

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."

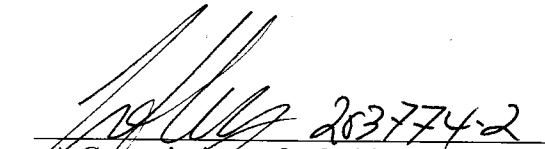
Retention of Jurisdiction

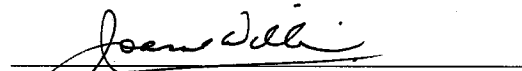
60. On October 30 and 31, 2018, Paula Isaak and Valerie Gideon were cross-examined before the Tribunal regarding their May 24, 2018 affidavits.
61. Following the cross-examinations on October 31, 2018, the Tribunal determined that Canada was no longer required to provide reporting affidavits.
62. Overall, 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/csjsj/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