

Robert Frater, QC, Max Binnie and Tara DiBenedetto
Counsel for the Applicant, Attorney General of Canada

David Taylor and Sarah Clarke
Counsel for the Respondent, First Nations Child and Family Caring Society of Canada

Brian Smith and Jessica Walsh
Counsel for the Respondent, Canadian Human Rights Commission

Maggie Wente and Sinead Dearman
Counsel for the Respondent, Chiefs of Ontario

Justin Safayeni
Counsel for the Respondent, Amnesty International

Julian Falconer and Molly Churchill
Counsel for the Respondent, Nishnawbe Aski Nation



Federal Court



Cour fédérale

Date: 20191007

Docket: T-1621-19

Ottawa, Ontario, October 7, 2019

PRESENT: Mr. Justice Favel

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

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

Respondents

ORDER

PURSUANT to Rule 384 of the *Federal Courts Rules* and in accordance with Section A (Dispute Resolution through Dialogue) of Part III of the Practice Guidelines for Aboriginal Law Proceedings (April 2016);

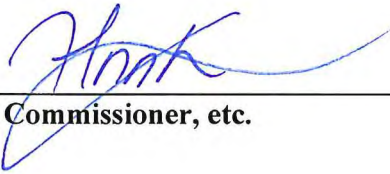
THIS COURT ORDERS that

1. The application shall continue as a specially managed proceeding.
2. The matter is hereby referred to the Chief Justice for the appointment of a case management judge.

 “Paul Favel”

Judge

**This is Exhibit “D” referred to in
the Affidavit of VICTORIA AZEVEDO,
affirmed before me this 22 day of November, 2019**

A handwritten signature in blue ink, appearing to read 'H. H. H.', is written over a horizontal line.

A Commissioner, etc.

Federal Court



Cour fédérale

Ottawa, Ontario
K1A 0H9

October 11, 2019

VIA EMAIL**Applicant**

Mr. Robert Frater, QC
Mr. Max Binnie
Ms. Tara DiBenedetto

Respondent

Mr. Stuart Wuttke
Mr. David C. Nahwegahbow
Mr. Thomas Milne
Mr. David Taylor
Ms. Sarah Clarke
Mr. Brian Smith

Respondent

Ms. Jessica Walsh
Ms. Maggie Wenté
Mr. Sinead Dearman
Mr. Justin Safayeni
Mr. Julian Falconer
Ms. Molly Churchill

Dear parties:

RE: ATTORNEY GENERAL OF CANADA V. FNCFCSC ET AL.
Court File No: T-1621-19

This will confirm the oral Direction of the Court (Mr. Justice Favel) dated October 11, 2019.

“Upon reviewing correspondence from counsel for the Assembly of First Nations dated October 10, 2019, the Court directs as follows:

- 1. The Applicant’s motion filed October 4, 2019 and made returnable at the General Sittings in Ottawa on October 23, 2019 is adjourned to a date and time to be fixed by the case management Judge once appointed; and*
- 2. Counsel for the Applicant is directed to submit, following consultation with counsel for the Respondents, dates of mutual availability of counsel for a case management conference in order to schedule the date for the hearing of the Applicant’s motion.”*

Yours truly,

Kassandra Cormier
Registry Officer

Pursuant to section 20 of the *Official Languages Act* all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

This is Exhibit "E" referred to in
the Affidavit of VICTORIA AZEVEDO,
affirmed before me this 22 day of November, 2019



A Commissioner, etc.



National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8

Telephone: 613-670-6289
Fax: 613-954-1920
Email: Robert.Frater@justice.gc.ca

November 15, 2019

Our File Number: 10967076

BY EMAIL

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

Dear Ms. Dubois:

**Re: AGC v. First Nations Child and Family Caring Society of Canada et al. [JR]-
T-1621-19 / T1340-7008**

Please bring this letter to the attention of the panel.

The Panel delivered its compensation ruling on September 6 of this year. In paragraph 269 of the ruling, the Panel directed

The Panel is not making a final determination on the process here rather, it will allow parties to discuss possible options and return to the Tribunal with propositions if any, no later than December 10, 2019. The Panel will then consider those propositions and make a determination on the appropriate process to locate victims/survivors and to distribute compensation.

The Attorney General of Canada has sought judicial review of this ruling, and has asked the Federal Court to stay your order pending the hearing of the judicial review. Although the Attorney General asked that the matter be heard on October 23, the stay motion has been set down for November 25-26.

In the circumstances, and to give the Federal Court time to render its decision, we would ask the Tribunal to suspend its December 10 deadline for submissions. If the Attorney general is successful on its stay motion, and if a concurrent motion brought by the Caring Society to hold the judicial review in abeyance is unsuccessful, the deadline will no longer be operative.

If the Attorney General's motion for a stay is unsuccessful, and/or the Caring Society's motion is successful, the appropriate course would be to convene a Case Management hearing to fix a new date for the submissions on process contemplated by para. 269.

Yours truly,

A handwritten signature in blue ink, appearing to read "Robert Frater, QC".

Robert Frater, QC
Chief General Counsel

c.c. Counsel for the Respondents

Court File No. T-1621-19

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT/MOVING PARTY/RESPONDENT

-and-

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

RESPONDENTS/MOVING PARTY

**REPLY IN THE ATTORNEY GENERAL'S STAY MOTION AND
RESPONSE TO THE CARING SOCIETY'S MOTION
TO HOLD THIS APPLICATION IN ABEYANCE**

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8
Fax: 613-954-1920**Per: Robert Frater Q.C.
Max Binnie
Meg Jones**

Tel: (613) 670-6289 / (613) 670-6283

Email: Robert.Frater@justice.gc.ca
Max.Binnie@justice.gc.ca
Meg.Jones@justice.gc.ca

Counsel for the Applicant / Moving Party

Table of Contents

PART 1: OVERVIEW	3
FACTS:	4
PART 2: QUESTIONS IN ISSUE	5
PART 3: ARGUMENT	
A: TRIBUNAL’S COMPENSATION DECISION SHOULD BE STAYED	6
<i>The Compensation Decision is Full, Final and Subject to Judicial Review</i>	6
<i>Judicial Economy and Conflicting Decisions</i>	7
<i>The Promptness of Canada’s Action</i>	8
<i>Public Statements</i>	8
<i>Need for Representative Plaintiffs</i>	8
<i>Evidence Required to Establish Irreparable Harm</i>	9
<i>Government has been Cooperative Throughout</i>	11
<i>Irreparable Harm to the Public Interest</i>	11
B: CANADA’S JUDICIAL REVIEW APPLICATION SHOULD PROCEED	12
<i>Interests of Justice Test</i>	13
<i>It Would Not be in the Interests of Justice to Place this Application in Abeyance</i>	15
C: COSTS	17
PART 4: ORDER SOUGHT	19
AUTHORITIES	20

PART I – OVERVIEW

1. In 2016, the Canadian Human Rights Tribunal (the Tribunal) found that Canada's funding for child and family services on reserve and in the Yukon was discriminatory. In response to that order, Canada changed its policies, significantly increasing the funding for child and family services on reserve. Since 2018, Canada has funded the actual costs of providing the necessary services, including prevention. Canada accepts that fair and equitable compensation is necessary for children who were harmed by the discriminatory underfunding.
2. There is no inconsistency in accepting the principle that compensation should be made, and refusing to accept the Tribunal's order on compensation (the "Compensation Ruling")¹ because of its serious flaws. The Tribunal unreasonably awarded compensation to individuals notwithstanding that this was a claim of systemic discrimination brought by the Respondents without representative complainants. Even if compensation were appropriate for non-parties, there was no basis for giving the maximum permissible award to all recipients without regard to the harm they actually experienced.
3. Contrary to the submissions of the opposing parties, the three-part test for a stay is easily met here. This case raises serious issues about the remedial jurisdiction of the Tribunal, and the reasonableness of the Compensation Ruling. These issues concern the respective roles of a specialized Tribunal and the courts. The Compensation Ruling amounts to the imposition of a class action settlement without a defined class, an appropriate legal framework or a proper evidentiary basis. Both the Tribunal's decision and the Respondents conflate the statutory remedies available to the Tribunal with settlement agreements that are negotiated and agreed to by the parties.

¹ *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 [Compensation Ruling].

4. There is no merit to the Respondents' argument that the Compensation Ruling is only part of an incomplete decision: it is a comprehensive ruling on the merits, specifying the classes of recipients and the amounts of compensation. Finalizing the details of the process for payment will not alter the Tribunal's core findings; it will only provide the process for paying an order that is flawed in law.
5. Canada is challenging a single "full and final" order. Canada cannot start the compensation process ordered by the Tribunal without suffering irreparable harm. The cost of the Compensation Ruling will mount without a stay. If Canada were to make payments to people living on reserve under the Compensation Ruling and succeeds on judicial review, it will be barred from recovering funds pursuant to subsection 89(1) of the *Indian Act*.²
6. The Compensation Ruling has already created unreasonable expectations of imminent payments to individuals. The balance of convenience favours Canada, since no harm flows to the Respondents, and the harms to potential non-party beneficiaries of the Compensation Ruling are caused by a belief that a flawed order is reasonable.

A. Facts

7. The relevant facts are summarized in Canada's Stay Motion materials. The following statement of facts responds to factual matters raised in the Respondents' submissions and accompanying records. These facts are relevant both to Canada's stay motion, and to the First Nations Child and Family Caring Society's (Caring Society) motion to place Canada's application for judicial review in abeyance.
8. When the stay materials were filed, the motion was returnable on October 23, 2019. That motion date was adjourned by this Court at the Respondents' request to November 25 and 26, 2019.³

² R.S.C., 1985, c. I-5.

³ Affidavit of Victoria Azevedo at paras. 3-5, Record of the Attorney General of Canada's Reply to Motion for a Stay of Execution and Attorney General of Canada's

9. In the interim, the Caring Society launched a motion returnable on those same days seeking to place Canada's judicial review application into abeyance until the Tribunal renders a decision on the process of paying the compensation ordered.
10. Contrary to the Assembly of First Nations (AFN) statements,⁴ Canada has requested an extension of the Tribunal's December 10, 2019 deadline to report on process discussions with the parties. The letter was sent on November 15, 2019.⁵ The Respondents have opposed the adjournment.
11. The AGC takes issue with the Caring Society's characterization of the complaint in its submissions.⁶ The complaint to the Commission and the particulars filed in support of it clearly indicate that this was a claim of systemic discrimination from the outset.⁷

PART II – QUESTIONS IN ISSUE

12. The two motions raise the following issues:
 - a. Should the Compensation Ruling be stayed until the judicial review application is decided?
 - b. Should the judicial review of the Compensation Ruling be placed in abeyance until the Tribunal renders a further judgment regarding the process for paying compensation?
 - c. Should either side be subject to costs if they are unsuccessful in the motion?

Response to a Motion to Hold Judicial Review in Abeyance, Tab 3 ("Attorney General's Response Record").

⁴ Written submissions of the AFN at paras. 68 and 71.

⁵ Affidavit of Victoria Azevedo at para. 6, Attorney General's Response Record, Tab 3.

⁶ Written submissions of the Caring Society at paras. 7 and 15.

⁷ Exhibits A and B to the Affidavit of Deborah Mayo dated October 1, 2019, Applicant's Motion Record for Stay, Tab 2 ("Attorney General's Stay Record").

PART III – ARGUMENT

A. The Tribunal's Compensation Decision Should be Stayed

13. The reasons that the Compensation Ruling be stayed are contained in the motion materials filed on October 4, 2019. This reply submission will briefly reply to the Respondents' submissions in the motion and will not repeat the previously-submitted arguments.

The Compensation Ruling is Full and Final and Subject to Judicial Review

14. There is no merit to the Respondents' suggestion that the Compensation Ruling is not final, or that Canada is only ordered to discuss a process for payment. As the AFN acknowledges,⁸ the order instructs Canada to pay, and identifies both the classes of recipients and the amounts owed. Indeed, the first 257 paragraphs of the decision provide the Tribunal's conclusion that compensation is required and the details of who is to be paid and in what amount. The invitation to make submissions on process consists of only 13 paragraphs⁹ and is clearly intended as the next step in the process if the parties accept the Compensation Ruling. Canada wishes to challenge the Compensation Ruling. A decision on process should wait until the validity of the order is established. A decision on the process for paying the Compensation Ruling is entirely unnecessary at this stage, and will result in considerable wasted time and resources for all parties if Canada is successful in the judicial review application.¹⁰

15. In the last of those same 13 paragraphs, the Tribunal invites questions and comments and requests for clarification from the parties, indicating that it is open to adding new categories of victims/survivors to the Compensation Ruling. The parties rely on this invitation to suggest that the Order is not final and should not be subject to immediate judicial review.¹¹ However, Canada's right to seek judicial review cannot be frustrated

⁸ Written submissions of the AFN at paras. 22-25.

⁹ Compensation Ruling at paras. 1-257 and 258-270.

¹⁰ Affidavit of Sony Perron, dated October 3, 2019, at paras 32-41, Attorney General's Stay Record, Tab 3.

¹¹ Written submissions of the AFN at para. 91; written submissions of the Caring Society at para. 17; and written submissions of the Nishnawbe Aski Nation at para. 17.

by conceiving of a decision as a series of sub-decisions. Canada cannot obtain the remedy it seeks from the Tribunal: it must proceed by way of judicial review.

16. In its written submissions, the AFN clearly acknowledges that the Compensation Ruling goes beyond ordering a discussion on process by stating that the Tribunal has ordered a “global compensation model,” and comparing it to the Indian Residential Schools Settlement Agreement.¹²

Judicial Economy and Conflicting Decisions

17. The Respondents’ argument that judicial economy favours allowing the Tribunal to continue its work on a process for paying the compensation ordered is without merit. The parties assume throughout their submissions that Canada will be unsuccessful on its judicial review, such that the work on process will not be effort thrown away. The seriousness of the issues raised by Canada are such that the ruling may be set aside in whole or part. Either way, the result would inevitably impact the discussions; for example, a decision from this Court could narrow the class of beneficiaries or the time period during which discrimination occurred.
18. Should Canada be unsuccessful, there is no reason to assume that Canada will not engage quickly and effectively with the parties on process. In his evidence, Mr. Perron outlines the many times that Canada has worked cooperatively with the parties when there is consensus on what needs to be done.¹³
19. Requiring Canada to engage in discussions regarding the flawed judgment now would put Canada in an untenable position. Mr. Perron outlines in his evidence and on cross-examination that Canada seeks to engage in a forthright manner with the parties and other First Nations individuals and groups.¹⁴ There is no benefit to requiring Canada to

¹² Written submissions of the AFN at para. 26.

¹³ Affidavit of Sony Perron dated October 3, 2019 at paras. 32-36, Attorney General’s Stay Record, Tab 3.

¹⁴ Affidavit of Sony Perron dated October 3, 2019 at paras 42-45, Attorney General’s Stay Record, Tab 3; transcript of the cross-examination of Sony Perron, at p. 50-51, Attorney General’s Response Record, Tab 1.

discuss a process to implement a flawed order without first having a chance to seek judicial review.

The Promptness of Canada's Action

20. The AFN's argument that Canada is responsible for its own irreparable harm because it failed to act promptly in response to the Compensation Ruling ignores the fact that Canada filed its stay motion in early October and sought to argue it on October 23, 2019. Had the matter been argued as scheduled, and Canada was unsuccessful, there would still have been sufficient time to engage in discussions. Canada would have faced the difficulty of operating under the caretaker convention. The hearing of the motion was delayed over a month at the request of the Respondents who now argue that Canada has allowed the time granted by the Tribunal to elapse. Canada appropriately sought to stay the Tribunal's order in order to avoid having to engage in discussions on a process for compensation in respect of a flawed order.

Public Statements

21. The Respondents place significant weight on public statements by elected officials during the writ period, to the effect that they do not oppose compensation. Canada supports fair and equitable compensation: there is nothing inconsistent about supporting compensation to those affected by discriminatory policies, and opposing the Tribunal's flawed order. The statements quoted by the Caring Society, the AFN¹⁵, and Nishnawbe Aski Nation¹⁶ indicate support for compensating impacted individuals. They do not indicate support for the Tribunal's Compensation Ruling.¹⁷

Need for Representative Plaintiffs

¹⁵ Affidavit of Jonathan Thompson at paras. 36-40, Motion Record of the AFN, Tab 3.

¹⁶ Written submissions of the Nishnawbe Aski Nation at para. 1.

¹⁷ Written submissions of the Caring Society at para. 19.

22. There is no dispute that, based on *Canadian Human Rights Commission v. Canada (AG)*, the Tribunal can extrapolate from the evidence of representative individuals and does not need to hear from all victims to award compensation.¹⁸ However, and as noted in the paragraph quoted by the AFN,¹⁹ the Tribunal requires evidence from “some individuals” to “determine the pain and suffering of a group.”²⁰ There were no representative complainants in this complaint. The AFN has provided evidence in this motion from two potential recipients who are adults, which shows that proper evidence can be provided without requiring vulnerable children to testify.
23. Similarly, the AFN is correct²¹ that the Tribunal has in the past awarded maximum statutory compensation to individuals who experienced discrimination. The case they cite, however, was launched by the victim of the discrimination who detailed his experiences and provided evidence of the harms he suffered. This case, however, lacks the requisite evidence from individuals of the harm they suffered.

Evidence Required to Establish Irreparable Harm

24. The Caring Society argues,²² based on Justice Stratas’s decision in *Oshkosh*,²³ that evidence of irreparable harm cannot be speculative or hypothetical. Canada agrees. However, the Court of Appeal has also acknowledged that logical inferences are permitted²⁴ and that the nature of evidence required differs depending on the harm alleged, with a higher standard being applied to financial harms than to harm to social interests like reputation.²⁵

¹⁸ *Canadian Human Rights Commission v. Canada (Attorney General)*, 2010 FC 1135, AFN’s Book of Authorities.

¹⁹ Written submissions of the AFN at para. 58.

²⁰ *Ibid.*

²¹ Written submissions of the AFN at para. 60.

²² Written submissions of the Caring Society at para. 51.

²³ *Canada (AGC) v. Oshkosh Defense Canada Inc.*, 2018 FCA 102, Caring Society’s Book of Authorities.

²⁴ *Laurentian Pilotage Authority c. Corporation des pilotes du Saint-Laurent central inc.*, 2015 FCA 295 at para. 13.

²⁵ *Newbould v. Canada (AG)*, 2017 FCA 106 at paras. 28-30.

25. The evidence of irreparable financial harm is clear here. The very terms of the Compensation Ruling mean its cost to Canada will increase by as much as \$120,000 each time a First Nations child is taken into care.²⁶ As well, the provisions of s. 89 of the *Indian Act*, which no Respondent has addressed, protect a person on reserve from seizure of their property. Thus, even if Canada succeeds on the judicial review any compensation paid would not be recoverable. This evidence is “clear and compelling”.
26. Canada also provided significant, and non-speculative or hypothetical evidence of irreparable harm in the affidavits of Sony Perron. In his first affidavit, Mr. Perron explained the harm to the public interest of being required to proceed with implementing the Tribunal’s orders²⁷ and the harm to Canada’s relationship with the potential recipients of compensation.²⁸ Mr. Perron further explained the harm during cross-examination by AFN’s Counsel:

We are working with First Nation people with communities with various group all the time on various subject. And one thing that we are asking our staff and our teams is to be very transparent and truthful and try to stay course when they make commitments. Here we are in a situation where there is a potential through a judicial review in future court decision that some of the parameter or the engagement process might be modified over time by a court decision.

So as an administer, I'm concerned that we engage into a process whereby we say something one day that is really important and sensitive, because Canada has made clear in the past that compensation for those who were victim of discrimination based on past policy, these children, needed to be compensated.

But through the course of a court decision, having to go back to them and say well, this is the parameter of change. So this is my concern, and this is what I try to express in the affidavit. And suggesting that a stay was probably better until we know the conclusion of the judicial review process.²⁹

²⁶ Compensation Ruling at paras. 245-248.

²⁷ Affidavit of Sony Perron dated October 3, 2019 at paras. 32-41, Attorney General’s Stay Record, Tab 3.

²⁸ Affidavit of Sony Perron dated October 3, 2019 at paras. 42-45, Attorney General’s Stay Record, Tab 3.

²⁹ Transcript of the Cross Examination of Sony Perron at p. 50-51, Attorney General’s Response Record, Tab 1.

27. The AFN argues that it would be irreparably harmed by having a stay granted because of all the work it has put into the complaint.³⁰ This harm is clearly not irreparable. It could be compensated by money. The work is by no means wasted. It contributed to the cooperative remedying of the systemic discrimination. The Caring Society does not argue that it will suffer irreparable harm in its submissions.³¹

Government Has Been Cooperative Throughout

28. There is no merit to the Respondents' suggestion that Canada has not been cooperative throughout this process. Canada has only judicially reviewed two of the many Tribunal decisions over the twelve years this complaint has been active. The first was in relation to the fundamental validity of the complaint and the second concerned a procedural question regarding safety and clinical decisions under Jordan's Principle. That application was later withdrawn when the parties worked cooperatively to reach an agreement that resulted in the Tribunal agreeing to vary the terms of its judgment.

29. Canada did not judicially review the 2016 finding of systemic discrimination and has worked closely with the parties to advance the mutual goal of addressing systemic discrimination. The uncontroverted evidence of Sony Perron, on which the Caring Society and AFN elected not to question him,³² demonstrates that Canada has worked hard and cooperatively with the parties³³ including under the consultation protocol and in the Consultation Committee on Child Welfare.

Irreparable Harm to the Public Interest

30. The Commission argues that declining to grant a stay would not harm the public interest by stating that in two of the cases Canada relies upon the issue was whether a private litigant could bar a government entity from carrying out its functions. With respect, this

³⁰ Written submissions of the Caring Society at para. 79.

³¹ Affidavit of Dr. Cindy Blackstock, dated October 24, 2019, at para. 76, Caring Society's Motion Record, Tab B.

³² Transcript of the Cross Examination of Sony Perron at p.7 and 45, Attorney General's Response Record, Tab 1.

³³ Affidavit of Sony Perron, dated November 8, 2019 at paras. 14 to 34, Attorney General's Response Record, Tab 2.

submission takes an unduly narrow view of the concept of the public interest as set out by the Supreme Court in *RJR MacDonald*. The Court stated:

The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility.³⁴

31. Here, Canada has addressed the systemic discrimination at the heart of the case, but it also has to defend the public interest in the responsible management of public funds. The public interest is best served by a government that ensures that massive expenditures of public funds are based on sound principles and equitably distributed among the intended recipients. There is nothing untoward about relying on the scale of the expenditure to justify a stay. The Federal Court of Appeal has concluded that the weight accorded to public interest considerations increases where large amounts of money are involved.³⁵ The billions of dollars in potential compensation at issue here are relevant to Canada's request for a stay.

B. The AGC's Judicial Review Application Should Proceed

32. This Court should decline to place Canada's judicial review application in abeyance pending the completion of the Tribunal's decision on a process for paying compensation. While the Tribunal's decision on process will provide details of how to pay the order, it will not impact the Tribunal's jurisdiction to award compensation or the reasonableness of its Compensation Ruling, the issues in the application.
33. The Compensation Ruling is "full and final" and subject to judicial review. Canada cannot challenge the Tribunal's finding that compensation is owed before the Tribunal and must, therefore, challenge it in Federal Court.³⁶ Time and resources devoted to agreeing on a compensation process or obtaining further judgments from the Tribunal

³⁴ *RJR-MacDonald Inc. v. Canada (AG)*, [1994] 1 S.C.R. 311 at p. 346.

³⁵ *Glooscap Heritage Society v. Canada (National Revenue)*, 2012 FCA 255 at para. 53.

³⁶ *Clayton v. Canada (AG)*, 2018 FCA 1 at para. 20 [*Clayton*].

detailing the compensation process before the validity of the Compensation Ruling is confirmed would be wasted if the order is overturned.

34. Neither the moving party, the Caring Society, nor the other parties supporting the abeyance motion provide significant submissions on this motion.³⁷ This is, perhaps, not surprising because the second motion was unnecessary given the similarity of the issues and the fact that the remedy of staying the Federal Court proceeding could and should have been sought in response to Canada's stay motion.

Interest of Justice Test

35. While the Respondent's motion is, in essence, a stay motion by a different name, it is not decided using the *RJR MacDonald* test for stay motions. Instead, because the Caring Society's motion involves staying the Court's own proceedings and not forbidding "another body from doing what Parliament says it can do",³⁸ the Federal Court of Appeal has determined that the broader "interest of justice" test applies.³⁹ The Ontario Court of Appeal has also endorsed and applied the "interest of justice" test.⁴⁰
36. Member Lustig, one of the members of the panel in this complaint, recently determined that the "interest of justice" test applies when the Tribunal is called on to decide whether to stay its own proceeding to await the outcome of a Federal Court judicial review.⁴¹
37. The test is based on the wording of s. 50(1) of the *Federal Courts Act*, the section relied upon by the Caring Society in its motion.⁴² It states that the Court has the discretion to

³⁷ Written submissions of the Caring Society at paras. 70-85; written submissions of the AFN at paras. 80-96; and written submissions of the Nishnawbe Aski Nation at para. 26.

³⁸ *Mylan Pharmaceuticals ULC. v. AstraZeneca Canada Inc.* 2011 FCA 312 at para. 5 [Mylan].

³⁹ *Clayton* at para. 24.

⁴⁰ *Korea Data Systems (USA) Inc. v. Amazing Technologies Inc.*, 2012 ONCA 756.

⁴¹ *Laurent Duverger v. 2553-4330 Quebec Inc. (Aeropro)*, 2018 CHRT 5 (CanLII) at para. 52.

⁴² Caring Society's Notice of Motion.

stay any proceeding where it is “in the interest of justice that proceedings be stayed”.⁴³ While the Court has not yet provided a definitive test, the jurisprudence provides significant guidance as to the relevant considerations.

38. Justice Stratas of the Federal Court of Appeal established the test in *Mylan*, a case in which Respondent, AstraZeneca UK, sought to stay a matter before the Federal Court of Appeal until the Supreme Court rendered judgment in a case it claimed would impact the appeal. Justice Stratas determined that the long delay requested would only be justified if there was a significant overlap of the issues, which he found not to be the case. In reaching his conclusion, Stratas J.A. stated that the assessment must be done on a case-by-case basis, and that Courts do not delay the consideration of matters before them lightly.⁴⁴
39. In *Coote*, the Federal Court of Appeal applied the “interest of justice” test to determine whether to stay two appeals arising from a vexatious litigant proceeding while the Federal Court decided the question of whether Coote was, in fact, a vexatious litigant. The Court incorporated Rule 3 of the *Federal Court Rules* into the test and determined that the “just, most expeditious and least expensive determination of every proceeding on its merits”⁴⁵ required that the appeals be stayed pending the outcome of the Federal Court application.
40. More recently, in *Clayton*, the Federal Court of Appeal applied the “interest of justice” test in a case with important similarities to the case at bar. *Clayton* concerned a bifurcated process before an arbitral panel considering a dispute under the *North American Free Trade Agreement*. The parties agreed that the panel would determine jurisdiction and liability first and then consider damages in a separate decision. The panel ruled against Canada on liability and Canada filed an application for judicial review in the Federal Court.

⁴³ *Federal Courts Act*, R.S.C., 1985, c. F-7, s.50(1)(b).

⁴⁴ *Mylan* at para. 5.

⁴⁵ *Coote v. Lawyer’s Professional Indemnity Company*, 2013 FCA 143 at para. 12; SOR/98-106.

41. The Respondents in *Clayton* sought to place Canada's application in abeyance until the Tribunal delivered its decision on damages, arguing that the further decision would "cast light" on the completed decision and provide "further context". They claimed that the award of damages is "inextricably linked" to the liability finding and that "statements made by the tribunal in the damages decision may provide clarity to its reasons underpinning the finding of liability."⁴⁶
42. Their motion was rejected by the Prothonotary and that rejection was upheld by both the Federal Court and the Federal Court of Appeal. The Federal Court of Appeal determined that "the appellants' arguments blur the fact that a final determination has been made on liability and that nothing that is said in the damages phase can undo that finding".⁴⁷ In dismissing the appeal, the Federal Court of Appeal approved of the Prothonotary and Federal Court judge's reliance on the possibility that the judicial review might render the second judgment moot in rejecting the request for an abeyance.⁴⁸

It Would Not be in the Interests of Justice to Place this Application in Abeyance

43. The Caring Society bears the onus of showing that they would be prejudiced or face injustice if the judicial review application proceeds. The burden is significant because the Court will not lightly delay a matter and must be concerned with obtaining the just, most expeditious and least expensive determination of the proceeding on its merits.
44. The Caring Society does not claim that it, or the recipients of the compensation, would suffer prejudice, harm or injustice if the judicial review proceeds. Dr. Blackstock states that it is in the "best interests of the First Nations children currently and formerly in care that the Compensation Process be determined as quickly as possible."⁴⁹ However, First Nations children will continue to receive the services they need, because Canada

⁴⁶ *Clayton* at para. 12.

⁴⁷ *Ibid.* at para. 22.

⁴⁸ *Ibid.* at para. 30.

⁴⁹ Affidavit of Dr. Cindy Blackstock, dated October 24, 2019, at para. 76, Caring Society's Motion Record, Tab B.

is funding the actual costs of providing those services.⁵⁰ If Canada is unsuccessful in overturning the Tribunal's Order, the victims will be compensated. There is certainly no prejudice to the Respondents as they are not the beneficiaries of any compensation.

45. In contrast, Canada would suffer “harsh effects”⁵¹ if the judicial review is stayed. It would be required to negotiate a process for paying compensation pursuant to a deeply-flawed judgment, and to stand by while the amount of the judgment, and the expectations of potential beneficiaries, increase. If required to make payments before the judicial review is complete, Canada will be precluded from recovering payments from victims who keep the awards on reserve.⁵² The Affidavit of Sony Perron dated October 3, 2019 outlines the harms Canada will suffer if the Tribunal's order is not stayed.⁵³

46. The Compensation Ruling is final and is subject to judicial review. The Tribunal's process order is not separate and distinct from the decision to order compensation. It provides the “how” for compensation, but will not alter the Tribunal's determination that it has the jurisdiction to order compensation to individuals in this circumstance and on this scale. The Compensation Ruling contains the Tribunal's full decision on these points and Canada can only challenge them via judicial review.

47. It would neither be in the interests of justice, nor expeditious and inexpensive, to proceed with determining a process for compensation before the Tribunal that would be rendered moot by a successful judicial review application. The validity of the Compensation Ruling must be determined before there is any value to the Tribunal issuing further orders regarding the specifics of compensation. As noted in *Clayton*, the

⁵⁰ Affidavit of Sony Perron, dated October 3, 2019 at para. 11, Attorney General's Stay Record, Tab 3.

⁵¹ *Mylan* at para. 5.

⁵² *Indian Act*, R.S.C., 1985, c. I-5, s. 89.

⁵³ Affidavit of Sony Perron, dated October 3, 2019, at paras. 8, 32-46, Attorney General's Stay Record, Tab 3.

potential for the Tribunal's decision on process to be rendered moot by a successful judicial review weighs against staying the judicial review application.⁵⁴

48. Indeed, the very fact that the Tribunal requires further submissions on a process for identifying potential recipients serves to highlight the unusual nature of the Compensation Ruling. Ordinarily remedies are specific to the parties and made at the end of proceedings based on the evidence in the record. This order shows that the Tribunal did not have the recipients before it, and that it may be no easy task to identify them.

49. The Compensation Ruling is also open-ended, in that it finds the discrimination is ongoing.⁵⁵ The actual cost is unknown, in part because the Tribunal has failed to render judgment on another motion—argued before this one— that will determine who qualifies as a “First Nations child” for the Jordan’s Principle portion of the Order. The Compensation Ruling is thus expansive and expanding, indicative of an approach to its remedial jurisdiction that requires review by this Court.

50. The Respondents’ evidence serves to further illustrate two problems with the Compensation Ruling. The order is disproportionate in that it awards the same amount of compensation to everyone, regardless of their personal experiences. One affiant remained in the care of family members and had regular contact with other family.⁵⁶ Another affiant indicates⁵⁷ that she was taken into care outside of her community and experienced abuse. The fact that two individuals with such different stories are both expecting the same amount of compensation demonstrates how the Compensation Ruling has created unreasonable expectations of forthcoming compensation and fails to distinguish between victims and award compensation that responds to the harms they experienced.

⁵⁴ *Clayton* at para. 30.

⁵⁵ Compensation Ruling at para. 245.

⁵⁶ Affidavit of Erickson Owen, dated October 25, 2019 at para. 3, AFN’s Motion Record, Tab 5.

⁵⁷ Affidavit of Rachele Wetatawabin, dated October 30, 2019 at para. 5, AFN’s Motion Record, Tab 4.

51. The Tribunal awarded the maximum compensation permitted by its statute to every child, and every caregiving parent or grandparent regardless of circumstance (except in cases of abuse), while highlighting that it viewed this compensation as insufficient.⁵⁸ The Tribunal should not impose the maximum remedy because it believes the compensation available by statute is insufficient. It is for Parliament, not the Tribunal, to amend the remedies available by statute, should an amendment be necessary.⁵⁹

C. Costs

52. While Dr. Blackstock's affidavit says that it is in support of a request for advanced costs,⁶⁰ the Caring Society's Notice of Motion makes no mention of advanced costs. Instead, it requests costs regardless of the outcome. In its written submissions, the Caring Society takes a different approach and requests solicitor-client costs in both motions if successful and no costs against them if they are unsuccessful.⁶¹

53. The long standing principle is that costs follow the cause.⁶² Courts require a very good reason to depart from that rule.⁶³ The rule applies equally to the AGC and the ability to pay is not a deciding factor in awarding costs.⁶⁴

54. Under the general rule, the Caring Society should pay costs in motions it loses and receive them in motions that it wins. If the Caring Society wishes to agree that neither side should receive costs in these motions regardless of the outcome then it can make that proposal.

55. Awards of costs serve an important function in discouraging unnecessary motions or other forms of delay. Indeed, Rule 400(3)(i) of the *Federal Court Rules* permits this

⁵⁸ Compensation Ruling at para. 13.

⁵⁹ *Arial v. Canada*, 2017 FC 270 at para. 58.

⁶⁰ Affidavit of Dr. Cindy Blackstock, dated October 24, 2019 at para. 1, Caring Society's Motion Record, Tab B.

⁶¹ Written Submissions of the Caring Society's at para. 87.

⁶² *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at para. 34.

⁶³ *Ibid.*

⁶⁴ *Khalil v. Canada*, 2007 FC 1184 at para. 13.

Court to consider whether the conduct of a party unnecessarily lengthened the duration of the proceeding in assessing costs.⁶⁵ In this case, the Caring Society chose to bring its own motion instead of simply replying to the AGC's motion and seeking a different remedy. They also insisted on delaying the motion hearing despite being given significantly more than the time required by the *Rules* to reply to the motion materials. These decisions resulted in additional work for the AGC.

56. Notwithstanding the firm basis for awarding costs to Canada, Canada does not seek costs against the Caring Society or any other party. This case raises important questions for the administration of justice, and it is important to hear from all parties on the issues. In the unusual circumstances of this case, Canada will not seek costs if it is successful on this motion, or on the judicial review application. Nor should it be required to pay them.

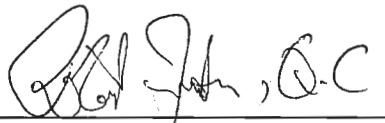
PART IV – ORDER SOUGHT

57. The Attorney General respectfully requests this Court issue an order:

- a. staying the execution and enforcement of the Tribunal's Order for the duration of the judicial review proceedings before this Honourable Court;
- b. dismissing the Caring Society's motion to place the judicial review application in abeyance; and
- c. granting such other or further relief this Court deems necessary.

⁶⁵ SOR/98-106.

DATED AT OTTAWA, ONTARIO, this 22nd day of November, 2019.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario
K1A 0H8
Fax: 613-954-1920

Per: Robert Frater Q.C.
Max Binnie
Meg Jones

Tel: (613) 670-6289 / (613) 670-6283

Email: Robert.Frater@justice.gc.ca
Max.Binnie@justice.gc.ca
Meg.Jones@justice.gc.ca

Counsel for the Applicant / Moving Party

TABLE OF AUTHORITIES

NEUTRAL CITATION	Paragraph Pincite
Cases	
<i>Arial v Canada</i> , 2017 FC 270	58
<i>Clayton v Canada (Attorney General)</i> , 2018 FCA 1	12, 20, 22, 24, 30
<i>Coote v. Lawyer’s Professional Indemnity Company</i> , 2013 FCA 143	12
<i>First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2019 CHRT 39	13, 245
<i>Glooscap Heritage Society v Canada (National Revenue)</i> , 2012 FCA 255	53
<i>Khalil v Canada</i> , 2007 FC 1184	13
<i>Korea Data Systems (USA) Inc. v Aamazing Technologies Inc.</i> , 2012 ONCA 756	
<i>Laurent Duverger v 2553-4330 Québec Inc. (Aéropo)</i> , 2018 CHRT 5	52
<i>Laurentian Pilotage Authority c Corporation des pilotes du Saint-Laurent central inc.</i> , 2015 FCA 295	13
<i>Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)</i> , 2007 SCC 2	34
<i>Mylan Pharmaceuticals ULC v AstraZeneca Canada, Inc.</i> , 2011 FCA 312	5
<i>Newbould v Canada (Attorney General)</i> , 2017 FCA 106	28-30
<i>RJR-MacDonald Inc. v. Canada (AG)</i> , [1994] 1 S.C.R. 311	346
Statutes and Regulations	
<i>Federal Courts Act</i> , RSC, 1985, c F-7	s. 50(1)
<i>Federal Court Rules</i> , SOR/98-106	Rule 3, 400(3)(i)
<i>Indian Act</i> , RSC, 1985, c I-5	s. 89