

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Ottawa, Canada K1A 1J4

BETWEEN/ENTRE:

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

Complainant

Plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

Commission

and/et

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

Respondent

Intimée

and/et

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Parties intéressées

BEFORE/DEVANT:

Sophie Machildon
Edward Lustig

CHAIR
PANEL MEMBER

Judy Dubois

REGISTRY OFFICER

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APPEARANCES:

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for Assembly of First Nations

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Maggie Wente

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for Chiefs of Ontario

Brian Smith

for the Canadian Human Rights
Commission

Judith Rae

for Innu Nation

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1 Via Zoom Videoconference

2 --- Upon commencing on Friday, January 8, 2021

3 MS. DUBOIS: Today, January 8th,
4 2021, we are meeting for the cross-examination of
5 the witness, Natalie Nepton in the matter of First
6 Nations Child and Family Caring Services Canada et
7 al and AGC, CHRT file number T-1340/7008.

8 I will turn over the proceeding
9 now to the panel chairperson, Sophie Marchildon.

10 THE CHAIR: Good morning,
11 everyone. Welcome, parties. It's good to see you
12 all. A special welcome to our newly added
13 interested party, the Innu Nation, and Ms. Rae,
14 representing them. And finally, welcome to the
15 other members of the public who are watching.

16 I would like to start by wishing
17 you all a happy new year filled with health, peace,
18 and especially hope. Hope for many things,
19 including the advancement of reconciliation in
20 Canada.

21 The purpose of the hearing today
22 is to allow the parties to ask questions by way of
23 cross-examination of Canada's witness and to allow
24 the Attorney General of Canada to follow up with
25 re-examination questions.

1 This forms part of a motion filed
2 by the Caring Society with respect to First Nations
3 children and families living on-reserve and in the
4 Yukon who received child and family services from
5 provincial/territorial service providers as opposed
6 to First Nations agencies pursuant to Indigenous
7 Services Canada's First Nations Child and Family
8 Services program. I'm giving this overview just
9 for the benefit of the public.

10 So the Tribunal now calls for
11 appearances, please.

12 MR. TAYLOR: Good morning, Madam
13 Chair. It's David Taylor for the First Nations
14 Child and Family Caring Society of Canada, and I'm
15 appearing today as counsel with Ms. Sarah Clarke
16 and Ms. Shelby Thomas, and we're also joined today
17 from representatives of the Caring Society, Dr.
18 Blackstock, Ms. Auger, and of course, Spirit Bear.

19 MR. WUTKE: Good morning. Happy
20 new year. It's Stuart Wuttke appearing for the
21 Assembly of First Nations.

22 MR. SMITH: Good morning. I will
23 jump in next. It's Brian Smith, counsel appearing
24 on behalf of the Canadian Human rights Commission.
25 Good morning.

1 THE CHAIR: Good morning.

2 MS. WENTE: Hi, it's Maggie Wente
3 for Chiefs of Ontario, and I have our articling
4 student, Ms. Emily King, with us today, and Ms.
5 Miller from Chiefs of Ontario is in the gallery as
6 well. Thank you.

7 THE CHAIR: Thank you.

8 MS. RAE: Good morning. It's
9 Judith Rae here on behalf of Innu Nation, and it's
10 just myself here today. Thank you.

11 THE CHAIR: Thank you.

12 MS. POSALA: Good morning,
13 everyone. This is Natalie Posala here, appearing
14 on behalf of NAN.

15 THE CHAIR: Thank you.

16 MR. FRATER: And Robert Frater for
17 the Attorney General of Canada. Ms. Nepton and I
18 are in the same room, so I will be wearing a mask
19 today. If there's any trouble hearing me, please
20 let me know.

21 THE CHAIR: Thank you. Can
22 everyone hear me well? Yes? Okay.

23 We have received a number of
24 documents this morning. I hope this won't create
25 any delays or issues. Is there anything that

1 parties would like to address before we have Ms.
2 Dubois swear in or affirm the witness?

3 MR. TAYLOR: None from the Caring
4 Society.

5 MR. WUTKE: And nothing from the
6 Assembly of First Nations.

7 THE CHAIR: Okay. I am seeing you
8 all, so it looks like there's no issue. That's
9 good news.

10 Since we're seeing Ms. Nepton with
11 us -- hi, Ms. Nepton. Thank you for being here. I
12 do not know if you have chosen to have a swearing
13 in or an affirmation, but Ms. Dubois will take care
14 of this now.

15 Ms. Dubois, could you affirm or
16 swear in the witness, please?

17 MS. DUBOIS: Yes, I will affirm
18 Ms. Nepton now.

19 AFFIRMED: NATHALIE NEPTON

20 MS. DUBOIS: Please state your
21 full name for the record.

22 THE WITNESS: My full name as it
23 appears on my birth certificate or my -- Nathalie
24 Nepton.

25 MS. DUBOIS: Nathalie Nepton is

1 fine.

2 THE WITNESS: Thank you.

3 THE CHAIR: Thank you. Ms.

4 Nepton, to preserve the integrity of the testimony
5 and the proceedings, we want to make sure that
6 you're not communicating, texting, emailing other
7 people while you're giving your evidence.

8 If you are consulting documents
9 that we are not aware -- that are not shared on the
10 screen, we might -- you might need our approval.
11 I'm just going to step in sometimes if I see that
12 some documents that we're not aware of are being
13 consulted. The thing is we just want to make sure
14 that everybody has the same documents that were
15 shared, and if there's an issue, counsel will raise
16 it and we'll address it as we go.

17 All throughout you're giving your
18 testimony, I would like for you not to communicate
19 outside -- anything about your evidence must not be
20 discussed all throughout the day. Hopefully we
21 will finish today so you won't remain under oath.
22 That's the goal here.

23 I won't repeat this every time,
24 but I'm asking you not to discuss your evidence
25 with anybody outside. Is that --

1 THE WITNESS: Yes.

2 THE CHAIR: -- understood? Thank
3 you. Okay.

4 Before we start with the cross-
5 examination, Mr. Frater, as we have done in the
6 past, would you lead your witness in a few
7 introductory questions, please?

8 MR. FRATER: Yes. Thank you,
9 Madam Chair. I would be happy to start that way.

10 EXAMINATION-IN-CHIEF BY MR. FRATER:

11 Q. Ms. Nepton, you have filed on
12 affidavit in this matter dated November 20th; is
13 that correct?

14 A. Yes, that's correct.

15 Q. Just by way of introduction
16 to the Court -- to the Tribunal, I note that in the
17 first paragraph of that affidavit, you describe
18 yourself as a First Nations person. What is your
19 nation, Ms. Nepton?

20 A. I am from the Innu Nation in
21 Lac Saint-Jean, also known as Mashteuiatsh, which
22 is about two hours further north, a little bit
23 west, of Quebec City. And yes, I have been a
24 member since birth.

25 Q. All right. And you have

1 today before you a binder of materials; is that
2 correct?

3 A. Yes.

4 Q. And that binder consists of
5 your own affidavits and other affidavits filed on
6 this (inaudible)?

7 A. Yes.

8 Q. All right. Can you just tell
9 us what your current position is?

10 A. I currently hold the position
11 of Director General of First Nations Child and
12 Family Services program within the Child and Family
13 Services Reform sector.

14 Q. Okay. In that job, what do
15 you do, generally?

16 A. Generally, my job consists of
17 the implementation of the CHRT orders passed and as
18 well as liaising, for example, with other partners
19 and also liaising with the parties to the CHRT
20 orders through the CCCW. Also, an important part
21 of my job is the review and administration of the
22 claims process. As well, there's a lot of
23 horizontality among sectors, and ensuring that
24 sectors other than the First Nations Child and
25 Family Services Reform sector are aware of the

1 orders and also that it's more than just our
2 implication; it's a departmental obligation.

3 Q. All right. In your job, I
4 take it you manage other people?

5 A. Yes, I manage a team of
6 approximately 30 people.

7 Q. Okay. Are they in the
8 national capital region or are they across the
9 country?

10 A. The majority of them are
11 located in the national capital region. We have
12 maybe one or two that are located elsewhere in the
13 country.

14 MR. FRATER: All right. Madam
15 Chair, I think those are all the questions I have
16 by way of introduction for Ms. Nepton.

17 THE CHAIR: Thank you very much.
18 The next person will be Mr. Taylor. Is that
19 correct?

20 MR. TAYLOR: That's right.

21 THE CHAIR: It's the Caring
22 Society's motion, so I would expect that you start.
23 However, we also have Ms. Clarke, so whoever wants
24 to start, please go ahead.

25 MR. TAYLOR: Potentially to

1 everyone's detriment, I will be conducting the
2 examination today, so I will get started if that's
3 all right, Madam Chair.

4 THE CHAIR: Yes. Please get
5 started.

6 MR. TAYLOR: Thanks very much.

7 CROSS-EXAMINATION BY MR. TAYLOR:

8 Q. Ms. Nepton, good morning.

9 A. Good morning.

10 Q. I'm David Taylor. Of course
11 you know me from past CCCW meetings and other
12 encounters, but I think this is the first thing we
13 have been together in the tribunal forum. So I
14 will be asking you some questions this morning on
15 behalf of the First Nations Child and Family Caring
16 Society of Canada.

17 Just kind of by way of
18 housekeeping, I have done a few of these virtual
19 examinations. They're always a bit of a challenge,
20 so if ever my internet cuts out and you don't
21 understand anything that I have said, please stop
22 me and I will do my best to go back over it, though
23 I can't promise to get the exact wording of the
24 question I might have asked right.

25 Similarly, if there is any time I

1 don't understand something from your end because of
2 the connection, I will let you know. And also,
3 just generally, if there are questions I'm asking
4 where you don't understand, please feel free to ask
5 me to rephrase. I can't promise to always be the
6 most straightforward speaker.

7 And another point is, today, my
8 questions are not really -- they're not a memory
9 exercise. I understand that you have a lot of
10 files that are part of your branch, so if there's a
11 question where you don't know the answer, just let
12 me know and we can go from there.

13 A. Thank you.

14 Q. I just have a couple of
15 questions arising from Mr. Frater's examination in
16 chief. You had mentioned a claims process that
17 you're responsible for or that you oversee, and I
18 just wanted to confirm that that's the -- when you
19 say "claims process," you mean the process by which
20 First Nations Child and Family Services agencies
21 can make claims for funding at actuals in certain
22 areas ordered by the Tribunal in 2018; is that
23 right?

24 A. That is correct, along with
25 the Community Well-being and Jurisdiction

1 Initiative.

2 Q. Is that a claims-based
3 process, the CWJI? I will just refer to that
4 Community Well-being Jurisdiction Initiative as
5 CWJI. Is that claim-based or is that administered
6 regionally? I had understood it was the latter.

7 A. We -- I administer the fixed
8 pot of money, but the decision on how that money is
9 spent is done regionally, along with partners, and
10 in accordance with, from my understanding, as it
11 predates my arrival to this sector, a formula or a
12 distribution methodology that was agreed to by
13 CCCW, or at least CCCW was consulted.

14 Q. Right. Okay. And we will
15 get to that a little bit later, but I just wanted
16 to clarify the claims process was indeed the
17 actuals claims process there.

18 And then the second point was you
19 had noted that there was a departmental obligation
20 in terms of some of your -- I think you referred to
21 it as horizontality, some of your efforts. Are you
22 referring to the department's obligation as a whole
23 to implement the CHRT orders?

24 A. Yes, the department as a
25 whole to implement, yes.

1 Q. Thank you. That is helpful.
2 In your affidavit and just now in
3 your examination in chief by Mr. Frater, you noted
4 that you're the Director General of the Children
5 and Families branch at ISC? That is correct?

6 A. Yes, that is correct.

7 Q. I understand you have been
8 the DG since June of 2019; is that right?

9 A. Exactly. June 3rd, 2019.

10 Q. Right. Thank you. And your
11 predecessor in that role, that was -- her name was
12 Odette Johnston?

13 A. Odette Johnston was the
14 acting on an interim basis. Prior to her, I
15 believe it was Margaret Buist.

16 Q. That was my understanding as
17 well. And just so I'm clear -- thank you for the
18 precision that she was acting. So Ms. Johnston
19 acted in that role, my understanding is, from
20 November 2018 until June 2019. Is that right?

21 A. I can't say with certainty.

22 Q. Okay. Do you know Ms. Buist,
23 who was her predecessor, she was the Director
24 General at the time the complaint was decided in
25 January of 2016; is that right?

1 A. I can't say with certainty.
2 I would need to confirm the exact dates of Margaret
3 Buist's tenure as Director General of my branch, of
4 my current branch.

5 Q. Are you aware of anybody else
6 who has held the role since January 2016 besides
7 Ms. Buist and Ms. Johnston?

8 A. Since 2016? Well --

9 Q. Again, not a memory test, so
10 if you're not sure, that's fine.

11 A. Yeah, I'm not sure. I could
12 say that, for example, if I am away on holidays,
13 somebody will act on my behalf in the short-term.

14 Q. Of course. No, and I was
15 referring more to, you know, someone who would
16 either be, you know, occupying the box as their
17 substantive position or on a more kind of ongoing
18 acting basis like Ms. Johnston did for a period of
19 some time before you took the role in June 2019.

20 A. No, I'm not aware of anybody
21 else except for Odette when I joined, and then
22 prior to that, Margaret Buist as the substantive
23 Director General of the branch.

24 Q. Now, just in terms of
25 reporting, you report to the Assistant Deputy

1 Minister for Child and Family Services Reform
2 sector; is that correct?

3 A. Yes, that's correct.

4 Q. And my understanding is that
5 the current ADM for CFS Reform is James Sutherland?

6 A. Yes, he has been appointed as
7 the acting ADM of the sector until the position is
8 filled on a permanent basis.

9 Q. And he took that position on
10 an acting basis in November 2020; is that right?

11 A. No. Actually, if I'm not
12 mistaken, it was in December. But I can definitely
13 confirm that if you want to, but I would say more
14 December if my memory serves me correct.

15 Q. We can say late last year and
16 that would be in the --

17 A. Exactly. Yes, I'm
18 comfortable with that. You are correct.

19 Q. And he was taking over from
20 Joanne Wilkinson; is that correct?

21 A. Yes, that's correct.

22 Q. And my understanding is she
23 assumed this position in October of 2018?

24 A. I can't say with certainty,
25 but I believe she was there close to two years, if

1 not more.

2 Q. And she was taking over from
3 Paula Isaac, who was ADM before her?

4 A. Yes, that's my understanding.

5 Q. And my understanding was that
6 Ms. Isaac was the ADM at the time the Tribunal gave
7 its ruling in January 2016; is that yours as well?

8 A. I believe so, yes. I can
9 confirm the dates of Paula's tenure, but it is my
10 understanding.

11 Q. Certainly and similarly to
12 Ms. Buist and Ms. Johnston, you're not aware of
13 someone who would have substantively held that role
14 besides Ms. Isaac and Ms. Wilkinson before Mr.
15 Sutherland?

16 A. Not to my knowledge.

17 Q. Thank you. That's my, kind
18 of, org chart (inaudible) so I will move on to your
19 background if that's all right.

20 You note in your affidavit that
21 you have a common law degree and a bachelor's of
22 history. Is that right?

23 A. Exactly. Yes.

24 Q. Did any part of your formal
25 education focus on First Nations child and family

1 services?

2 A. No.

3 Q. I understand that you're
4 called to the bar of Ontario; is that right?

5 A. Yes.

6 Q. But you're a non-practicing
7 member?

8 A. I am non-practising.

9 Q. Now, in your affidavit you
10 state you joined INAC -- or I guess it would have
11 been Indian Northern Affairs at the time -- in
12 1998?

13 A. Yes, on an indeterminate
14 basis.

15 Q. And you held a number of
16 roles in the department. In your affidavit, you
17 describe those as providing policy advice,
18 overseeing administration of programs and working
19 on legislative reforms.

20 Were any of those roles involved
21 in child and family services for First Nations
22 children?

23 A. No.

24 Q. My understanding is before
25 becoming DG of the Child and Family Services

1 branch, you were the Indian registrar and executive
2 director of Indian registration as CIRNAC; is that
3 right?

4 A. Yes, that's correct.

5 Q. And CIRNAC -- I should spell
6 it. That is Crown-Indigenous Relations and
7 Northern Affairs Canada; that's correct?

8 A. Yes.

9 Q. Thank you. And prior to
10 that, you were the Director of Governance Policy
11 and Implementation at Aboriginal Affairs and
12 Northern Development Canada; is that correct?

13 A. Exactly.

14 Q. Now, did you receive any
15 training in child and family services before taking
16 on your role as DG in June 2019?

17 A. No.

18 Q. Now, I understand as part of
19 your duties, you attend the Consultation Committee
20 on Child Welfare; is that correct?

21 A. Yes.

22 Q. I'm just going to refer to
23 that as the CCCW, just to try and save a little
24 time.

25 A. Yes.

1 Q. Now, you came in in June of
2 2019, and my understanding is, at least my
3 recollection, and help me by confirming, is that
4 you hadn't attended any meetings prior to June of
5 2019. Is that right?

6 A. I attended the one in May
7 when I was in my previous position. Just help me
8 situate myself if I have got the date right.

9 Q. Right. So that would have
10 been -- at the time you would have known you were
11 coming into the new role as DG, so --

12 A. Exactly.

13 Q. Preparatory. I understand.
14 But in terms of -- as Indian registrar, you haven't
15 attended the CCCW?

16 A. No.

17 Q. Did you review the records of
18 decision -- well, I guess -- sorry, I will take a
19 step back. So there are records of decision from
20 the CCCW meetings that are produced after the fact.
21 You're aware of that?

22 A. Yes, I am.

23 Q. And did you review the
24 records of decision for the meetings prior to May
25 or June of 2019 when you took the role of DG?

1 A. No. No, I started fresh.

2 Q. Okay. Have you gone back and
3 looked at the 2018, 2019 records of decision since
4 taking on the role of DG?

5 A. No, I have only been moving
6 forward based upon information that has been
7 provided to me and based upon the discussions at
8 CCCW. However, I can say that I have understood
9 many of the issues that have been brought forward
10 to me are -- some of which are outstanding from
11 prior to my arrival.

12 Q. Some of them have a history
13 prior to June 2019. Would that be fair?

14 A. Yes.

15 Q. Now, as part of your duties,
16 you attend the National Advisory Council. And for
17 the same purposes of brevity, I'm going to call
18 that the NAC.

19 A. Yes.

20 Q. Did you -- does the NAC keep
21 -- the NAC keeps minutes of its meetings, is my
22 understanding; is that right?

23 A. Yes.

24 Q. So, similarly, after becoming
25 DG for the CFS branch, did you undertake an

1 exercise of going back to look at past minutes? Or
2 was it the same go-forward (indiscernible) CCCW?

3 A. It was the same go-forward.

4 Q. Okay. Now, you noted in your
5 affidavit that you have read the Tribunal's January
6 2016, April 2016, September 2016, and February 2018
7 orders. Can you just let me know, when did your
8 first read those decisions?

9 A. I was provided the orders
10 prior to my arrival upon having accepted an offer
11 for the position.

12 Q. Okay. So that would have
13 been in April, May, June of 2019, then?

14 A. I would say it was probably
15 two weeks before I started, maybe three. So, yes,
16 mid-May.

17 Q. So your review of those would
18 have been similar to your attendance at that first
19 meeting you mentioned, getting oriented for your
20 new role?

21 A. Exactly.

22 Q. Moving on to some questions
23 that are a bit more specific to your affidavit --
24 and I guess I should just pause here for a moment.
25 I understand you have got a binder with you?

1 A. Yes.

2 Q. And that that binder has your
3 affidavit in it, as well as the affidavits of Grand
4 Chief Abram, Grand Chief Johnston, Germaine Benuen,
5 Dr. Cindy Blackstock. Is that correct?

6 A. Yes, and as well as the
7 information that was provided to me yesterday,
8 which includes the January 29th, 2019, documents,
9 the supplementary record of documents, as well as
10 documents provided by Ms. Rae this morning, as well
11 as the information regarding notices and requests
12 related to an Act respecting First Nations, Inuit
13 and Métis children, youth and families, as well as
14 your letter dated June 15th to Mr. Frater, as well
15 as an email that you provided from Paula Isaac to a
16 group of individuals which include yourself, Ms.
17 Wente, Dr. Blackstock, Mr. Thompson (ph) from the
18 AFN, as well as Mr. Wuttke, and a couple of other
19 individuals such as members of the Tribunal.

20 Q. And then I think you should
21 also have a short document from the Public Accounts
22 Committee --

23 A. Yeah --

24 Q. -- October (inaudible) --

25 A. Yes. It was in the back.

1 Apologies.

2 Q. No, no, no, that's -- there's
3 actually -- in the context of this proceeding, this
4 is not a lot of paper, but objectively, it's still
5 a bit of paper.

6 A. And I should say,
7 unfortunately, in reviewing my materials, I have
8 just noticed that the affidavits referred to in Ms.
9 Benuen's affidavit, unfortunately, I don't seem to
10 have them before me.

11 Q. I will leave that for my
12 friend, Ms. Rae. I won't, at least in my
13 questioning, be referring to those materials.

14 Other than those materials, do you
15 have anything else before you on the boardroom
16 table?

17 A. I have a notebook to note
18 questions and that's (inaudible).

19 Q. Is there anyone else in the
20 room with you besides Mr. Frater?

21 A. No, just Mr. Frater and I.

22 Q. Thanks very much. Now, Madam
23 Chair and Member Lustig, I am in your hands of
24 terms of how you would like to proceed with screen
25 sharing. I have the materials before me. The

1 witness has them before her as well. If you would
2 like to screen share as I go through the questions,
3 that's fine by me. But at least for my purposes
4 and questioning, it's fine for me given that the
5 witness has the materials before her. But I'm in
6 your hands on that one.

7 THE CHAIR: We will screen share.
8 However, would you like to control the documents
9 while you're asking your questions? Or do you want
10 Ms. Dubois to control the documents?

11 MR. TAYLOR: It may go a little
12 bit faster if I can control, but again, I'm in your
13 hands on how you prefer to manage this.

14 THE CHAIR: No, either way is fine
15 for us.

16 MR. TAYLOR: Okay.

17 THE CHAIR: So you can control the
18 documents. Ms. Dubois --

19 MS. DUBOIS: Yes, I will start the
20 share and then provide control to Mr. Taylor.

21 THE CHAIR: Thank you.

22 BY MR. TAYLOR:

23 Q. Okay. Great. So I'm going
24 to go to paragraph 8 of your affidavit, Ms. Nepton.

25 In this paragraph, you describe

1 Dr. Blackstock having raised the issue of First
2 Nations communities not served by First Nations
3 child and family services agencies. And again,
4 just for the sake of brevity, I'm going to refer to
5 those kind of generically as non-agency communities
6 or non-agency nations if that's helpful.

7 Did your staff raise a need for
8 greater action regarding non-agency communities
9 prior to Dr. Blackstock raising this issue?

10 A. I would say they briefed me
11 on the issue, yes. I was briefed on the issue. As
12 well, I would add that Dr. Blackstock raised it
13 several times over the course, I would say, of the
14 CCW meetings that I participated at.

15 Q. So would you agree it was one
16 of these issues that had some history prior to your
17 involvement and that was being raised by the Caring
18 Society going forward?

19 A. Yes, I would agree with that,
20 that it predates my arrival, yes.

21 Q. And had your staff come up
22 with an action plan for dealing with this issue
23 prior to the Caring Society bringing its motion?

24 A. No. No action plan was
25 presented to me. I was presented with briefings

1 about how the CWJI was -- came into being. But in
2 regards to an action plan, not that I can recall.

3 Q. Now, at paragraph 9 -- this
4 is moving to the next section that is titled
5 "Delivery of Child and Family Services to On-
6 reserve --"

7 A. Yes.

8 Q. You note two vehicles or two
9 ways that child and family services are delivered
10 on-reserve. One is provincially-delegated
11 agencies, the FNCFS agencies, and the second is
12 directly by a province or territory.

13 A. Yes.

14 Q. Would you agree with me that
15 there is at least one exception to this dichotomy
16 that's kind of either agency or mainstream
17 provincial or territorial provider, which would be
18 the Mi'kmaq Confederacy of P.E.I., which I
19 understand is not delegated by the province of
20 Prince Edward Island but nonetheless provides some
21 CFS services to First Nations on-reserve in P.E.I.?

22 A. Could you clarify your
23 question for me, please?

24 Q. Sure. So my question is
25 there's -- your affidavits presents the two

1 streams. There's the agencies and then the ones
2 that receive -- you know, via essentially the
3 provinces and territories. And the agencies are
4 delegated by the provinces to provide services.

5 So I will start with -- my
6 understanding is that the Mi'kmaq Confederacy of
7 P.E.I. is not delegated by the province of Prince
8 Edward Island. Am I right about that?

9 A. In regards to Prince Edward
10 Island, if I could draw your attention to paragraph
11 31 of my affidavit.

12 "...all FNCFS program
13 funding, including CHRT
14 actual claims and CWJI, flows
15 to the Mi'kmaq Confederacy of
16 Prince Edward Island, which
17 operates according to an
18 agency model and delivers
19 prevention services to the
20 province's on-reserve First
21 Nations."

22 And services are purchased in
23 regards to protection from the province.

24 Q. Right. So I guess the crux
25 of my question is -- my understanding was that the

1 MCPEI, which is what I will call the Mi'kmaq
2 Confederacy of Prince Edward Island, they don't
3 have provincial delegation for the prevention
4 services that they deliver on-reserve; is that
5 right?

6 A. I would say that it is a
7 partially delegated agency.

8 Q. What is the basis for calling
9 it partially delegated?

10 A. Because it does not
11 (inaudible) protection services. Those are
12 purchased from the province.

13 Q. Right. But my understanding
14 was that the prevention, which is the activity it
15 does carry out, that there is not a formal
16 delegation from the province of Prince Edward
17 Island to do those activities.

18 A. I'm not certain. I
19 understand your question or your comment; however,
20 I will say that prevention services or prevention
21 activities are carried out by the MCPEI or M --
22 yes, M -- sorry. I'm trying to find it. MCPEI --
23 because the legislation doesn't provide for
24 prevention services.

25 Q. I see. So in that case, it's

1 a -- and I won't debate the wording of the
2 legislation. We don't have it before us in any
3 event. We can do that in another forum. But it
4 would be -- in that case, if the legislation is not
5 provided for, it would be an example of a non-
6 delegated activity because there is no delegation
7 to give from the province. Am I right about that?

8 A. I would not phrase it that
9 way. We refer to partially delegated agency. But
10 I think we're saying the same thing.

11 Q. That it would be an instance
12 in which a First Nations entity, not necessarily
13 the First Nations community itself, is providing
14 some of these services to communities as opposed to
15 either the provincial or territorial government or
16 the FNCFS agency. Is that fair?

17 A. Again, I don't know if it's
18 because I'm interpreting it differently. What I am
19 saying is that the prevention activities are
20 provided for -- or provided to the on-reserve
21 members.

22 Q. Via the vehicle of the MCPEI,
23 which is neither an FNCFS agency nor a
24 provincial/territorial entity, if that makes sense.

25 A. Okay --

1 Q. I'm just trying to identify
2 if there is a third way here, that the first way
3 being a First Nations child and family services
4 agency with formal delegation, the other being
5 provincial/territorial government providing the
6 services, and then the third being a First Nations
7 entity that is not an agency providing the services
8 on-reserve.

9 A. And again, I don't want to
10 appear difficult. I see it as being partially
11 delegated. So I don't know the difference in
12 (audio distortion) -- mainstream child and family
13 services agencies, than there are, as you
14 indicated, the delegated First Nations child and
15 family service.

16 Then we have those communities or
17 those entities that have a partial delegation,
18 which, if the legislation is (indiscernible),
19 provincially or territory in way, and we will say
20 the Yukon, then the prevention activities are
21 performed by the (inaudible). So in this case, it
22 would be the MCPEI.

23 Q. If I can maybe just take a
24 step back, and on that, what I kind of qualify it
25 as the first way when we're talking about

1 delegation, do you know how delegation happens? Is
2 there a formal document from the province that
3 gives that delegation to the agency?

4 A. The provinces formally
5 delegate through an agreement, as I understand, and
6 it -- yes, I would say yes, there is a formal
7 document.

8 Q. Have you seen such a formal
9 document between the MCPEI and the government of
10 Prince Edward Island?

11 A. I cannot say that's -- no, I
12 do not recall seeing that.

13 Q. My next question is about
14 paragraph 11, so if you just give me a moment here
15 to make my way back. To the fans in the stands,
16 I'm screen sharing here, and of course for the
17 panel members and my friends. Paragraph 11 here is
18 up on the screen. You have it before you as well.

19 So you note cases where the
20 services are provided by provinces or Yukon -- and
21 I should specify it's Yukon. Northwest Territories
22 and Nunavut have different arrangements which you
23 spelled out in your affidavit.

24 A. Yeah.

25 Q. These services are funded

1 through federal-provincial or federal-territorial
2 agreements. That's right?

3 A. Yes.

4 Q. Would you agree with me that
5 these agreements were not updated to account for
6 the Tribunal's 2016 decision in terms of the
7 parameters for child and family services being
8 provided on-reserve?

9 A. Yes, I would agree.

10 Q. Now, at paragraph 10 of your
11 affidavit -- I will just go back and try and
12 straddle the page here on the screen -- you note
13 that the FNCFS agencies must comply with the FNCFS
14 program terms and conditions --

15 A. Mm-hmm.

16 Q. -- in order to receive
17 funding from Canada. That's right?

18 A. Yes.

19 Q. And you're, of course, aware
20 the Caring Society takes the view that the terms
21 conditions aren't in full compliance with the
22 Tribunal's rulings?

23 A. Yeah, I am aware of that.

24 Q. Now, do all of the sections
25 of the terms and conditions also apply to provinces

1 and territories providing services directly on-
2 reserve?

3 A. The provinces and territories
4 administering the provincial schemes are
5 responsible for their part of it. In regards --
6 and if I -- I'm not too certain I understand your
7 question, but if you're saying that the terms and
8 conditions, do they apply to the provinces? No,
9 they apply in regards to -- well, there are the
10 agreements in place that determine the funding
11 amounts and what services are to be accounted for.
12 When you look at the terms and conditions, however,
13 they're really for recipients and who we enter into
14 contribution agreements with for other types of
15 arrangements in order for the administration of the
16 funds that are provided to them.

17 So, for example, if you look at
18 the terms and conditions, we say which recipients
19 are eligible for what type of funding, as well as
20 they outline criteria for the terms and conditions
21 with respect to CWJI. And I will leave it at that.

22 Q. So if I can try and summarize
23 -- and please tell me if I'm summarizing unfairly.
24 If you're a First Nations child and family services
25 agency, your funding is governed by the terms and

1 conditions, and if you're a provincial or
2 territorial government, if would be the applicable
3 provincial -- federal-provincial or federal-
4 territorial agreement that would be setting out the
5 conditions for that funding?

6 A. Yes. Because -- yes.

7 Q. So I'm right, then, that as a
8 result, the obligations are different on FNCFS
9 agencies as opposed to provincial/territorial
10 governments because they're set out in different
11 documents, or at least -- maybe I should step back
12 and ask the question. The terms and conditions
13 aren't replicated in the provincial/territorial
14 agreements? Those stand on their own?

15 A. Without going through
16 (indiscernible) without -- through each agreement,
17 I can't confirm.

18 Q. That's fair enough. But I
19 think we can agree they're separate documents?
20 They're --

21 A. Yes, we can agree they're
22 separate documents.

23 Q. Now, your impression as
24 Director General, the reporting obligations on
25 provincial or territorial government, they would be

1 different than those on a First Nations child and
2 family services agency?

3 A. I would say in certain ways
4 they're the same in terms of accountability, but in
5 other ways they're different, yes.

6 Q. So in terms of
7 accountability, that the money was spent on
8 eligible purposes, both recipients would have to
9 confirm that through their reporting obligations;
10 is that right?

11 A. Yes. I would say that, for
12 example, where the province/territory is reimbursed
13 on actuals for services rendered, they would have
14 to account for the amount billed.

15 Q. When you say reimbursed on
16 actuals, that would be the services that they
17 determined in terms of -- my understanding is that
18 would apply mainly for maintenance; is that right?

19 A. I would say that whichever --
20 I would say that they are responsible or that they
21 would need to report to the extent that they are
22 providing protective and preventive services to
23 First Nation families and children on-reserve.

24 Q. And they work within the
25 context of the funding envelope that is set out in

1 their agreement; is that right?

2 A. To a certain extent, yes.
3 However, for some provinces, for example, like
4 Alberta, they bill us for actuals. And so while
5 there may be an envelope, we may get an invoice or
6 a summary of items that weren't -- that are
7 reimbursable.

8 Q. Do you know, is that driven
9 by maintenance, what would cause it to go up and
10 down, the number of children in care?

11 A. Yes, I would say that's
12 definitely one of the factors.

13 Q. Would you say there are
14 others or is that the primary factor?

15 A. I would say that that is one
16 of the primary factors. However, if you look at
17 prevention, where we are -- where the focus is not
18 trying to avoid or trying to mitigate against
19 bringing a child into care, so we're talking about
20 least disruptive measures, for example, they would
21 be included in there as well.

22 Q. The reporting between, for
23 instance, Alberta, which is, in this case, the
24 province we're talking about, would they be
25 accounting for the kinds of prevention activities

1 that they're doing, then, or is that something that
2 they send you an invoice and that is what it is?

3 A. I can affirm that I know of
4 the process that happens; however, the invoice does
5 not come to my office. It remains within region.

6 Q. Now, do provincial and
7 territorial governments have access to the actuals
8 reimbursement process that First Nations child and
9 family services agencies do?

10 A. I would say that if a First
11 Nation does not receive services from a First
12 Nations CFS-delegated agency, the province would be
13 reimbursed or funded at cost for the services
14 rendered.

15 Q. So that would be the
16 provincial or territorial government's decision in
17 terms of the level and kind of services to provide?

18 A. Exactly. Exactly. It's my
19 understanding that that would be the case, yes.

20 What I would say is that, if I
21 could add something, is that it is different for
22 every region, and as well as for the Yukon, so it
23 has to be taken -- the comments that we exchange
24 today, this dialogue, is that what may apply, let's
25 say, in Alberta, might not apply elsewhere. Each

1 region and each payment is individual.

2 Q. We will call that the beauty
3 of federalism.

4 A. Yes, we can call that the
5 beauty of federalism.

6 Q. So the provincial/territorial
7 in general, provincial and territorial governments,
8 they will be deciding how they're going to be
9 providing their services and then their funding is
10 dictated according to the agreements.

11 Now, with respect to what they're
12 doing -- my understanding is that, for instance, a
13 First Nations child and family services agency has
14 to submit a business plan to -- I don't know if
15 it's to the region or to headquarters, but at least
16 to ISC a business plan has to be submitted; is that
17 right?

18 A. That is my understanding,
19 yes.

20 Q. And there are -- my
21 understanding is there are other long-term or more
22 long-term planning documents that are being worked
23 on. I'm not sure if they're implemented in terms
24 of community plans, the longer-term plan for
25 addressing the needs and circumstances of First

1 Nations children and families who are coming into
2 contact with the system, for lack of a more
3 specific term. Is that right?

4 A. Are you referring to CWJI
5 funding and how plans can go up to five years?

6 Q. You know, I'm being a little
7 inexact. I apologize. I don't have the precise
8 term. My understanding was that in addition to the
9 business plan, there was a more overarching plan
10 that agencies had to submit.

11 I guess the way I will phrase it
12 is, regardless of what we call the vehicle, there
13 is some interaction between the agency and ISC in
14 terms of the anticipated goals and activities of
15 the agency.

16 A. I would agree with that and
17 that, you know, when plans are submitted,
18 regardless of which sector you're talking about,
19 yes, they're a plan; however, things happen and
20 sometimes plans need to be revised.

21 Q. Right. But there is at least
22 -- there's some communication between the agency
23 and ISC with respect to the situation on the ground
24 and what the agency is going to be doing in a given
25 year going forward?

1 A. Yes, I would agree with that.
2 And also to add is that, for example, you mentioned
3 community planning, broader community planning. So
4 if we're talking about a community-centered
5 approach, some regions have specific regional
6 initiatives where you look not only at child and
7 family services and needs, let's say, for
8 infrastructure, but you will get it more
9 comprehensively and more wholly as to what the
10 community needs in terms of --

11 Q. So -- I'm sorry, I missed the
12 end of your answer there. I spoke too quickly.

13 A. Okay. Oh, the end of my
14 answer. I'm sorry, I didn't hear that.

15 So, for example, you mentioned
16 community planning. And in some regions, some
17 regions have certain initiatives. So for example,
18 in Ontario, they have a community-focused approach
19 to a variety of areas.

20 So, for example, in regards to
21 infrastructure especially, if a request comes in
22 for a school or some other building for a specific
23 purpose, it has to be part of a broader community
24 plan idea, right, in order to build that
25 sustainable foundation and sustainable accessible

1 infrastructure so that it can be used -- it's
2 available and used over the years.

3 Q. That planning process, that
4 is between the community and Indigenous services;
5 that's right?

6 A. Exactly, at the regional
7 level.

8 Q. Now, with respect to
9 provincial and territorial governments, do they
10 submit business plans to ISC?

11 A. I'm sorry, can you repeat
12 that?

13 Q. No problem. So the
14 provincial and territorial governments, where they
15 are providing services as opposed to an agency, are
16 they submitting business plans or at least similar,
17 I think you called it, comprehensive community
18 planning, you know, exercises, is that dialogue or
19 communication going on between the province and
20 territory and ISC?

21 A. I am unable to confirm that
22 but would be happy to look into it and provide you
23 with an accurate response.

24 Q. At least from your
25 perspective as Director General at headquarters,

1 that is not something you're aware of, that process
2 between the provincial/territorial governments and
3 ISC?

4 A. Again, I think we get a lot
5 of information, as does everybody who is here
6 today. I would like to --

7 Q. "I don't know" is a fine
8 answer if that's the case.

9 A. Yeah.

10 Q. It's just a question I had.

11 A. No, I -- yeah, and so I would
12 like to go back and confirm to make sure that I
13 provide you with the most accurate response.

14 Q. Now, a further question I
15 have got is -- I guess one follow-up. So you
16 wouldn't have seen anything like a business plan
17 from a province or a community plan from a province
18 doing these -- it may go without saying given your
19 answer, but I just wanted to confirm, you haven't
20 seen -- the kinds of documentation you might have
21 seen from agencies about business plans, et cetera,
22 you wouldn't have seen those from provincial and
23 territorial governments?

24 A. No, I would not.

25 Q. Now, in terms of the work

1 that the provincial and territorial governments
2 were doing, do you know if the First Nations who
3 received those services, are they consulted by
4 Canada about what their needs are and whether
5 they're being met through those agreements? Or is
6 that left between the nation in question and the
7 provincial/territorial government?

8 A. I would say it depends. For
9 example, and if I'm -- you know, based upon my
10 interpretation of your question is that in some
11 instances, yes, we would be aware because we are
12 cc'd in a letter from a First Nation to a
13 provincial counterpart. So we could be aware via
14 that route. We could also be aware from a region
15 reaching out or actually an agency or an advocate
16 such as, you know, Dr. Blackstock, for example, or
17 Madame -- Ms. Wente or Ms. Clarke or yourself or --
18 of course, you know, I think of our colleagues in
19 NAN as well. They would bring it to our attention
20 or to the attention of who they worked with at the
21 regional level.

22 Q. But when the agreements are
23 revised or when the agreements between -- between
24 the federal government or provincial government or
25 territorial government, there is not a step in that

1 process that involves consulting the nation or
2 nations in question?

3 A. I cannot say with certainty.
4 I would love to go back and look into it to provide
5 you with the accurate response.

6 Q. Now, at paragraph 12 -- I'll
7 move the screen down here. Give me one moment. At
8 paragraph 12, you state that there are 149 FNCFS
9 delegated agencies in Canada serving approximately
10 500 First Nations communities, and that the
11 estimate in November of 2020 was that there were
12 138 First Nations not currently served by a First
13 Nations delegated agency but who received services
14 directly from the provinces or the Yukon
15 government.

16 Now, earlier in the paragraph, you
17 note the number of FNCFS agencies varies through
18 time. The corollary of that then would be that the
19 number of communities not served by agencies would
20 vary by time as well; is that right?

21 A. I would say that is a fair
22 (indiscernible), yes.

23 Q. Does ISC keep data on the
24 number of First Nations by region that weren't
25 served by First Nations agencies by fiscal year?

1 A. I am uncertain as to how it
2 is broken down, but in regions, yes, that
3 information is available.

4 Q. Would it be possible -- and I
5 guess, Mr. Frater, this is partially addressed to
6 yourself as well. We have got the number here of
7 138 for November 2020, which I will take that as
8 the 2020/2021 number. Would it be possible to get
9 that number broken down by region and then also to
10 have it for fiscal '16/'17 through to '19/'20?

11 MR. FRATER: Yes, to the extent we
12 have (indiscernible).

13 MR. TAYLOR: I'm sorry, Mr.
14 Frater, you're -- I heard "Yes, to the extent" and
15 then that was all I got.

16 MR. FRATER: Yes, to the extent we
17 have the information, we are happy to provide it to
18 you. So we will look into what we have and give it
19 to you if we have it.

20 MR. TAYLOR: Okay. Thank you very
21 much.

22 BY MR. TAYLOR:

23 Q. Now moving on to the next
24 section, Ms. Nepton. This is "C", "Improving
25 Funding to the FNCFS Program Funding to First

1 Nations Communities".

2 So in paragraph 13, you're
3 addressing what you term as engagement. This is
4 actually -- sorry, on the next page, the last
5 sentence:

6 "A key point heard through
7 this engagement process was
8 the need for additional
9 investments directly to First
10 Nations for prevention and
11 early intervention."

12 So when you're saying
13 "engagement", can you help me understand what is
14 meant for the program by the word "engagement"?

15 A. "Engagement", it means
16 soliciting points of view of, of course, the
17 parties to the CHRT, motions, and other
18 stakeholders such as, you know, the First Nations
19 themselves, other representative groups, for
20 example, First Nation children advocates and family
21 advocates, in order to inform further -- so it's
22 the dialogue to inform further change down the
23 road.

24 Q. So if I can just ask, is that
25 -- in your view, is that any different from

1 consultation?

2 A. I would say that from my
3 perspective, we often use "engagement" and
4 "consultation" -- sorry, I'm trying to think of the
5 word in English -- interchangeably. And so for me,
6 you know, when we engage in a dialogue, we engage,
7 and then the consultation is something concrete to
8 further dialogue about, right? But I think it's
9 very situation-based.

10 Q. What would be the differences
11 that would, I guess, drive -- I guess if you see
12 them as different terms, "consultation" and
13 "engagement", what would be the situational
14 differences that would be driving that?

15 A. For example, engagement on
16 issue around CFS, okay? So we would have this
17 discussion, much like we do at CCCW meetings or NAC
18 about issues. And then if, for example, we have a
19 document that's already established and in place
20 that needs to be worked on and that we need to work
21 on policy changes or on directive changes, whatever
22 the case may be, implementation of (indiscernible),
23 we would work from that. And then once whatever
24 document has been circulated amongst interested
25 parties or the parties to the motions, we would

1 then use that document and then we would further
2 consult on it.

3 So we would -- you know, for me,
4 consultation requires something concrete.
5 Engagement is that discussion. It's that
6 preliminary discussion and that builds into
7 something, the consultation aspect.

8 Q. So, if it's fair, engagement
9 might be a first step and then consultation would
10 follow on that?

11 A. Exactly. Depending, again, I
12 can say, on a situation, but from my personal
13 experience is that, you know, if there's an issue,
14 we discussed it and we have something concrete to
15 talk about, be it a discussion paper, be it a
16 potential, you know, policy change, a directive
17 change. So it doesn't form the consultation to a
18 certain extent.

19 But I don't -- I realize that some
20 would say that one -- they're one and the same and
21 that one doesn't necessarily inform or that they
22 both happen at the same time, which is also
23 possible. So there are a few scenarios. So I
24 hope, you know, that is --

25 Q. No, no, that is helpful, and

1 I haven't worked in government, so it's helpful to
2 have, you know, some of the explanation of what
3 might be behind some of these points. That was an
4 editorial comment.

5 My question is -- so when you look
6 at something like, for instance -- I guess I should
7 ask first: Have you read the consultation protocol
8 that was signed between all the parties following
9 the February 2018 order?

10 A. Yes.

11 Q. So when you read that
12 consultation protocol, then, to your mind, would
13 you agree that there is an obligation when there is
14 something concrete, an action that Canada is going
15 to take, that the parties to that protocol have to
16 be looped in, at least on the point that falls
17 within the scope of what needs to be consulted on?

18 A. I would say, yes, that
19 discussion needs to happen, but I would like to put
20 on the record that in regards to my preparation for
21 this discussion, I don't have the protocol in front
22 of me, so --

23 Q. That's fine. I don't either,
24 but it's one of the many bricks in the wall of this
25 matter. Tiles in the mosaic would be a better -- a

1 more evocative way of putting it, so I just wanted
2 to touch on it.

3 Before I ask my next question, I
4 just want to say if there's any point where you
5 feel more comfortable responding in French, please
6 feel free.

7 A. Okay.

8 Q. I am fluent both directions
9 and, you know, this is a federal proceeding, so the
10 Official Languages Act applies. Don't feel for my
11 benefit that you need to respond in English if you
12 would be more comfortable responding in French.

13 A. Thank you. Sometimes the
14 expression comes in French a little bit quick --
15 more quickly than sometimes in English, so some --
16 I will stay to English, but if I can't figure out
17 the wording in French, I appreciate your offer.

18 Q. And I should just say for my
19 friends, not all other counsel may speak French
20 like myself, so if there is an instance where we do
21 pass into French, I will endeavour to provide a
22 summary. But if there's any issue from any other
23 party, please don't hold back, because I would like
24 to try and keep this on the rails. But I just want
25 the witness, in fairness to her, to have her full

1 opportunity to respond.

2 Now, a question I have about this
3 consultation in 2016 -- this is from paragraph 13.
4 This is -- sorry, engagement. This is engagement
5 that happened in 2016, so I appreciate you may not
6 know the answer to this question, but was the
7 engagement described here, is that the vehicle by
8 which provinces and territories were informed about
9 the 2016 orders and the obligations flowing from
10 them?

11 A. I am unable to confirm that.
12 That predates my arrival.

13 Q. That's fine. Now in terms of
14 where services are provided pursuant to a
15 provincial or territorial agreement -- and again,
16 I'm going to try and use that as a short form for
17 these federal-provincial, federal-territorial
18 agreements. So those weren't amended after the
19 January 2016 decision; that's right?

20 A. I would have to look for each
21 agreement because each agreement has a set date.
22 So I would have to really look at each one and see
23 when it came into force, what the amendments were,
24 in order to answer that with accuracy. So --

25 Q. You're not aware of any

1 effort to -- not effort -- any initiative. You're
2 not aware of any initiative to go through the
3 agreements and say what needs to change in order to
4 render us in compliance or ensure that they are in
5 compliance with the orders?

6 A. I think if I understand your
7 question correctly, there have been discussions.
8 However, the agreements that are in place are in
9 place and are the documents that we use for our
10 relationships with the provinces and the Yukon, the
11 territories -- the territory --

12 Q. Does ISC take -- I'm sorry.
13 If you're not finished, please --

14 A. No, I was going to say -- so,
15 have there been discussions? Yes, I have discussed
16 this issue because I have had conversations with
17 Dr. Blackstock, and also, it has been raised at
18 CCCW. It doesn't mean that the discussions haven't
19 happened in my office. The issue for me is just
20 the implementation aspect of that and how that
21 timing works out. But I know that for now, I have
22 -- in terms of changing wording, that sort of
23 thing, no, I have not done that. My office, ISC,
24 has not done that.

25 Q. Now, beyond the wording of

1 the agreements, does ISC take any steps to ensure
2 that the services that are provided on the ground
3 by provinces and territories through these
4 agreements are substantively equal to those -- or
5 provide substantive equality?

6 A. I am not certain I understand
7 your question. Could you ask it a different way if
8 you don't mind?

9 Q. Sure. So where a community,
10 a non-agency community, is receiving services from
11 the provincial or territorial government --

12 A. Yes.

13 Q. -- beyond the wording of the
14 agreement that is governing the funding, does ISC
15 undertake any, you know, essentially, quality
16 evaluation of what kinds of services are being
17 provided? You know, in the Tribunal ruling it
18 talks about reflecting the historical, cultural and
19 geographical needs and circumstances of
20 communities. Is there any exercise undertaken by
21 ISC to ensure that that is happening in those
22 communities that don't have agencies?

23 A. I cannot say with certainty.
24 I would be happy to go back to see -- to get the
25 full picture of my regional counterparts in terms

1 of those discussions. I can say that I am aware of
2 some discussions that have happened between ISC and
3 provinces about the services and the cost of those
4 services based on needs with respect to First
5 Nations that are not served by a delegated agency.

6 Q. And then one last question
7 about this engagement from 2016. You may not be --
8 well, actually, no, I will just confirm.

9 Based on your not having knowledge
10 of those engagement at the time, you can't confirm
11 either way whether non-agency First Nations were
12 included in the engagement process at that time?

13 A. No, I am not able to confirm
14 that information at this point in time.

15 Q. So in paragraph 15, so just
16 moving a couple down, you note the budget 2016 and
17 budget 2018 supports for the FNCFS program. Are
18 you aware that the allocations that were made in
19 budget 2016 were developed prior to the Tribunal's
20 ruling in January 2016?

21 A. I am not aware and therefore
22 unable to confirm the question.

23 Q. No, no, I appreciate it. I'm
24 just looking at my next question here.

25 Now, in terms of Ontario, are you

1 aware about how the prevention funding from budget
2 2016 was dealt with for Ontario, that it was
3 provided to nations and not to agencies?

4 A. With respect to how that was
5 developed? Is that what the question is?

6 Q. It's more of an allocation
7 question. So my -- again, if you're not aware,
8 just stop me. My understanding was that the
9 additional prevention monies provided in budget
10 2016, a decision was made for Ontario to provide
11 those, as opposed to providing them to agencies to
12 provide them to nations. I am just wondering if
13 you're aware of that.

14 A. I cannot confirm that. What
15 I can confirm are the funding amounts that are
16 found in -- I believe it's tab 3 of my affidavit,
17 the document entitled -- it's NN-3, CFS provinces
18 and territory expenditures, and as well as the
19 allocations that are provided for how the program
20 is delivered across the country. So there are no
21 figures in that one, but in the expenditures by
22 region and type, that is what I can attest to. So
23 I --

24 Q. That's fine. That's okay. I
25 will move on.

1 I would just like to move on to
2 the CWJI, and you're (inaudible) --

3 MS. DUBOIS: Member Marchildon is
4 having problems with her screen view. Member
5 Marchildon, are you able to speak? Member
6 Marchildon, are you there? Just a moment. I'm
7 just going to stop the share for a moment. She has
8 told me that she is able to hear everyone. She
9 just can't see. Just a moment. Okay. It looks
10 like she's disconnected, actually.

11 I'm just speaking with Member
12 Marchildon on the telephone, and I'm just walking
13 her through the sign-in process. Ms. Nepton, I
14 will ask her about a health break as well.

15 THE WITNESS: Yes, Madam Dubois, I
16 was wondering if it would be possible to have a
17 health break after I respond to Mr. Taylor's next
18 question or maybe given the technical issues that
19 we're currently experiencing with one of
20 participants. I leave it up to others' opinions or
21 views.

22 MS. DUBOIS: Go ahead, Member
23 Marchildon. We can see you now and Ms. Nepton has
24 asked for a break.

25 THE CHAIR: Sorry about that.

1 There was a notification that my internet was
2 unstable. However, I'm plugged into the main so I
3 don't know what's going on.

4 Yes, let's take a break. Let's
5 take 20 minutes and come back after that. Thank
6 you.

7 MR. TAYLOR: Thank you very much.

8 THE CHAIR: Ms. Dubois, can you
9 bring Member Lustig and I in the breakout room,
10 please?

11 MS. DUBOIS: I will put everyone
12 in their breakout room. And members of the
13 gallery, I will put you back into the waiting room.
14 So, 20 minutes, that would be approximately 11:15?

15 THE CHAIR: Yes. Correct.

16 MS. DUBOIS: Great.

17 THE CHAIR: Thank you.

18 --- (Recess taken)

19 MS. DUBOIS: Please go ahead, Mr.
20 Taylor. Let me know if you would like me to screen
21 share again and to give --

22 MR. TAYLOR: If you wouldn't mind,
23 Ms. Dubois.

24 MS. DUBOIS: Excellent. I will.

25 THE CHAIR: Mr. Taylor?

1 MR. TAYLOR: Yes.

2 THE CHAIR: Could you repeat your
3 last question? I didn't hear it.

4 MR. TAYLOR: I will do my best.
5 Madam Chair, I believe my questions were about the
6 Ontario prevention amounts in budget 2016. Was
7 that where we were when you lost your connection?

8 THE CHAIR: Yes.

9 BY MR. TAYLOR:

10 Q. Okay. Ms. Nepton, just to, I
11 guess, try and summarize where we left off, I had
12 asked you about your awareness of how the budget
13 2016 additional prevention money was dealt with for
14 Ontario in terms of being provided to agencies or
15 just to nations, and I believe your response was
16 generally that you weren't aware of it, but then
17 you directed me to Exhibit 3 of your affidavit,
18 which is this one-page chart of the allocations
19 from fiscal '15/'16 through to '18/'19. Is that
20 right?

21 A. Yes, that's correct, Mr.
22 Taylor.

23 MR. TAYLOR: Okay. I didn't have
24 anything to add over that. To be transparent, I
25 was moving on because I think budget 2016 was in

1 the rear-view mirror. My characterization, not the
2 witness'. So, Madam Chair, if you're content with
3 that summary, I would move on to my next topic.

4 THE CHAIR: Yes, please move on.

5 MR. TAYLOR: Okay. Thanks very
6 much. I was going to ask about the CWJI next.
7 Just for road-mapping purposes, to just try and
8 keep everybody informed, I think I will likely be
9 until the lunch break, maybe shortly after that,
10 but I don't expect to go too, too much longer.
11 Just in terms of, I guess, landmarking and time
12 management, Madam Chair, what time would you like
13 to take a lunch break at?

14 THE CHAIR: Well, I was thinking
15 we could go on for another hour, but at the most,
16 if that helps people. And then we'll break for
17 lunch. Is it okay, Ms. Nepton? Do you feel okay
18 for an hour?

19 THE WITNESS: Yes, that's fine.

20 THE CHAIR: Okay.

21 THE WITNESS: Thank you.

22 THE CHAIR: If there's any issue,
23 just let us know. That's perfect.

24 THE WITNESS: Okay. Thank you.

25 MR. TAYLOR: I should have

1 included Ms. Nepton in my housekeeping. If you
2 need a break at any time, don't be shy. I won't
3 say no. And even if I did, Madam Chair --

4 THE WITNESS: Thank you.

5 MR. TAYLOR: -- makes the call.

6 BY MR. TAYLOR:

7 Q. Okay. Moving on to paragraph
8 17 -- I'm sorry. Paragraph 18 and following.
9 That's where you're speaking of the Community Well-
10 being and Jurisdiction Initiative. Again, I will
11 just refer to that as CWJI.

12 Now, the CWJI, as I understand it,
13 that was created following budget 2018. Am I
14 right?

15 A. Yes.

16 Q. My understanding -- and just
17 let me know if I'm right, but my understanding is
18 the CWJI itself, it wasn't created in response to a
19 specific Tribunal order; is that right?

20 A. That is my understanding as
21 well.

22 Q. Am I right that it is aimed
23 at providing prevention funding to all First
24 Nations communities whether or not they have a
25 First Nations agency or not? Sorry, the goal isn't

1 to provide to the 600-and-some First Nations
2 communities, each and every one of them, but the
3 CWJI funding doesn't make a distinction in terms of
4 eligibility of the nation having an agency or not.
5 The goal is to provide it to nations and not
6 agencies; is that right?

7 A. It's my understanding that
8 based upon the engagement sessions with a
9 ministerial special representative that had been
10 appointed is that the CWJI stream was developed in
11 response to a First Nation expressing the need for
12 money to come directly to the community for
13 prevention, pilot projects and jurisdiction
14 initiative.

15 Q. And that need would be
16 regardless of their service provider, regardless of
17 whether their service provider was a delegated
18 First Nations agency or a provincial or territorial
19 government?

20 A. It's my understanding that
21 the funding is allocated based upon tripartite
22 tables that are established regionally and that the
23 allocation comes from those tripartite tables about
24 how to distribute it. So it may include First
25 Nations that are not serviced by an FNCFS

1 initiative -- sorry, an FNCFS agency, as well as a
2 non -- a CFS-serviced First Nation.

3 Q. Thank you. Now you're aware
4 that the Caring Society and others at the CCCW
5 raised concerns about the size of the CWJI
6 allocation in roughly June 2018?

7 A. Not particular -- in terms of
8 the materials that you provided, I wasn't able to
9 go over them in depth, but I did notice that their
10 issue was raised. I can't remember which CCW
11 minutes I looked at, but I can affirm that I did
12 note it in the most recent documents that you had
13 sent.

14 Q. Maybe we can take a look at
15 those. Now, I have got -- for me, I have done them
16 like the old days and I have print it off and put
17 it in a book.

18 A. Yes.

19 MR. TAYLOR: Madam Chair and
20 Member Lustig, I don't know if you have access
21 easily to the supplementary documents I sent late
22 yesterday evening. The way I sent it was the PDF
23 with four bookmarks in it.

24 THE CHAIR: I believe that Ms.
25 Dubois has them on the record and you can access

1 them. Is that correct, Ms. Dubois?

2 MS. DUBOIS: Mr. Taylor, they're
3 the last two tabs of the document.

4 MR. TAYLOR: Excellent. Thank
5 you. Thank you. Let's see if I can pull this off.
6 That's the supplementary record. This is the
7 exhibit book, I believe. Okay. Perfect. Thank
8 you.

9 BY MR. TAYLOR:

10 Q. So we will take a quick look
11 at tab 1, Ms. Nepton. This is an email. You it
12 mentioned it earlier when you were kind of
13 describing what you had before you. This is from
14 Ms. Isaac. She would have been Assistant Deputy
15 Minister at that time responsible for your group?

16 A. Yes, sorry, I was looking at
17 the wrong document. I referred to -- yes, I have
18 it in front of me now.

19 Q. Okay. It's also up on the
20 screen if that's helpful.

21 A. Thank you.

22 Q. The subject is "Ramp-up
23 approach in Community Well-being and Jurisdiction
24 Initiative". Turning over to the next page. The
25 second-last paragraph is for the Community Well-

1 being and Jurisdiction Initiatives documents in
2 response to feedback from the Caring Society and
3 COO, being Chiefs of Ontario. We have developed a
4 new option, D-1. This option builds on the
5 previous option D, titled D-2, and includes
6 "Ontario would be happy to further discuss this
7 document."

8 And then moving a few pages down
9 in the document -- if you have got it in print, Ms.
10 Nepton, it has a small number 2 at the bottom of
11 the page.

12 A. Okay.

13 Q. And Table 1 is option D-1 and
14 Table 2 is D-2. Just give me a moment to put it on
15 the screen for the benefit of others.

16 A. Okay.

17 Q. If you will follow along with
18 me, Table 2, the Ontario line says "See Annex A for
19 additional information regarding Ontario's
20 allocations", which Annex A is included, but I
21 don't need to go there for now. And then D-1 has
22 an amount of 17.6 million for Ontario.

23 A. Yes.

24 Q. Were you aware, then, of this
25 issue prior to preparing for today that the total

1 envelope here, which is listed as 80 million in
2 both tables, D-1 and D-2, that there were some
3 issue or concern at the CCCW about Ontario having
4 been added an amount of 17.6 million without
5 adjusting that 80 million envelope upwards? Were
6 you aware of that concern?

7 A. No. The concern that I
8 understood from CCCW since joining the sector are
9 concerns about the fixed pot in general and also
10 potentially insufficient funding. But nothing in
11 regards to the specific 80 million and the
12 allocation except what I have read in the minutes
13 that you provided.

14 Q. And then the next document is
15 just over the tab. It's tab 2. This is a letter
16 from myself to Mr. Frater. Part of our lengthy
17 correspondence over the years. The first paragraph
18 is describing the concern and then the -- sorry,
19 the second paragraph, I should say, and then there
20 is a table that is characterizing the shortfall.
21 The Caring Society categorizes the shortfall due to
22 D-1, i.e. the reductions in allocations for other
23 provinces occasioned by Ontario being included.

24 So you wouldn't have been aware of
25 this issue either, the concerns about the 17.6

1 million and the lesser amounts of funding for the
2 other jurisdictions as a result?

3 A. No. And I can say when I
4 read briefly last night the documents as well as
5 the CCCW minutes, some of the items, especially
6 this issue about the options and the funding, I
7 didn't understand what the issue was. And so
8 without the benefit of having attended the meetings
9 or participated in the discussions, my context
10 wasn't sufficient for me to really seize the issue
11 for what it is.

12 Q. But you are aware, though,
13 that there have been concerned about the fixed or
14 the set pot, the total amount of funding available
15 for CWJI, at least in -- in the tables I have seen
16 it was 80 million plus the amounts that were
17 settled on in that Minister's special
18 representative process, and that there was no
19 mechanism within the CWJI to increase the pot in
20 the event that other needs arose or the needs were
21 greater than the funding provided for.

22 A. Exactly. As I have stated in
23 CCCW is that it is a fixed pot and that is the
24 envelope within which ISC works.

25 Q. So it's not a needs-based

1 amount, then?

2 A. No, it's a fixed pot.

3 Q. Now, in terms of the
4 initiatives that CWJI covers -- and I guess I
5 should just -- I will go back to your affidavit. I
6 don't have the specific wording point, but just to
7 make life a bit easier when I do.

8 Now, in terms of the CWJI, my
9 understanding is that there are prevention
10 activities that can be funded for nations under the
11 CWJI; is that right?

12 A. Yes.

13 Q. But in terms of the other
14 child and family services activities like intake
15 and investigations or legal fees associated with
16 child welfare proceedings or repair for buildings
17 that have child and family services function, those
18 aren't eligible amounts under the CWJI, is my
19 understanding.

20 A. Yes, they would be accessible
21 for agencies that have access to the actuals
22 (inaudible) and actuals (inaudible).

23 Q. But not under the CWJI?

24 A. No.

25 Q. And so ISC's position would

1 be, then, that those kinds of matters, intake,
2 investigation, legal fees for child welfare
3 proceedings or building repairs, that those would
4 be matters for the provinces and territories to
5 provide under the applicable agreement?

6 A. Yes. Could I ask you to
7 repeat that?

8 Q. Sure. So the CWJI funds
9 prevention, we're agreed on that, I think. And
10 then the CWJI does not fund intake and
11 investigation legal fees for child welfare
12 proceedings and building repairs for facilities
13 involved in child welfare activities or child and
14 family services activities. So for a nation that
15 doesn't have an agency, those kinds of functions
16 would have to be funded by the province and
17 territory under their agreement with (inaudible)?

18 A. I'm sorry, for a community
19 that isn't serviced by an agency?

20 Q. That's what I'm asking about.

21 A. I would agree with that
22 statement.

23 Q. Now, at paragraph 21 of your
24 affidavit, which I will put up on the screen here,
25 we note the estimated 138 First Nations -- you note

1 124 since 2018 received direct funding from an
2 FNCFS program through CWJI. Did all of those
3 nations receive funding in all years? Or is that a
4 total number for fiscals? I guess it would be,
5 '18/'19, '19/'20 and '20/'21.

6 A. I'm sorry, can you rephrase
7 the question to make sure I understood it
8 correctly?

9 Q. Sure. I will take a step
10 back. That may assist.

11 So CWJI came in in 2018/'19.

12 A. Mm-hmm.

13 Q. Then we then had '19/'20 and
14 '20/'21.

15 A. Mm-hmm.

16 Q. I should say 2020/2021 for
17 the purposes of the record. And so what I take
18 your evidence in paragraph 21 to be is that 124
19 nations have received CWJI funding since it was
20 introduced. So my question would be if those 124
21 nations had been funded in each of the three
22 fiscals since it was introduced or is that a total
23 number of the nations funded over that time?

24 A. (Inaudible) broken down
25 Exhibit NN-3, so --

1 Q. If you give me a moment, Ms.
2 Nepton, I will put up NN-3 on the screen for the
3 benefit of others or anyone who doesn't have the
4 paper.

5 A. I'm looking at my tab 3, NN-
6 3. I would have to -- in order to provide the most
7 accurate response and without speculation, I would
8 need to go back and confirm to accurately respond
9 to your question.

10 MR. TAYLOR: Mr. Frater, I'm
11 wondering if we could have a -- if I can make a
12 request, then, that we get the number of nations
13 funded by fiscal year for '18/'19, '19/'20 and
14 '20/'21. And that would just be the non-agencies.
15 So of that 124 nations, how many were funded in
16 each year?

17 MR. FRATER: We will endeavour to
18 get that information for you.

19 MR. TAYLOR: Thank you.

20 BY MR. TAYLOR:

21 Q. So in terms of the purposes,
22 Ms. Nepton, to which CWJI funding can be put, one
23 is prevention?

24 A. Mm-hmm.

25 Q. Another is what's titled

1 jurisdiction initiatives? I understand these are
2 efforts by nations to take a greater control or
3 governance over child and family services?

4 A. Yes, I agree.

5 Q. And then another, I
6 understand, is expenses related to the COVID-19
7 pandemic?

8 A. With respect to that aspect
9 of the question, it's not -- there's flexibility
10 within the terms and conditions. So within this
11 fiscal year, given that some projects, some pilot
12 projects, ongoing projects, could not move on
13 because of confinement, because of its impacts, we
14 did indicate -- "we" being the department --
15 provided First Nations that were accessing or that
16 had received CWJI funding with flexibility to
17 redistribute that money in order to meet whatever
18 prevention needs that may be required. If PPP --
19 oh, that is one P too many -- PPE was required,
20 that would be one thing. And I would say also
21 flexibility around other types of tools necessary
22 to help in terms of prevention within communities
23 directly.

24 Q. And then the other purpose or
25 use of CWJI funding would be those projects that

1 were agreed to or flowed out of the ministerial
2 special -- Minister's special representative
3 process prior to 2018?

4 A. If I have understood your
5 question correctly, I would say that the projects
6 that were underway or that were going to be
7 underway come out of the First Nations' discretion
8 in terms of what prevention activities they need or
9 which activities they wish to undertake.

10 Q. Right. So I think I
11 understand that with respect to prevention in terms
12 of their scope selection, but the other kind of
13 initiative that happens under the CWJI, I was just
14 trying to confirm that there would be those -- the
15 number of projects that were agreed to -- my
16 understanding is the first envelope was about 105
17 million, 80 million of which was distributed
18 according to the option D-2 that we looked at, and
19 then the other 20-something million, 25 million,
20 had been projects arising from this Minister's
21 special representative tour -- "tour" is the wrong
22 word -- engagement process. So just to confirm
23 that that is the other stream within the CWJI.

24 A. All right. Again, what I am
25 hearing, what I understand is that the second

1 stream that you're referring to is really the
2 jurisdiction initiatives.

3 Q. Yes.

4 A. Is that what you're getting
5 to? I can't confirm how the ministerial
6 representative, how that worked out or how that was
7 developed, but I can say, yes, there are two
8 streams, one of which is about prevention
9 activities, and the other being about jurisdiction
10 and exercising jurisdiction in the area of First
11 Nation or Indigenous child and family services.

12 Q. Now, in terms of those two
13 streams, when we're talking about the 124 nations
14 that have received funding --

15 A. Yep.

16 Q. -- do you know if all of
17 those nations received prevention funding?

18 A. No, I do not. Well, the 124
19 First Nations, I can confirm that number. I would
20 rather not speculate and come back and provide you
21 with an accurate response.

22 Q. It's possible, then, that of
23 the 124 First Nations, some may have only received
24 jurisdiction funding as opposed to prevention
25 funding?

1 A. I would say that that could
2 possibly be.

3 Q. My understanding is that at
4 least until June or July of last year, there wasn't
5 really, like, a national register of data on the
6 projects that were being funded in terms of being
7 able to know, you know, of the 80 million going out
8 to the provinces and territories, which were
9 prevention and which were jurisdiction. Is that
10 right?

11 A. Yes. I have to go back to
12 each regional counterpart, my counterpart, and ask
13 what the projects are that were agreed to from the
14 tripartite table, let's say, hypothetically, or
15 through whatever other mechanism possibly that the
16 decisions are made, and I have to ask the regions
17 to provide me with that information.

18 Q. Is that still the case?

19 A. Yes, it's still the case.

20 Q. Is there a category under the
21 CWJI called "Pilot projects with assorted goals"?

22 A. Pilot project with -- I'm
23 sorry, I didn't hear.

24 Q. "Pilot projects with assorted
25 goals". Is there a basket -- an envelope --

1 "basket" is my term.

2 A. With assorted goals? It's
3 the first time I have heard it described or put to
4 me that way, so I would rather -- either if you
5 could define "assorted goals" for me --

6 Q. That's fine, Ms. Nepton. I
7 will move on.

8 A. All right.

9 Q. The term might be just "pilot
10 project". Is it possible there's prevention
11 jurisdiction initiatives and then pilot projects?
12 Is that a --

13 A. I could say at any given
14 time, you know, there could be a jurisdictional
15 initiative, there could be a prevention initiative.
16 There could be -- I'm sorry, what was the third one
17 you said?

18 Q. A pilot project, just the
19 term.

20 A. A pilot project to define or
21 work within those two streams, right?

22 Q. Okay.

23 A. Yeah.

24 Q. Okay. Moving on to paragraph
25 23, an example that you provide about Alberta, or

1 at least -- sorry, there are two examples in the
2 paragraph. One is B.C. and one is Alberta.

3 For Alberta, it's specific. This
4 is unaffiliated and affiliated First Nations. So
5 the way I read what you're referring to is that an
6 affiliated First Nation would be one that has an
7 agency and then an unaffiliated First Nation would
8 be one that does not. That's right?

9 A. Yeah.

10 Q. And I think that's a term or
11 a phrasing that arises from the IFSD report?

12 A. Yes, I would agree.

13 Q. So they are provided a base
14 amount of \$150,000. That would be a decision that
15 was made at this tripartite table for Alberta; is
16 that right?

17 A. Exactly. That is my
18 understanding.

19 Q. And then over and above the
20 \$150,000, there's amounts provided that are based
21 on the on-reserve child population age. That's
22 what the next sentence says.

23 A. Yes, that's what I have been
24 advised.

25 Q. So do you agree that this

1 isn't a needs-based allocation?

2 A. I cannot confirm that
3 affirmation or that question because it would
4 require going into and seeing what the discussions
5 were at the tripartite tables about those
6 allocations.

7 Q. At least you would agree with
8 me that the allocation is driven by, number one,
9 being the nation in order to be eligible for the
10 base 150?

11 A. Yes.

12 Q. And number two, by child
13 population?

14 A. Yes. At minimum, yes.

15 Q. So that wouldn't be
16 accounting for historical, cultural or geographical
17 needs and circumstances?

18 A. Again, because I haven't been
19 privy to the discussions that happened at the
20 tripartite tables about the distribution and I
21 don't want to speculate on that. It would be
22 unfair to provide you with this information on that
23 one.

24 Q. Would it be fair to say that
25 in terms of the CWJI amounts that are allocated, it

1 would require some further initiative at the
2 regional level between the province, the federal
3 government and the nations involved for those
4 historical, cultural and geographical needs and
5 circumstances to be taken into the account?

6 A. Again, I think it depends on
7 what pilot projects or what initiatives have been
8 discussed and approved. And so it would be unfair
9 to speculate, but I would say, you know, I would be
10 happy to inform -- to get that information from my
11 regional colleagues to confirm.

12 Q. That is fine. I don't want
13 to call for speculation here.

14 Just going back to paragraph 22,
15 here you note that the pilot projects are projects
16 that were brought forward during the ministerial
17 special representative's engagement process in 2016
18 and 2017.

19 A. Mm-hmm.

20 Q. Do you know if at the time it
21 was made clear to nations participating in that
22 process that there was a funding opportunity
23 associated with it?

24 A. I cannot confirm that but
25 would be happy to go back and confirm, going

1 through our documents to see what that -- what the
2 expectation or what was communicated to First
3 Nations and agencies and other stakeholders about
4 that.

5 Q. Just moving down to paragraph
6 25. Here you have some more specific examples.

7 A. Exactly.

8 Q. Paragraph 25(a) and 25(b),
9 you're providing some examples of projects funded
10 in Manitoba?

11 A. Yes.

12 Q. The Manitoba First Nations
13 Family Advocate Office --

14 A. Mm-hmm.

15 Q. -- and then the Assembly of
16 Manitoba Chiefs' Grandmothers Council. Are you
17 aware that all the First Nations in Manitoba are
18 served by FNCFS agencies?

19 A. I can't confirm all of them,
20 but I would be happy to confirm it when I get back
21 to the office.

22 Q. I think we can confirm now if
23 we go to paragraph 37 of your affidavit.

24 A. Yeah.

25 Q. I will just click forward to

1 it here on the screen.

2 A. No, you're correct. Yeah.
3 They're all -- "As a result, communities have
4 access to the CHRT actuals claims process," yeah.

5 Q. And then "in addition to
6 CWJI".

7 A. Yes.

8 Q. So with respect to Manitoba,
9 at least, those examples wouldn't be (inaudible)
10 non-agency communities because they're all agency
11 communities in Manitoba?

12 A. Yes.

13 Q. My understanding -- sorry.
14 Do you know if the child advocate office -- or the
15 Manitoba First Nations Family Advocate Office, if
16 that's an off-reserve or on-reserve agency or
17 entity?

18 A. I do not know if it's off-
19 reserve or on-reserve. I can confirm that for you
20 later.

21 Q. Yes. That's fine. And then
22 just on the same theme of Manitoba, paragraph 26,
23 you mention Misipawistik and Opaskwayak --

24 A. Yes.

25 Q. -- Cree Nation -- sorry,

1 yeah, both of them Cree Nation. My understanding
2 is that those are both located in Manitoba as well;
3 is that correct?

4 A. Yes.

5 Q. My understanding is that some
6 of the projects or some of the initiatives funded
7 under CWJI, those may take place off-reserve; is
8 that right?

9 A. Where the entities are
10 located themselves?

11 Q. Is there a restriction to on-
12 reserve funding with CWJI or could it be spent both
13 on and off-reserve?

14 A. If you could give me a second
15 just to look through -- because the CWJI prevention
16 and jurisdictional initiatives would be for the
17 entity and generally exercise -- at least based on
18 recent experiences, would be an on-reserve
19 community. However -- or a non-reserve entity.

20 I can confirm that they are
21 designated for on-reserve child and family -- child
22 and family -- I don't want to say recipients --
23 "les gens ciblés sont" --

24 Q. "Targeted" is the wrong word.
25 The synonym I was thinking was "visé" but that

1 doesn't help because it's French as well.

2 A. No --

3 Q. The bodies --

4 A. No, go ahead. I'm sorry.

5 Q. No, just that the audience is
6 the on-reserve population. I was just wondering if
7 it was eligible to provide funding off-reserve as
8 well, but we can move on. That is not a big deal.

9 My next questions are about some
10 of the particular provinces that you note in
11 paragraph 31 and following.

12 A. Yes.

13 Q. So in paragraph 38 -- I will
14 give my mouse a chance to catch up here. So you
15 note here that there is a prevention protocol with
16 the Saskatchewan Ministry of Social Services that
17 governs some of these provision or prevention
18 services to First Nations communities. I was
19 wondering, Mr. Frater, if we would be able to get a
20 copy of that protocol?

21 MR. FRATER: The one mentioned in
22 38?

23 MR. TAYLOR: Yes.

24 MR. FRATER: Yes, we will try and
25 get that for you.

1 MR. TAYLOR: Thank you.

2 BY MR. TAYLOR:

3 Q. Now, in paragraph 44 of your
4 affidavit, Ms. Nepton, you mentioned Yukon. Here,
5 you note that they introduced -- Canada introduced
6 the five-year EPFA funding stream. In reading
7 EPFA, am I to take that as the Enhanced Prevention
8 Focused Approach?

9 A. Yes.

10 Q. Is this the same EPFA
11 methodology that was introduced in the mid-2000s
12 after the Wen:de reports?

13 A. I'm sorry, which reports?

14 Q. The Wen:de reports.

15 A. What I have been advised is
16 that since the prevention, the flowing of the
17 enhanced prevention funding approach and -- I think
18 if I understand what you're getting at is that
19 directive 20-1, whether or not it's still used, and
20 the answer would be no. It is no longer being
21 applied with respect to the allocation of CWJI.

22 Q. I think we may be blending a
23 number of concepts right now --

24 A. Okay. Sorry.

25 Q. No, no, that's okay. So my

1 question was about paragraph 44.

2 A. Yes.

3 Q. So there is a five-year EPFA
4 funding stream introduced --

5 A. Yes.

6 Q. -- in 44, or at least the
7 acronym is the same as the approach that was in
8 place in a handful of provinces -- or I think a
9 bunch -- I think it was about half the provinces,
10 Alberta, Saskatchewan and a few others.

11 So what I was wondering is, the
12 funding methodology that was being referred to here
13 is the five-year EPFA funding stream. Is that the
14 same methodology that was used in the past for
15 Alberta, Saskatchewan and others to reach this
16 amount for Yukon?

17 A. I cannot confirm the response
18 to your question. I would rather take it back and
19 make sure that I provide you with the most accurate
20 response.

21 Q. But you are aware that the
22 EPFA was found discriminatory in January 2016?

23 A. Yes.

24 Q. Just in fairness to you, you
25 mentioned directive 20-1 and it no longer being

1 used. Was that specific to Yukon? Was that with
2 reference to CWJI in terms of prevention amounts
3 being calculated? Just help me understand where
4 you were going with 20-1.

5 A. I was just -- I thought you
6 were -- the question was whether that directive was
7 still in play or in use, and it is not.

8 Q. Okay. Now at paragraph 45,
9 which is just over the page, you mentioned a
10 tripartite table -- sorry, a trilateral table at
11 which child and family services matters are
12 discussed in Yukon.

13 Now, am I right in reading this
14 paragraph that the trilateral table, that's really
15 dealing with service delivery as opposed to the
16 underlying funding amounts? Is that right?

17 A. I would agree with that.

18 Q. And at paragraph 46, you're
19 noting that there's 11 million in unexpended funds
20 and that work is ongoing at the trilateral table
21 pending some decision-making about how those
22 services can be provided.

23 So my understanding, based on that
24 paragraph -- let me know if this is a fair
25 characterization -- is that the funding is not

1 expended because of a process issue but not because
2 it's greater than the needs in communities?

3 A. Can you repeat the last part?
4 If it's a process issue (indiscernible) that is
5 indicated is not based on --

6 Q. It's not a surplus resulting
7 from there being less need in communities?

8 A. No, I would agree with that.

9 Q. So you don't -- do you
10 disagree with Grand Chief Johnston when he says
11 that the needs in Yukon outstrip the funding that
12 is available in his affidavit?

13 A. I would say that it would be
14 inappropriate to speculate without having had the
15 benefit of being in discussions and hearing and
16 engaging in that discussion with the Yukon Council
17 of First Nations and the Grand Chief.

18 Q. Are you aware that the
19 Council of Yukon First Nations desires increased
20 involvement in the territories' activities on
21 intake and investigation, placements and case
22 planning?

23 A. I have not -- I cannot
24 recall, and so I would like to go back and check
25 with my emails from regions to see if they have

1 flagged it for me.

2 Q. It's not really much benefit
3 for me to simply state that the matter is addressed
4 in -- maybe I should -- okay. Here is Chief
5 Johnston's affidavit. Just give me a moment.

6 THE CHAIR: Mr. Taylor?

7 MR. TAYLOR: Yes.

8 THE CHAIR: While you're looking,
9 I would like to interject and just ask Ms. Nepton.
10 In your affidavit, you speak about
11 the EPFA. So in your view, in your own words, what
12 did you mean when you wrote your affidavit? What
13 does EPFA stand for for you?

14 THE WITNESS: It's the enhanced
15 prevention funding that was provided or fed as a
16 result of budget -- hold on -- either -- yeah, I
17 believe it was in response to budget or with
18 respect to budget 2016. If you don't mind, I will
19 double-check.

20 THE CHAIR: Sure.

21 THE WITNESS: Yeah. Yeah, the
22 agency funding that went directly to -- or the
23 prevention funding that went directly to agencies
24 or -- yes, for services on-reserve provided to
25 child and family services delivered on-reserve.

1 THE CHAIR: Okay. Thank you. Mr.
2 Taylor?

3 MR. TAYLOR: Thank you, Madam
4 Chair, for the moment. I have been able to locate
5 the paragraph in Grand Chief Johnston's affidavit
6 which I will attempt to arrive at shortly on the
7 screen share.

8 BY MR. TAYLOR:

9 Q. Paragraph 20, Ms. Nepton. I
10 think you have his affidavit in your binder under
11 tab 2.

12 A. Yes.

13 Q. In this paragraph, Grand
14 Chief Johnston is saying that:

15 "The CYFN and Yukon First
16 Nations wish to establish a
17 process for collaborative
18 planning with the Yukon
19 government relating to the
20 operation, administration and
21 management of child welfare,
22 including intake and
23 investigation, placements and
24 case planning, in the Yukon
25 with respect to First Nation

1 children."

2 That's the concept that I was
3 referring to.

4 A. Okay.

5 Q. So the prevention funding
6 that is available either through this EPFA amount
7 from 2016 or through CWJI, that wouldn't address
8 these other initiatives like intake and
9 investigation, placement and case planning?

10 A. To the best of my knowledge,
11 no, because they would be delivered at the Yukon
12 government level.

13 Q. And in any event, they fall
14 outside the ambit of prevention because they're
15 protection (inaudible) --

16 A. Yes.

17 Q. Now I have got some questions
18 about some of your comments in the affidavit about
19 policy -- I will call it policy in the legislative
20 context.

21 Just in terms of the -- I will
22 qualify it potentially as background reading. Have
23 you read all of the provincial and territorial
24 legislation on child and family services?

25 A. I have read most of them, I

1 can say, and I read them as issues arising in
2 region in order to address, you know, any issues
3 that come up, as well as in discussions. For
4 example, at CCCW when -- for example, Ontario, when
5 issues arise as to legislative obligation.

6 Q. So when you say in paragraph
7 51 here that each jurisdiction places a different
8 emphasis on prevention and early intervention, is
9 the basis for that statement your review of the
10 legislation?

11 A. It is based on, if not my
12 review of the exact legislation, based on
13 discussions with regional colleagues in terms of if
14 legislation does not provide for prevention, then
15 we provide prevention funding to the First Nation
16 because the province or the territory or the
17 province doesn't have it in its legislation, so
18 there's no authority to exercise those activities.

19 Q. Now in paragraph -- moving
20 down a couple to paragraph 53, (indiscernible) the
21 page.

22 A. Yes.

23 Q. You note that there have been
24 65 Indigenous groups who have given notice of
25 intent to exercise jurisdiction or requests -- and

1 requests to enter into a coordination agreement
2 under 20(2) of the Act. And of course, the Act,
3 that's the Act respecting First Nations, Inuit and
4 Métis children, youth and families?

5 A. Yes.

6 Q. I may refer to that for short
7 as Bill C-92. I know that that's -- it's now a
8 statute, so it's not a bill anymore, but if it's
9 all right with you, I may use that shorthand from
10 time to time.

11 A. (Inaudible).

12 Q. Sorry?

13 A. No, that's fine. I said I
14 will refer to it the same way.

15 Q. Okay. I'm clicking over to
16 the tab here of the documents that I had sent.
17 This is a web page under tab 3. If you, like me,
18 are doing it the old way with paper, it's in
19 landscape, and that's just in order to get the last
20 two columns on the second table.

21 But have you seen this website
22 before? It's titled "Notice and requests related
23 to an Act respecting First Nations, Inuit and Métis
24 children, youth and families".

25 A. It has been shared with me by

1 my colleague -- by my colleague's branch and my
2 colleague with respect to her function in the
3 context of Bill C-92 or the Act.

4 Q. On the last page, it notes
5 date modified, December 23, 2020. My
6 understanding, this is actually quite a new
7 website. It has just been recently posted. Is
8 that right?

9 A. Based on that date, yes, and
10 also confirmed by discussions about, you know --
11 for example, at management meetings, the website
12 has been (indiscernible).

13 Q. So that was something, to
14 your knowledge, that was a recent initiative that
15 was being launched?

16 A. Initiative or a recent
17 publication, yes, made accessible on the internet,
18 on the departmental website.

19 Q. Now, looking at the table,
20 there's a number of First Nations that are listed.
21 Do you know if any of these nations -- I haven't
22 counted, so we will use the number in your
23 affidavit that there's 65. Do you know if any of
24 these are some of the non-agency nations or do they
25 all have their own agencies?

1 A. I can confirm. I do not know
2 the distinction between some of them, as to whether
3 or not they're serviced by an agency or not, but
4 would be happy to go back and confirm that for you.

5 MR. TAYLOR: Mr. Frater, I wonder
6 if we might be able to have that, just a
7 confirmation -- or I suppose a confirmation of the
8 number within these two tables that would be non-
9 agency -- if any that would be non-agency nations.

10 MR. FRATER: Yes, we will endeavor
11 (inaudible).

12 MR. TAYLOR: Thank you.

13 BY MR. TAYLOR:

14 Q. Now, paragraph 54 of your
15 affidavit. I will just click back to it. That's
16 just a little further down the page.

17 Now, you wrote that -- this is the
18 second sentence:

19 "As these reform efforts
20 continue and more Indigenous
21 groups exercise their
22 jurisdiction over the
23 delivery of child and family
24 services in their respective
25 communities, the FNCFS

1 program will continue to
2 respect provincial and
3 territorial legislative
4 frameworks and fund
5 recipients that provide
6 services in accordance with
7 them."

8 So I guess what I would like to
9 ask is -- my understanding, just if you can help me
10 with this, is that the only delegation model funded
11 under the program is for FNCFS agencies with
12 provincial delegation, not First Nations
13 delegation; is that right?

14 A. I can confirm from my program
15 perspective with respect to funding for --

16 Q. Yes.

17 A. -- First Nations child and
18 family services, yes, my branch fund solely -- not
19 solely, but it's responsible for the funding of
20 those agencies.

21 Q. So if a nation either that
22 has its own agency or it does not have its own
23 agency but creates one pursuant to a First Nations
24 law that is given the force of federal law under
25 Bill C-92, so whether it's an existing or a new

1 agency, that agency's activities, those wouldn't be
2 eligible for funding under your program; is that
3 right?

4 A. Again, I work with agency --
5 with respect to funding from my branch and my
6 responsibility, it must be a First Nation delegated
7 agency.

8 Q. Right. I guess the -- I want
9 to try and make sure I have got this clear. So if
10 a First Nations agency came to you and wanted to
11 set up a contribution agreement to provide the
12 services and they said I'm operating -- taking an
13 example from the first line of the table we were
14 just looking at is Fort William First Nation.

15 A. Yeah.

16 Q. Their notice went out in
17 January of 2020, so let's say they have got a First
18 Nations law that is in force, and they said, "I'm
19 providing these services but pursuant to delegation
20 under the Fort William First Nations child and
21 family services law and not the Ontario
22 legislation." You would not be able to fund that
23 agency; is that right?

24 A. I would like to go back, and
25 instead of provide you with misinformation, to

1 confirm what the source of funding would be for an
2 agency that exercises or will ultimately exercise
3 their jurisdiction under the Act.

4 Q. So you, as the Director
5 General of the program, don't know how these
6 (inaudible) agencies or current agencies with new
7 delegation, how they're going to be funded?

8 A. I will say that with respect
9 to my area, I will be funding or ISC will be
10 funding -- in my branch, we are responsible for the
11 program with respect to First Nation child and
12 family services.

13 With respect to my sector
14 colleague, I would like to confirm with her with
15 respect to how the agencies will be funded in order
16 to make sure that I do not mislead you with the
17 incorrect information, if that is okay.

18 MR. TAYLOR: Mr. Frater, I'm
19 wondering if we can get a response on that. For my
20 purposes, at least, a "yes" or "no" would be
21 sufficient in terms of whether they're eligible for
22 funding under the FNCFS program or not.

23 THE WITNESS: Mr. Taylor, can I
24 ask just a question? So you are talking about --

25 MR. TAYLOR: Sorry, Ms. Nepton,

1 just before that, I just wanted to know if Mr.
2 Frater is fine to give that request for
3 information.

4 MR. FRATER: Yes, I will try and
5 get that information for you.

6 BY MR. TAYLOR:

7 Q. I'm sorry, Ms. Nepton, I just
8 wanted to put a pin on that before moving on.

9 A. No, I'm sorry I interrupted.
10 It was rude of me.

11 Q. That's fine.

12 A. In regards to your question,
13 just to make sure I understand it when I'm
14 communicating with follow-up information, you are
15 looking for once the -- okay, once that exercise of
16 jurisdiction happens, so let's say, you know, the
17 notice has been given, there's a coordination
18 agreement, or it just comes into effect, where the
19 funding comes from?

20 Q. That's -- well, where the
21 funding comes from is part of it, but my more
22 particular question is if it would be funded
23 through your program. So your program has the --
24 there's the terms and conditions. There's the
25 orders that are applicable, there's the actuals

1 process, and whether a new agency or a current
2 agency that is now operating pursuant to a First
3 Nations law instead of provincial or territorial
4 law --

5 A. Yes.

6 Q. -- can come to you for
7 funding. If there is information to provide on
8 what that would look like -- I don't want to get
9 into a debate on the Act and what it provides for
10 for funding.

11 A. No.

12 Q. That would certainly be
13 helpful to know. This actually leads me to a
14 follow-up question, which is whether you know if
15 the federal government has a plan for ensuring that
16 the CHRT orders are upheld when new agencies are
17 providing services pursuant to First Nations laws.

18 A. Yeah, I would like to take
19 that back to my colleague, my sector colleague's
20 branch, to confirm and ensure that I provide you
21 with the most accurate information and not mislead
22 you.

23 MR. TAYLOR: Mr. Frater, just for
24 the purposes of that request, the request would be
25 whether Canada has a plan for ensuring the CHRT

1 orders are upheld by entities or agencies receiving
2 federal funding to provide services under First
3 Nations delegation under the Act respecting First
4 Nations, Inuit, Métis children, youth and families.

5 MR. FRATER: Well, Mr. Taylor,
6 with respect to (inaudible) built into the question
7 is how funding should occur after jurisdiction has
8 been exercised. And implicit in that, you say, is
9 the idea that funding should continue under the
10 orders, as I understand it -- can and should, which
11 is argument, really, in my mind --

12 MR. TAYLOR: It's not so much a
13 matter of funding continuing under the orders. The
14 question is -- I agree there is a premise in the
15 question which is that the federal government is
16 continuing to provide funding. So if it's the case
17 that the federal government won't be providing
18 funding, then that would be, I suppose, also good
19 to know.

20 But the question, more
21 particularly, is where the federal government will
22 provide funding, what its plan is to ensure the
23 CHRT orders are followed. Because the CHRT orders
24 aren't just about funding. It's a broader question
25 of how the services are to be delivered when

1 federal funding is provided for them.

2 MR. FRATER: I would say we're
3 happy to provide you information about how funding
4 will continue after jurisdiction has been exercised
5 by the First Nation. But if you're going to say,
6 you know, have we got a plan to see that the orders
7 are maintained, there's a legal argument implicit
8 in that that jurisdiction -- after jurisdiction has
9 been exercised, that the CHRT orders continue to
10 apply, which might be a matter of argument.

11 So we're certainly happy to give
12 you information on how the funding is going to take
13 place, but if you want to argue about that, I think
14 that's a matter for argument.

15 MR. TAYLOR: We can -- I can
16 certainly follow up on that outside the context of
17 the cross-examination. I appreciate your point.

18 BY MR. TAYLOR:

19 Q. Ms. Nepton, just to confirm
20 your evidence on the point, you personally, as the
21 Director General of the CFS branch, aren't aware of
22 a plan to ensure that the orders are respected
23 under new funding arrangements that might happen
24 outside of your program?

25 A. Again, I cannot speak in an

1 accurate manner on it, and I would like to consult
2 with my sector colleague to make sure that I
3 provide you, as well as the others, with the most
4 accurate information so that I don't mislead
5 anybody.

6 Q. That's all right. I think I
7 have Mr. Frater's position on that consultation, so
8 I will leave it there for now and we'll have to
9 follow up elsewhere.

10 A. Thank you.

11 Q. Now, at paragraph 55 of your
12 affidavit, here you say in the first sentence that:

13 "Canada is at the forefront
14 of prevention funding as most
15 provincial and territorial
16 jurisdictions have not yet
17 revised legislation to
18 account for a significant
19 shift towards prevention."

20 Would you agree with me you
21 haven't provided any financial figures to
22 substantiate this?

23 A. I would say that tab NN-3 of
24 the exhibit provides the funding that has been
25 provided in terms of CWJI. In order to accurately

1 respond to the issue of prevention, again, I would
2 have to go back and look at projects and also look
3 at agencies and their prevention services, those
4 that are fully delegated versus those that are
5 partially delegated versus those that aren't
6 serviced by a First Nation child and family
7 services agency.

8 Q. Right, but you have used the
9 word "forefront" which is an inherent comparative
10 term that, you know, Canada is ahead of a group of
11 some others. My reading of Exhibit NN-3 is that
12 this is only federal funding, so you haven't
13 provided any basis in comparison with federal
14 versus provincial funding to support your statement
15 that it is at the forefront.

16 A. I would agree.

17 Q. And has ISC undertaken any
18 financial analysis to support this statement that
19 it's at the forefront?

20 A. Personally, I would say that
21 we have looked at existing studies, so most
22 recently the IFSD report, as well as other studies
23 that have come in over the years. And I would say
24 that, for example, the Chiefs of Ontario special
25 study, as well as the NAN remote quotient report.

1 MR. TAYLOR: Mr. Frater, if there
2 is an analysis that has been made on the basis of
3 these studies that shows Canada at the forefront,
4 could that be provided? Or if there's no concrete
5 analysis that has been done, just a "There is none"
6 would be fine as well.

7 MR. FRATER: Yes, I will endeavour
8 into get the information (inaudible).

9 MR. TAYLOR: Thanks very much.

10 BY MR. TAYLOR:

11 Q. I just have a few more
12 questions on this topic, Ms. Nepton, and then it
13 might be an appropriate time for lunch. Are you
14 okay to go for about another five or ten minutes?

15 A. Yes. Thank you for asking.

16 MR. TAYLOR: Madam Chair, that is
17 fine with you?

18 THE CHAIR: Yes.

19 MR. TAYLOR: Thank you very much.

20 BY MR. TAYLOR:

21 Q. Just in terms of levels of
22 funding, would you agree with me, Ms. Nepton, that
23 the amount of funding asked for, received or spent,
24 that can be driven by need, in terms of how much
25 need underlies the funding. Is that right?

1 A. I would agree with that
2 statement in general.

3 Q. In terms of the funding that
4 has been provided, particularly since 2018/'19,
5 would you agree that it would potentially be higher
6 because it is now being based on actual needs as
7 ordered by the Tribunal?

8 A. I would agree with that.

9 Q. Would you agree that if the
10 federal government is providing services to
11 communities with greater needs, it makes sense that
12 their expenditures would be higher?

13 A. I think that's a fair
14 statement.

15 Q. So the raw dollars that's
16 spent on prevention, that may not be a measure of
17 commitment. It's also a measure of need. Is that
18 right?

19 A. Would you mind repeating that
20 in a different way? I'm sorry.

21 Q. Sure. So the way I read your
22 statement in 55 -- and you will have to give me a
23 moment to get back to it. I'm as fast at clicking
24 the mouse as I am at turning pages.

25 A. I'm sorry.

1 Q. No, no. I was the one who
2 went to Exhibit 3, so it's fine. So, 55, you make
3 the statement:

4 "Canada is at the forefront
5 of prevention funding as most
6 provincial and territorial
7 jurisdictions have not yet
8 revised legislation to
9 account for a significant
10 shift towards prevention."

11 I mean, I read a certain, you
12 know, relativity in that statement of, you know,
13 Canada is leading the way. But would you also
14 agree with me that it's also a reflection that
15 Canada is serving communities that have the
16 greatest need? It's true, I mean, we don't have
17 numbers underlying the comparisons --

18 A. I would say that that is
19 fair.

20 Q. Would you agree with me, just
21 in terms of your statement here, about whether
22 legislation has been revised or not to account for
23 a significant shift towards prevention, would you
24 agree with me that whether that's the case, that's
25 going to be assessed based on the wording of the

1 legislation in question?

2 A. Yes, I would agree.

3 MR. TAYLOR: It turns out that was
4 less than ten minutes. Those are my questions on
5 this topic. I have, just for purposes of
6 reference, I think, another, you know, possibly ten
7 minutes after the break, but I am close to being
8 done.

9 THE CHAIR: Okay. Thank you. Is
10 an hour and five minutes -- if we come back by
11 1:30, is that sufficient for everybody?

12 THE WITNESS: Sure.

13 MR. FRATER: That is fine for us.
14 Thank you --

15 THE CHAIR: Yes?

16 MR. TAYLOR: Yes, that is fine.
17 Thank you very much.

18 THE CHAIR: I see people nodding.
19 Some people are not doing anything. I will take it
20 as a yes.

21 UNIDENTIFIED FEMALE: That's fine.
22 Thank you.

23 THE CHAIR: Okay. And some people
24 I don't see all at once, but I will take it as a
25 yes and we will come back at 1:30, so have a good

1 lunch.

2 UNIDENTIFIED FEMALE: Thank you.

3 MR. TAYLOR: Thank you very much.

4 UNIDENTIFIED FEMALE 2: Ms.

5 Dubois, I'm wondering if we can be put back in our
6 break out rooms for the lunch break.

7 MS. DUBOIS: Yes, I will do that.

8 And Ms. Rae, I have a break out room assigned for
9 you as well.

10 MS. RAE: Thank you.

11 --- (Luncheon recess)

12 MS. DUBOIS: We're on the record
13 now, Member Marchildon. Please go ahead.

14 THE CHAIR: Thank you. Good
15 afternoon, everyone. I hope you had a good lunch
16 and this was sufficient time for all of you to have
17 a little bit of rest or to prepare, depending on
18 who is going to speak next.

19 Ms. Nepton, do you feel ready to
20 continue? I'm sorry, you're muted.

21 THE WITNESS: Yes, I'm ready as I
22 can be.

23 THE CHAIR: Okay. Let me know if
24 you need a break at any time.

25 THE WITNESS: Thank you.

1 THE CHAIR: Mr. Taylor, you had
2 more questions, so --

3 MR. TAYLOR: Yes.

4 THE CHAIR: -- please go ahead.

5 MR. TAYLOR: Okay. Thank you very
6 much, Madam Chair. Ms. Dubois, I wonder if we
7 could have the affidavit back up. Perfect. Thank
8 you.

9 BY MR. TAYLOR:

10 Q. I just had one more question,
11 Ms. Nepton, about paragraph 55 here. I'm just
12 reading in the last sentence. You're noting:

13 "...while the province of
14 Nova Scotia made considerable
15 changes to its legislation,
16 prevention is still not a
17 focus of or funded by the
18 Province..."

19 So that is a statement that is
20 based on your reading of that legislation; is that
21 right?

22 A. Yes. My last reading of it
23 at the time of my affidavit.

24 Q. Okay. Thank you. I had my
25 last set of questions on long-term reform, but just

1 before I go there, I just have a couple of one-off
2 questions. We'll see. Hopefully one-off
3 questions. Time will tell.

4 One question is whether you read
5 the orders of Jordan's Principle. There would be
6 one that was made in May of 2017, and then another
7 in November 2017, and then a further one in
8 February of 2019 and then two more in June and
9 August of last year -- sorry, June and November of
10 last year.

11 A. For the purposes of
12 preparation for this, I specifically reread the
13 rulings of January 26, 2016; April 26, 2016;
14 September 16, 2016; and of course, February 1,
15 2018. But I have read them in the past, and of
16 course I read the one about the definition of First
17 Nation child that was most recently issued.

18 Q. So you have read the Jordan's
19 Principle orders but just in the past and not
20 specifically in the context of preparing for this?

21 A. Exactly.

22 Q. And I didn't have any
23 questions on the orders. I just wanted to confirm
24 whether you've read them.

25 The next question I had was with

1 respect to the folks on your team, and I think you
2 mentioned there are about 30 people who report to
3 you?

4 A. Yes.

5 Q. Do you have a sense of how
6 many of those folks would have been in place since
7 January of 2016?

8 A. Oh, my goodness. I would say
9 no greater than potentially five.

10 Q. Thank you. And then my last
11 one-off question is, just with respect to
12 engagement and consultation, we kind of discussed
13 them as being kind of two phases. Is there a point
14 or a way in which your team, when doing engagement,
15 would be advising another entity, whether it's a
16 First Nation or parties of the CCCW, that you're
17 moving from the engagement phase, where it's more
18 general discussion, to the consultation phase where
19 it's something more concrete? Or does that just
20 organically happen in the process?

21 A. Based upon my experience, it
22 could be both. In regards to my experience here
23 and CFS, although it seems long but it's actually
24 quite short and still learning a lot from everyone,
25 I would say that the engagement phase and the

1 consultation phase often blend, but I would --
2 based upon my experience over this since starting
3 in June 2019, I would say that one informs the
4 other but there's some -- it's not a grey zone but
5 a melting zone, for lack of --

6 Q. So it's not necessarily the
7 case that there's a clear, you know, statement that
8 we have moved from engagement to consultation at
9 this point?

10 A. I would say it depends, too,
11 on the subject itself.

12 Q. Now, my last set of questions
13 is about long-term reform, going from paragraph 56
14 of your affidavit, moving on here.

15 Now, in paragraph 56, you mention
16 the Institute of Fiscal Studies and Democracy's
17 report. I will just refer to that as IFSD or the
18 IFSD report.

19 Has Canada formally accepted the
20 findings and recommendations in the IFSD report?

21 A. In regards to the IFSD report
22 that was shared with us in early or mid-September,
23 if I'm not mistaken, we have been reviewing it, and
24 as most of the people participating in this process
25 know, it has been discussed at CCCW, and as well, I

1 57. You note here that C-92 -- actually, I will
2 read it from the screen here. One moment. The
3 first sentence here:

4 "The Act addresses long-term
5 reform and provides a
6 foundation for comprehensive
7 FNCFS program reform."

8 So in terms of a program reform
9 and Bill C-92, my understanding is that Bill C-92
10 doesn't actually set out a funding obligation or a
11 funding approach. Is that correct?

12 A. You are correct in that the
13 bill does not speak to funding.

14 Q. Does Bill C-92 have a
15 foundation -- provide the same foundation for
16 comprehensive reform with Jordan's Principle or is
17 it just limited to CFS, in your view?

18 A. In regards to the question, I
19 can say I don't think I have a view on it because,
20 technically speaking, as I have mentioned before, I
21 -- and I don't want to appear, you know, repetitive
22 or evasive, but my area is the existing program and
23 program reform.

24 C-92 provides an alternative to
25 the existing program and enables First Nations or

1 other Indigenous entities to exercise jurisdiction
2 in regards to child and family services.

3 I don't know if -- I'm hoping that
4 answers your question.

5 Q. It does in a way, and I guess
6 I would like to follow up, then, with what exactly
7 you mean, then, in the first sentence of paragraph
8 57. Because I had read it as the Act, C-92, will
9 address long-term reform and provide a foundation
10 for comprehensive FNCFS program reforms, so the Act
11 would be the foundation of reforming the program.
12 But what I'm hearing is you have qualified it now
13 as an alternative, so it would be something
14 different than the program.

15 A. Well, I would say that if
16 First Nations want to exercise jurisdiction, they
17 have the Act to rely on. However, for those
18 wishing to continue within the existing program,
19 there's long-term reform, you know, that we need to
20 look at for that.

21 Q. But that would not be under
22 the aegis of the Act. That would be under whatever
23 new reform comes forward through this process?

24 A. Exactly. So there is a C-92
25 process and then there's my branch that deals with

1 the current program for those that are not
2 exercising C-92.

3 Q. Now, if you have got the
4 little book -- actually, I don't know if it's a
5 book for you, but the four documents that came
6 yesterday evening. I will put it up on the screen
7 here as well.

8 So tab 4 of that is the -- it's
9 just a one-page excerpt from the proceedings of the
10 House of Commons Standing Committee of Public
11 Accounts back in October 2011.

12 A. Yes.

13 Q. You're aware that the Auditor
14 General made a report on your program --

15 A. Yes.

16 Q. -- in 2011?

17 A. Yes, I was advised of that.

18 Q. And are you aware that the
19 Standing Committee on Public Accounts then
20 considered the subject matter of that report as
21 part of their proceedings?

22 A. Based upon the information
23 that you had sent last night, yes, I was, at that
24 moment, seized of it.

25 Q. So it wasn't something you

1 had been aware of prior to last night?

2 A. No.

3 Q. Okay. I would just like to
4 point to you -- it's on right-hand side of the
5 page. Mr. Kramp is asking some questions of John
6 Wiersema, who is the interim Auditor General, is
7 what the transcript notes, and then Mr. Michael
8 Wernick. You would be aware that Mr. Wernick at
9 the time was Deputy Minister of -- I believe it was
10 AANDC in those days?

11 A. Yes, I believe so.

12 Q. And Mr. Wernick -- so Mr.
13 Kramp's question is at the last paragraph. He
14 says:

15 "In terms of the road map
16 forward, should it be
17 legislatively addressed or
18 can it be done through
19 initiatives from the
20 department? Which way should
21 it be done -- either, or, or
22 both?"

23 And this is in terms of -- my
24 characterization of Mr. Kramp's questions progress
25 on the Auditor General's overall recommendations.

1 But I want to focus on Mr. Wernick's response. So
2 he says:

3 "One of the really important
4 parts of the Auditor's
5 General's report is that it
6 shows there are four winning
7 conditions or missing
8 conditions. The combination
9 of those is what's likely to
10 result in enduring change.
11 You could pick any one of
12 them, such as legislation
13 without funding, or funding
14 without legislation, and so
15 on. They would have some
16 results, but they would
17 probably be temporary, in our
18 view. If you want enduring
19 structural change, it's the
20 combination of these tools."

21 So I would just like to see -- do
22 you agree with Mr. Wernick that it's the
23 combination of legislation and funding, the
24 combination of those tools that's going to lead to
25 ensuring structural change?

1 A. Not having the full context
2 of the Deputy's comments at the time, I see it
3 differently in that the two -- and I don't know if
4 I'm understanding your point correctly, so please
5 correct me if I'm wrong. What I hear is that
6 perhaps you're saying that program reform, the
7 existing program, and C-92 or legislative reform
8 are mutually exclusive, in that one -- you have to
9 sacrifice, perhaps, the program for the
10 legislation. Can you confirm that that is what
11 you're saying?

12 Q. I don't want you to focus too
13 much on what you think my agenda behind the
14 questions might be --

15 A. No. No, it's really not an
16 agenda question.

17 Q. No -- again (indiscernible)
18 pejorative. I will try and be transparent here.
19 There is no trick.

20 I understand what you're saying to
21 be -- and some of this goes back to some of the
22 comments with your counsel when we were discussing
23 requests for information. But the answer I
24 understand you to have been giving is that the
25 long-term reform of the FNCFS program is one thing,

1 and then the Bill C-92 and the systems that's going
2 to happen under that Act -- First Nations
3 (indiscernible) their own jurisdiction -- is
4 something different. Maybe I can stop there. Have
5 I got that right, that they're two separate
6 streams?

7 A. Yes, I would say that they're
8 two different items in that you have -- and I
9 apologize if I'm not expressing it correctly -- is
10 that the program is there for those who won't be
11 exercising jurisdiction. And we know that we need
12 to do the broader policy work and we know that we
13 have to do the funding methodology work. That is
14 clear. So that work falls, as we know, under my
15 area.

16 The C-92 work is the legislative
17 process or is the legislation within which people
18 can exercise jurisdiction. I think we all know
19 that. And I don't think that one is at the
20 detriment to the other. I think they co-exist and
21 it could be like other areas, for example, of
22 jurisdiction where it's been exercised, is that,
23 you know, not all communities or all Indigenous
24 entities are going to, you know, all write a notice
25 letter to say that they plan to exercise authority

1 within the time frame provided in the Act.

2 Obviously, it's going to be a
3 staged process or a staged -- it's not staged, the
4 word I'm looking at. Not everybody is going to be
5 doing it at the same time on a simultaneous date
6 and a simultaneous coming into force. Everyone is
7 moving differently based upon their capacity, you
8 know, and also based upon the work they have
9 already undertaken. So, some it could possibly go
10 faster.

11 I could double-check with my
12 colleague in the branch in regards to that, but for
13 me, they're two that co-exist and in some ways
14 couldn't -- you know, definitely program and
15 program objectives could -- or programs for --
16 could maybe inform those that choose to exercise
17 jurisdiction. But to me, they're two different
18 items but they're not mutually exclusive,
19 necessarily.

20 So, I don't know. I have
21 presented that the best that I could --

22 Q. No, no, and certainly I
23 appreciate your -- you know, I have had a lot of
24 time to think about my questions and you're
25 presenting your answers as we go, so I appreciate

1 that.

2 I guess if I can try and
3 summarize, they are separate matters that could
4 potentially have some links between them. But from
5 your perspective, long-term program reform within
6 the program and whatever system or systems operate
7 under the legislation are different.

8 A. Exactly.

9 Q. I just have a couple or more
10 questions about -- I will go back to your affidavit
11 here.

12 Do you agree with me in terms of
13 the ultimate objective of reform spoken to by the -
14 - I'm sorry, I put the wrong affidavit on the
15 screen. The objective of reform that is spoken to
16 in the January 2016 decision, having a system that
17 meets the needs and circumstances of First Nations
18 children and families, Bill C-92 by itself, that
19 won't be enough to address the discrimination.
20 It's more than just conferring jurisdiction that is
21 required to solve a problem. Would you agree with
22 that?

23 A. I would say that as you
24 stated, the Act is meant to address long-term
25 reform and provides, you know, the foundation for

1 the exercise of jurisdiction, from, you know,
2 whichever perspective, being an Indigenous agency,
3 perhaps an Indigenous entity, or an agency that
4 exists today, as you previously mentioned, going
5 under and being created under C-92. I think when
6 we look at it, again, the funding is one aspect and
7 then there's the legislation that provides or is
8 part of the foundation.

9 So if I understand you correctly
10 is that you're saying there is -- you know, the Act
11 provides for the foundation, but there is also the
12 funding which is inequitable. And for that I would
13 say I can't say if I agree or disagree because in
14 terms of that foundation, financial, and the
15 establishment of the entity, I would need to go
16 back and work with my colleague and come back to
17 you with a response to that question in order to be
18 fair to everybody and to give -- provide the most
19 accurate information I can.

20 Q. Well, I guess one point I
21 would make is you have been put forward as the
22 affiant on this and you have made the statements
23 you have made about long-term reform on behalf of
24 the respondent or the Attorney General of Canada
25 representing the Minister of Indigenous Services,

1 so I am approaching my questions on that basis. I
2 appreciate your answers, and when you don't know,
3 you should say so.

4 A. Yes.

5 Q. But unfortunately, this is a
6 cross-examination. It's not an iterative process
7 for reaching out. And I appreciate the limits that
8 have kind of put on your knowledge of this, but
9 just at a conceptual level, if jurisdiction is part
10 of the foundation for (indiscernible) substantive
11 equality for First Nations children, would you
12 agree it's not the only part of the foundation,
13 that there are other pieces required, one of which
14 is adequate funding?

15 A. Yes, I would agree with that.

16 Q. Thank you. Now, my next
17 question is about paragraph 59.

18 A. Yes.

19 Q. In this paragraph you refer
20 to Indigenous partners?

21 A. Yes.

22 Q. What organizations would you
23 include in that definition of Indigenous partners?

24 A. In regards to Indigenous
25 partners, it can mean, of course, the parties to

1 the CHRT motions that are currently before the
2 Tribunal, as well as CCCW and NAC, as well as First
3 Nations and First Nation entities or Indigenous
4 entities.

5 I would say that there's no one
6 party. However, that being said, I know from
7 having heard my colleagues speak at CCCW and that
8 when we talk about C-92 and exercising
9 jurisdiction, we do talk about First Nations being
10 rights-holders and the Indigenous entities
11 themselves being potential rights-holders.

12 Q. Now, in terms of when you're
13 using the next words in the paragraph which is
14 "work towards exercising jurisdiction", when you're
15 referring to working towards, is that that
16 engagement and consultation process that we have
17 been discussing at a few other points today? Is
18 that what you're referring to?

19 A. Yes. Yeah. And I would say
20 that, you know, when I say this in my affidavit or
21 as you quoted, ISC has been engaging, for example,
22 with a list of individual First Nations and
23 entities that have come forward as being interested
24 or having made concrete actions or taken them to
25 exercise jurisdiction.

1 Q. Now, in terms of that work
2 and the engagement and consultation, would you
3 agree with me that doing that work and the
4 engagement or consultation itself, that by itself
5 won't end the discrimination or it won't result in
6 substantive equality for First Nations children?
7 There's actually going to need to be a result that
8 flows from that work in order to bring about
9 substantive equality.

10 A. Yes, I would say that I would
11 agree with your statement.

12 MR. TAYLOR: Madam Chair, I
13 normally at this stage would be turning to whisper
14 to Ms. Clarke and Ms. Thomas and Dr. Blackstock to
15 see if anything else -- I wonder if the four of us
16 might be put in a breakout room for a moment. I
17 don't think we need a full break. But if it would
18 be possible just to have a few moments and then I
19 can confirm whether those are, in fact, all of my
20 questions.

21 THE CHAIR: Yes. How long did you
22 have in mind?

23 MR. TAYLOR: I think just a few
24 minutes is likely fine.

25 THE CHAIR: Okay. Madam Dubois?

1 Ms. Dubois?

2 MS. DUBOIS: I am just trying to
3 figure out if I -- what I'm going to do is open up
4 all of the rooms so that the Caring Society can go
5 in the room. If you get an invite to go into your
6 meeting room, if you want to, that's fine. But you
7 can also ignore that message and just stay in the
8 main room.

9 MR. TAYLOR: Ms. Dubois, if I
10 understand Zoom correctly, I think I can leave our
11 room --

12 MS. DUBOIS: When you're ready.

13 MR. TAYLOR: -- when I want to
14 come back here, so that's how I propose to do it if
15 that's fine with everyone.

16 MS. DUBOIS: Member Marchildon,
17 I'm just going to pause the recording for now. I
18 will pause the recording.

19 --- (Recess taken)

20 THE CHAIR: Mr. Taylor, did you
21 have sufficient time?

22 MR. TAYLOR: That was sufficient.
23 Thank you very much, Madam Chair.

24 Ms. Nepton, thanks very much.
25 Those are all of my questions.

1 I wonder, Madam Chair, before I
2 mute myself, if we could mark the -- for me it's a
3 book, but the PDF with four bookmarked tabs as the
4 Caring Society's exhibit to this cross-examination.

5 THE CHAIR: Yes, certainly. Ms.
6 Dubois?

7 MS. DUBOIS: I will mark the
8 Caring Society's exhibit of four tabs for the
9 purposes of this hearing Exhibit C-1.

10 EXHIBIT C-1: PDF with four
11 tabs.

12 MR. TAYLOR: Thank you very much.

13 THE CHAIR: Thank you. Okay. I
14 am mindful of the time and I just wanted to do an
15 overview of who will be asking questions and in
16 what order. So can someone inform me on this? Who
17 is going next and let's go from there. Who is
18 supposed to go next? Whoever I pick or --

19 MR. WUTKE: On behalf of Assembly
20 of First Nations, we just have one follow-up
21 question that we can go to, and then we would be
22 done.

23 THE CHAIR: Okay. Right before
24 that, let's just do a roundtable.

25 MS. WENTE: For my part, for

1 Chiefs of Ontario, we do have some questions, but I
2 don't expect it will be any more than a half hour.

3 THE CHAIR: Okay. Thank you. Ms.
4 Rae?

5 MS. RAE: Thank you. I have, I
6 think, about a half hour of questions as well.

7 THE CHAIR: Okay. Thank you. Mr.
8 Smith?

9 MR. SMITH: Good afternoon. Right
10 now I don't anticipate having any questions. We
11 would like to reserve an opportunity maybe to ask a
12 point of clarification after everyone else, but
13 right now, my sense is that we should go last and
14 we likely won't have any questions.

15 THE CHAIR: Okay. From what I
16 heard, it's about an hour and 15 minutes. We need
17 a break. And we need to leave some time for Canada
18 to re-examine Ms. Nepton. So we will try to finish
19 in time. I would really like to avoid having to
20 reconvene, especially for a director of a program.
21 Remaining under oath can be an issue here, so that
22 would lead us into procedural questions and all of
23 that. So let's try to -- I don't want to refrain
24 you from asking questions, but we will see how it
25 goes.

1 The next person will be the AFN
2 with Mr. Wuttke, so please go ahead.

3 MR. WUTKE: Thank you, Madam
4 Chair.

5 CROSS-EXAMINATION BY MR. WUTTKE:

6 Q. Good afternoon, Ms. Nepton.
7 Stuart Wuttke from the Assembly of First Nations.
8 I just have one follow-up question for you stemming
9 from the questions asked by my colleague, Mr.
10 Taylor.

11 At paragraphs 53 and 54 of your
12 affidavit and additions 57 and 58, you speak about
13 Bill C-92, the Act. You talked about funding
14 streams, that type of thing. Just one point of
15 clarification.

16 For First Nations that choose to
17 exercise their inherit right and jurisdiction under
18 the Act, there will be a funding stream for First
19 Nations to provide those services to First Nations
20 communities -- I mean to the First Nations citizens
21 in their community. Is that correct?

22 THE CHAIR: She's on mute.

23 THE WITNESS: As I indicated, I
24 know that we have existing programs, and the
25 funding stream with respect to the exercise of

1 jurisdiction under the Act is currently being
2 examined and discussed with my colleague in the
3 other areas with other partners, including the AFN,
4 including First Nations. And as well, also subject
5 to discussions that are ongoing with CCCW.

6 It's a good question. And I'm not
7 saying that it's not a fair question. It's just
8 with respect to the funding stream, I would rather
9 go back and provide you with the correct
10 information in terms to the funding stream that
11 will be available for the exercise of jurisdiction.

12 MR. WUTKE: All right. Thank you.
13 We look forward to receiving that information. The
14 AFN has no further questions. Thank you.

15 THE CHAIR: Thank you. Ms. Wente?

16 MS. WENTE: Thanks, Member
17 Marchildon. I don't actually think that I will be
18 an entire half hour, so I am hoping that I can be
19 as succinct as possible. Luckily for me, as usual,
20 Mr. Taylor has been fairly exhaustive in the kinds
21 of questions that he asked.

22 CROSS-EXAMINATION BY MS. WENTE:

23 Q. Ms. Nepton, I'm just going to
24 ask some questions about the Ontario contacts
25 specifically. And I'm not going to ask you to pull

1 up your affidavit now because I think that they're
2 probably just more general, but if you would like
3 Ms. Dubois to pull it up so that you can look at it
4 again, please let us know so we can pull it up on
5 the screen.

6 So I just wanted to sort of --
7 it's been a long time since we have all been
8 together in front of the panel members, so I just
9 wanted to kind of lay the scene out for the Ontario
10 situation so that everybody can be refreshed
11 because the Ontario situation is a little bit
12 different, as we have noted.

13 So for those communities that are
14 served by a First Nations child and family services
15 agency, I just want to go through the sources of
16 prevention funding that they might be able to
17 access, just to confirm that we're all on the same
18 page.

19 You will agree that the first one
20 would be access and prevention services through
21 their agency, which is funded at actuals. Is that
22 correct?

23 A. Yes.

24 Q. Yes. And then the second one
25 would be prevention services that may be funded

1 through ramp-up money or the budget 2016 money;
2 correct?

3 A. Yes, that specifically.

4 Q. Right. And then the third
5 funding stream is that prevention services that may
6 be funded through the Community Well-being and
7 Jurisdiction Initiatives funding; correct?

8 A. Yes.

9 Q. Okay. And just to confirm,
10 the CWJI money, the Community Well-being and
11 Jurisdiction Initiatives money, doesn't have to be
12 towards prevention? It might get funded -- used by
13 a First Nation for something else; that is correct?

14 A. Yes, I agree.

15 Q. Okay. And those two, the
16 budget 2016 or what people called the ramp-up now
17 and the CWJI, that's funded directly to First
18 Nations in Ontario; correct?

19 A. I believe, yes, the
20 prevention dollars -- unless the delegated agency
21 is providing, you know, the full delegation of
22 prevention and protective services. But generally,
23 yes, at the First Nation level.

24 Q. Right. Because Chiefs of
25 Ontario has asked for those two pots of money to go

1 directly to the First Nation, which is a little bit
2 different than how it works in other provinces;
3 correct?

4 A. Yes.

5 Q. Okay. All right. And are
6 there any other sources of money that are available
7 to fund prevention services that could be accessed
8 by First Nations who have a First Nations child and
9 family services agency?

10 A. I would say that in regards
11 to funding streams and accessing, are you -- is
12 your question -- for example, if prevention funding
13 was provided and distributed in accordance with the
14 OFLP, would there be additional money available or
15 funds if those funds were not -- if there was
16 additional pressure?

17 Q. No, I think you're
18 misunderstanding my question. My question is just
19 that there's those three different funding streams
20 that are available; is that correct?

21 A. Yes.

22 Q. Not whether or not those are
23 capped.

24 A. Okay. All right. No, would
25 be the primary ones to the best of my knowledge.

1 Q. Right. And there's no
2 prevention funding available under the band
3 representative services program and order from the
4 Tribunal; that's correct?

5 A. I believe so. You're
6 correct.

7 Q. And so we did talk about
8 earlier, and now that you have mentioned it, let's
9 just go back for completeness, that the ramp-up
10 funding and the CWJI funding, those have a hard
11 ceiling, whereas prevention at actuals is at
12 actuals?

13 A. Exactly. It's a fixed pot of
14 money.

15 Q. Okay. For those communities
16 that are not served by a First Nations child and
17 family services agency, I just want to run through
18 there.

19 Again, it's available to them to
20 access the ramp-up and the CWJI money that is
21 allocated according to a formula that Chiefs of
22 Ontario has asked for; correct?

23 A. Exactly.

24 Q. Right. And the non-agency
25 communities would be accessing all of their

1 prevention services through their mainstream
2 agency, let's call it, the non-Aboriginal CIS;
3 correct?

4 A. Yes, to the best of my
5 knowledge.

6 Q. Okay. Those prevention
7 services are funded -- to the extent that they are
8 funded at all, they're funded by Ontario, not by
9 Canada; correct?

10 A. Yes, through the operation of
11 the 1965 agreement.

12 Q. Have you looked at the 1965
13 agreement lately, I guess is my question. I mean,
14 I don't -- I think it's a matter of fact --

15 A. Not --

16 Q. Yeah. I think it's a matter
17 --

18 A. (Simultaneous speaking).

19 Q. -- on the record. Okay.

20 Fair.

21 A. Yeah.

22 Q. So prevention is not
23 something that is funded by the federal government
24 --

25 A. No.

1 Q. -- through 1965; correct?

2 A. No --

3 Q. And the agencies aren't
4 eligible to access prevention money through 1965;
5 correct?

6 A. No. I believe so. I'm
7 looking at my tab 2 of how the FNCFS programs are
8 delivered across Canada.

9 Q. Right.

10 A. And that would be page 13, 14
11 and 15 for Ontario.

12 Q. There's no band rep funding
13 that's available to these communities either, the
14 non-agency communities, as we'll call them?

15 A. No. Band rep funding --

16 Q. Not for prevention services,
17 sorry. In general, yes, but not for prevention.

18 A. Yes.

19 Q. Okay. So that's helpful, I
20 think, hopefully, for the panel to sort of just
21 have a sense of those sort of two different sets of
22 communities in the way that they might access
23 funding. Thank you for that.

24 So I guess -- and so with respect
25 to the Ontario non-agency communities, the ones who

1 were working with mainstream CISs, are you familiar
2 at all with how that funding formula works?

3 A. To the extent of our
4 discussions that we had over the past year about
5 how the funds are distributed in accordance with
6 the Ontario OFNLP.

7 Q. Sorry, I'm not talking about,
8 though, FNLP. I'm talking about the funding
9 formula for mainstream child welfare agencies in
10 Ontario. Are you familiar with that formula?

11 A. No. That one, I would say
12 no.

13 Q. Do you anything about it?
14 For instance, do you know whether or not prevention
15 is funded at actuals under those kinds of programs?

16 A. Hold on. Let me refer to my
17 affidavit because I think I saw it. It is -- no,
18 it is not -- for children in care for -- no, I
19 believe not.

20 Q. I won't ask you questions,
21 because to be perfectly frank, I also do not have
22 the Ontario funding formula memorized.

23 A. Okay. All right.

24 Q. And by not memorized, I mean
25 not at all, so let's stop talking about it. Okay.

1 I just want to go back because you
2 had mentioned the OFNLP formula a few times, and
3 again, there were some affidavits about this in
4 earlier proceedings, but I just want to be clear
5 for the panel what that means.

6 By OFNLP, do you mean the Ontario
7 First Nations Limited Partnership formula?

8 A. Yes.

9 Q. And that's a formula that
10 Chiefs of Ontario has used in the past to guide the
11 distribution of ramp-up and CWJI funds within
12 Ontario; correct?

13 A. Yes, I agree.

14 Q. And it's not -- it's a
15 formula that they have used in other contexts?
16 It's not devised specially for child welfare; is
17 that correct?

18 A. Yes, I agree.

19 Q. Okay. And then just to close
20 the loop on that, I suppose, they have -- Chiefs of
21 Ontario has recently declined to take a position
22 about the distribution of CWJI and ramp-up funding
23 within First Nations. Do you recall that?

24 A. Yes, I recall it.

25 Q. Okay. And so you're

1 distributing it in whatever -- according to ISC's
2 own judgment?

3 A. Exactly.

4 Q. All right. Given that, I
5 don't have too, too many other questions.

6 Mr. Taylor had asked you several
7 times or asked you quite a bit about how the CWJI
8 formulas and the ramp-up monies -- how the gross
9 amounts to be distributed over Canada, how you came
10 to those.

11 Did I hear you -- can you just
12 clarify for me, do you agree that those weren't
13 based on any kind of assessment of First Nations
14 needs at the time?

15 A. Based upon my understanding,
16 yes.

17 Q. All right. Okay. So I'm
18 just going to -- I didn't put the Ontario special
19 study into the document book because I'm not going
20 to draw you to any particular part of it, but --
21 and I note you didn't say that you had read it in
22 preparation, so can you just let me know when the
23 last time you read it was?

24 A. Oh, my goodness. It's a good
25 question, Ms. Wente. I would say probably a good

1 nine months ago.

2 Q. Okay.

3 A. Prior to or about the same
4 time that the IFSD was starting its study that was
5 released earlier in September, early October.

6 Q. Do you recall, though, from
7 the Ontario special study that there was a
8 recommendation in there that the funding formula
9 for Ontario First Nations would be such that there
10 was a community-directed prevention approach?
11 Meaning that the communities -- the First Nations
12 themselves would prefer to deliver prevention
13 services?

14 A. I do not recall at this point
15 in time having seen it, but I seem to recall in
16 many of our informative discussions that you may
17 have mentioned it to me.

18 Q. Okay. That's fair. So
19 you're in the position now twice of having to take
20 my word for it.

21 A. I know.

22 Q. And just to go with the
23 Ontario special study, can you just, for
24 everybody's sake and for the panel's sake, let us
25 know where Canada is? It's my understanding that

1 you have not yet said that Canada agrees to
2 implement the recommendations of the special study.

3 A. I would agree with that
4 statement. In terms of where we are with it, I
5 think it's an important piece of the puzzle as we
6 move forward or an important piece of the
7 foundation as we embark on work around funding
8 methodologies.

9 Q. Okay. Do you know when you
10 might have a position about whether or not the
11 recommendations of the special study will be
12 implemented?

13 A. No, I do not have any type of
14 time frame. Again, I think as we move forward,
15 looking at, you know, at the orders that are
16 already being implemented in terms to actuals, work
17 that's being done on capital, and as well as the
18 orders pending on capital, I think, you know, it's
19 all, again, part of a comprehensive process, and
20 COO is one important piece and source of
21 information of that overall funding methodology and
22 what we -- where we go with that report.

23 When I say "we", it's ISC but also
24 in partnership with you -- excuse me, with the
25 Chiefs of --

1 Q. Not me personally.

2 A. Sorry. So --

3 Q. Okay. All right. And then I
4 have asked this question of one of your colleagues
5 before and I guess I will ask you as well.

6 Does ISC have an idea of what it
7 might do if it decides not to adopt the
8 recommendations of the Ontario special study?

9 A. No, and I wouldn't want to
10 speculate on that. You know, I'm -- yeah, I think
11 that's a broader discussion in terms of ISC and the
12 government of Canada accepting it. So I would be
13 speaking a little -- I would obviously be speaking
14 outside my program role.

15 Q. Sure. Understood. And with
16 respect to the 1965 agreement, I noted that you did
17 refer to it in your affidavit.

18 A. Yes.

19 Q. And the renegotiation of it.
20 You will agree that the renegotiation of the 1965
21 agreement has not yet commenced?

22 A. No, I would agree with that,
23 that it is definitely work that needs to be
24 undertaken or restarted.

25 Q. Right.

1 A. Am I aware that the province
2 has indicates its desire to look at the agreement
3 as well, and I will leave it at that.

4 Q. So internally or even amongst
5 the parties, there's no timeline by which the 1965
6 agreement will be renegotiated?

7 A. To the best of my knowledge,
8 a fixed timeline has not been established.

9 Q. Okay. Thank you. And I
10 believe, if you will just give me one moment, that
11 those are probably all of my questions. I think
12 that's everything. Thank you, Ms. Nepton.

13 A. Thank you.

14 THE CHAIR: Ms. Wente?

15 MS. WENTE: Yes.

16 THE CHAIR: We're not rushing you,
17 so are you sure?

18 MS. WENTE: No, I'm quite
19 confident I'm done. Thank you. No, I wouldn't
20 leave something behind. You know me. I'm not one
21 to spare words. Thank you.

22 THE CHAIR: I didn't want to
23 convey the message that everybody has to rush. I
24 was just trying to figure out how long we needed to
25 --

1 MS. WENTE: No. Understood. I
2 will --

3 THE CHAIR: There is no negative,
4 you know, things that are cast on the Caring
5 Society or Mr. Taylor, who did a great job. It's
6 just that I wanted to make sure that we are right
7 on time, because I believe we have to end by 4:30.

8 MS. WENTE: Yes. I was lucky in
9 that Mr. Taylor did most of my work for me, as
10 usual, so thank you very much.

11 THE CHAIR: Okay. Thank you. I
12 believe -- how are you, Ms. Nepton? I don't see --
13 there you are. Are you okay to continue for about
14 a half an hour with another set of questions?

15 THE WITNESS: That would be Ms.
16 Rae?

17 THE CHAIR: I'm wondering, Ms.
18 Nepton, if you're okay if we continue for about a
19 half an hour. Do you feel comfortable --

20 THE WITNESS: If we could have a
21 five-minute break, if you don't mind.

22 THE CHAIR: Sure.

23 THE WITNESS: Okay. Thank you.

24 THE CHAIR: Okay.

25 MS. DUBOIS: I will pause the

1 recording and resume when we're back.

2 --- (Recess taken)

3 THE CHAIR: I know you've said you
4 needed about 30 minutes, but if you need more time,
5 just let us know.

6 MS. RAE: Okay. Thank you. I'm
7 just adjusting the screen. Perfect. Thank you.

8 CROSS-EXAMINATION BY MS. RAE:

9 Q. Good afternoon, Ms. Nepton.
10 Good afternoon, panel and friends. Ms. Nepton, I
11 recognize that it is a long day for you, of course.
12 Feel free to, of course, pause as needed or ask me
13 to re-clarify.

14 Just to introduce myself briefly
15 because, of course, I am new here, my client is
16 Innu Nation, and this is the Innu Nation in
17 Labrador.

18 Ms. Nepton, in introducing
19 yourself, you mentioned that you are a member of
20 the Innu Nation in Quebec and a First Nation
21 community in Quebec. If I refer to Innu Nation, I
22 of course mean in Labrador.

23 A. Yes.

24 Q. Thank you. For everyone's
25 benefit, Innu Nation in Labrador is composed of two

1 First Nations, which is Sheshatsiu Innu First
2 Nation and Mushuau Innu Nation.

3 Ms. Nepton, I think you would
4 agree with me that those would be two of the First
5 Nations among the 138 that you have indicated in
6 your First Nation that Canada would consider as not
7 being served by an agency?

8 A. Exactly, by a First Nations
9 agency.

10 Q. Right. Ms. Nepton, you
11 mentioned earlier just -- sorry, preliminary
12 matters, but you had mentioned earlier that you
13 don't have in front of you the exhibits to Ms.
14 Germaine Benuen's affidavit, which is fine. I
15 actually think that we won't need them. If we do,
16 we can refer to them electronically, but I suspect
17 we won't.

18 A. Okay. Thank you.

19 Q. The last thing I just wanted
20 to say by way of introduction is, of course, Innu
21 Nation is here, you know, bringing forward its
22 experience as, you know -- its experience as one
23 local example among the nations that aren't being
24 served by an agency that Canada recognizes in its
25 agency program.

1 I'm then taking it now to the most
2 local level of our evidence, and I respect that
3 you, Ms. Nepton, are not going to necessarily have
4 in your mind and at your fingertips information at
5 that level of specificity, and of course just be
6 honest about those challenges and we will just work
7 through the best that we can.

8 A. Thank you. Thank you very
9 much.

10 Q. Yes, I'm mindful of that.
11 Okay. I want to turn to -- maybe we could screen
12 share, Ms. Dubois, Ms. Nepton's affidavit.

13 MS. DUBOIS: Just a moment. I'm
14 not sure why it's not -- just a moment. I'm having
15 myself some technical difficulties.

16 MS. RAE: Not a problem.

17 MS. DUBOIS: I will just call it
18 up again.

19 MS. RAE: There we go.

20 MS. DUBOIS: No, that's the
21 whiteboard. I'm sorry, I don't know why I can't
22 call it up. Of course it was just working. I will
23 try one more thing.

24 MR. FRATER: Madam Chair, I'm just
25 wondering whether we could ask whether there is

1 anyone who doesn't have a copy before them so that
2 if it's not the case that we can't all follow
3 along, I don't know that we should trouble Ms.
4 Dubois to get to the technological bottom of this.

5 MS. RAE: That would work fine for
6 me to just proceed that way.

7 MS. DUBOIS: Okay. Now, Ms. Rae,
8 do you have the document?

9 MS. RAE: Oh, yeah.

10 MS. DUBOIS: Okay. I can give you
11 screen sharing rights. Let's do that.

12 MS. RAE: Okay. Let's do that.
13 Okay. Let me just make sure that everything I have
14 got up here is correct.

15 MS. DUBOIS: You should have it.

16 MS. RAE: Okay. So if I have
17 screen sharing rights now -- yes, this should work
18 and I can share the PDF. Good. Okay. So this is
19 the affidavit. Okay. Good. Now, the only thing
20 this does for me is -- sorry, I have a technical --
21 I'm sorry, I have a technical question. The
22 trouble I have, and I have had this problem before,
23 is if I'm screen sharing, I don't know how to
24 minimize it so I can get access to my own notes.
25 Does anyone else understand what I'm talking about?

1 THE WITNESS: You have to select
2 your screen. So if you press -- I don't know what
3 kind -- if you have a Windows type of machine, you
4 can press the Windows key and the left -- to the
5 left arrow, and it will split your screen in two.

6 MS. RAE: Okay. All right. Let
7 me see here. What do I need to do? Sorry, this is
8 just --

9 MS. DUBOIS: I really apologize
10 for this. I'm not sure why this is happening.
11 Someone else has it up, they could screen share it
12 but then the give controls over to Ms. Rae. We
13 could try that. I'm still trying. I'm not sure
14 why I can't call it up.

15 MS. RAE: I'm going to try --
16 let's try proceeding without the screen share. I
17 think that may work fine. And if Ms. Nepton or if
18 anyone else has a concern at any point, just stop
19 me, please.

20 THE CHAIR: Just a moment, please.
21 Member Lustig, do you have the document --

22 MR. LUSTIG: Yes.

23 THE CHAIR: Okay. Great. I
24 wanted to check that first. Okay. Yes, you can
25 proceed. I think everybody has the document;

1 correct?

2 MS. RAE: Okay. I will proceed.

3 THE CHAIR: Okay.

4 BY MS. RAE:

5 Q. Okay. So we are turning,
6 then, to paragraph 27 of Ms. Nepton's affidavit
7 which speaks to services in Newfoundland and
8 Labrador. And I'm just going to start on my
9 questions, just focusing on the protections side
10 and just clarifying a few pieces of information.

11 So the first piece of information
12 that I wanted to clarify on the protections side
13 was the statement in this paragraph that:

14 "According to ISC data --"

15 Of course meaning Indigenous
16 Services Canada

17 "-- on March 31, 2019, there
18 were approximately 82 on-
19 reserve First Nations
20 children in care from these
21 communities."

22 Meaning Natuashish and
23 Sheshatshiu, the two Innu communities.

24 With respect to that figure, my
25 question is: Are you aware that -- that figure was

1 surprising to me and I do have some questions about
2 it. That's less than half of the provincially
3 recorded numbers of Innu children in care at the
4 time. Is that something you're familiar with?

5 A. I was made aware of it
6 recently, and given the discrepancy between the
7 numbers that we reported and the numbers that I
8 believe have been reported at 162, perhaps, if I
9 remember correctly, I would be happy to look again
10 at our system, our information management system to
11 see where that discrepancy could come from, and I
12 would be happy to get back to you or to work
13 through Mr. Frater on any questions that you have
14 about how we got to these numbers, knowing that
15 they're a snapshot in time. Our figures are based
16 upon, of course, what the province reports back to
17 us, as well as what we have in terms of our
18 information management. So I think that that is
19 possible and would be happy to work on that with
20 you.

21 Q. Okay. I will accept that as
22 a take-back. I will just point out, then, in
23 relation to that, that Ms. Benuen's affidavit does
24 have the number of -- it was 165 in her affidavit,
25 which is a provincially-derived figure, which would

1 be from 2020. So the numbers which are in the
2 meeting minutes, which I don't think we need to go
3 to now, given your commitment, they are from 2019
4 and are in the 170s.

5 I just want to point to one other
6 figure in relation to your search on this, which is
7 in your own affidavit in Exhibit 2. So for those
8 of you -- so then in the portion there where it
9 says -- which I believe is the first one in Exhibit
10 2, Newfoundland and Labrador.

11 A. Yes.

12 Q. And if you go to the kind of
13 second page of it, on the left, it says children
14 and care, all ages, FNCFS data as of March, and
15 then that's 2018. But the number there is 235.

16 What I have been told from my end
17 is that typically the federal government numbers
18 are higher than the provincial numbers in
19 Newfoundland and Labrador because they include the
20 federal government's reimbursement of children in
21 kinship care who aren't considered by the province
22 to be formally in care. So I was quite surprised
23 to see the number of 82. It doesn't accord with
24 the information we have, so I thank you for your
25 commitment to take that back and check it out.

1 A. No, I have made note of it on
2 page 4 of the Newfoundland/Labrador tab 2 and the
3 discrepancy of 235 as of March 31st, 2018. And
4 then, of course, the 85.

5 Q. Okay. So just to wrap that
6 issue up, then, you're not aware of -- you're not
7 personally aware of any dramatic fluctuations in
8 the number of Innu children in care, Labrador Innu
9 children in care at that time?

10 A. No. No, I am not aware of
11 anything.

12 Q. Okay. Thank you. So we will
13 just leave that piece, then, with that commitment
14 if that's okay with you. Do we still have Rob?
15 Sorry, Mr. Frater --

16 MR. FRATER: Yes. We will get you
17 that information.

18 MS. RAE: Thank you, Mr. Frater.

19 BY MS. RAE:

20 Q. Good. Okay. I will then
21 move to -- I'm just flipping, then, in my notes.
22 Continuing in your affidavit, then -- continuing on
23 the issue of protection -- and I'm just now going
24 to go back out of the exhibit and back up to
25 paragraph 27 where we were prior.

1 A. Yes.

2 Q. There's a comment at the end
3 of that paragraph 27 around the funding that Canada
4 has provided to the province through its bilateral
5 agreement with the province.

6 I just want to first confirm,
7 we're talking about protection funding there, then,
8 not prevention funding?

9 A. That is correct. I will
10 double-check my table at NN-3.

11 Q. I think what you will --

12 A. Yes.

13 Q. Yes. Okay. Thank you.

14 What's also in your paragraph 27, at the top of
15 that paragraph, is that the provincial government
16 of Newfoundland and Labrador provides protection
17 services. Later in that same paragraph, you say
18 prevention is not part of the legislation.

19 So just to confirm, the province
20 of Newfoundland and Labrador, it is not providing
21 prevention services?

22 A. Yes. I agree with that.

23 Q. Okay. So in terms of the
24 funding then referenced that is going to the
25 province for protection, this 10.8 million and then

1 up to 19.1 million, do you know how that is broken
2 down between the maintenance and operations?

3 A. No, I cannot confirm that at
4 this moment, how it's broken down.

5 Q. That's fine. Do you know, is
6 the growth there, is that reflecting a larger
7 number of Innu children in care or is it reflecting
8 more expensive services generally or anything else,
9 or is that something that you're not able to speak
10 to?

11 A. I am not able to speak to it
12 with certainty, but I could say that it may be due
13 to increases of children in care. I could also say
14 that it may be due to fluctuations in population,
15 and so I can leave it as those two as an example.

16 Q. Okay. That's fine. The last
17 -- the end of paragraph 27 of your affidavit, it
18 refers there to the 76.9 increase in that
19 protection funding going to the province between
20 the 10.8 in 2015/'16 to 19.1 in 2018/'19.

21 A. Yes.

22 Q. I just want to raise with you
23 something that I have been told from Indigenous
24 Services Canada at the regional level, which is
25 that the 19.1 figure included a sizable amount in

1 the range of 1.8 million or such that actually
2 related to a previous year.

3 Is that -- I raise it only because
4 that would then affect that statement about 76.9
5 percent as an amount of increase. It would then
6 make that percentage lower if the amount that
7 really related to 2018/'19 was lower. It's just
8 for the sake of clarity. Is that something that
9 you are aware of or (inaudible)?

10 A. I am not available -- I am
11 not aware of that level of detail but would agree
12 that, yes, it would decrease the percentage of the
13 increase over four years, yes.

14 Q. Okay. Could I ask -- this is
15 a small point, then, but just for the sake of
16 accuracy, is that something that could be taken
17 back?

18 A. Yes. Yes, I could take it
19 back.

20 Q. Okay. Thank you. So those
21 are some just clarification points in relation to
22 protection. I'm going to move, then -- I'm going
23 to circle back in a minute to some other -- I'm
24 going to move, then, to funding for Innu
25 representatives, which is in paragraph 28, the next

1 paragraph.

2 A. Yes.

3 Q. What I was saying is I'm
4 going to circle back at the end to prevention, but
5 I want to just first stay kind of within
6 protection. And we will go to paragraph 28, which
7 references band representative funding.

8 So just for context, what is set
9 out in a bit more detail in Ms. Germaine Benuen's
10 affidavit is that the province introduced a
11 legislative role of band representatives, what its
12 legislation called Indigenous representatives.
13 That was introduced in 2019. And what you have
14 here in paragraph 28 is that since then, that
15 funding has been through Jordan's Principle.

16 A. Mm-hmm.

17 Q. Okay. So that's where we
18 are. Okay. Also in Ms. Benuen's affidavit -- we
19 could go to it if need be -- which is that they
20 turn to Jordan's Principle having been unable to
21 get ISC proper, shall we say, to fund the band
22 representative program in the 2019/'20 year or the
23 2020/'21 year. And that's where kind of that story
24 leaves off in her affidavit.

25 Does that fit with your

1 understanding?

2 A. With respect to the provision
3 of band rep services funding through the Jordan's
4 Principle funding stream, I am aware that it
5 happened that way or that's how the money was
6 flowed. However, I am uncertain, because I think
7 it speaks to before I joined perhaps, this sector,
8 as to how or why it was funded through Jordan's
9 Principle as opposed to through child and family
10 services.

11 With respect to band rep services
12 and options for band rep (inaudible).

13 Q. Thank you. And we're
14 probably both under some limitation about what we
15 can say about those discussions. We will do what
16 we can. I just wanted to clarify a little.

17 What you said in the affidavit
18 there is funding will be made available in 2020/'21
19 for band representatives under the CWJI funding
20 stream. Would it surprise you to say that that was
21 the first that Innu Nation or the Innu roundtable
22 secretariat had heard about the extension of CWJI
23 funding for Innu band representatives?

24 A. Would you mind repeating the
25 question? I'm sorry.

1 Q. I will put to you that your
2 affidavit was the first that my clients had heard
3 about CWJI funding being potentially extended for
4 Innu band representatives. Does that fit with your
5 knowledge or do you have contrary knowledge?

6 A. I think that based on
7 discussions with ISC and about the issue of band
8 representative services, we were seized of the
9 issue, seized of the fact that it had been under
10 Jordan's Principle the previous year, and looking
11 at it again with a view of potentially resolving it
12 through either ongoing discussions or through some
13 other means.

14 Q. Okay. The year referred to
15 here in your affidavit is 2020/'21. That is this
16 current fiscal year. I just want to confirm, ISC
17 has not extended CWJI funding to the Innu Nation
18 for band representative services for this fiscal
19 year, to my knowledge. Does that fit -- is the
20 reference to the year here intentional or are you
21 intending to say that there is funding being
22 offered this fiscal year?

23 A. Without wanting to compromise
24 other ongoing discussions, at the time that my
25 affidavit was made, we were looking to resolve this

1 issue and providing some sort of certainty with
2 respect to the possibility of funding for 2021.

3 Q. 2021/'22?

4 A. Yeah. And --

5 Q. Okay.

6 A. Yeah.

7 Q. So that may refer, then -- be
8 intended to refer to next fiscal year?

9 A. Yes.

10 Q. Okay. And I do not want to
11 compromise -- I recognize that there are
12 discussions --

13 A. Yes.

14 Q. -- but I do want the panel to
15 have some clarity of information. I'm going to put
16 to you that Indigenous Services Canada has not, in
17 fact, confirmed any CWJI funding for Innu band
18 representatives for any year. And I'm saying
19 confirmed -- has not confirmed. Is that correct,
20 to your knowledge, Ms. Nepton?

21 A. I would say yes, besides what
22 has been provided by Jordan's Principle. However,
23 as mentioned before, there are ongoing discussion
24 that are looking at other options and accommodating
25 needs.

1 Q. Okay. So there's been an
2 outreach to discuss and there has been no funding
3 confirmed yet outside of the current year Jordan's
4 Principle? Like, nothing further has been
5 confirmed?

6 A. As far as I understand. I
7 can go back to my original colleagues and confirm
8 with certainty, but as I understand, I do not think
9 that that has been conveyed or communicated
10 formally for the Innu to consider.

11 Q. Thank you. And one last
12 question about that. Just to confirm, it has been
13 the position of Indigenous Services Canada, then,
14 that those First Nations outside of Ontario are not
15 eligible for any actual cost reimbursement of band
16 representative-type services?

17 A. First Nations are not
18 eligible for actuals. The actuals process is --
19 the actuals process and the reimbursement of
20 actuals is agencies.

21 Q. But for band representative
22 services --

23 A. Oh, yeah, no --

24 Q. -- it's limited to Ontario?

25 A. Yes.

1 Q. The actuals process is
2 limited to Ontario?

3 A. Exactly. Ontario is the only
4 one that provides, to the best of my knowledge,
5 band rep services. Band representative services.
6 Sorry.

7 Q. Sorry, that Ontario is the
8 only jurisdiction to have that service in its
9 legislation? Or that Ontario is the only
10 jurisdiction that Canada will reimburse at actuals?

11 A. In the legislation. Provided
12 for in legislation.

13 Q. Okay. That doesn't fit with
14 my knowledge, so that's something I may ask you to
15 take back, then, to confirm.

16 A. Yeah.

17 Q. Maybe I will just pose it as
18 a question as to which jurisdictions -- I know the
19 answer to this question, but it's not one that
20 obviously I can put in evidence. But I will pose
21 it as a question as to which jurisdictions have in
22 their legislation band representative services and
23 how does Indigenous Services Canada fund them.

24 A. Okay.

25 Q. Is that acceptable to take

1 back?

2 MR. FRATER: Yes, that's fine.
3 Madam Chair, though, I have to say I'm concerned
4 about the entire line of questioning because, as my
5 friend knows, discussions are ongoing and it sort
6 of left the impression that it's not a resolution
7 at the moment so we're not paying. And it puts us
8 in a very difficult position to answer candidly
9 because we're both under requirements of
10 confidentiality about this. And so, you know,
11 leaving the impression that at a point in time,
12 namely today -- I'm not sure my friend is
13 establishing anything other than that the
14 discussions haven't been concluded.

15 So I am concerned that this whole
16 line has left the witness in a very difficult
17 position and the Tribunal in a less than fully
18 informed way. So I just want to -- I don't know
19 whether my friend is moving on at this point but --

20 MS. RAE: Yes. I mean, I am
21 moving on to the next question. The main question
22 I had there, which is just that actuals are not
23 available for band representative services outside
24 Ontario, but the fact is -- and I don't think it's
25 controversial. There are several other

1 jurisdictions that do have band representative
2 functions in the legislation to varying degrees.
3 British Columbia is one, Yukon is one. And then in
4 terms of partial roles, I mean, Newfoundland and
5 Labrador, Nova Scotia -- there's others.

6 I don't think I'm asking anything
7 controversial just in trying to confirm.

8 MR. FRATER: No, I don't think
9 that part is controversial, but the entire lead-up
10 to that is potentially misleading.

11 MS. RAE: The concern I have, Mr.
12 Frater, is that Ms. Nepton put in her affidavit
13 that ISC has or will make available CWJI funding
14 this year, and I put to her that they have not.
15 So, I mean, I have to address what is in her
16 affidavit on this point.

17 MR. FRATER: Well, if the
18 impression is going to be left that the funding was
19 given in 2019 and has not been given thereafter,
20 that's my concern. So anyway, we can maybe deal
21 with this at a later time.

22 THE CHAIR: Mr. Frater, I note
23 your objection. The only difficulty here is now we
24 have context, and thank you for that, but I
25 appreciate you were giving them some leeway before

1 objecting and you were trying to figure out where
2 she was going with this. But now the questions
3 have been asked, so how do you propose that we move
4 forward with this? We have your context. We have
5 your objection.

6 MR. FRATER: Yes. I guess what we
7 would like is if we get to a place where we can
8 give the Tribunal more clarity on this issue, I
9 would appreciate the opportunity to do so.

10 THE CHAIR: Perfect. Thank you.
11 Ms. Rae?

12 MS. RAE: Okay. Thank you. Okay.
13 I think we can move on from that piece.

14 BY MS. RAE:

15 Q. I'm going to move to an issue
16 that Mr. Taylor raised around this issue of, as you
17 put it, Ms. Nepton, partially delegated agencies.

18 A. Yes.

19 Q. Or as he put it, a kind of
20 third way. There does seem to be a bit of a
21 category there in terms of how Indigenous Services
22 Canada is operating, and I'm going to try to just
23 ask a few further follow-up questions on there. I
24 don't know if I'll serve to clarify anything or
25 perhaps muddy the waters further, but we can try.

1 So I would like to just turn to
2 paragraph 29 of your affidavit, around the
3 Miawpukek First Nation, which is in Newfoundland
4 and Labrador. So this is the third reserve
5 community, third and last reserve community in
6 Newfoundland and Labrador.

7 As you indicate, Indigenous
8 Services Canada provides direct funding to the
9 First Nation which is based on actuals and that
10 they then have a service agreement with the
11 province of Newfoundland and Labrador for
12 protection services. The salary of a provincial
13 social worker is paid for.

14 My understanding is that they have
15 a very small -- a very tiny number of children in
16 care, so one social worker on duty is quite
17 sufficient, so it's a pretty simple service
18 agreement.

19 I'm just trying to characterize
20 this. It is still the province of Newfoundland and
21 Labrador that delivers the protection service in
22 this model; yes?

23 A. Yes. Yes. As I understand
24 it.

25 Q. Thank you. So they haven't

1 delegated protection to the Miawpukek First Nation?

2 A. That's right. It's subject
3 to a service agreement between the province and
4 Miawpukek.

5 Q. Right. So what's different
6 from Indigenous Services Canada's perspective is
7 that there is a -- it has one funding agreement,
8 which is with Miawpukek, and then they kind of flow
9 through the protection funds to the province?

10 A. Yes.

11 Q. Okay. But it's not that the
12 province has delegated anything to the First
13 Nation.

14 A. I would have to double-check
15 what the arrangement is to confirm how the funding
16 flows. And I would be happy to get back to you to
17 confirm how the funding flows with respect to
18 protection services and prevention.

19 Q. Okay. The suggestion I put
20 to you is that the category here is really about
21 the flow of funding from Indigenous Services
22 Canada's perspective rather than any type of
23 delegation.

24 A. Okay.

25 Q. Does that fit -- would you

1 agree with that, Ms. Nepton?

2 A. Yes, that you would like
3 confirmation of how the funds are flowed with
4 respect to protection services to the First Nation
5 --

6 Q. Yes, and whether there's any
7 actual delegation.

8 A. Mm-hmm.

9 Q. Or is it just a second level
10 of the flow of funding? They're an intermediary in
11 the flow of funding.

12 A. Okay.

13 Q. And I have the same question
14 in relation to paragraph 31 of your affidavit,
15 which Mr. Taylor was asking about in relation to
16 Prince Edward Island and the Mi'kmaq Confederacy.

17 A. Mm-hmm.

18 Q. Which, again, it says here
19 they purchased the protection services from the
20 province. And I put to you: Is there an actual
21 delegation from the province to the Mi'kmaq
22 Confederacy? Or does the province retain
23 jurisdiction and deliver the services but rather
24 they're just purchased? The same way that Canada
25 would purchase the services from the province with

1 respect to the Innu, but instead it flows through
2 in this case.

3 A. Yep, and I am happy to take
4 that back and confirm and provide accurate
5 information as opposed to speculating about how the
6 funding flows.

7 Q. Okay.

8 A. And the formal delegation
9 instrument, whether it is formal or -- and I think
10 what you are getting at is whether there is a
11 formal arrangement that sets out the roles of each
12 party, but also, you know, is it beyond just flow-
13 through?

14 Q. Well, what I'm getting at is
15 that "delegation" may not be the right word here --

16 A. Okay.

17 Q. -- because if the body here,
18 be it the Mi'kmaq Confederacy of P.E.I. or be it
19 Miawpukek First Nation, they're not being delegated
20 protection from the province. And at least in the
21 Newfoundland and Labrador context, we know that
22 they're not being delegated prevention from the
23 province because we know from your affidavit that
24 they don't have prevention in the legislation.
25 They can't delegate prevention.

1 A. M'hmm.

2 Q. So my suggestion is that
3 nothing is, in fact, delegated. It's a different
4 funding model but not a delegation difference.

5 A. All right. Thank you for
6 that clarification.

7 Q. Okay. And I take it you're
8 not necessarily agreeing with that right now? It's
9 something you're going to take back?

10 A. Exactly.

11 Q. Thank you. Okay. And then
12 further to that, you would agree with me, Ms.
13 Nepton, that in both of those cases, P.E.I. and
14 Miawpukek, they have a very small number of
15 children in care?

16 A. Yes.

17 Q. Thank you. So, further to
18 that, if they have a service agreement where
19 they're purchasing protection services from the
20 province, we can anticipate that there is a level
21 of complexity that is much simpler if we're talking
22 about, say, one social worker, as your affidavit
23 indicates in the case of Miawpukek, versus, say,
24 hundreds of children in care and multiple social
25 workers.

1 A. Yes.

2 Q. There's a difference there in
3 complexity.

4 A. Yes, I would agree with that.

5 Q. Thank you. Okay. I think,
6 then, I can move on from the discussion, then, of
7 child protection, the child protection side of
8 services. And I just have a few questions, then,
9 on the prevention side.

10 We will just confirm a few points
11 here. I think, actually, your evidence and Ms.
12 Germaine Benuen's evidence has been quite
13 consistent on the prevention point. So just going
14 back up to paragraph 27 of your affidavit. I think
15 we actually confirmed earlier that you have been
16 kind of -- based on what you've had here already,
17 the province of Newfoundland and Labrador, it does
18 protection, it doesn't do prevention, and that's
19 not part of it, the legislation?

20 A. Exactly. It's not entrenched
21 in the legislation.

22 Q. Okay. Thank you. We covered
23 that the 10 million going up to 19 million or
24 whether it goes up to 17 or 18, whatever the number
25 is confirmed to be, that money is for protection.

1 That's not money for prevention. I think we did
2 cover that.

3 A. Yes, and when I respond to
4 the question, I will make sure to confirm the type
5 of funding with respect to the protection versus,
6 let's say, CWJI for prevention --

7 Q. But that is not the CWJI
8 money?

9 A. No.

10 Q. That's the bilateral
11 agreement?

12 A. Yeah. Exactly.

13 Q. Thank you. So as you say in
14 your paragraph 27, following budget 2016, that's
15 when Indigenous Services Canada started funding the
16 Innu communities to provide their own prevention
17 services; is that correct?

18 A. Yes.

19 Q. Okay. And before the
20 implementation of budget 2016, then, in the
21 Labrador Innu communities, no one was funding child
22 welfare prevention services?

23 A. Because it predates my
24 arrival to the sector, I can confirm and follow up
25 on that point gladly, because as I stated, 2016 is

1 a good three years before my arrival and I would
2 like to make sure that I accurately provide you
3 with that information.

4 Q. Okay. That's fine. So not
5 to your knowledge, but that's something you can
6 take back?

7 A. Yes.

8 Q. Okay. Canada has not
9 required Newfoundland and Labrador to provide
10 prevention under their bilateral funding agreement?

11 A. I would have to go over the
12 bilateral agreements in great detail and review
13 them from when I originally reviewed them. But I
14 can again look at the agreements and confirm that
15 that is either true or incorrect.

16 Q. Okay. So we know that
17 Newfoundland and Labrador is not providing
18 prevention, so --

19 A. No.

20 Q. So it's not that they have
21 been in default of Canada's requirement that they
22 provide it, I don't think. That's not something
23 that Canada has. Canada has funded them for
24 protection but it hasn't required them to provide
25 them to provide for --

1 A. No. Not that I am aware of.

2 Q. Not to your knowledge. Okay.

3 A. Yes. Sorry, I had
4 misunderstood the question.

5 Q. That's okay. Okay. I think
6 we have got that clarified.

7 So you have put in your affidavit
8 that the prevention funding now for the current
9 fiscal is now up to nearly 3 million and that that
10 is CWJI funding.

11 As to the timing of when that
12 amount was confirmed, there is a bit of information
13 on that in Ms. Benuen's affidavit which we could
14 turn to at paragraph 78.

15 So what she says is that later in
16 2020, which was following their human rights
17 complaint filed, their funding appeal, it was in
18 September or October of 2020 that there were
19 additional funds that came forward. So it's not
20 that there was no funding before that, but there
21 was an increase in funding that was confirmed
22 around September/October of last year.

23 A. Yes, based upon what is
24 written here. But again, I think because of the
25 discussion around the human rights complaint that

1 is currently before the Tribunal, and again, not to
2 compromise the discussions that we have been having
3 -- and when I say "we", it's of course ISC and the
4 Innu Nation -- I'm a little uncomfortable in
5 commenting further on that point.

6 Q. And I don't want to make you
7 uncomfortable --

8 A. Okay.

9 Q. -- but what it's worth it to
10 say -- I mean, you don't have different information
11 on timing about that that you're bringing forward?

12 A. I can say to the best of my
13 knowledge, I do not have any different information.

14 Q. Okay. So the funding for
15 prevention in the Labrador Innu community, then,
16 you have it in your affidavit that it's through
17 CWJI; correct?

18 A. Yes, for prevention funding.
19 Yes.

20 Q. Okay. It's not going through
21 the actuals claims process?

22 A. No.

23 Q. Okay. And on the province's
24 side, they cannot be eligible for prevention at
25 actuals, not being a First Nations agency, first of

1 all, and also not having -- not doing prevention,
2 they're not eligible on the province's side to
3 apply for prevention at actuals?

4 A. As far as -- to the best of
5 my knowledge, no. Yes. Yeah.

6 Q. Right. Is any province able
7 to apply for a prevention at actuals?

8 A. No, not that I'm aware of.
9 The prevention on actuals -- the prevention is the
10 CWJI stream that is provided directly to First
11 Nations. And again, CWJI can be prevention or it
12 can be jurisdictional initiatives.

13 Q. Okay. But Newfoundland and
14 Labrador can't claim through the actuals process?

15 A. Yes, for prevention --

16 Q. For prevention --

17 A. Not that I am aware of. I am
18 not aware that they have been submitting --

19 Q. Right.

20 A. -- claims and being
21 reimbursed on --

22 Q. Right. We have already
23 covered that they don't do prevention.

24 A. Yeah.

25 Q. We don't need to rehash.

1 Okay.

2 A. Yeah.

3 Q. You have confirmed that the
4 Innu funding is through CWJI. The Innu that are
5 not eligible for a prevention at actuals, at least
6 in Indigenous Services Canada's view, that's --

7 A. Correct. Yes.

8 Q. Okay. So just to confirm,
9 then, no one, no entity, is eligible for prevention
10 funding on an actual cost basis at this time in
11 order to provide prevention services to the
12 Labrador Innu First Nations?

13 A. As far as I know, I agree
14 with that statement. I do not know.

15 Q. Sorry, you agree?

16 A. Yes.

17 Q. Thank you.

18 A. (Inaudible).

19 Q. Okay. And please -- okay.
20 Thank you. Please confirm for me the basis on
21 which Indigenous Services Canada reimburses the
22 province of Newfoundland and Labrador for
23 maintenance to put Labrador Innu children into care
24 if they are removed from their families of origin,
25 the cost of (indiscernible) care, the maintenance

1 cost. That cost remains an actual cost
2 reimbursement; correct?

3 A. I would say in principle I
4 would agree. However, based on uncertainty, I
5 could take that one back and relook at the service
6 agreement to see what is covered in the agreement.

7 Q. Okay. Those are all my
8 questions. Thank you, Ms. Nepton.

9 A. Thank you.

10 THE CHAIR: Thank you. We will
11 take a 15-minute break. Is that sufficient for
12 everyone? Yes? No?

13 UNIDENTIFIED FEMALE: Yes.

14 MR. SMITH: Chair Marchildon, it's
15 Brian Smith speaking from the Human Rights
16 Commission. It may be helpful, just before we go
17 into that break, for me to let you know what my
18 intentions are. And I can say that to the extent I
19 had a few questions, Ms. Rae has actually touched
20 on them and I don't have any questions that I will
21 be asking of the witness. So as we go into the
22 break, it may be helpful for Mr. Frater and Ms.
23 Nepton to know that unless I'm forgetting someone,
24 the next opportunity may be to do some reply
25 examination.

1 THE CHAIR: Okay. Thank you. I
2 was actually giving you some time to figure out if
3 you had questions or not, but thank you for that.

4 MR. SMITH: Yes, I'm good. Thank
5 you.

6 THE CHAIR: All right. Okay. So
7 we will take 15 minutes and be back at 3:35.

8 MR. FRATER: Chair, could I just
9 say that I probably only have five minutes in
10 reply. So if you want to do that now, I think
11 we're done.

12 THE CHAIR: Well, do you need a
13 break or you're good?

14 MR. FRATER: I'm happy to take 15
15 minutes now if you want.

16 THE CHAIR: Let's just ask Ms.
17 Nepton. Ms. Nepton, are you okay to continue?

18 THE WITNESS: Sure, I am okay to
19 continue. Thank you.

20 THE CHAIR: Okay. Let's continue,
21 then. Thank you.

22 Before you start, Mr. Frater, I
23 just wanted to confirm that we've received a letter
24 and I believe that everybody received the letter
25 that the NAN is observing today but are not asking

1 questions. Okay. Thank you. Please go ahead.

2 RE-EXAMINATION BY MR. FRATER:

3 Q. Thank you. Ms. Nepton, you
4 were asked about paragraph 59 of your affidavit --

5 A. Yes.

6 Q. -- and the phrase in the
7 first sentence, "working towards exercising
8 jurisdiction".

9 A. Yes.

10 Q. To your knowledge, is ISC
11 funding First Nations to help them work towards
12 exercising jurisdiction?

13 A. To the best of my knowledge,
14 what I can say is that as part of the CWJI, much of
15 the work that was undertaking or work that is
16 undertaken by an entity of First Nation would be
17 funded for that capacity portion up to the time of
18 exercising jurisdiction. So the preliminary work
19 would have been funded through an ongoing work, of
20 course, through CWJI.

21 Q. All right. So the answer to
22 my question is "yes"?

23 A. Yes. Sorry. Yes.

24 Q. So the second question is you
25 were asked a lot of questions about C-92. Who does

1 that work within ISC?

2 A. Within ISC it is my sector,
3 so definitely the First Nation Child and Reform --
4 Child and Family Services Reform sector. It falls
5 under two individuals. There is Isa Gros-Louis,
6 who is their Reform branch, and also the addition
7 of a new branch with respect to the negotiation of
8 those agreements, and that's done -- it continues
9 to be under James Sutherland, who is currently
10 acting as our Assistant Deputy Minister but
11 retaining a role on those tables.

12 Q. All right. And when you say
13 negotiation of those agreements, are you talking
14 about coordination agreements?

15 A. Yes.

16 Q. To your understanding, do
17 those discussions involve discussions about
18 funding?

19 A. Yes, to the best of my
20 knowledge, that is the appropriate form to be
21 raising them.

22 Q. All right. And the third
23 question I have is, you have used the terms
24 "tripartite" and "trilateral" in giving your
25 evidence here this afternoon. Do those terms mean

1 anything different?

2 A. From my perspective, no.
3 It's three parties, be it the province, the
4 federal, and whatever Indigenous entity, agency or
5 other representative organization.

6 Q. All right. And my last
7 question, Ms. Nepton. Mr. Taylor asked you several
8 questions about your qualifications. Apart from
9 your legal training, what in your experience,
10 either your life experience or your formal
11 training, prepared you for the job you have?

12 A. I think when you look at what
13 is written in my affidavit, yes, you know, I have a
14 law degree. But really what compelled me to come
15 here was the subject matter itself. And as I get -
16 - I think anybody who has been raised in a First
17 Nation family definitely knows and is related to
18 children who are in the family who have been in the
19 care system or, in fact, have friends who were
20 raised in the foster system or, you know, captured
21 or fall in the victims of Sixties Scoop and
22 residential schools.

23 And so these are really complex,
24 but for me, from the human perspective, very
25 compelling and very real issues that play out in my

1 family, in others' families. And it also, I think,
2 allows me to learn a lot from others and learn from
3 -- you know, besides just ISC, I like what I learn
4 from others -- others being partners,
5 organizations, First Nations leadership and also,
6 you know, just from the news.

7 Like I said, for me, from my
8 perspective, the work with leadership and
9 organizations is something that I have always
10 really enjoyed. It keeps me grounded and I never
11 cease to learn and appreciate the elders that
12 attend a lot of the meetings, especially being far
13 away from home.

14 So while I'm far, I can be close
15 or at least feel close to who I am as a person.

16 MR. FRATER: Thank you. Those are
17 all the questions I have in re-examination, Madam
18 Chair.

19 THE CHAIR: Thank you. Thank you
20 everyone. Thank you, Ms. Nepton. This was a long
21 day for you.

22 THE WITNESS: It was a long day
23 for everyone.

24 THE CHAIR: Yes. Is there any
25 benefit -- will any party ask for a case management

1 after this? If the answer is no -- I see some
2 people saying -- so we will adjourn and thank you
3 very much. Have a good day.

4 THE WITNESS: Have a good weekend.
5 Thank you.

6 UNIDENTIFIED FEMALE: Take care,
7 everyone. Bye-bye.

8 UNIDENTIFIED MALE: Thank you very
9 much.

10 UNIDENTIFIED FEMALE 2: Thank you.
11 --- Whereupon the proceeding adjourned.