

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

COMPLAINANTS

- and -

CANADIAN HUMAN RIGHTS COMMISSION

COMMISSION

- and -

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

RESPONDENT

- and -

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

INTERESTED PARTIES

HEARD BEFORE: Ms. Sophie Marchildon, Chair

Mr. Edward P. Lustig, Member

PLACE HEARD: Ottawa, Ontario

DATE HEARD: Wednesday, May 15, 2019

APPEARANCES: Dr. Cindy Blackstock

Mr. David Taylor

Ms. Alyssa Edwards

For the First Nations Child and Family

Caring Society of Canada

Mr. Stuart Wuttke

Mr. Thomas Milne

For the Assembly of First Nations

Mr. Brian Smith

Ms. Jessica Walsh

For the Canadian Human Rights Commission

Mr. Robert Frater, Q.C.

Mr. Jonathan Tarlton

For the Attorney General of Canada

APPEARANCES: Ms. Krista Nerland (Not present)
Ms. Maggie Wente (Not present)
For the Chiefs of Ontario

Ms. Akosua Matthews (Not present)
For the Nishnawbe Aski Nation

Recorded by:

Canadian Human Rights Tribunal

240 Sparks Street, 6th Floor West

Ottawa, Ontario

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1 **THE CHAIR:** Good morning. And I'd like to
2 call for appearances, please, beginning with the Caring
3 Society.

4 **MR. TAYLOR:** David Taylor and Alyssa Edwards
5 for the Caring Society, and we're joined this morning by
6 Dr. Blackstock.

7 **MR. WUTTKE:** Good morning. Stuart Wuttke
8 for the Assembly of First Nations.

9 **MR. MILNE:** Thomas Milne for the Assembly of
10 First Nations.

11 **MR. SMITH:** Brian Smith for the Canadian
12 Human Rights Commission.

13 **MS. WALSH:** Jessica Walsh for the
14 Commission.

15 **MR. TARLTON:** Jonathan Tarlton for the
16 Attorney General of Canada.

17 **MR. FRATER:** And Robert Frater, Q.C., for
18 the Attorney General of Canada.

19 **THE CHAIR:** Thank you. I don't see Ms.
20 Wente or the Chiefs. Is that the understanding, that
21 they're not participating today?

22 **MR. TAYLOR:** Yes, Ms. Wente had to return to
23 Toronto.

24 **THE CHAIR:** Thank you. Given that the
25 witness has already arrived at his seat, what I will ask

1 is, Ms. Dubois, to administer the oath, and then move on to
2 Mr. Frater asking a few introductory questions. Oh, okay.
3 Thank you.

4 **MR. PAUL THOPPIL**, (Sworn)

5 **THE CLERK:** Please state your full name for
6 the record.

7 **THE WITNESS:** Paul Thoppil.

8 **THE CHAIR:** Thank you. Mr. Tarlton?

9 **MR. TARLTON:** Yes. Thank you, Madame Chair.

10 **--- DIRECT EXAMINATION BY MR. TARLTON:**

11 **Q.** Good morning, Mr. Thoppil.

12 **A.** Good morning.

13 **MR. TARLTON:** Madame -- Panel Members,
14 yesterday we provided to Ms. Dubois and Our Friends with a
15 copy of Mr. Thoppil's curriculum vitae. As it is the first
16 time he's appeared before you, we thought -- I'm going to
17 just briefly go through that with him, and then ask a few
18 questions before turning him over to Our Friends for their
19 questions.

20 **--- BY MR. TARLTON:**

21 **Q.** So, Mr. Thoppil, I think you have in
22 front of you a copy of your curriculum vitae. Correct?

23 **A.** Correct.

24 **Q.** Perhaps, if you would, could you briefly
25 go through it and highlight your education and professional

1 background leading up to today?

2 **A.** Thank you very much for the question. I
3 started my education at the University of Ottawa on the
4 pursuit of a Bachelor of Commerce, specializing in
5 accounting, and after graduation and prior to -- well,
6 concurrently while studying, I was apprenticing with the
7 accounting firm of PricewaterhouseCoopers, and through my
8 apprenticeship, I became a chartered professional
9 accountant.

10 After some years at PricewaterhouseCoopers,
11 I joined the Federal Government and I started my work at
12 the Treasury Board's Secretariat.

13 **Q.** I'm sorry, Mr. Thoppil, would you be
14 able to speak up a little bit? I'm just having some
15 difficulty hearing.

16 **A.** Sorry.

17 **Q.** No, it's fine, thanks. It's a big room.

18 **A.** Apologies. After several years at the
19 Treasury Board Secretariat, I moved to a Crown Corporation
20 called Canadian Commercial Corporation where I occupied a
21 number of roles, eventually becoming its Chief Financial
22 Officer and Vice President responsible for risk and
23 financial services.

24 Following that, I was asked to join the
25 Department of Foreign Affairs and International Trade,

1 where I was responsible for corporate planning, and then,
2 successively, as the senior full-time Financial Officer for
3 that federal department.

4 Then, from there, I occupied a number of
5 Director General positions on the international trade side,
6 responsible for export strategies for businesses for
7 international science and technology, and then was asked to
8 represent Canada abroad, for which I did, representing
9 Canada in Japan for five years as the commercial -- as the
10 head commercial representative, whereby I was engaged in
11 issues such as Transpacific Partnership Agreement and
12 encouraging Japanese foreign investment, such as Toyota,
13 into Canada.

14 I came back and was approached to become the
15 Chief Financial Officer of the -- what was then the
16 Department of Indigenous and Northern Affairs, for which I
17 accepted. And then, following the Prime Minister's
18 announcement in August 31st, 2017, on the proposed
19 dissolution of the Department of Indigenous and Northern
20 Affairs, I was -- I supported both the Chief Financial
21 Officer for both the Department of -- well, what was Crown
22 Indigenous Relations and Northern Affairs, as well as the
23 Department of Indigenous Services Canada. And then full-
24 time Department of Indigenous Services Canada's Chief
25 Financial Officer.

1 There was a stint for eight months whereby I
2 was concurrently the Chief Financial Officer for both the
3 Department of Indigenous and Northern Affairs and the
4 Assistant Deputy Minister responsible for strategic policy
5 at that department.

6 Currently, I am the Chief Financial Officer
7 for the Department of Indigenous Services Canada and the
8 Interim Chief Financial Officer for Crown Indigenous
9 Relations and Northern Affairs.

10 **Q.** Thank you, Mr. Thoppil. Could you just
11 briefly explain, in your present role, what your roles and
12 responsibilities are?

13 **A.** Yes, I will. So, my specific job title
14 is Chief Finances Results and Delivery Officer. The Chief
15 Financial Officer is more of a euphemism or more a term
16 that most people know, but, officially, it's Chief Finances
17 Results and Delivery Officer. And that position occupies a
18 number of roles and responsibilities. Obviously, it's
19 responsible for the financial management of the
20 Department's funds overall, and that -- and the financial
21 management goes from financial planning to resource
22 allocation to payment processing, corporate accounting,
23 procurement, and asset material management.

24 I'm also responsible for information
25 technology and the various corporate applications and

1 systems, as well as information management.

2 I'm also responsible for business planning,
3 including the Department's departmental plan and
4 departmental report that are tabled in Parliament.

5 I'm also responsible for the government's
6 agenda on deliverology and reporting on results, in terms
7 of what is the results -- in terms of achievements that
8 we're accomplishing under this government in terms of the
9 monies that it has asked Parliament to vote on.

10 I'm also responsible for statistics and
11 research of elements associated with indigenous peoples and
12 work closely with First Nations Information Government
13 Centre and Statistics Canada with regards to that as well.

14 **Q.** Thank you. I believe you have in front
15 of you a -- you swore an affidavit dated April 16th, 2019.
16 Correct?

17 **A.** Correct.

18 **Q.** And you have a copy of that affidavit in
19 front of you?

20 **A.** That is correct.

21 **Q.** And since you swore your affidavit back
22 on April 16th, is there anything you wish to add or revise
23 to it?

24 **A.** No, nothing further to add.

25 **Q.** Thank you very much. Madame Chair,

1 those are all my questions.

2 **THE CHAIR:** Thank you, Mr. Tarlton. That
3 was helpful. So, we'll ask Mr. Taylor.

4 **MR. TAYLOR:** Thank you very much, Chair.

5 **--- CROSS-EXAMINATION BY MR. TAYLOR:**

6 **Q.** Good morning, Mr. Thoppil.

7 **A.** Good morning.

8 **Q.** My name is David Taylor, and I'm counsel
9 for the First Nations Child and Family Caring Society of
10 Canada, so I've got a few questions for you this morning
11 about your affidavit and kind of subjects related to it.

12 **A.** Okay.

13 **Q.** My Friend, Mr. Tarlton, has actually
14 done some of my first questions for me. I was going to ask
15 you about your background. But I was just hoping to
16 clarify with you two dates in your background. The first
17 was when -- when did you start with the Treasury Board
18 Secretariat?

19 **A.** When I joined the Federal Public
20 Service, so, I think that was around 1991.

21 **Q.** '91? Okay. Thank you. And just to
22 confirm I'm correct, and you began with -- I think it was
23 then called Aboriginal Affairs Northern Development Canada
24 in 2014.

25 **A.** That's correct.

1 Q. Now, in terms of your training, you
2 mentioned you have a Bachelor of Commerce in Accounting
3 from the University of Ottawa and that you're also -- are
4 you still a chartered professional accountant?

5 A. Yes, I am.

6 Q. And that's a licensed profession?

7 A. That's correct.

8 Q. And so you're a member in good standing
9 with your licensing body at the moment?

10 A. Yes, that's true.

11 Q. And with regard to your training, do you
12 have any training in social work?

13 A. I don't have any formative training in
14 social work. Any work that I have been involved in through
15 -- it was as an indirect in terms of providing management
16 support to those providing social services.

17 Q. Right. So you -- no direct training
18 regarding social work. Is there other forms of training
19 you've received? I can't remember the term you used
20 exactly, if it was direct training or -- I just didn't
21 quite understand your answer. So, you've not received
22 formal training regarding social work. Is there other
23 training that you've received?

24 A. Training -- just only being involved in
25 an organization whereby that's one part of its mandate and

1 being part of a fora, various fora whereby social services
2 issues, challenges, opportunities for improvement in the
3 delivery of social services has been discussed.

4 **Q.** So, the experience of being present in
5 the work environment then.

6 **A.** That's correct.

7 **Q.** Now, in terms of training regarding
8 childhood development, would that be the same case then?

9 **A.** Yes, it would be.

10 **Q.** And regarding child and family services?

11 **A.** That is correct.

12 **Q.** Have you received any specific training
13 regarding residential schools?

14 **A.** No.

15 **Q.** Sorry, if you say "no" for the record

16 ---

17 **A.** No.

18 **Q.** --- that helps. Thank you. Now, you
19 mentioned your title is the Chief Finances Results and
20 Delivery Officer. Has this been the title of your position
21 since 2014?

22 **A.** No, it hasn't. It was Chief Financial
23 Officer as of 2014, and then it changed around -- in
24 November -- in 2017, in order to take on additional
25 responsibilities associated with results and delivery.

1 Q. And this links to deliverology, which
2 was something you just mentioned?

3 A. That is correct?

4 Q. And what is deliverology? It's a bit of
5 an Ottawa term, I think.

6 A. Deliverology is a framework initially
7 developed in Great Britain in order to have a heightened
8 focus on delivering on government priorities of the day and
9 going through business process reviews to find out where
10 there are challenges and roadblocks to ensuring that the
11 government priorities in terms of its money allocation was
12 accomplishing what it was intending to do.

13 Q. So, essentially, if I can just try and
14 paraphrase, deliverology is ensuring that the priorities
15 that have been established have actually been achieved?

16 A. That's correct.

17 Q. Now, in terms of, you know, ensuring
18 priorities are achieved or ensuring that results are
19 delivered, would you agree that ensuring that relevant
20 public servants who are involved in delivering the work
21 have the proper knowledge and skills to deliver results,
22 that that's an important aspect of deliverology?

23 A. Understanding the government's agenda
24 and understanding their business processes and ensuring
25 that they inform what are the critical milestones and

1 challenges associated with that as part of accomplishing
2 the government's objects in that regard is very important
3 for those people.

4 **Q.** And where those individuals have
5 positions that impact on either community groups or
6 entities outside the government, having training to
7 understand the context of that, of where the services are
8 going to or who the programs are for, who the results are
9 being achieved for, you'd agree that's important?

10 **A.** That would be important.

11 **Q.** Now, just one more question on training.
12 You're aware of the Truth and Reconciliation's Calls to
13 Action?

14 **A.** Yes, I am.

15 **Q.** And have you received any training on
16 the Truth and Reconciliation Calls to Action?

17 **A.** I have not received any formative
18 training on the Calls to Action.

19 **Q.** Would you agree that the Calls to
20 Action, with respect to this government, are part of the
21 results that the government is trying to deliver?

22 **A.** It's very important. It's one of the
23 elements that we do track in terms of how are we doing in
24 terms of accomplishing the government's commitment to
25 achieve all of the government's Calls to Action -- all the

1 Calls to Actions under the Truth and Reconciliation
2 Commission.

3 Q. Now, you've been in your position since
4 2014. So, when you arrived at the Department, I think you
5 were -- you'd come back from Japan, I think it was. And
6 so, when you arrived back in -- or sorry, not arrived back
7 -- when you arrived to the Department, AANDC as it then
8 was, were you aware at that time that there was a complaint
9 from the Caring Society and the AFN before the Tribunal?

10 A. No, I was not.

11 Q. So, when did you first become aware of
12 this complaint?

13 A. To my knowledge, I was only aware of it
14 about a year or two ago.

15 Q. So, sometime in 2017?

16 A. Yes.

17 Q. So, when did you first read the January
18 2016 -- or I guess I should ask first -- have you read the
19 January 2016 Tribunal decision?

20 A. Yes.

21 Q. And when did you first read that?

22 A. I only read it following the Tribunal
23 orders as of February 2018 when they came out.

24 Q. So, before you read the January 2016
25 decision -- that would have been last year in or around

1 February -- were you aware of the (inaudible) reports?

2 A. No, I was not.

3 Q. And before you read the 2016 decision,
4 were you aware of the Auditor General of Canada's 2008
5 report regarding the FNCFS Program?

6 A. Generally aware.

7 Q. And so, were you aware that the report
8 found that the funding formulas under EPFA and 20-1 led to
9 inequities in the program?

10 A. I'm familiar with that recommendation.

11 Q. And so, when would you have become aware
12 of the Auditor General's 2008 report? You said it was
13 prior to reading the decision.

14 A. I don't recall.

15 Q. Would it have been before the Tribunal's
16 2016 decision?

17 A. I honestly don't recall. Sorry.

18 Q. No, no, this isn't a memory test. Your
19 evidence is your evidence. That's all you can answer.

20 Now, I guess either before reading the 2016
21 decision or prior -- so, before reading the 2016 decision,
22 were you aware of the House of Commons Standing Committee
23 on Public Accounts 2009 Report about the FNCFS Program?

24 A. No, I'm not aware.

25 Q. And were you aware of the Auditor

1 General's 2011 report before reading the 2016 decision from
2 the Tribunal?

3 **A.** The Auditor General's 2011 report?

4 **Q.** Yeah, so there's the 2008 report, which
5 we've just discussed, and then there was a follow-up report
6 in 2011.

7 **A.** Just generally aware.

8 **Q.** And the same, you wouldn't recall when
9 exactly you read that.

10 **A.** No. Sorry.

11 **Q.** And the same would then be -- in terms
12 of the House of Commons Public Accounts Committee, you
13 wouldn't have been aware of the 2012 report regarding the
14 First Nations Child and Family Services Program.

15 **A.** No. Sorry.

16 **Q.** And how about the United Nations
17 Committee on the Rights of the Child's recommendations from
18 2012 regarding the First Nations Child and Family Services
19 Program?

20 **A.** No.

21 **Q.** Now, before we -- is there a reason why
22 you wouldn't have become aware of these things before the
23 2016 decision, before you read the 2016 decision?

24 **A.** Those were -- I think came under the
25 purview and roles and responsibilities of the Program --

1 Assistant Deputy Minister responsible for it.

2 **Q.** Now, in terms of your -- because I
3 understand, at least before 2017, your role was the Chief
4 Financial Officer, and your new expanded role is the
5 Finances Results and Delivery Officer. Would ensuring that
6 programs are delivering the results that they were intended
7 to, would that now fall under your purview as well?

8 **A.** Only those that were government priorities
9 as opposed to baseline existing programs. So, those that
10 the government had defined coming into its mandate post-
11 election, as its political priorities was the ones that we
12 were tracking.

13 **Q.** I see. Now, at paragraph 2 of your
14 affidavit and in your answer just a few minutes ago, you
15 noted that you read the February 1st, 2018 ruling. Or,
16 actually, I suppose, to be fair, your evidence was that
17 you'd read the 2016 decision in February. So I'll ask the
18 questions separately. Have you read the February 1st, 2018
19 ruling -- no, you say you've read it in your affidavit, I'm
20 sorry. When did you read the February 1st, 2018 ruling? I
21 apologize for thinking out loud there a bit too much. So
22 I'll just ask the question directly.

23 **A.** That's okay.

24 **Q.** When did you first read the February
25 1st, 2018 ruling?

1 A. I think later that month.

2 Q. And can you -- what's your recollection
3 or understanding of what the February 1st, 2018 ruling
4 ordered Canada to do?

5 A. I think, in a very high-level summary
6 way, it imposed a legal obligation upon the Department to
7 ensure that there was adequate funding, sufficient funding
8 for the program and specifically to deal with actual costs
9 incurred by agencies and to ensure that the Department
10 suspended reallocations from other programs that may impact
11 negatively a First Nation child.

12 Q. Now, in terms of the other -- or I guess
13 you're aware there have been other orders besides the two
14 we've discussed, the January 2016 and the February 2018?

15 A. Um-hmm.

16 Q. And have you read those orders?

17 A. Not specifically. I don't recall.

18 Q. So, you don't recall reading any other
19 besides the two, January -- I mean, I can -- if it will
20 assist, the other orders are -- there's one from April
21 26th, 2016.

22 A. Okay.

23 Q. And there's another from September 14,
24 2016. One from May 26, 2017, that was specifically
25 regarding Jordan's Principle. And then that order was

1 amended November 2017. And then there's the most recent
2 order was February 21st, 2019. Does that jog any
3 recollection of other orders you might have read?

4 **A.** I'm familiar with the Jordan's Principle
5 order.

6 **Q.** That would be the May 2017 order.

7 **A.** Right.

8 **Q.** And so, you're familiar with -- and that
9 you've read it or that you would have been briefed on it?

10 **A.** I've been briefed on it.

11 **Q.** But you have not read it.

12 **A.** No.

13 **Q.** Other than reading the orders, I suppose
14 there's been at least one briefing regarding the Jordan's
15 Principle order. So, have you received any training on the
16 Tribunal orders or has it just been briefings?

17 **A.** It's been briefings.

18 **Q.** Why hasn't there been any training or
19 why haven't you sought any training regarding the orders?

20 **A.** May I ask what type of training are you
21 asking about?

22 **Q.** Well, I guess training in the sense of
23 understanding what the orders are, understanding what the
24 obligations for the government is, what the impacts on your
25 position may be of these obligations existing.

1 **A.** So, in terms of those, those have been
2 -- those have been trained -- in terms of those issues,
3 those have been briefed to me by program colleagues.

4 **Q.** And when you say, "program colleagues,"
5 that would be folks working within the Child and Families
6 Directorate?

7 **A.** As well as Jordan's Principle.

8 **Q.** Right. Of course. And was there any
9 training material provided during these briefings?

10 **A.** Most of it was oral.

11 **Q.** You say, "Most of it was oral." Was
12 there a written component, then, if you say "most"?

13 **A.** I believe there may have been some
14 documentation, but I don't know specifically at that time
15 what it was, but most of it -- most of the discussion was
16 oral.

17 **MR. TAYLOR:** Mr. Tarlton, in terms of the
18 written documentation, I know there are some slide decks,
19 etcetera, that have been provided in the affidavit. If
20 there's any documentation over and above those slide decks,
21 if we could have it.[u]

22 **MR. TARLTON:** We'll make inquiries and make
23 our best efforts to respond to you.

24 **MR. TAYLOR:** In terms of best efforts to
25 respond, is that in terms of providing whether something

1 exists ---

2 MR. TARLTON: Yes.

3 MR. TAYLOR: --- or whether you ---

4 MR. TARLTON: Well, determine -- I'll need
5 to obviously consult with the witness and determine if we
6 can locate these -- if such documents he's referred to,
7 where they are and locate them and just clarify there's no
8 reason not to, you know, disclose them by way of a claim of
9 privilege or anything. I don't anticipate so, but until I
10 see the documents, I can't -- I can't give an absolute
11 undertaking.

12 MR. TAYLOR: No, no, certainly. And if
13 there's a privilege issue, we can deal with that later.

14 MR. TARLTON: Certainly.

15 MR. TAYLOR: So, I'm satisfied, subject to
16 privilege, that we'll see those then.

17 MR. TARLTON: Thank you.

18 --- BY MR. TAYLOR:

19 Q. So, when there's a new order from the
20 Tribunal, what measures are in place so that you find out
21 about that and become aware of the obligations imposed by
22 the order?

23 A. I get apprised of that through meetings
24 that are organized in order to discuss the orders with my
25 program ADM colleagues as well as the Senior Management

1 Committee.

2 Q. Now, following those meetings -- you
3 have a team that reports to you, Mr. Thoppil?

4 A. Yes.

5 Q. And what steps do you take, then, to
6 ensure that your team is aware of their obligations in
7 relation to the order?

8 A. The same principle happens at different
9 levels in the hierarchy between my staff and their
10 counterparts in the programs, as well as meetings that I
11 have with my own staff to discuss it.

12 Q. And you've had meetings to discuss the
13 orders with your staff?

14 A. We've had meetings to discuss the
15 consequences of the implementation of the orders and the
16 development of the Department's financial management
17 planning.

18 Q. Now, if we could just look at paragraph
19 3 of your affidavit. So this is in your book. Now, just
20 before I ask this question about funding, just one more
21 question on this training or kind of implementation
22 pathway. How soon would you say, after an order is made,
23 do these meetings happen, first the meeting with your ADM
24 level colleagues, and then within your team, to advise them
25 of their obligations?

1 A. They've happened over the course of the
2 months following the order, those meetings happen. To
3 circulate it, to understand it, ask questions, and then
4 meetings and discussions henceforth to understand what the
5 financial planning consequences are, are least from my --
6 in my realm -- my roles and responsibilities.

7 Q. Now, paragraph 3 of your affidavit ---

8 **THE CHAIR:** Excuse me, Mr. Taylor. I think
9 you're moving on to another subject?

10 **MR. TAYLOR:** Yes.

11 **THE CHAIR:** So I'd like to jump in right
12 here.

13 **MR. TAYLOR:** That's fine.

14 **THE CHAIR:** Thank you for being here. I
15 just wanted to know, in your role, did you receive any
16 training on the **Canadian Human Rights Act** and its quasi-
17 constitutional status? And I'm not asking you to answer as
18 a lawyer. I'm just asking you if you've received any
19 training.

20 **THE WITNESS:** What I had asked for was a
21 legal opinion on the order and had received a copy of the
22 Justice Canada legal opinion on it.

23 **THE CHAIR:** Okay. I'm asking, generally,
24 did you receive any training on the CHRA?

25 **THE WITNESS:** No.

1 **THE CHAIR:** No? And how about your team?
2 Did your team receive any training on the **Canadian Human**
3 **Rights Act**?

4 **THE WITNESS:** Not to my knowledge.

5 **THE CHAIR:** Okay. The Supreme Court of
6 Canada -- and, again, I know you're not a lawyer, and I'm
7 not asking for any opinion on what I am about to read. The
8 Supreme Court of Canada said that, in **Kelso v. The Queen:**

9 "No one is challenging the general
10 right of the government to allocate
11 resources and manpower as it sees fit,
12 but this right is not unlimited. It
13 must be exercised according to law.
14 The government's right to allocate
15 resources cannot override a statute as
16 the **Canadian Human Rights Act.**"

17 So, do you recall reading this in our
18 decision in 2016?

19 **THE WITNESS:** Yes.

20 **THE CHAIR:** Okay. Thank you. Just a
21 minute.

22 **MR. TAYLOR:** I'm sorry, what did you say,
23 Mr. Thoppil?

24 **THE WITNESS:** I said "yes."

25 **THE CHAIR:** Thank you. And lastly, we also

1 wrote in our decision:

2 "Conversely, any exception from its
3 provisions must be clearly stated.
4 Again, there is no indication in the
5 CHRA or otherwise that Parliament
6 intended to exclude funding from
7 scrutiny under the Act, subject, of
8 course, to the funding being determined
9 to be a service in line with **Kelso**
10 where the Government of Canada is
11 involved in the provision of a service,
12 including where the service involves
13 the allocation of funding, that service
14 and the way resources are allocated
15 pursuant to that service must respect
16 Human Rights principle."

17 So, I'm putting this right now because it
18 may inform some of my questions later. Do you recall
19 reading this in our decision?

20 **THE WITNESS:** Yes.

21 **THE CHAIR:** Thank you.

22 --- **BY MR. TAYLOR:**

23 **Q.** So, looking at paragraph 3, Mr. Thoppil,
24 of your affidavit, you note here -- well, I suppose you're
25 noting that Ms. Wilkinson is noting in her affidavit that

1 the FNCFS Program's total expenditures were 680.9 million
2 in '15/'16. And then you say:

3 "Since that time, Canada's investments
4 for the program have grown to
5 approximately 1.2 billion in 2018/19."

6 Are you aware of what prompted the increase
7 in funding from 681 million to 1.2 billion?

8 **A.** Yes.

9 **Q.** And what's your sense, then, of what
10 prompted that increase in funding?

11 **A.** Well, there was a general lack of
12 funding advocacy, and there was -- it was important to
13 ensure that the program was adequately funded and budget
14 submissions were made in order to increase the program
15 levels accordingly, and particularly in order to implement
16 the Tribunal orders.

17 **Q.** Now, in terms of budget submissions,
18 which you've just mentioned -- so that's really the
19 genesis, then, of an increase in funding, like, is it
20 starts with the budget submission?

21 **A.** It can happen through a federal budget,
22 but it could also happen -- it can happen through what we
23 call an off-cycle federal -- what we mean "off-cycle" it
24 means not through the federal budget process -- as well.

25 **Q.** So, if we think of kind of a term that

1 might englobe both of these things, either a budget request
2 or an off-cycle request, could we call that a funding
3 request ---

4 **A.** Um-hmm. Yes, we may.

5 **Q.** --- just for the purposes of questions?
6 Okay. So, in terms of a funding request, that begins with
7 a recommendation from public servants within Indigenous
8 Services. Am I right?

9 **A.** Yes, it does. It actually starts if the
10 Minister makes the request, not the public servant.

11 **Q.** So, the Minister would have to ask the
12 public servants for a proposal or ---

13 **A.** We would -- if we see a financial need,
14 we will first approach the Minister and seek his approval
15 for him to officially ask. It starts there, and it's only
16 -- it only is an official ask once the Minister signs,
17 makes the request.

18 **Q.** So, the step one is that the public
19 servants will identify the need for a funding request and
20 prepare that request for the Minister to approval. And
21 step two would be the Minister says, "Green light. We'll
22 go ahead with this funding request."

23 **A.** The Minister signs a letter formally
24 requesting it.

25 **Q.** Right. Now, after the Minister has

1 signed the letter formally requesting it, are there public
2 servants from other departments who become involved in
3 considering the funding request?

4 **A.** That is correct, because if it's through
5 the federal budget process, then it is -- the federal
6 budget process is run by the Minister of Finance, and
7 therefore, the Department of Finance gets involved.

8 **Q.** And for an off-cycle request, would it
9 also be Finance?

10 **A.** That is correct. But both -- through
11 both processes, all central agencies are consulted, as
12 well, so, the Privy Council office as well as the Treasury
13 Board Secretariat -- in part because decisions for the
14 federal budget or through -- or not through the federal
15 budget ultimately require Minister of Finance, but also by
16 the Prime Minister's approval for any requests of funds to
17 be approved.

18 **Q.** So, after the public servants have
19 proposed and the Minister has signed off, the public
20 servants from these central agencies become involved, and
21 their respective ministers or the Prime Minister also have
22 to approve the request moving forward?

23 **A.** That is correct, but public servants in
24 the central agencies are usually consulted and engaged
25 prior to seeking the Minister's formal approvals, from a

1 heads-up perspective, relationship perspective. And also,
2 a bit of a challenge function before we in the Department
3 of Indigenous Services formally table something because we
4 want to make sure that when we have the Minister formally
5 sign something, that we know what are the potential
6 challenges with the request coming from central agencies,
7 and we want to make sure that what this Minister puts
8 forward will -- in terms of additional funds -- is
9 ultimately secured.

10 Q. So, once all those signoffs from central
11 agencies, both from the public servants and the Ministers,
12 have been secured, does the request then go to Cabinet?

13 A. For the off-cycle budget, off-cycle
14 budget process, the letter goes to the Minister of Finance
15 and then the Prime Minister. And so, it goes to the
16 Minister of Finance -- or the Department of Finance first,
17 and then they do their challenge function, and then they
18 seek Minister of Finance approval. Once the Minister of
19 Finance approves it, then it goes to the Prime Minister's
20 or the Privy Council office where they do their work and
21 then support or not support the Minister of Finance's
22 approval or recommendation to the Prime Minister. That's
23 the off-cycle budget approach.

24 The federal budget process is one whereby
25 all federal -- all Ministers submit their federal budget

1 submissions in to the Department of Finance. They go
2 through their challenge functions for several months, and
3 then they make their recommendations to the Minister of
4 Finance, and then, ultimately, the Prime Minister. I'm not
5 aware of the degree of Cabinet engagement in terms of how
6 the federal budget actually, in the end, gets defined. But
7 ultimately, the Prime Minister has to sign off on it,
8 what's included in both processes for source of additional
9 funds.

10 **Q.** So, in terms of -- just to walk back to
11 the first step, I guess, this idea of a funding request,
12 public servants aren't able to move funding requests
13 through -- even if all the various entities agree, the
14 elected Ministers are a key part of this process in terms
15 of approving a funding increase going forward.

16 **A.** No federal civil servant has authority
17 to secure additional funds out of the fiscal framework. It
18 all requires, I guess, the government's approval.

19 **Q.** And then, once -- even once the
20 government has approved, of course, a parliamentary
21 appropriation at the end of the line for the funds to be
22 available?

23 **A.** Prime Ministerial approval is only --
24 from my vantage point, only the first real step. That only
25 just secures some funds within the fiscal framework of the

1 country. That's, for me, the first step. Then the second
2 step is Parliament has to actually vote on actually
3 allocating -- of actually allocating the funds because,
4 under the constitution, only Parliament can disburse funds
5 under the consolidated revenue fund. So, Parliament has to
6 vote on it. That's the second step.

7 Then the third -- and actually, there is a
8 step before -- my apologies -- before Parliament votes on
9 it. So please excuse me.

10 So, once the Prime Minister -- so, the first
11 step was really, from my vantage point, the Prime Minister
12 actually has to secure -- has to say that "We'll find some
13 funds for you."

14 Then the second step is then we have to do a
15 Treasury Board submission. And the Treasury Board
16 submission says how are we going to spend the money and
17 what we will get for it and how will we delivery it. So,
18 the Treasury Board then has to approve it. And then, when
19 they approve that spending plan, then they will say, "Okay,
20 then we'll put it into the estimates that have to be voted
21 by Parliament."

22 And then the third step is what I had
23 referenced earlier, Mr. Taylor, which is that then
24 Parliament has to vote on it. And if Parliament votes on
25 it, then we can then spend on it.

1 Q. And just a small clarification from
2 within step two there. When you say Treasury Board has to
3 sign off, is that the public servants within Treasury Board
4 Secretariat or the Ministers who sit and ---

5 A. It's never public servants. It's always
6 the Ministers.

7 Q. In that case, Treasury Board, it's more
8 than one Minister. It's ---

9 A. Right.

10 Q. --- committee (inaudible).

11 A. So, Treasury Board is a Cabinet
12 committee. Right? And the Chair of that Cabinet committee
13 is the President of the Treasury Board.

14 Q. Now, I have a few specific questions
15 about Budget 2018.

16 A. Um-hmm.

17 Q. So, you've described kind of a month-
18 long process leading to getting to your, you know, first
19 step, essentially, which is the Prime Minister saying,
20 "We'll try and find some money for you in this." And so,
21 in terms of the additional 1.4 billion for the First
22 Nations Child and Family Services Program that was
23 announced for over six years, that process would have
24 started well before -- I think it was February or March
25 2018 when the budget was announced?

1 **A.** Correct.

2 **Q.** Were any adjustments made after the
3 Tribunal's February 1st, 2018 order?

4 **A.** They were -- they are -- what do you
5 mean by adjustments?

6 **Q.** So, in terms of -- you know, there was a
7 plan in this kind of pipeline we've described, and within
8 that timeframe, the Tribunal made a further order on
9 February 1st. I'm just wondering if there's a reaction
10 from the system to that order.

11 **A.** There was -- I believe there was some
12 wording in the federal budget that said that if we -- that
13 the government will fulfill its obligations in this regard,
14 which was a signal that if we needed more, the government
15 will provide more.

16 **Q.** And that would be through an off-cycle
17 request?

18 **A.** Or another federal budget process,
19 depending upon the timing of the need.

20 **Q.** Now, in terms of -- there was an
21 emergency meeting held in January 2018, January 25th and
22 25th, by the Minister of Indigenous Services, on child and
23 family services for -- I can't recall if it was termed as
24 "First Nations" or "Indigenous Communities." Were you
25 aware of that meeting?

1 A. Yes, I was aware of that meeting.

2 Q. And did you attend that meeting?

3 A. No, I did not attend that meeting.

4 Q. Now, in terms of Budget 2019, were there
5 any additional funds for the First Nations Child and Family
6 Services Program in Budget 2019?

7 A. I'm just trying to recall. I don't
8 believe so.

9 Q. Now, there's a small document in front
10 of you. It's a stapled -- it's looseleaf. And the title
11 on the first page is "Chapter 3: Advancing Reconciliation."
12 Would you recognize this as an excerpt from the 2019 Budget
13 document?

14 A. Yes, I do recognize it as such.

15 Q. And I believe the panel and everyone
16 else should have a copy. So, this is an excerpt, and if
17 you go over the page, there's Part 4, which is titled
18 "Better Services for First Nations and Inuit Children."
19 And on the next page, Part 5, "Preserving, Promoting and
20 Revitalizing Indigenous Languages." And then there's a
21 table, the last two pages. So, this table at the end,
22 "Chapter 3: Advancing Reconciliation," this would be all
23 the investments, Parts 1 to 6, that Budget 2019 would have
24 made in the Indigenous Services/Crown Indigenous Relations
25 realm. Is that right?

1 A. That's correct.

2 Q. Were you involved in writing this
3 document?

4 A. No. It's a Department of Finance
5 document.

6 Q. Now, if we can turn to page 136, just on
7 the bottom, which is the second page of the document. So,
8 this page provides some details regarding continuing
9 implementation of Jordan's Principle. It starts with some
10 background information. Specifically, the first paragraph
11 says:

12 "In 2016, the government took a new
13 approach to implementing Jordan's
14 Principle and respond to the Truth and
15 Reconciliation Commission's Call to
16 Action 3 aimed at reducing the gaps in
17 services between First Nations children
18 and other children in Canada. This
19 included an initial investment of 382.5
20 million over three years to establish
21 the Child First Initiative."

22 So, you've said you weren't involved in
23 writing this, but would you be aware why the Human Rights
24 Tribunal orders wouldn't be mentioned in this introductory
25 material?

1 based on Jordan's Principle."

2 So, I just want to confirm I'm reading the
3 chart right. So, the implication of this "zero" in the
4 '22/'23 column is that, as things stand today, there's no
5 money forecast for Jordan's Principle on April 1st, 2022,
6 in the fiscal framework?

7 A. In what is public -- in the public
8 domain, I think that is true, but there is a fiscal
9 framework that the Department of Finance has that probably
10 does some forecasting for items that, in their view, will
11 have to go on beyond. And so, the question that is
12 appropriate for the Department of Finance is whether they
13 have factored the continuation of it in their internal
14 financial projections or not. What you have before you is
15 in the public domain, but that's not necessarily what the
16 Department of Finance uses for its own internal forecasting
17 of future government obligations. Those are two separate
18 things.

19 Q. And those forecasts, that would be
20 public servants who were responsible for them?

21 A. Yes.

22 Q. And so, in terms of actually having the
23 number go from zero to something that's more than zero on
24 April 1st, 2022, there are more decisions of government or
25 of Ministers that are required before it will get to that.

1 A. That's correct.

2 Q. Now, a question regarding the 404
3 million for this year, so, starting April 1st, 2019. Now,
4 what I'm wondering is has the 404 million been drawn down
5 to Indigenous Services yet, or is it still in this three-
6 step process we discussed earlier?

7 A. So, what has transpired to date is that
8 the government has really been -- passed the first step of
9 allocating the money. And so, what you will see as part of
10 the government's commitment to main estimates reform in
11 providing visibility and transparency to parliamentarians
12 to see an alignment of what they have in the federal budget
13 document and what is tabled in Parliament in terms of main
14 estimates is there is a discrete budget vote within the
15 Department of Indigenous Services main estimates for
16 Jordan's Principle of that number, and that can be accessed
17 once Treasury Board has approved it. So, in one sense,
18 this one is a bit -- through the main estimates reform, a
19 bit different from what I had talked about in terms of
20 those three steps earlier whereby, for the federal budget
21 process, Treasury Board approval happens post Parliament's
22 approval of the main estimates as part of a larger main
23 estimates reform commitment that this government made to
24 parliamentarians to provide closer alignment between
25 federal budget and main estimates documents.

1 question. So, would that be cash management, then, that's
2 being used to fund the program right now?

3 **THE WITNESS:** That would be correct.

4 **MR. TAYLOR:** So, yes, it would be the source
5 from which the funds are being cash managed.

6 **THE WITNESS:** Happy to do so.

7 **MR. TAYLOR:** Sorry?

8 **MR. TARLTON:** Yes, we will certainly look
9 into that and get back to you -- make our best efforts to
10 get back to you as soon as possible.

11 **MR. TAYLOR:** Thank you.

12 --- **BY MR. TAYLOR:**

13 **Q.** Now, if we go back to the small document
14 here, the budget document from chapter 3. Just looking at
15 page -- it's page 138, which is the fourth page, I believe,
16 in the document. And this is under the heading of Part 5,
17 "Preserving, Promoting and Revitalizing Indigenous
18 Languages." So, it notes:

19 "To support the implementation of the
20 proposed **Indigenous Languages Act**,
21 Budget 2019 proposes to invest 337.5
22 million over the next five years,
23 starting in 2019/'20 with 115.7 million
24 per year ongoing."

25 And then if we look at the last page in the

1 document, which is that table again, under Part 5, there is
2 amounts set out. And, unfortunately, the helpful year
3 lines aren't produced at the top again, but the numbers are
4 fifteen forty-four, seventy-two eighty-seven, a hundred and
5 sixteen. So, would that be setting out the commitment to
6 the Indigenous Languages Bill that was referenced in the
7 earlier page?

8 **A.** I believe so.

9 **Q.** Now, this is a bill that -- my
10 understanding, at least, is the bill has not been passed
11 yet, and that's at least what I'm taking from the word
12 "proposed" as well. Are you aware of that?

13 **A.** No, because this is the domain of the
14 Department of Canadian Heritage, so I don't have a lot of
15 visibility on this, unfortunately.

16 **Q.** So, languages falls out of your
17 department ---

18 **A.** It's -- yeah, sorry.

19 **Q.** Again, you can only answer what you
20 know, so ---

21 **A.** That's correct.

22 **Q.** --- no need to apologize.

23 **A.** Thank you for your understanding.

24 **Q.** So, a few more questions about funding.
25 So, in paragraph 3 of your affidavit -- and you can set the

1 small document aside now.

2 **A.** Okay.

3 **Q.** Paragraph 3, the last sentence, you note
4 that:

5 "Indigenous Services did not anticipate
6 having to fund the First Nations Child
7 and Family Services Program by
8 reallocating funds from other ISC
9 programs outside of for cash management
10 purposes."

11 And so, I'm just wondering if you could help
12 me, and maybe help the panel a bit here as well. How is
13 cash management different from reallocation, and who is it
14 that determines the difference between these two concepts?

15 **A.** Thank you for your question. So, I
16 think cash management is a subset of reallocation in one
17 sense. I think there are two types of -- and I think that
18 -- and the reason why I say it's a subset is because it
19 depends upon the length of time and its impact on the other
20 programs. So, line departments are different from, you
21 know, private sector organizations and other organizations
22 in the sense that line departments don't have lines of
23 credit much like individuals do. So, if you want to
24 purchase something but you don't have enough pay money to
25 purchase something, if you are the beneficiary of the line

1 of credit with your bank, you can actually maybe draw down
2 on your line of credit and make that purchase for that
3 need. Line departments don't have lines of credit with
4 financial institutions, so, when they have a cash
5 obligation for a program that exceeds what the program has,
6 well, then, federal line departments or any organization in
7 a line department must access surpluses that may exist in
8 other programs. That's just the reality of how line
9 departments are organized. We just don't have the benefit
10 of having access to lines of credit like I do personally or
11 you may have as well, or a private sector organization.
12 So, running cash flow of an organization is dependent upon
13 always the ability to access cash to meet your obligations,
14 and if you don't have it within a program, related to the
15 program, then, much like individuals, you must seek
16 external sources of funds. And so, in a federal line
17 department context, we do so from those programs in order
18 to make sure that we have our cash flow. So, cash flow is
19 to be -- for cash flow management, those are what I would
20 call temporary reallocations because we will -- we pay back
21 those programs that we have borrowed for cash flow purposes
22 in order to give it back to those other programs so that
23 they can fulfill theirs. The difference as why I say cash
24 management was just a subset of reallocation is because the
25 other one is more -- it's a permanent reallocation, and

1 then that program has a permanent loss for what is
2 borrowed. Right? So, it's the nature of time is the
3 difference, if you could understand. So, maybe to put it
4 another way, cash management could be a temporary
5 reallocation for a cash flow obligation; and permanent
6 reallocation, the impact on the other program is a
7 permanent loss.

8 **Q.** Now, just a couple of questions. One is
9 that you'd said during your answer about essentially
10 taking, for cash management purposes, from surpluses in
11 another program. Is it the case that other programs are
12 always in surplus when cash is managed away from them?

13 **A.** So, when I say "surplus" it's because,
14 at that point in time, they don't need the funds, based on
15 the obligations that they may have for when that flow comes
16 out. So, there may not be, for cash flow management
17 purposes, any impact on that program that we've taken the
18 money. They just have cash, but the timing of their
19 obligations to pay may be later in the year, and therefore,
20 when we take the cash from that program, there's absolutely
21 zero impact from a stakeholder's perspective. It's just
22 based on because of the timing of their obligations for
23 when that money flows out. So, it all depends upon what's
24 the timing of the obligations associated with that program
25 that we've taken the money out from.

1 **Q.** Now, in terms of -- you've made some
2 analogies to loans. You know, so, some loans have terms on
3 them. For instance, I'm greatly anticipating 2023, which
4 is the end of the term on my current mortgage, and I'm
5 hoping that interest rates are fine at that time.

6 **A.** Congratulations.

7 **Q.** But my understanding of "temporary" from
8 the Department's perspective is that there's not really an
9 end date on when those funds have to come back. Am I right
10 about that?

11 **A.** So, I mean, I think that's where all
12 federal line departments are dependent upon the processes
13 to secure the additional funds in order to replenish as
14 required where a program has a pressure beyond its
15 allocated funds. And so -- and that's why there needs to
16 be flexibility in the definition of "temporary" to account
17 for the timing of political approvals because, if you
18 recall my earlier comments, there needs to be a number of
19 political approvals, and then, ultimately, Parliament,
20 before monies are ultimately secured. And that can take a
21 while. Right?

22 **Q.** Um-hmm.

23 **A.** So, it's not a lack of intent to
24 replenish; it's just the machinery of government and its
25 business processes and to respect Parliament in terms of

1 its time to vote that requires a temporary definition that
2 may be different than your mortgage term, Mr. Taylor.

3 **Q.** Now, but in terms of my mortgage term, I
4 mean, the bank wants the money back so it can do other
5 things or, you know, notionally, to charge me a different
6 interest rate. But in terms of the program, when the --
7 so, you've said, you know, you identify a program that
8 doesn't need the funds at that point, and there's no impact
9 to stakeholders, but how is that tracked in terms of -- you
10 know, you've noted the unpredictability of the
11 parliamentary or the of appropriations process in terms of
12 when the funds that are backing it up -- or the Treasury
13 Board approval even for the Jordan's Principle, 404 million
14 -- how is it tracked to ensure that, six months down the
15 line, or two months down the line, there isn't a need in
16 the place it's been cash managed away from? Does the
17 source -- or the donee or the lending program then have to
18 raise its own flag and say, "Oh, now we're coming up on
19 pressures, but program A has taken our funds, and so we now
20 need reallocation or temporary reallocation from somewhere
21 else in the Department." How does that work? Who's
22 watching to make sure that there's not a stakeholder impact
23 due to that?

24 **A.** So, my finance staff engage with all
25 programs to understand impacts. We have a financial system

1 that enables us to -- that helps us in terms of providing
2 some information in terms of visibility on that program's
3 timing obligations. And so that's a helpful guide. And
4 then we validate that by, in fact, talking to the program
5 officials to ensure that what's in the financial system is
6 essentially correct or not. That's a helpful guide. And
7 then that helps us communication to central agencies and
8 other parties the necessary urgencies associated with a
9 funding request, if required, in order to ensure there --
10 and to mitigate that scenario that you had just talked
11 about.

12 Q. So, in that case, is that something that
13 happens at the front end? So, you know, for instance, when
14 I go to the bank and say, "Hey, I'd like this money for my
15 house," they say, "Sure, you can have it for five years."
16 I know that up front, and so I can plan my life
17 accordingly. Is that done with the Department where
18 program A says, "Hey..." -- Jordan's Principle says, "Hey,
19 we need, you know, let's say five million dollars to cover
20 obligations in April," and there's a donee program or a
21 lender program that says, "Well, you can have the five
22 million but I need it back because I'm going to have
23 obligations in May." That's done at the front end when the
24 reallocation happens?

25 A. So, we do departmental cash flow

1 scenarios, and so we are mindful of other programs' timing
2 obligations in order to ensure that all programs are able
3 to fulfill their obligations to the extent that we have the
4 ability to control the process. But, as you know, there's
5 a number of external parties beyond the Department that
6 actually have to approve those funds. And we're not in
7 control. We can communicate based on our internal
8 urgencies, but, in the end, those parties, including
9 Parliament, will approve when they approve.

10 Q. But, just in terms of the internal
11 urgencies, I guess my specific question is, if the
12 Department goes into the temporary reallocation with that
13 in mind in terms of here's the timeframe, of course where
14 it can be foreseen, or is it something that's identified
15 once the -- like you said, there's no sense necessarily
16 when the money is going to be back once the allocation is
17 done because there are all these other actors outside the
18 Department. But is there a sense, before that money is
19 moved, of what's coming down the line and what the
20 yardsticks are, or does that only become apparent as the
21 yardsticks are being approached later on in the process?

22 A. No, we try to understand at the front
23 end, to the extent that we have information to understand
24 what those impacts are on the program's ability to meet its
25 financial obligations.

1 Q. Now, just a question -- you mentioned
2 impacts there. So, in terms of the process -- and we'll
3 get to this in more detail specifically regarding the
4 social programs -- but what's the process that is involved
5 in assessing those impacts in terms of -- you mentioned the
6 Department was essentially tracking them or keeping an eye
7 on them.

8 A. Oh, for me, from a financial
9 perspective, it's whereby there is a funding agreement with
10 a recipient whereby there's a -- it's already been agreed
11 about -- there's an agreed-upon payout for processing of
12 the money, and so, I need to make sure, from a cash flow
13 perspective, that we have funds in order to respect those
14 funding obligations, funding agreement obligations.

15 Q. Now, just in terms of the parliamentary
16 approval aspect of all of this, so, the funds -- in order
17 to spend funds or access funds generally, there has to be,
18 at some point, an appropriation from Parliament. And
19 Parliament, I understand, at least in the estimates, votes
20 funds in certain manners, and there's a budget document
21 that breaks it down. So, why is it that the Department is
22 able to reallocate and move funds around within the
23 Department without parliamentary approval as opposed to it
24 getting into the Department's bank account in the first
25 place?

1 **A.** So, Parliament votes funds across votes,
2 not by program, although we do try to flag what the -- in
3 the main estimates and in the forthcoming supplementary
4 estimates, what the money is for. That being said, the
5 policy of financial management that is approved by the
6 Treasury Board provides the authority to Deputy Ministers,
7 as the legal accounting officers, to reallocate in or to
8 meet obligations.

9 **Q.** And is there a significance of funds
10 being within a vote? Can there be reallocations between
11 different votes?

12 **A.** Yes, there can be, but you can only
13 transfer money between votes with parliamentary approval.

14 **Q.** I see. And so, once the Jordan's
15 Principle vote funds are received in the Department, it
16 won't be possible to transfer funds from the Jordan's
17 Principle vote to, say, for instance, the general vote for
18 indigenous services.

19 **A.** So, Jordan's Principle, to be accurate,
20 is delivered in two ways. It's delivered through vote 10,
21 whereby we transfer funds to, say, communities who deliver,
22 but there's also Jordan's Principle that is delivered by
23 the Department, and so, that money is in vote 1, which
24 isn't the same as, I guess, the program administration
25 dollars as well. So, Jordan's Principle is delivered

1 through two votes, actually.

2 Q. Now, in terms of the Auditor General's
3 recommendations that are relevant to your Department, does
4 your team track those?

5 A. I'm sorry, would you mind repeating the
6 question?

7 Q. No, that's fine.

8 A. Thank you.

9 Q. Does your team track the Auditor General
10 of Canada's recommendations that are relevant to your
11 Department?

12 A. I don't. I think that's done perhaps --
13 I'm not sure who -- I suspect perhaps it's the Chief Audit
14 Executive.

15 Q. Oh, I see.

16 A. But that would not be me.

17 Q. But are you aware of the 2008
18 recommendation from the Auditor General that, as opposed to
19 reallocating in this way, that the government properly
20 budget for the programs that it delivers?

21 A. I'm familiar with the recommendation
22 from the Auditor General in that regard.

23 Q. And yet, these reallocations are still
24 occurring among the different programs in the Department.

25 A. They are occurring if there is a

1 requirement for the Department if it doesn't -- isn't able
2 to secure -- if it's not able to access additional funds in
3 order to support its obligations for certain programs, then
4 reallocations must occur. And so, it is incumbent upon the
5 government to approve, and that, followed by Parliament, to
6 provide those funds if reallocations are not to proceed --
7 on a permanent basis. As I mentioned earlier, there will
8 always be cash management due to the nature of the
9 organization.

10 Q. All right. And I've got some questions
11 about paragraph 8 of your affidavit. It's over the page.
12 Now, the last sentence in paragraph 8, the last clause in
13 the sentence says:

14 "ISC continually monitors and forecasts
15 program demand to meet program funding
16 needs and legal obligations."

17 And so, is this part of your responsibility,
18 then, as Chief Finances Results and Delivery Officer, this
19 -- the forecasting program demand to meet needs and to meet
20 legal obligations?

21 A. It is a shared responsibility between
22 myself and all Program Assistant Deputy Ministers, and
23 ultimately the Deputy Minister, given his legal obligation
24 as accounting officer.

25 Q. Now, would you agree that, in 2014/15,

1 no changes were made to the First Nations Child and Family
2 Services Program funding to reflect AANDC's obligations,
3 legal obligations under the **Canadian Human Rights Act**?

4 **A.** I'm sorry, Mr. Taylor, would you mind
5 repeating? I'm sorry.

6 **Q.** I'm just asking if you'd agree that, in
7 2014/15 -- so, fiscal year '14/'15, when you would have
8 come into your position with AANDC -- in terms of meeting
9 legal obligations, no changes were made to the First
10 Nations Child and Family Services Program to reflect legal
11 obligations under the **Canadian Human Rights Act**.

12 **A.** I don't recall specifically. I
13 understand that, at that point in time, there was
14 insufficient funding for a number of programs, and
15 therefore, in order to meet obligations in certain
16 programs, there was reallocations happening from other
17 programs in order to shore up other programs whereby they
18 were doing their best to meet their obligations in those
19 areas.

20 **Q.** Now, were you involved in the Budget
21 2016 process?

22 **A.** Yes.

23 **Q.** And so, were you aware that, in March of
24 2016, the Caring Society publicly expressed concerns that
25 the funds in Budget 2016 for the program weren't sufficient

1 to meet the requirements of the Panel's January 2016
2 orders?

3 **A.** I'm familiar with the federal budget,
4 but I'm not familiar with any stakeholder comments
5 associated with the federal budget.

6 **Q.** And why would that be?

7 **A.** Because my responsibility was
8 essentially associated with appropriate costing of the
9 federal budget submissions into the federal budget.

10 **Q.** Would you agree that specific orders
11 assist ISC in determining what its legal obligations are?

12 **A.** I'm sorry?

13 **Q.** So, you note in paragraph 8 that part of
14 the role here -- and you said that's shared between you and
15 the ADMs who deliver the programs -- part of the role here
16 is to "continually monitor and forecast program demand to
17 meet program funding needs and legal obligations." So, in
18 terms of those legal obligations, would you agree that
19 specific orders help ISC in determining what its legal
20 obligations are?

21 **A.** The orders are a legal obligation.

22 **Q.** And in terms of knowing what ISC has to
23 do to meet those obligations, the orders are helpful in
24 defining the path forward. Am I right?

25 **A.** The orders are our legal obligation,

1 which we must factor as part of our financial planning.

2 Q. And are there procedures in place within
3 the Department to evaluate internal and external concerns
4 about the Department's performance against or compliance
5 with the orders?

6 A. Would you mind repeating?

7 Q. Yeah, I was wondering if there are
8 procedures in place within the Department to evaluate
9 internal and external concerns regarding compliance with or
10 performance against the orders.

11 A. The Department treats adhering to its
12 legal obligations very seriously. And if there is feedback
13 that we are not taking that into account, we will examine
14 the merits of that, and we will do financial planning
15 accordingly in order to ensure that we are meeting those
16 legal obligations.

17 Q. And as Chief Finances Results and
18 Delivery Officer, are you involved in those discussions?

19 A. Yes, if it requires a funding beyond a
20 program and department's capacity to do so.

21 Q. Now, were you aware, in July 2016 --
22 this is when the Child First initiative was first announced
23 -- that the parties raised concerned that the commitment
24 didn't meet Canada's legal obligations under the orders at
25 that time from the Tribunal?

1 **A.** I don't recall. Perhaps.

2 **Q.** Now, I'd just like to look at paragraph
3 11 of your affidavit. So, in this paragraph, you note a
4 series of meetings with senior management in April and May
5 2018 regarding the Tribunal orders, and you note you
6 chaired the May 1st meeting. So, I note there are April
7 5th, 6th, 18th and May 14th. Were you present at the other
8 four meetings?

9 **A.** No, I was not.

10 **Q.** Now, in paragraph 18, you note a meeting
11 on November 19, 2018, of Indigenous Services Senior
12 Management Committee. Were you at that meeting?

13 **A.** Yes, I was.

14 **Q.** Do you know if there were notes or
15 minutes kept of the meeting?

16 **A.** I believe there were minutes of -- there
17 are minutes of -- there are all minutes of Senior
18 Management Committees.

19 **MR. TAYLOR:** Mr. Tarlton, could we have
20 those minutes?[u]

21 **MR. TARLTON:** I'll confer with my client and
22 respond as soon as possible.

23 **MR. TAYLOR:** Just to confirm, that's subject
24 to any privilege concerns.

25 **MR. TARLTON:** Just subject to knowing what

1 they entail and whether there are any claims or issues that
2 arise from what their contents reveal.

3 --- **BY MR. TAYLOR:**

4 **Q.** Now, if you look at Exhibit C, Mr.
5 Thoppil, to your affidavit. So, this is the policy on
6 financial management.

7 **A.** Um-hmm.

8 **Q.** Now, if we can look at Section 4.2,
9 which is over -- starts on page 4. So, my understanding of
10 4.2 is this is the section outlining your responsibilities
11 as the CFO for ---

12 **A.** Correct.

13 **Q.** --- legal services. So, you may have
14 more responsibilities as a result of deliverology, but, at
15 least on the finance side, my understanding is these are
16 your responsibilities. Is that right?

17 **A.** That is correct.

18 **Q.** Now, under the heading -- so, the
19 heading under 4.2 is "Governance and Oversight." And then,
20 over the page, at 4.2.6, the policy makes you responsible
21 -- this is how I'm reading it -- you responsible for
22 advising the Deputy Minister and the Comptroller General of
23 certain risks or unusual circumstances or difficulties in
24 terms of complying with the policy. Am I reading that
25 correctly?

1 **A.** That is correct.

2 **Q.** So, my questions on this portion, 4.2.6
3 -- the first question is, since January 2016, with respect
4 to either the First Nations Child and Family Services
5 Program or Jordan's Principle, have you, at anytime,
6 advised the Deputy Minister or the Comptroller General of a
7 risk the Department will exceed its appropriations?

8 **A.** I did for fiscal year '18/'19.

9 **Q.** And that was -- was that prior to the
10 process then that led to the request for supplementary
11 funds for Jordan's Principle?

12 **A.** No. It was associated with Child and
13 Family Services.

14 **Q.** And what was the outcome of having
15 raised that concern?

16 **A.** We secured an additional 100 million
17 dollars from a Treasury Board reserve in March.

18 **Q.** Of 2019?

19 **A.** Of 2019.

20 **Q.** And the second question, then, would be,
21 since January 2016, with respect to either the FNCFS
22 Program or Jordan's Principle, have you at anytime advised
23 the Deputy Minister or the Comptroller General of a risk
24 that there were unusual or uncertain circumstances?

25 **A.** I had discussed with the Deputy the

1 notion that both programs had significant financial
2 pressures and that in order -- and in particular, with
3 regards to Jordan's Principle, that there would be impacts
4 in terms of, you know, the necessity to have an appropriate
5 internal controls framework and a number of financial
6 policies associated with the appropriate financial
7 management of Jordan's Principle given that it was a
8 relatively new program.

9 Q. And can you help me understand that a
10 bit. I'm not an accountant. I rely on mine very heavily
11 for advice when it comes to numbers and finances. So,
12 you're mentioning internal controls and policies, so, can
13 you just break that down for me ---

14 A. Sure.

15 Q. --- in maybe more layperson's terms?

16 A. So, in terms of Jordan's Principle, you
17 know, all funds to all departments are subject to the
18 scrutiny of the Auditor General, and the Auditor General
19 wants to ensure that all taxpayers' funds are, one,
20 appropriately recorded, are done in order to ensure that it
21 respects the **Financial Administration Act**. There is
22 appropriate documentation that underpins the actual money
23 that was spent, and therefore, given the fact that it was a
24 new program, the appropriate documentation procedures, as
25 the Department was ensuring its level best to comply with

1 the needs under Jordan's Principle, we were moving forward
2 in terms of delivery, but from a financial management
3 framework perspective, in terms of ensuring the
4 requirements for an external auditor to look at how funding
5 has worked and the business financial process underway,
6 those were still under development at the same time as the
7 Department was doing its best to adhere to the obligations
8 associated with Jordan's Principle. So, there was a catch-
9 up that the Finance Department, the Finance Section would
10 have to do to work with the program to put in a master
11 control framework around ensuring appropriate financial
12 compliance that you would expect for an auditor to come in
13 and say, "Yes, when money is spent, it meets the tests of
14 meeting the obligations under the **Financial Administration**
15 **Act** as part of the Office of the Auditor General's review
16 of spending.

17 Q. Now, you're aware that under the Panel's
18 May 2017 orders, there are timeframes associated with
19 approvals of requests that come into the Department.

20 A. That is correct.

21 Q. Now, the master control framework or the
22 policies that you're speaking to, are those going to operate
23 in the back end or is there going to be -- I guess are you
24 aware of what a focal point is?

25 A. Yes, I'm familiar with the focal points.

1 Q. So, will there be a change at the level
2 of the focal point in terms of how they're doing their job
3 once these are put in place?

4 A. No, I don't think there's going to be
5 impact on the focal point. I think the -- in the sense
6 that we need to ensure that there is requisite
7 documentation required in order to support the Office of
8 the Auditor General challenge to ensure that the
9 documentation meets the Office of the Auditor General's
10 requirements for documentation associated with spending.
11 So, we need to have that meet a level that meets the Office
12 of the Auditor General's scrutiny and challenge function.
13 And then, I think the -- it will require clarity of the
14 financial process so that we can adhere to the timeframes
15 of payment associated with Jordan's Principle in a timely
16 way.

17 Q. Now, in terms of the -- you mentioned
18 documentation. So, is part of this control framework going
19 to involve a requirement for more documentation from
20 claimants before requests can be approved?

21 A. We are very mindful of the impact of
22 reporting burden, if I may frame it that way, on
23 recipients, and therefore, we're trying to find a balance
24 that recognizes the circumstances of the recipients in
25 question vis-a-vis the expectations of the Office of the

1 Auditor General, in terms of its requirement for scrutiny,
2 to support the underlying taxpayer's expenditure. And so,
3 ideally, the documentation impact would be negligible from
4 a recipient's perspective.

5 Q. But, in terms of finding the balance,
6 that's a process that's ongoing?

7 A. Yes. And, you know, much like any
8 federal line department's service, whether it's at Service
9 Canada for EI recipients or Old Age recipients, or whether
10 it's Canada Revenue Agency when it gives tax return forms
11 out, it's a journey of continuous improvement. And so,
12 from my perspective, Jordan's Principle is a relatively new
13 program, and we are continuing in that journey much like
14 other federal line departments in service to Canadians to
15 continue to find opportunities for improvement, to do
16 better and better, and to make it easier on the Canadians
17 that we are serving.

18 Q. But this master control framework -- and
19 I apologize if I'm using the wrong terms here -- but this
20 financial framework -- or no, "financial framework" is also
21 probably not the right term -- these controls that will be
22 imposed in terms of -- you mentioned the expectations of
23 the Auditor General, etcetera -- those are things that are
24 being developed at the moment, it's something that is to be
25 implemented. Am I right?

1 A. Yeah, I mean, I think it's a work in
2 progress. We have a guide that we've given out internally,
3 a guide on Jordan's Principle financial claims process,
4 which ultimately, you know, informs departmental staff of
5 the importance of meeting the Tribunal's orders on timing,
6 and you know, the various approaches that we have in order
7 to ensure that, one, the recipient is served, above all,
8 and number two, that we are respecting and in compliance of
9 the Tribunal orders in that regard. I mean, so, any
10 financial framework that is put into place, or the ones
11 that are in evolution, has to meet those two tests above
12 all.

13 Q. Right. But, in terms of the -- you
14 described this process of catch-up. The catch-up is still
15 ongoing?

16 A. Right. I mean, I think that Jordan's
17 Principle is, relative to other federal programs in the
18 federal public service, relatively new. It came from a
19 standing start. Staff have been working very hard and
20 tirelessly to do -- and doing their best in terms of trying
21 to adhere to the orders in order to deliver. And so, that
22 service has been paramount and the most important priority.
23 And then, subject to scrutiny by the Office of the Auditor
24 General for how taxpayers' monies are being spent in that
25 program, we need to ensure that there is an internal

1 control framework in place and a compliance -- financial
2 management compliance framework in place that respects the
3 expectations of the Office of the Auditor General when it
4 does its annual audit of departmental program spending.

5 Q. Now, will the Consultation Committee be
6 looped in before this internal controls framework is
7 launched?

8 A. Well, I mean, I guess the control
9 framework is an internal documentation in order to respect
10 things such as the policy on the financial management
11 framework, and it's there to ensure that we meet the
12 expectations of the Auditor General. It's not there to
13 impact at all the service obligation that the Department
14 has to impact the recipients, nor is it -- and it is to
15 ensure that the financial framework, once finalized, is
16 there to ensure its compliance with the Tribunal orders.

17 Q. So, is that a "no"?

18 A. I guess my question would be the desire
19 to see it would be based on what frame, if I may ask, Mr.
20 Taylor?

21 Q. Well, I don't think we really need to
22 get into debate about whether or not we would need to see
23 it. I think that's a question for my colleagues from the
24 Department of Justice -- or My Friends from the Department
25 of Justice. My question is whether or not, on your work

1 plan in getting this control framework into place, there's
2 a step or a stage in that work plan that involves sending
3 it out to the Consultation Committee for comment.

4 **A.** It wasn't in our plan to finalize off
5 financial management framework for Jordan's Principle in
6 that regard.

7 **Q.** Is there a timeframe for when this
8 management control framework or this master control
9 framework is to be in place?

10 **A.** I don't recall specifically the
11 timeline.

12 **MR. TAYLOR:** So, Mr. Tarlton, if we could
13 have the approximate date or timeline as to when this would
14 be put into place.[u]

15 **MR. TARLTON:** Thank you. I'll look into it.
16 Before you continue with your questions, can I just briefly
17 -- the previous undertaking with respect to the minutes of
18 the Budget Management Meeting ---

19 **MR. TAYLOR:** Yes.

20 **MR. TARLTON:** --- I think it was May in 2018
21 ---

22 **MR. TAYLOR:** November ---

23 **MR. TARLTON:** --- November, sorry. I just
24 want to clarify for the record, when you're asking for the
25 minutes, I had assumed but just want to confirm, having not

1 seen it, it's possible that the minutes may contain matters
2 that are completely irrelevant and unrelated to the
3 Tribunal proceedings. So, you only want the portions of
4 the minutes that pertain to the testimony of Mr. Thoppil in
5 paragraph 18 of his affidavit.

6 **MR. TAYLOR:** Yeah, paragraph 18, the
7 paragraph states:

8 "On November 19, 2018, the draft
9 reallocation policy budget management
10 principles, comments received from the
11 Caring Society, and next steps were
12 discussed at the Indigenous Services
13 Canada Senior Management Committee."

14 So that's what I would be looking for.

15 **MR. TARLTON:** Yes. I just wanted to
16 confirm, that's all. Thank you.

17 **--- BY MR. TAYLOR:**

18 **Q.** As part of your orientation to the
19 February 1st, 2018 orders, did you ever see the
20 consultation protocol signed between the Minister, the
21 National Chief, Dr. Blackstock, the Regional Chief for
22 Ontario, and the Grand Chief for Nishnawbe Aski Nation, as
23 well as the Chief Commissioner of the Human Rights
24 Commission?

25 **A.** I'm familiar with the protocol, but I

1 have not reviewed it.

2 **Q.** Okay. And would the same be true, then,
3 of the August -- I believe they're dated August 2018 --
4 terms of reference for the Consultation Committee?

5 **A.** No.

6 **Q.** And last question on this policy ---

7 **MR. TARLTON:** Sorry, I didn't hear your
8 answer.

9 **THE WITNESS:** I said "no."

10 **MR. TARLTON:** Thank you.

11 --- **BY MR. TAYLOR:**

12 **Q.** Last question on this policy on
13 financial management. My second took a bit longer than
14 expected. Thanks for your assistance there. The last one,
15 this is regarding -- if we look back to Exhibit C, it's the
16 last bullet under 4.2.6. This is 4.2.6.3. It says:

17 "Since January 2016, with respect to
18 the First Nations Child and Family
19 Services Program or Jordan's Principle,
20 have you at anytime advised the Deputy
21 Minister or the Comptroller General of
22 a risk that there were difficulties in
23 complying with the policy on financial
24 management?"

25 **A.** I think, orally, yes, by saying that,

1 you know, there was a pressure on my staff with regards to
2 ensuring the appropriate processing of payments in a timely
3 manner, and questioned, therefore, the ability to -- you
4 know, ensuring that that function that we're supposed to
5 perform under the **Financial Administration Act**, which is
6 Section 33 of the **Financial Administration Act**, which is
7 (inaudible) quality assurance of what is about to be
8 processed for payment is done appropriately, and therefore,
9 had raised, as a challenge, based on capacity and the
10 volume of transactions, our ability to ensure that we were
11 doing our best to meet the timeframes in the order.

12 Q. And has capacity increased since you
13 raised those concerns?

14 A. What we have done, as our first step, is
15 to create a center of expertise for Jordan's Principle and
16 to ensure that there was a dedicated capacity for that
17 because, prior to that, that decision, the processing was
18 done in a number of hubs that we found that was inefficient
19 to meet our obligations to process payments on a timely
20 basis, based on the natural lack of knowledge that having a
21 number of people across different locations be familiar
22 with it, and we thought our best way, you know, to ensure
23 that we respected the orders was to centralize the
24 knowledge in a dedicate group and so that they would be
25 immune from all the other payment obligations from the

1 other programs, so that we put our best foot forward in
2 order to ensure that we did meet those obligations because
3 those people would only be familiar with Jordan's Principle
4 every day. And so, we are using that as our first step and
5 monitoring whether that will be sufficient before we take
6 other steps such as augmentation, but augmentation will be
7 there if required in order to be fully in compliance with
8 the order.

9 **Q.** Do you still have those concerns about
10 difficulties in complying with the policy?

11 **A.** It's a continued monitoring as
12 envisioned in the policy that I must do so. And at this
13 juncture, no, but it is something that I am monitoring for
14 sure because it is a legal obligation for which I am
15 required to ensure that we fulfill as a member of senior
16 management.

17 **Q.** And you're aware of the continuing
18 concerns about timeliness of payment from recipients?

19 **A.** I am.

20 **Q.** And you're continuing to work to resolve
21 those.

22 **A.** That is correct.

23 **MR. TAYLOR:** Chair, this would be a
24 convenient time for a break, if it's all right for you.

25 **THE CHAIR:** Before we go on a break, I have

1 a question on this exhibit. At Section 8.1, I saw that
2 references in terms of legislation is the **Financial**
3 **Administration Act**, and then the related policy instrument
4 is the foundation framework for Treasury Board policies.
5 So, I didn't find any references to the CHRA or other
6 quasi-constitutional legislation. So, would it be fair to
7 say that the lens for this policy is mainly financial risk
8 management?

9 **THE WITNESS:** So, the policy is developed by
10 the Comptroller General; it's not by the Department. And
11 then ultimately approved by the Treasury Board. And I
12 think that it's a question that's best posed to the
13 Comptroller General, if I may.

14 **THE CHAIR:** Thank you. But, I'm not
15 mistaken, there is no reference in the document about the
16 CHRA? Are you familiar with this document?

17 **THE WITNESS:** I am unsure -- and again, I am
18 unsure of the linkage that the Treasury Board (inaudible)
19 has made to the CHRA.

20 **THE CHAIR:** Oh, fair enough.

21 **THE WITNESS:** We do recognize -- I do
22 recognize that the CHRA orders are a legal obligation, and
23 therefore, that, in my mind, I have to ensure its
24 compliance under the framework of the policy on financial
25 management that is promulgated by the Treasury Board.

1 **THE CHAIR:** Thank you. So, you remain under
2 oath, so I would direct you not to discuss your evidence
3 until you've completed the entirety of your testimonies.
4 Do not discuss your evidence with anyone, except if you
5 have to have a short discussion on documents that were
6 requested. Otherwise, I would ask that you wait until
7 you've completed your testimony.

8 **THE WITNESS:** Thank you.

9 **THE CHAIR:** That works. So, we'll be back
10 at 11:20. Thank you.

11 --- Upon recessing at 11:00 a.m.

12 --- Upon resuming at 11:15 a.m.

13 **THE CHAIR:** Mr. Taylor.

14 **MR. TAYLOR:** Thank you very much.

15 --- **BY MR. TAYLOR:**

16 **Q.** Mr. Thoppil, I wanted to come back to
17 paragraph 11 of your affidavit. And so, 11(d) notes, on
18 May 1st, 2018, you chaired a meeting of the Financial
19 Management Committee. So, is that an ISC Committee?

20 **A.** Yes, it is.

21 **Q.** And who would be members of that
22 committee?

23 **A.** I'm a co-chair of that committee with
24 the Deputy Minister, and it comprises essentially the
25 members of the Senior Management Committee as well.

1 **Q.** I see. And were there notes or minutes
2 kept of that meeting?

3 **A.** I believe there was.

4 **MR. TAYLOR:** So, Mr. Tarlton, if we could
5 have, I guess, those portions of the notes or minutes that
6 relate to what's in the header of the paragraph there, the
7 implementation of these orders, again, subject to concerns
8 regarding privilege. [u]

9 **MR. TARLTON:** Yes, as before, yes.

10 **MR. TAYLOR:** Thank you.

11 --- **BY MR. TAYLOR:**

12 **Q.** Now, a few questions just where we --
13 around where we left off before the break about Jordan's
14 Principle payment timelines. So, when you were describing,
15 in your response to Mr. Tarlton's question, your job
16 responsibilities, you reference financial management, and
17 part of that, I believe you said, was planning, resource
18 allocation payment, accounting. And so, in terms of your
19 responsibilities, that flow of payment out to recipients,
20 that falls within your wheelhouse?

21 **A.** It's a shared responsibility in terms of
22 the processing of payments because it starts with the
23 programs first, and then I'm at the back end of the
24 financial payment processing flow.

25 **Q.** So, as part of that back office role, do

1 you receive any reports from the front office about the
2 payment timelines, how long things are taking and where
3 things are at?

4 **A.** I get whatever the program ADM would ask
5 for.

6 **Q.** So, if the program ADM would ask for a
7 report about that, that would come to you.

8 **A.** Yeah, if she shared it to me. We
9 usually share that.

10 **Q.** I see. And what's the frequency with
11 which you see -- oh, I guess I should ask first, have you
12 seen any reports having to do with payment timelines for
13 Jordan's Principle?

14 **A.** I've seen one recently.

15 **Q.** And how often would you see those
16 reports?

17 **A.** So, I have seen one recently, I think,
18 but I haven't seen one in several months.

19 **Q.** Several months.

20 **MR. TAYLOR:** Mr. Tarlton, could we have a
21 copy of that recent report that Mr. Thoppil has seen?[u]

22 **MR. TARLTON:** Again, subject to my earlier
23 comments, but yes, we'll look into that.

24 **MR. TAYLOR:** Thank you.

25 **--- BY MR. TAYLOR:**

1 Q. Now, are you aware that the Tribunal
2 made a further order regarding Jordan's Principle in
3 February 2019?

4 A. I believe so.

5 Q. You believe so. Yes or no, Mr. Thoppil.

6 A. Yes.

7 Q. Yes. Did you read the order?

8 A. No.

9 Q. Do you know what the order was about?

10 A. Was it about the timeliness of payments?

11 Q. No. This was the one about the
12 definition of First Nations child. It was an interim
13 ruling.

14 A. Right. Thank you for jogging my memory.

15 Q. So that jogs your recollection?

16 A. Yeah. There was a bit of a -- there was
17 a definition that came out of that.

18 Q. Do you have any more precise
19 understanding beyond that there was a definition that came
20 out of it?

21 A. Oh, my understanding is that it expands
22 the scope of eligibility for program recipients.

23 Q. And does that expansion, albeit -- and
24 I'll say this just -- I don't want to mislead you or
25 anything -- that it's a temporary expansion while another

1 matter is pending with the Tribunal -- but when there are
2 orders like that definition that have an expansion of
3 program requirements, does that have an impact on you and
4 on your staff?

5 **A.** Just at the back end, but the lead is
6 really the program ADM.

7 **Q.** And in terms of the back end impact, how
8 do you communicate to your staff that there's been a change
9 or that there's been a new order that needs to be taken
10 into account? Is it any different from the earlier process
11 you spoke to, which is kind of a series of discussions,
12 either with their analogues in the program or from
13 yourself?

14 **A.** It's the same. It's discussed at Senior
15 Management Committee, and then it goes down through the
16 hierarchy at all levels. That's correct.

17 **Q.** And just one question about the report,
18 the recent report that you saw. Do you recall, did it
19 track the time from the receipt of the request to payment
20 of the request or was it the time from when the request
21 hit the system after it had been approved to when it had
22 been paid?

23 **A.** It was the whole thing.

24 **Q.** So, the whole from contact to focal
25 point to payment.

1 A. That's my understanding.

2 Q. Thank you. And I suppose we will see
3 the report and we'll go from there.

4 So, I have a few questions about the budget
5 management principles that are at Exhibit D to your
6 affidavit.

7 A. Yes.

8 Q. And then Exhibit E is the reallocation
9 policy. And you speak to those at paragraph 17 of your
10 affidavit, and you say that:

11 "ISC intends to continue to implement
12 the reallocation policy and the budget
13 management principles indefinitely."

14 So, my first question on this is who was
15 involved in developing the principles and the reallocation
16 policy on your side. And when I -- I should say, "your
17 side" -- not your team, but within ISC, who is responsible
18 for this development of both of these documents?

19 A. Again, it's a shared responsibility. We
20 worked at it together with my staff and programs.

21 Q. And that would have been Ms. Isaac's
22 team, at the time, you were working with?

23 A. Yes.

24 Q. Now, in terms of going forward, who
25 would make the decision on whether to change these

1 policies?

2 **A.** Ultimately, it would be the Deputy
3 Minister at the Financial Management Committee.

4 **Q.** Now, I note the policy on financial
5 management -- so that's Tab C of your affidavit -- maybe if
6 we can just turn that up. So, 1.1 says:

7 "The policy takes effect on April 1,
8 2017."

9 And then 1.2 notes eight policies from the
10 previous government that are replaced. And so, my question
11 is if it's common for a change of government to lead to
12 repeal and replacement of policy standards and directives.

13 **A.** It is common for policies to be --
14 irrespective of government, to be continually reviewed and
15 updated given the latest contexts and lessons learned in
16 financial management practices. So, it's a continuation
17 that is driven by the Comptroller General always, and then
18 subject to widespread consultation within the financial
19 community of the Federal Public Service, and then Deputy
20 Ministers before they take it to the Treasury Board for
21 approval. So, it's an evergreen agenda by the Comptroller
22 General of Canada.

23 **Q.** Now, in addition to the Comptroller --
24 or first I should ask, does the Comptroller General have
25 any authority over the budget management principles or the

1 reallocation policy, or is that an ISC-internal ---

2 **A.** Those are internal documents. They are,
3 of course, informed based on the larger public service-wide
4 policies because we need to develop internal policies that
5 are framed within the larger public service financial
6 management policy suite.

7 **Q.** Now, if there were a change in the
8 larger financial management policy suite that conflicted or
9 that resulted in an impact where you felt you had to change
10 something in these two policies, and that you felt was in
11 conflict either with the orders or with the Canadian Human
12 Rights Act, is there any process within the Public Service
13 for working out that apprehended conflict?

14 **A.** Obviously, I think we would have to have
15 -- there are mechanisms. I think the policy on financial
16 management cites mechanisms of engagement with the
17 Comptroller General and the Deputy Minister in that regard
18 in order to chart a path forward.

19 **Q.** Now, in terms of the Minister's
20 authority, does the Minister have the authority to direct
21 the Deputy Minister to change the budget management
22 principles or the reallocation policy?

23 **A.** I think the Minister has to be guided by
24 -- much like all Ministers -- with what the Treasury Board
25 has approved. And so, the Treasury Board is essentially

1 the -- a Cabinet Committee, and all Ministers are subject
2 to Cabinet Committee decisions, and the Minister will have
3 to adhere to the Treasury Board policies.

4 **Q.** Now, irrespective of Treasury Board
5 policies in terms of the Minister's own initiative as the
6 Minister of the Department, is it within their authority to
7 tell the Deputy Minister, "Your budget management
8 principles, you need to change them along these principles
9 or the reallocation policy"?

10 **A.** The Minister can influence, but,
11 ultimately, it's the Deputy Minister, by law, who is the
12 accounting officer; and ultimately the legal obligation on
13 the policy rests with the Deputy Minister.

14 **Q.** So, the indefinite implementation, then,
15 of these two policies, then, that is impacted by the
16 greater suite of policies from Treasury Board and elsewhere
17 in government. Am I right about that?

18 **A.** We'll have to take into account what is
19 the Federal Government's policy suite, as I mentioned
20 earlier.

21 **Q.** Now, we've discussed the Consultation
22 Committee a bit earlier today and so you're aware what the
23 Consultation Committee on Child Welfare is?

24 **A.** Yes.

25 **Q.** Have you attended any CCCW meetings?

1 "The document provides an overview of
2 the principles that guide budget
3 management at Indigenous Services
4 Canada and that serve as the foundation
5 for the ISC policy on internal
6 reallocation of social housing,
7 education and health program funds."

8 Would you agree that, in addition to this
9 document, the other foundation for the policy on internal
10 reallocation of social housing, education and health
11 program funds is the February 1st, 2018 order of the
12 Tribunal?

13 **A.** I would say that is correct that the
14 Tribunal order was -- is an obligation which has -- we have
15 ensured, through the development of an internal financial
16 policy, to ensure that we are respectful and in compliance
17 always of the Tribunal order.

18 **Q.** And would it be the February 1st order
19 or is it all of the Tribunal orders?

20 **A.** It's the February 1st, 2018 order which
21 was germane for the development of the reallocation policy.

22 **Q.** Now, the way I'm reading this document
23 -- and maybe you can just help me that I'm reading it right
24 -- is the bullets here, these are the discrete principles
25 that are set out to guide budget management in these -- to,

1 I guess, (a) guide budget management within ISC, and then,
2 (b) serve as the foundation for the reallocation policy.

3 Is that right?

4 **A.** That's correct.

5 **Q.** So, I see the first is the idea of
6 working collaboratively with partners. The second is the
7 idea of budget decisions seeking to do certain things,
8 respond to needs, sustain service delivery, optimize
9 funding. The third principle is about the Deputy Minister
10 being responsible. So that seems to be a responsibilities
11 or an accountabilities principle. The fourth -- and stop
12 me at any point if you think I'm wrong here. The fourth
13 about the Deputy Minister being assisted by -- or
14 supported, I should say, by monitoring and forecasts, and
15 looking at historical trends and forecasting again. The
16 idea of identifying the kinds of unforeseen pressures that
17 might impact budget decisions. And then the idea of delays
18 within years that might require pushing funds out in order
19 to still respond. And then, over the page, the idea of
20 temporary reallocation or cash management, which we
21 discussed earlier. Then, of course, the policy itself and
22 what's permissible. And then the idea of commitment to
23 transparency on results and expenditures through reporting
24 to Parliament and this Departmental Results Report and
25 Public Accounts of Canada.

1 So, I didn't see a reference in those nine
2 principles to ensuring that funding is reactive to or
3 responsive to the needs and circumstances of First Nations
4 children and family, including historical, geographical and
5 cultural needs and circumstances. Is there something
6 within those nine that you see that falling under or is
7 that a principle that's not reflected here?

8 **A.** I find that that has actually been
9 addressed through the first two principles that you cited.

10 **Q.** So this is the idea of working
11 collaboratively, and then the second point is responding to
12 needs and emerging pressures?

13 **A.** Um-hmm.

14 **Q.** So, when you're referring to needs here,
15 that would be the robust understanding of needs and
16 circumstances including history, geography and culture.

17 **A.** Of course. That's the indigenous
18 context that is also referenced here.

19 **Q.** And you're aware that taking individual
20 circumstances of First Nations children into account is a
21 key message from the Tribunal's orders about the First
22 Nations Child and Family Services Program and Jordan's
23 Principle?

24 **A.** Yes.

25 **Q.** And so, would the Department be amenable

1 to specifically referring to that, or, more specifically,
2 unpacking that word "needs" in the second bullet?

3 **A.** If there are suggestions that's been
4 demonstrated in the past that you'd like to provide, we
5 will take that onboard for a decision by the Financial
6 Management Committee.

7 **Q.** Now, if there's a disagreement between
8 the parties, between Canada on your end, or any other
9 consultation committee entities, is there anywhere for that
10 disagreement to go, other than to the Tribunal? Is there a
11 dispute resolution mechanism that's within these principles
12 or within your Treasury Board policy environment?

13 **A.** Through the development of financial
14 policies at Indigenous Services, I believe there is not a
15 process of adjudication of the development of financial
16 policies of the Department.

17 **Q.** So I have a few questions about the
18 reallocation policy, which is under Tab E of your
19 affidavit. So, if we could take a look at 6.2.1, which is
20 on page 4 of the policy. So, 6.2.1, so ESDPP Child and
21 Family Services National Policy Team. And so, ESDPP,
22 that's -- is that Ms. Wilkinson's part of the Department?

23 **A.** Yes.

24 **Q.** And so, 6.2.1 notes that her team is
25 responsible for:

1 "Reporting to the Tribunal on the
2 implementation of the reallocation
3 orders from a national perspective."

4 And then 6.3.2, which is under CFRDO
5 Sector's responsibility -- so that would be your team's
6 responsibilities?

7 **A.** That is correct.

8 **Q.** And so that says:

9 "Keeping record of all responses to the
10 monthly report and the additional
11 attestations on reallocation for the
12 purpose of monitoring oversight and
13 reporting to the Tribunal."

14 So, I guess what I'm wondering is do you
15 know if any reports for the Tribunal have been prepared in
16 terms of the rollout of the policy? So, I know we've --
17 obviously your affidavit, you know, reports the existence
18 of the policy and how it was developed, but in terms of now
19 that it's in place and it's governing reallocations, have
20 there been any reports prepared on that part of the
21 process?

22 **A.** There is, I think, a guidance document
23 in terms of -- that's in draft -- developed. And then
24 there are monthly attestation reports that we will be -- I
25 think we've requested and will monthly request from the

1 regions to ensure compliance with the policy.

2 Q. So, I'll have some questions about the
3 guidance document a bit later.

4 A. Okay.

5 Q. So, just focusing, I guess, on these
6 attestations. So, when did this policy -- the date stamp
7 says "December 21, 2018." When did the policy start
8 governing reallocations within the Department?

9 A. Well, I mean, I think as soon as we were
10 aware of the -- as soon as the Tribunal order came out, we
11 were -- had to be in compliance.

12 Q. No, and I'm not trying to suggest that
13 there's been noncompliance with the order. I'm more asking
14 about the mechanics of the policy. My understanding, not
15 to be too precise on dates, is there was a draft that went
16 out to the parties in September, and so, presumably it was
17 written sometime before that. Comments then came back in,
18 were processed by ISC, and then a final version came out on
19 December 21st. And obviously there are a couple of points
20 that are before the panel in the context of a motion, but,
21 you know, in terms of a cash management or a reallocation
22 request coming in and needing to go through the steps that
23 are outlined here, when did that start? So, when did a
24 program official have the obligation to consider what's in
25 the policy?

1 A. Well, we -- well, I think there is a --
2 there was a recognition by all officials of the impact on
3 the orders right away throughout the year. From an
4 implementation practical standpoint, I think the guidance
5 document and the attestation we indicated would start for
6 "What did you do through the year in terms of an
7 attestation for the year?" for which is coming in later
8 this month for '18/'19, to understand the impacts, and then
9 for then the rollout on a monthly basis going forward --
10 only because of, where we're at in the state of the
11 dissolution of the former Department and the creation of
12 the two entities in terms of different financial systems,
13 it was just too complicated practically to kind of do
14 something in terms of precise implementation. But now that
15 we've gone -- the Department has its own single financial
16 system as of April 1st, we're able to move forward on a
17 monthly basis with the attestations with one for the whole
18 year from the different financial statements, starting in
19 April.

20 Q. So, the monthly attestation process,
21 that will start with regard to last month then.

22 A. Yes.

23 Q. And so, have those attestations been
24 collected yet and rolled up?

25 A. They're coming in as we speak. As I

1 mentioned earlier, we issued it out in April for the
2 '18/'19 year, and they're coming in for mid to later half
3 of May. And then we'll issue, shortly thereafter then, the
4 monthly attestation for April '19/'20, and then monthly for
5 after that going forward.

6 **Q.** Now, in terms of once those reports are
7 rolled up, 6.2 and 6.3 refer to reporting to the Tribunal.
8 So, where will the reports go next? Are they going to be
9 filed with the Tribunal in terms of here's what's happening
10 under the policy?

11 **A.** I think the -- I think we're still in
12 its development and trying to ensure that people know how
13 to respond to the reports appropriately, and so I think
14 that will require some time because it's a new tool and how
15 people kind of report on the new tool. That will take some
16 time to get it right because I'm not expecting, with like
17 anything, any new form or tool for parties to kind of
18 respond in the way that perhaps we had expected. So, that
19 will take some time for education and training and some
20 months before we get comfortable with ensuring that the
21 reports are faithfully getting the information that we want
22 in adherence to the policy. So, it's a journey that we're
23 -- an evolution that we're going through in order to ensure
24 that we're respecting the policy.

25 **Q.** So, what measures are in place, then --

1 and I'm going to come back to the report question in a
2 second, but you've raised another question for me. So,
3 what measures are in place with regard to -- were in place
4 for '18/'19 or are in place now, before these reports have
5 kind of gelled in terms of people know how to use them, to
6 ensure that the reallocations that are happening, whether
7 they're permanent or they're kind of -- you know, not a
8 line of credit, but an in-house loan -- that those are
9 being done in respect of the policy, and particularly
10 regarding the adverse impacts that the policy addresses?

11 **A.** Well, prior to the implementation of the
12 attestation form, it's through widespread dissemination of
13 the policy and using the various governance committees
14 across the Department to ensure that people were aware and
15 informed accordingly. And I have my own -- sort of besides
16 the Financial Management Committee that governs the
17 departmental finances, I also have my own National Finance
18 Council which has the Director of Financial Services at the
19 regions as part of that fora to make sure that I can use
20 that to get straight to the financial managers in the
21 regions to make them aware as well.

22 **Q.** Is there any spot checking being done by
23 individuals outside the managers to ensure that the
24 understanding of adverse impacts is proper?

25 **A.** I think the attestation tools will be

1 the ultimate test of that, for sure, going forward because,
2 much like anything, you can promulgate a policy or issue a
3 directive, but how people digest it, I think we will see
4 if, through the attestations -- and I think the
5 attestations tools combined with a guidance document will
6 be very important in order to deal with issues such as
7 staff turnover and other issues related to, you know, when
8 you have change of personnel or so on, or people take new
9 positions, that the attestations and the guidance will be
10 -- are primordial documents for them going forward.

11 Q. So, just coming back to the idea of this
12 reporting, then, at 6.2.1 and 6.3.2. So, this is the way
13 I'm reading it. It's a bit of an accountability measure in
14 terms of the rolled up reports are going to -- I mean, you
15 say, "for the purpose of monitoring oversight and reporting
16 to the Tribunal." So, that will be in place in a period of
17 months, it sounds like from your answer?

18 A. Well, we're implementing the -- as I
19 said, we already have implemented the attestation tool.

20 Q. I took from your answer, though, that
21 there was some concern that the data coming in through the
22 attestation tool wouldn't be sound for a period of months
23 as people got used to it.

24 A. Well, I'm -- it's a speculation, but I
25 think much -- because based on my past experience over the

1 decades, once you implement something, you know, it takes
2 time to get it right.

3 Q. Yes.

4 A. Right? I think that's just natural,
5 regardless of organization, because it's a new thing. So,
6 I think we need to give space to make sure people are
7 fulfilling the form right over some time, as opposed to
8 assuming naturally right away that, because we've asked for
9 something, and then it's going to come back in, what we get
10 is right. It may not meet our expectations and there will
11 be a journey of refinement and evolution of it. Right?
12 That's why I made that comment earlier. But, that being
13 said, forms are coming in. So, is the adherence happening
14 underneath the policy? For sure. And I think that's the
15 most important thing because we are demonstrating that we
16 have developed a policy in compliance with the order, and
17 the actions that we committed to under the policy are now
18 being implemented. And, for me, that's the most important
19 thing.

20 Q. And so, when could we expect, then, to
21 see the first report, you know, flowing from this
22 monitoring, oversighting and reporting to either the CCCW
23 or to the Tribunal?

24 A. I would not be in a position to commit
25 to a timeline until I make sure that the journey of -- as I

1 said earlier, we're into a place that, you know, what we're
2 gathering is right. Right? And as I said, much like
3 anything, it's a journey of getting it right. Are we
4 implementing? For sure. Are we gathering information?
5 For sure. Is there a commitment to keep doing it on a
6 monthly basis? For sure. And, for me, that's the
7 important thing, and to make sure that we are respecting
8 the Tribunal order. That is paramount.

9 Q. And in terms of the reports reflecting
10 what's happening on the ground, etcetera, that's the
11 journey that's continuing.

12 A. Right.

13 Q. And it's an evolution?

14 A. Yes.

15 Q. Now, just in terms of some of the
16 decision making that happens here -- so I may need to bring
17 it down to kind of the level of the line official, the one
18 who's going to be -- you know, a hand gets raised in terms
19 of -- you know, for cash management, for temporary
20 reallocation. You know, "I need funds." And then program
21 B is the pockets that those are going to be coming out of.
22 So, 5.6.3, which is on the page prior, defines permissible
23 reallocation, and it says:

24 "'Permissible' in this context, is when
25 the transfer is from a program listed

1 in this policy..."

2 Which is a -- or at least as I kind of refer
3 to it -- one of the protected programs.

4 "...but is a temporary measure taken to
5 address program/operational funding
6 needs, cash management, and the
7 transfer will not result in an adverse
8 impact on First Nations children and
9 families."

10 And then 5.5 defines "adverse impact," which
11 talks about it ---

12 "...including but not being limited to
13 a reduction in services that could
14 reasonably be expected to increase the
15 likelihood of a child being removed by
16 Child and Family Services."

17 And then, in your affidavit -- you'll just
18 have to give me a moment here. My knowledge is not
19 photographic of your affidavit. And this is at paragraph
20 31. And so you say -- and this is -- I'll ask some
21 questions about the guidance document later, but you say
22 that:

23 "The goal of the guidance document is
24 going to be assessed if a reallocation
25 of funds is likely to have an adverse

1 effect/impact that leads to additional
2 apprehensions of First Nations children
3 or impacts First Nations children and
4 families negatively, to prevent
5 discriminatory practices from occurring
6 due to the ISC policy on internal
7 reallocation of social, housing,
8 education and health program funds."

9 So, is that idea of preventing
10 discrimination something then that, in your view, falls
11 within the "includes but is not limited to" for an adverse
12 impact? The idea of wanting to avoid an adverse impact is
13 also wanting to avoid the reoccurrence of discriminatory
14 practices.

15 **A.** Correct.

16 **Q.** Now, in terms of the -- so, the official
17 that's going to have to make this decision, is it the
18 official who's in program A, the one that's requesting the
19 funds, or is it program B, the one that the funds are
20 leaving from? And if I've oversimplified that, which is
21 certainly possible, please correct me.

22 **A.** So, I think it comes from the regions
23 and in terms of what they have come forward with, and then
24 I think it'll have to be decided by the program ADMs along
25 with myself in terms of understanding that impact, and then

1 if it's an adverse impact, we don't let that happen.

2 Q. So, when you say, "the program ADMs,"
3 you could have -- for instance, Ms. Wilkinson, I understand
4 that she has -- well, I guess it would have been maybe --
5 let's pretend it's still Ms. Isaac because, at the time,
6 Education and Child and Family Services were under -- both
7 under her purview. And so, if it had been between those
8 two programs, it would have been herself and yourself
9 discussing the possible adverse impact because that was
10 within one program ADM's suite of programs. Am I right?

11 A. At that time.

12 Q. Now, if it's between ---

13 A. Along with -- and also, I think, we'd
14 also bring in Valerie Gideon as well because, under our
15 policy, we have ensured that, beyond the order application,
16 we've expanded it on our own to include education and
17 health, so we need to have the four of us.

18 Q. So, would it be the four of you for all
19 of these temporary reallocations that could raise an
20 adverse impact then?

21 A. Well, we'll have to bring -- if there is
22 assigned of adverse impact, we'll have to bring all four of
23 us in.

24 Q. All four. Okay. Now, in terms of the
25 four of you, have you received training to ensure that you

1 can determine whether or not a reallocation is going to
2 result in an adverse impact for First Nations children and
3 families?

4 **A.** I think we are all mindful, being in the
5 Department over the years, of the impact on it. I haven't
6 been privileged to receive a specific training on it -- I'm
7 not sure it exists -- but we're all very very impact based
8 on our day-to-day engagement with Chiefs and our own -- and
9 when we meet -- when we go out to communities, we
10 understand the reality that is out there, and that informs
11 us.

12 **Q.** So, it's mainly informed by your work
13 experience within Indigenous Services Canada and its
14 predecessor departments then.

15 **A.** Which, in turn, is based on our working
16 at the First Nation community level.

17 **Q.** Now, when there's a concern that there's
18 a temporary reallocation that could arise, are the First
19 Nations that could be impacted by this temporary
20 reallocation -- are they consulted as part of the decision-
21 making process?

22 **A.** So, the financial management that I had
23 mentioned at the beginning of our question session was
24 based on taking money from programs where there may be
25 surplus, whereby there is -- whereby we're still meeting

1 that program's obligations, and so they just have excess
2 cash at that time. And so, we take that. And so, that is
3 something within the Department.

4 Q. And so that's necessarily, then, the
5 Department's understanding of the ability of the program to
6 meet its obligations?

7 A. That's correct, based on the funding
8 agreements that we've signed with First Nation communities
9 and the obligations and the financial system. So, as long
10 as money is continuing to flow, there is no impact based on
11 what has been agreed to in the funding agreement with the
12 First Nation. So, as long as those obligations are still
13 being adhered to, then there is no impact when we take the
14 excess cash.

15 Q. So, now, we've talked about the idea of
16 these temporary reallocations are not like my mortgage
17 where I know there's a day in 2023 where a reckoning will
18 be had. It's indefinite, it depends on central agencies,
19 it depends on appropriation.

20 A. It's not indefinite. It's based on,
21 yeah, a process.

22 Q. Oh, it's -- but there's no set date the
23 money will come back, right?

24 A. It's not defined at the beginning, but
25 will it end? Yes, it will. So, it's a timing issue.

1 Q. Right. So, "indefinite" may not be the
2 exact word, but it's imprecise.

3 A. "It's imprecise" would be, I think, a
4 better word, Mr. Taylor. Thank you.

5 Q. Now, in terms of the -- during this
6 imprecise time period -- you know, for instance, Parliament
7 will be dissolved for most of the fall, given the election.
8 If, over that time period, the -- either the time period
9 runs longer than expected or there's a change in need from
10 the agency -- sorry, "the agency," the First Nation or
11 First Nations Agency, depending on the recipient -- and
12 certainly in your budget management principles, you refer
13 to, you know, unforeseen pressures that fall into
14 categories of emergency, health and safety, level
15 obligations, and service funding. Is there an opportunity
16 for a First Nation who's impacted by a reallocation -- so,
17 if there's a funding agreement or if there's a program and
18 there's been a temporary reallocation away -- to, at
19 anytime during the period of reallocation, raise a flag
20 about an adverse impact that might arise during that period
21 of reallocation?

22 A. I think if their funding agreement
23 obligation and the cash flow schedule that they've been
24 agreed to under it is not being respected, they do flag in
25 the financial system because they have -- there are over

1 200-odd First Nations who actually have access to the
2 system and they communicate through that, so, they do have
3 an opportunity already to inform us if there are issues.

4 Q. But that would be issues about "You're
5 not meeting our funding agreement" or would it be issues
6 about "Hey, there's a risk of perpetuating discrimination
7 or removals of children going up"?

8 A. "Hey, there's a risk you're not meeting
9 my cash flow schedule that we were relying on for the
10 delivery of services on reserve."

11 Q. Now, just in terms of this exercise that
12 yourself and your three colleagues would go through in
13 terms of an allocation, a temporary reallocation that
14 raises adverse impact concerns, is that an exercise that's
15 done when the money leaves program A and goes into program
16 B, or is it revisited at any point during the process?

17 A. I am sorry, Mr. Taylor ---

18 Q. So, if an emergency occurs and a First
19 Nation needs the funds earlier than scheduled to respond to
20 an emergency, you know, whether it's health and safety as
21 referred to in your budget management principles, does that
22 return to -- does the table, the four of you, is it on the
23 lookout for those kinds of changes in circumstances after
24 the decision has been taken? Because it could be on -- you
25 know, today, May 15th, I mean, you're here, so you probably

1 won't have such a meeting, but if you were to have a
2 meeting this afternoon and there's a reallocation that
3 causes -- a temporary reallocation that causes a concern,
4 you know, you and your colleagues sign off on it and say,
5 "No, this won't result in an adverse impact," but
6 circumstances change three months from now and there hasn't
7 been an appropriation or a central agency's approval to get
8 the money back, how does that come up again for the
9 Department to consider, or is it just -- is it the decision
10 has been made and someone else will have to ask for a
11 reallocation to meet that need that's arisen?

12 **A.** I think we will convene if there is a
13 potential impact, so I believe that the -- I mean, we are
14 always meeting constantly to ensure that our obligations
15 are being respected and First Nations are being -- funding
16 flows are happening. So that's an ongoing conversation.

17 **Q.** But is that a responsive process or is
18 it a process that is one in which the Department is being
19 proactive?

20 **A.** I think it's proactive given the fact
21 that we are service delivery and it's embedded in our
22 principles of who we are. So, when you're a service
23 organization, it's a partnership, it's a partnership with
24 the First Nation community, so it's day to day and it never
25 ends. And so it's not an issue of whether it's proactive

1 or not proactive, it's just who we are. And so you can't
2 put it in categories like that. I'm sorry, Mr. Taylor.

3 Q. So, I guess, maybe to step out of the
4 category and just try and look at it from a functional
5 perspective, so, at the level of the Department in the
6 region -- I think that's where I understand most of these
7 concerns would come up is at the regional level, an
8 identified need for a reallocation. So, there's a -- I
9 don't know what the proper term would be, if it's a program
10 officer or an individual who's responsible for the delivery
11 who raises the flag, which then goes up the chain until it
12 gets to the four of you. Is the person at the bottom of
13 the chain, who's identified the need for additional funds
14 -- is there a counterpart in the program from which the
15 funds have been taken -- are they monitoring that program
16 to say that the funds may need to come back?

17 A. Yes, for sure. That's ongoing across
18 all programs.

19 Q. One moment. Now, in terms of the
20 decision that happens at the table with yourself and your
21 four colleagues -- so, can you walk me -- I mean, have you
22 had to determine, at this point, under the policy whether
23 there were any adverse impacts that could be occasioned by
24 a temporary reallocation?

25 A. Not as of yet. As I mentioned, we are

1 still -- it's still only coming in, our first round, and so
2 we will need to convene, depending upon whether -- what's
3 in the contents of that. So, we haven't been able to do
4 so. We have only got together as we have in Financial
5 Management Committee when we see whether we have sufficient
6 funds or not, and then ensuring that we make the request to
7 get extra funds in order to meet our service obligations
8 ---

9 **Q.** So, up to this point ---

10 **A.** --- in order to impact -- therefore, to
11 avoid reallocations.

12 **Q.** So, up to this point, the monitoring of
13 the adverse impacts has been happening then at a lower
14 level in the regions.

15 **A.** Over '18/'19, it has been, based on the
16 promulgation of the policy up to the issuance of the
17 monthly attestations, which went out as scheduled in April,
18 going forward. So, up to that point in time, Mr. Taylor,
19 your comment is correct. It's been at the regional level
20 up to that point in time, pending the implementation of the
21 tool, the attestation tool.

22 **Q.** In terms of the adverse impacts that you
23 and your colleagues will consider -- because I understand
24 you haven't been there yet -- is one of the impacts that
25 you'll be considering the flexibility of programs to

1 respond to unexpected circumstances going forward? And
2 I'll just give you an example. So, in 2017, there was a
3 very tragic circumstance in Wapekeka, which is in Northern
4 Ontario. It's a First Nations community, and there was a
5 number of children who died by suicide in a short period of
6 time, and the community made a request for mental health
7 funding, for support. And the response that had come back
8 to that request was that it was an awkward time in the
9 budgeting cycle to be able to respond to and fund that
10 request. And so, in terms of some of these programs that
11 have -- you know, we've spoken about funding agreements --
12 but more that have standing budgets to respond to needs on
13 an ongoing basis -- not necessarily Jordan's Principle --
14 there are other programs. If a reallocation out of such a
15 program would have the result of leaving them less able to
16 respond to requests, is that something that your group, the
17 four ADM table, would be considering in terms of what an
18 adverse impact might be?

19 **A.** I can't comment to that specific case
20 and what had transpired, but, obviously, we have defined
21 what is the scope of programs that are impacted. Health
22 programs such as mental wellness are incorporated in that
23 scope of application of the policy, and we will have to
24 take that into account in terms of its sustainability and
25 its protection in order to ensure that it can deliver on

1 its service obligations to First Nation communities.

2 Q. Now, I've got a question for you about
3 Exhibit G in your affidavit. This is a February 25th email
4 from Stephanie Bertrand to a number of recipients. Now, I
5 recognize a few names in the recipient list. There's Ms.
6 Wilkinson, of course, who was here yesterday; Dr. Gideon,
7 who was here last week; and there's Linda Claremont. So,
8 is she another ADM at Indigenous Services?

9 A. Yes, she is the Assistant Deputy
10 Minister for Regional Operations.

11 Q. And then there's Mr. Kahn, who is also
12 an Assistant Deputy Minister through FNIHB.

13 A. That's correct.

14 Q. So, is that the -- are all these
15 individuals at the table with you, then, in terms of making
16 these decisions?

17 A. Yes.

18 Q. So, you'd said there were four of you.
19 I count five.

20 A. Yeah, there would be others as well.

21 Q. Okay. Now, who are the other -- we
22 don't need to go through each name, but who are the
23 remainder of the colleagues on this list? Are they -- I
24 mean, they all have AANDC or ISC next to their names in the
25 email list. What rank would they be?

1 **A.** So, this email was directed at the
2 Regional Director Generals for the regional operations as
3 well as the Regional Executives for the FNIHB Program.

4 **Q.** I see. Now, the second paragraph -- and
5 I'll just use the English. Maybe, at least in trying to
6 keep my language of questioning consistent, it will be
7 helpful. The second paragraph says:

8 "In the coming weeks, you'll receive
9 your first monthly email report from
10 the Chief Finances Results and Delivery
11 Officer sector..."

12 I think that's your sector.

13 "...outlining the status of transfers
14 in and out of the programs for which
15 you manage funding. In response to
16 these emails, you will be required to
17 provide attestations and supporting
18 documentation as to the nature of
19 transfers out of your programs. This
20 documentation will be saved by CFRDO
21 and used by the Department as evidence
22 of compliance with the CHRT orders on
23 reallocation."

24 So, that's the attestation process ---

25 **A.** Yeah.

1 Q. --- that we were speaking of?

2 A. Um-hmm.

3 Q. And so, just to help me understand the
4 chronology of this -- and maybe we'll break for lunch after
5 this, depending on how we're going. So, the reallocation
6 occurs between program A and program B. Your sector would
7 be advised of that as part of its responsibility for
8 financial management within the Department. And then your
9 sector produces back to the program involved in the
10 reallocation a statement that the reallocation occurred and
11 asks for the attestation at that point. Is that correct?

12 A. No, I don't believe so. I think that
13 the regions come forward with the attestation that defines
14 whether it's a temporary or not reallocation and a
15 commentary on the adverse requirements, and then we look at
16 it, and if it's a problem, then we will -- if it's an
17 adverse request, well then we will suspend that, and we
18 will ensure that the requisite funding to mitigate that is
19 addressed.

20 Q. So, the attestation process, as the
21 process goes forward, that's going to come to the front
22 end, i.e., before money leaves program A and goes to
23 Program B.

24 A. Well, it may -- so, it's for -- after
25 the fact, for the month, so it's a monthly thing. I may

1 have referenced earlier, Mr. Taylor, that it's a monthly
2 process, and therefore, it's about -- so it's an after the
3 fact. And then, once we receive that report, that's when
4 we make the determination, and if it's an adverse, then we
5 have to suspend it and then rectify.

6 **Q.** So, if it's identified the month
7 following that there is a risk of an adverse impact, or the
8 language of the -- in fairness to the record, the language
9 is the requirement is it has to be that the transfer "will
10 not result in an adverse impact on First Nations children
11 and families." So, if the determination is that there will
12 be an adverse impact, the reallocation which has occurred
13 is reversed.

14 **A.** That's correct.

15 **Q.** And then, I guess, at that point, the
16 borrowing department is on the hunt for other funds at that
17 point -- or borrowing program would be on the lookout for
18 other funds.

19 **A.** And that's my responsibility to deal
20 with that.

21 **Q.** And if programs have been expended
22 within the borrowing department before this is caught by
23 you and your colleagues at the ADM level, how is that
24 accounted for in terms of, you know, money has been spent,
25 and so, even if the remainder is reallocated, there's still

1 a shortfall within program B.

2 **A.** I have to deal with the shortfall.

3 **Q.** And how would you deal with the
4 shortfall?

5 **A.** A number of means. I mean, obviously we
6 look at the programs that aren't under the scope of
7 application of a Tribunal order to see whether there's any
8 surplus cash. And so, that's my first approach. And if
9 there is a surplus, then I can deal with it fairly quickly.
10 If there is no flexibility across the Department, then I
11 presume I will have to move fairly quickly with an urgent
12 off-cycle approach to seek additional funds in order to
13 address this urgently.

14 **Q.** And do you have a general sense, based
15 on your five years of experience in the role, as a general
16 ballpark sense, how long each of those options would take
17 to either pull in surplus funds from the non-impacted
18 program or have an off-cycle request?

19 **A.** Well, I mean, I think we will be able
20 to, within a week, be able to determine the relative
21 flexibility of the programs that are not in scope of the
22 policy and that we can take monies from. A week or two
23 before we can address it.

24 **Q.** And in terms of once you've determined
25 whether it can be addressed, if you have to go the off-

1 cycle route, ballpark, is it a matter of weeks, a matter of
2 months, for that process?

3 **A.** It's a matter of months at that point.
4 I mean, much like any process external to the Department,
5 there are lead times because it's subject to Ministers,
6 Prime Ministers, Treasury Boards, and then Parliament,
7 beyond what Parliament has already remitted to us. So,
8 there are a number of -- the decision makers of the
9 government of the day, plus Parliament and Cabinet meetings
10 need to be engaged.

11 **Q.** So, the success of the policy, then, is
12 it's pretty important that the line -- the regional folks
13 who are making decisions about the temporary reallocations,
14 that they be able to identify adverse impacts properly.

15 **A.** Correct. I mean, and they are, of all
16 people in the Department, the most familiar with the
17 context of the impacts on First Nation communities because
18 they're dealing with them and they're at the communities
19 every day, so they'll have a -- they are the appropriate
20 individuals to make that first assessment.

21 **Q.** And they are also going to be supported
22 by this guidance document that you referred to.

23 **A.** That's correct.

24 **Q.** Okay.

25 **MR. TAYLOR:** I have a number of questions

1 about the guidance document, and I note the time, Chair, so
2 I wonder if we might break for lunch at this point.

3 **THE CHAIR:** I'm not pressuring you, but how
4 long do you need after lunch, just so I have an idea?

5 **MR. TAYLOR:** I'd say it should be less than
6 half an hour.

7 **THE CHAIR:** Okay. And will there be any
8 questions -- maybe it's too early to ask, but will you be
9 asking questions?

10 **MR. WUTTKE:** Yes. The Assembly of First
11 Nations does anticipate asking questions. We should be
12 about 40 minutes.

13 **THE CHAIR:** Okay. How about the Commission?

14 **MR. SMITH:** We'll think about it over the
15 lunch break. We had a few questions, but, actually, Member
16 Marchildon, I think you asked some of the questions that we
17 had in mind as well, so we may have no questions. If we do
18 have any left, they'll be short, but we can let you know
19 after the lunch break, which it sounds like we're going to
20 need.

21 **THE CHAIR:** Yes. Well, if you have
22 questions, feel free to ask them. I'm just trying to --
23 so, if we take an hour and 15 minutes, would that work for
24 everybody? Yes? So let's be back at 1:30. Thank you.

25 --- Upon recessing at 12:15 p.m.

1 --- Upon resuming at 1:30 p.m.

2 **THE CHAIR:** Okay. Good afternoon. Mr.
3 Taylor, you had more questions, I believe?

4 **MR. TAYLOR:** Yes, yes. I won't be too long,
5 but I have a few more questions.

6 **THE CHAIR:** Thank you, Mr. Thoppil, for
7 coming back this afternoon.

8 **THE WITNESS:** I had an option?

9 **THE CHAIR:** No. And, by the way, if you
10 need a break, just let me know, and I'll give you a break.

11 **THE WITNESS:** Thank you. You're very kind.

12 **THE CHAIR:** It's burdensome for you for a
13 full day, so I understand. Let me know.

14 --- **BY MR. TAYLOR:**

15 **Q.** Okay, Mr. Thoppil. So, I'd like to go
16 to paragraph 25 of your affidavit. So, here you're
17 speaking of the idea of initiatives or projects being
18 delayed for reasons such as weather, winter roads or
19 contracting issues. And so, you note:

20 "The Department may ask Treasury Board
21 for the ability to spend the funding in
22 future years when it will be needed for
23 the original project."

24 So, this would be if there was a project to
25 build a school, for whatever reason, delays with the

1 contractor or, you know, worse than expected weather
2 conditions, it needs to be carried out in a future year --
3 so, to reassign those funds, that would be something that
4 Treasury Board would have to be involved in, is my
5 understanding based on this?

6 **A.** Yeah, Treasury Board and Finance.

7 **Q.** And Finance. And in terms of -- then in
8 the next sentence, you note that:

9 "ISC Programs may also use funding
10 allocated to a delayed project to
11 support other initiatives with funds
12 being returned to the original program
13 in a future fiscal year."

14 So, if there were funds allocated for a
15 school, the school is delayed, and one of those cash
16 management needs that we discussed this morning come up,
17 then that delayed pot of funds could be reallocated
18 temporarily to the emergent cash management need.

19 **A.** Good.

20 **Q.** Now, if -- in the future year, if the
21 cash is to be returned, is Treasury Board approval required
22 at that point for the return of the funds?

23 **A.** Well, I mean, if we used the funds from
24 the school project, and it got delayed, then we seek
25 something called a re-profile, and when it's usually tied

1 to a specific project, that's usually an automatic
2 approval, and then we get that money through supplementary
3 estimates.

4 **Q.** So, in a future year, you'd get the
5 money from supplementary estimates?

6 **A.** Next year. We can cash manage and then
7 begin in the interim until Parliament gives us the money
8 again, but that's just -- that's usually par for the
9 course. For those departments that have infrastructure --
10 and any significant projects like IT projects or so on,
11 delays inevitably, right, with infrastructure or IT
12 projects -- and so, re-profiles are part of ensuring that
13 those funds earmarked for that purpose don't get impacted
14 by fiscal year ends.

15 **Q.** And so, re-profiling is sending the
16 funds forward into another year. Is that ---

17 **A.** That's correct.

18 **Q.** That's right? And so, when a
19 reallocation -- when a temporary reallocation spans more
20 than one fiscal year, there's a re-profiling requirement
21 there at some point then. So, the example being ---

22 **A.** So, I'm sorry, I don't understand, Mr.
23 Taylor. I'm sorry.

24 **Q.** If program A has a surplus and the funds
25 leave program A and go into program B, and the funds are

1 not returned to program A until a future fiscal year, is
2 there a re-profiling step that's required before the funds
3 can come back home, or can the loan just be paid off
4 between the two programs without any outside intervention
5 from Treasury Board or Finance?

6 **A.** I think it depends upon what's in scope
7 related to the reallocation policy and what's not. Right?
8 So, I think that if we're in scope related to a temporary,
9 then we have hit upon a legal obligation, which is on an
10 automatic, so, there may be some approvals, but they'll
11 commence, right, so that's just a timing issue for us. The
12 issue that's more germane is where it's programs that are
13 not within the scope of the application, and then, you
14 know, there's some advocacy that has to happen and some
15 outside approvals.

16 **Q.** Yeah, and certainly my questions, I'm
17 trying to keep them within the scope of the policy.

18 **A.** Right. Sorry, sorry, your question
19 wasn't ---

20 **Q.** When I say "program" ---

21 **A.** I'm just trying to understand it.

22 **Q.** When I say "program A" and "program B,"
23 I was -- implicit in my question, I was hoping, was that
24 they were programs within the policy as opposed to ---

25 **A.** Oh, I see. Sorry, I didn't understand.

1 Q. At least, I suppose, one of them would
2 have to be a program within the policy, the source program.
3 Program A would have to be an education -- in order for the
4 policy to apply, program A, the program lending the funds
5 has to be education, health, social. I just want to make
6 sure I understand this. So, the Indigenous Services Policy
7 on Internal Reallocation applies to social, housing,
8 education and health program funds. I'm right about that?

9 A. Right. But -- so now that I understand
10 -- so, thank you for providing the clarity related to your
11 question. So, because of the policy and the way we've
12 organized our funds, you know, that's more of a theoretical
13 question because those funds are now kind of segmented, so,
14 if there's any borrowing, it's coming from outside those
15 programs, it's not within that suite. Do you understand?

16 Q. Yeah. So, if you have a need from
17 outside of the four programs, there could be funds cash
18 managed out of housing ---

19 A. No. Because that's in scope.

20 Q. But I thought that, under the policy,
21 temporary reallocations were permissible when it was cash
22 management and there were no adverse impacts.

23 A. Correct. But most likely, it's going to
24 be beyond those programs that are in the scope for cash
25 managing purposes. Do you understand? Because we have

1 other programs beyond those that are within the
2 application, the scope of application that we're going to
3 cash manage. Right? For those programs in the suite.
4 Because of the legal obligation, because of the policy, if
5 there's cash management for those programs within scope,
6 we're taking the money from those other programs not under
7 the scope of application. Right?

8 Q. Right. So, if there's a -- if the
9 borrowing program is one of the programs that's protected
10 by the policy, then the borrowing will happen -- the
11 lending will happen from outside from a non-impacted
12 program. Is that what you're saying?

13 A. I'm saying if any of those programs that
14 are under the scope of application as defined -- right --
15 if they need cash management, we're taking it from programs
16 that aren't part of those.

17 Q. Right.

18 A. Right?

19 Q. Right.

20 A. Because we're trying to keep them whole
21 and uninterrupted.

22 Q. Right.

23 A. Right? So, that's what I thought your
24 question was about.

25 Q. Well, I guess my ---

1 **A.** The objective of the policy is to
2 respect the Tribunal order and to make sure that those
3 programs are running sustainably and not negatively
4 impacted even by cash management. Right?

5 **Q.** Right. Exactly. But I guess what I'm
6 asking, so, 5.6.3 -- this is page 3 of Tab E.

7 "When the transfer is from a program
8 listed in the policy..."

9 So, one of those protected policies we're
10 discussing.

11 "...but is a temporary measure taken to
12 address program/operational funding
13 needs, cash management, and the
14 transfer will not result in an adverse
15 impact on First Nations children and
16 families."

17 And so, if it can clear those hurdles in
18 terms of its cash management, and there's not adverse
19 impact, then money could leave ---

20 **A.** Yeah.

21 **Q.** --- the program. And what I'm -- is
22 what I'm hearing from you is that that's a last resort for
23 the Department?

24 **A.** Yeah, because -- yeah, but I guess
25 that's what I was maybe failing to talk about and maybe

1 does not come through in the policy is -- you know, if
2 we're truly trying to reflect and deliver on the spirit and
3 intent of the order, right -- so, the ethos will be to take
4 money from outside the programs that are in scope from the
5 other programs at all times in order to keep those programs
6 whole, and then we only have to apply this as second
7 course, right, because we understand the obligations
8 embedded in the policy and in the directive. Right? So,
9 you know, we are going to cash manage, if we have, from the
10 other non-affected programs that aren't in scope in order
11 to help on the cash management of this. It's only if we
12 can't do that, then are we into this.

13 Q. Right.

14 A. If I'm clear that way. And,
15 unfortunately, you know, this policy is if we can't deal
16 with that. And then we're into, then, the next step of,
17 okay, where we couldn't find other cash in the other
18 programs out of scope, now we're into this area, now how do
19 we try to figure out a way to mitigate it, right, because
20 remember what our ethos is, we want to respect the spirit
21 and intent of the order. Right?

22 Q. Right. So, what I'm hearing, then, is
23 that the spirit of how 5.6.3 would be applied is when the
24 transfer is from a program listed in the policy and other
25 alternatives have been exhausted. Is that right?

1 A. Yeah. Exactly.

2 Q. So, in terms of the ---

3 A. This is, you know -- and thank you for
4 -- I really want to thank you for asking the question
5 because this is a bit microscopic in nature, so it doesn't
6 look at the departmental-wide issue, right ---

7 Q. Right.

8 A. --- because the scope of application is
9 only part of it, right?

10 Q. Right.

11 A. And so -- but this is primordial for us.

12 Q. Right.

13 A. So that's why it's segregated.

14 Q. And just in terms of the other programs
15 that are outside of the scope, do you have a few examples
16 of what those programs would be?

17 A. Well, I mean, there's all types of other
18 programs, so, I guess there is, I guess, other
19 infrastructure programs that isn't housing.

20 Q. There would be roads, water ---

21 A. There would be roads and water ---

22 Q. So, there wouldn't be an adverse impact
23 screen applied for a reallocation or cash management
24 affecting roads and water? Is that right?

25 A. No, but, on the other hand, that's

1 mitigated by the fact that, because it's infrastructure
2 projects, I can get them re-profiled fairly easily. So, to
3 some degree, there's a bit of an imbedded risk mitigation
4 if I do have to take it from associated infrastructure
5 projects because I mentioned earlier in my comments those
6 are easily re-profileable.

7 **Q.** Delayed to a future year. Is that
8 right?

9 **A.** Yeah, it's just delayed by a year,
10 right? So, I'm not too worried about the potential impact
11 on the First Nation community from that perspective,
12 particularly if the First Nation, due to contracting delays
13 or construction delays, it wasn't meeting anyways. Right?
14 So, there's some safeguards there in terms of impacts, for
15 sure.

16 **Q.** Now, at paragraph 31 of your affidavit,
17 you refer to this guidance document. So, if I understand
18 -- and just maybe you can confirm my understanding is right
19 -- this is a document that is going to help ISC officials
20 from your table of the ADMs all the way down to the region
21 in assessing if a temporary reallocation is going to have
22 an adverse impact on First Nations children and families.
23 That's right?

24 **A.** Correct. It's in process for -- it's in
25 circulation, we're trying to make sure that we get

1 everybody's input, so it's going through its evolution of
2 governance approval.

3 Q. So, it hasn't yet been pushed out to all
4 the individuals who will be using it yet?

5 A. It has been, for comment.

6 Q. For comment.

7 A. It has. Right?

8 Q. But not for operational ---

9 A. Well, I mean, I guess they know it's
10 there for usage, but we're trying to make sure that it's a
11 guidance document that is practical, that is sustainable,
12 and that adheres to the Tribunal order, for sure. But we
13 want to make sure it deals with the Tribunal order and the
14 other issues, you know, can they actually do it given
15 financial policies and business process and systems and
16 other realities. Right? We don't want to provide a
17 guidance document that's not real. That's why it's
18 important to circulate for comment. Right? But they know,
19 because that's released, that there's a spirit and intent
20 embedded in it, for sure.

21 Q. Now, do you know who wrote this
22 document?

23 A. It's done in collaboration between
24 program and finance stuff.

25 Q. So, there's a number of authors then?

1 A. Yes.

2 Q. Do you know if any of the authors had
3 credentials in child welfare or social work?

4 A. I don't know. I can't comment on that.
5 I knew that the program people involved in Child and Family
6 Services were part of the development of the document.

7 Q. And so, in terms of someone who had
8 child welfare or social work credentials, that would only
9 be the case if someone on that team who worked on the
10 document had those credentials.

11 A. I believe so.

12 Q. So, in terms of this guidance document
13 -- so, other than the guidance document -- and we've talked
14 about the attestations -- those are the tools that you're
15 using to implement -- is there going to be any specific
16 education or training provided by the Department to prepare
17 the individuals who are going to be applying the policy to
18 determine if reallocations could lead to adverse impacts as
19 they're defined in the policy?

20 A. I think the Department is committed to
21 get it right, and so, much like promulgation of anything
22 new in an organization, I mean, it's a journey. And I've
23 cited that phrase before in earlier testimony. So, I don't
24 presume we've got it all right. Right? So, our first
25 attempt is a guidance document, we're going to circulate

1 it, we're going to get comments, we're going to use our
2 governance fora to make sure people understand it, we've got
3 the tool, the attestation tool, and then we'll see what we
4 get back. And then, if it's not working, then we will
5 revise. Right? Much like any organizational business
6 process, the issue is will we get it right at the first
7 instance? Probably not. But are we committed to making
8 sure that we're refining it constantly through the internal
9 mechanisms of an organization such as a line department
10 such as internal audit or a program (inaudible) or so on?
11 We will, and through our governance forum. And I think
12 that's where we're at at this juncture. Right?

13 Q. Right.

14 A. So, I think the -- it's clear through
15 the policy that was approved by the Financial Committee and
16 the Deputy that this is who we are, and this is important,
17 and we've come out with a guide and some implementation
18 tools in order to ensure that we are taking the policy and
19 now providing and putting it on the ground, and we're at a
20 juncture, at this point in time, whereby we're trying it
21 out, and we will refine and improve over time, right, as we
22 get the experience or the feedback. Right? So, it's going
23 to be a constant loop. And I think all organizations are
24 in a constant iterative process of improving. Right? And
25 we're the same.

1 Q. Now, as part of that iterative process
2 of improving, I note that paragraph 35 says that:

3 "ISC expects the tools will continue to
4 develop with input from the
5 Consultation Committee on Child
6 Welfare."

7 So, a copy of this guidance document, then,
8 is going to be going to the CCCW next?

9 A. Yes. I understand there was a meeting
10 that was originally going to be scheduled in May. It was
11 ready for discussion then. I understand it was deferred
12 until June, and it will be tabled then.

13 Q. Okay. So, prior to the June meeting is
14 when you're expecting that document to go to the CCCW.

15 A. For sure. It should be on the agenda
16 for that meeting.

17 Q. Now, in terms of once that document is
18 put together or once those comments come back in, is there
19 a plan in the Department in terms of having specific
20 training on the document and the kinds of decisions that
21 have to be made with the people who are making them? For
22 instance, by analogy, the focal points of had a collective,
23 you know, gathering in Ottawa -- I think it was November of
24 last year -- to receive training on what they're doing as
25 implementing Jordan's Principle. Would there be a similar,

1 you know, assembling of the various individuals in the
2 disparate places to make sure everyone's on the same page?

3 **A.** We're open to that. It hasn't been
4 originally part of a plan, to my knowledge, but maybe it
5 has. But, I think the gatherings of people from across the
6 country are very important and they're very helpful, and
7 depending upon what we're getting back in terms of the
8 attestation tool, in terms of it, we may have to move
9 sooner rather than later in order to do such a gathering.
10 That is one of our important management tools that we use
11 in order to ensure alignment and consensus across the
12 Department in terms of applying something consistently.
13 And so, we will do so -- yeah.

14 **Q.** And so that's a future part of your work
15 plan then.

16 **A.** Yeah.

17 **Q.** Now, in terms of pending that future
18 state, to your knowledge, the kind of training or the
19 education people are receiving is what they've got through
20 their work experience on the job then.

21 **A.** You know, I don't know the credentials
22 of all the staff in the Department. Right? There is, you
23 know, some people who may have some specific accreditations
24 in the field. I don't know. I know that there is
25 significant accumulation of experience that is gathered

1 through the nature of the jobs that they employ and who
2 they engage with that is helpful. Is that sufficient?
3 We'll see. And if we need to up our game in terms of
4 increasing our accreditations or so on, then we'll do so if
5 that is the gap in terms of the improvement of their
6 performance.

7 **Q.** You mentioned, I mean, just then, and
8 also earlier in your evidence, about interactions or
9 engagement with communities, and I'm just wondering, as
10 part of that interaction or engagements, have you had -- or
11 how often would you have the occasion to engage with First
12 Nations children and families in your day-to-day operations
13 or work?

14 **A.** No, I don't have that opportunity. I
15 mean, I regularly meet with Chiefs and Chiefs in Council.
16 That is usually the stakeholder base who I regularly
17 interact with besides the AFN and the AFN staff and the
18 National Chief of the AFN, who I deal with. And then, if
19 there are particular issues in the area of my
20 responsibility, which is not program, that is an impact on
21 a First Nation community, then I am asked to intervene.
22 But, you know, I think, generally, CFOs of any
23 organizations aren't asked to deal with delivery issues. I
24 guess that's not necessarily our primordial forte, but ---

25 **Q.** That's despite your deliverology

1 responsibilities then.

2 A. Which is overall frame. I mean, I take
3 the coordinator view, but I can't be there -- I can't
4 deliver on every single program because I just don't have
5 that much time in the day. And nor is my staff, as you've
6 noted related to your other questions, particularly
7 associated with program delivery. They are finance people.
8 And so, if there's a finance issue, a funding agreement
9 issue, I mean, where that is my particular area of
10 expertise and roles or responsibility -- then I will do,
11 though. If there is a deliverology whereby we're not
12 meeting the government's milestones, then I will, of
13 course, interface to kind of understand what are the
14 challenges, what can we do differently, if it's within my
15 responsibility or whether I have to bring in outsiders
16 beyond the Department in order to kind of deal with the
17 problem. So, if we don't have enough money to deal with
18 the government's priority agenda of dealing with
19 elimination of long-term boil water advisories by the
20 timeframe that the government has set, and if I follow that
21 they're not adhering to the timeline, and if I understand
22 that the problem is a lack of money, then I will engage
23 with outsiders, Department of Finance and the Treasury
24 Board and others to ensure that we get the additional
25 funding in order to meet that government commitment.

1 That's an example.

2 Q. Now, just in terms of -- one quick
3 question on -- just to return briefly to the Jordan's
4 Principle payment timelines. So, there's this idea of
5 acquisition cards, which I understand is a government card
6 that it functions akin to how a credit card would work?

7 A. It is, although defined by the advice
8 given by the Secretariat for low value, low risk issues.

9 Q. Right.

10 A. So, things like usually office supplies.

11 Q. Right.

12 A. Right? Things whereby you don't want,
13 if you want to get, you know, a pen and a piece of paper,
14 you don't want to go through a lot of hoops in terms of how
15 you get those office supplies for a civil servant. So,
16 it's meant in that frame.

17 Q. Have you been involved in any
18 discussions about rolling out acquisition cards for focal
19 points for some of those smaller acquisitions? Some of the
20 -- Dr. Gideon has spoken of, in her affidavit and some of
21 her evidence, some of the smaller items like, you know,
22 sports equipment or -- there's evidence about a bed or, you
23 know, discrete products for individual children that come
24 in through the system. Has there been any thought to using
25 acquisition cards to facilitate that as opposed to the

1 parents, you know, paying and reimbursing or having to set
2 up a direct service payer relationship?

3 **A.** So, we are open to the utilization of
4 the credit cards, so we're in conversations with the
5 acquisition card holder -- the acquisition card company, as
6 well as the Treasury Board Secretariat, in terms of seeing
7 what we can do. Obviously, the best thing we could do is
8 if we don't have to trouble the individuals with any
9 paperwork or any cash flow issue. If we can just actually
10 deliver the service directly for them, then they are immune
11 from it all, and then we take on all of the process, and
12 they're unaffected by that. I mean, that's obviously the
13 best course of action. It can't apply in all
14 circumstances, for sure, in real life, but -- and so, if we
15 can't go to that whereby we can immune them from all of the
16 financial issues because we're taking it on directly and
17 we're servicing them directly, then there is a series of, I
18 guess, other actions we can take that will try to mitigate
19 that impact on the recipient for sure.

20 **Q.** And is there a time horizon, then, on
21 when the acquisition cards might be in place?

22 **A.** No, not yet.

23 **Q.** Some questions about Bill C-97, which I
24 understand is the Budget Implementation Bill. And it's my
25 understanding that division 25, subdivision (a) of that

1 bill enacts the **Department of Indigenous Services Act**. Are
2 you aware of that?

3 **A.** There is a portion of the Budget
4 Implementation Bill that has the legislation for the
5 Department of Indigenous Services and Crown Indigenous
6 Relations and Northern Affairs.

7 **Q.** And have you reviewed that portion of
8 the bill?

9 **A.** Yes.

10 **Q.** Is there any reference in that to
11 Jordan's Principle?

12 **A.** Not to my understanding specifically.

13 **Q.** And is there any reference to the
14 Department's -- the future Department's obligations under
15 the **Canadian Human Rights Act**?

16 **A.** Not specifically.

17 **Q.** And it's my understanding the preamble
18 sets out an objective of gradual transfer of departmental
19 responsibilities to indigenous organizations. Is that
20 right?

21 **A.** That is correct. Our goal is strategic
22 obsolescence, which is we are trying to close the
23 department, based on as fast a pace as First Nations are
24 willing to move to assume control and so that we can vacate
25 the space and close.

1 Q. Mr. Thoppil, just a couple more
2 questions. You note in paragraph 36 of your affidavit --
3 that's on page 8 -- that, in performing your duties, you're
4 guided by the **Financial Administration Act** and the policies
5 that are established to implement it.

6 A. Um-hmm.

7 Q. Would you agree that your duties are
8 also guided by the **Canadian Human Rights Act**?

9 A. If it's an Act of Parliament, then I am
10 responsible as a federal civil servant to uphold all Acts
11 of Parliament and their orders.

12 Q. Thank you. Those are my questions, Mr.
13 Thoppil.

14 **THE CHAIR:** Thank you. You would like to
15 enter a document?

16 **MR. TAYLOR:** If I could enter -- yeah, if I
17 could enter the short document, the excerpt from Chapter 3
18 of the 2019 Budget.

19 **THE CHAIR:** Yes. And did you bring a copy?
20 Yes.

21 **MR. TAYLOR:** So, maybe I'll just hand the
22 copy of the book from Dr. Gideon's cross-examination last
23 week to Ms. Dubois, as well, then.

24 **THE CHAIR:** Okay.

25 **THE CLERK:** A five-tab document titled

1 "FNCFCSO Exhibits to May 7th, 2019, Cross-Examination of
2 Valerie Gideon" will be entered as C-1.

3 **EXHIBIT NO. C-1 (ENTERED) - A FIVE-TAB DOCUMENT TITLED**
4 **"FNCFCSO EXHIBITS TO MAY 7TH, 2019, CROSS-EXAMINATION OF**
5 **VALERIE GIDEON"**

6 **THE CLERK:** And the six-page document,
7 "Chapter 3 - Advancing Reconciliation," which is page 127,
8 136, 137, 138, 148 and 149, will be C-2.

9 **EXHIBIT NO. C-2 (ENTERED) - A SIX-PAGE DOCUMENT, "CHAPTER 3**
10 **- ADVANCING RECONCILIATION," PAGES 127, 136, 137, 138, 148**
11 **AND 149**

12 **THE CHAIR:** Thank you. You had a question?

13 **--- QUESTIONS BY MR. LUSTIG:**

14 **Q.** Good afternoon. Thank you very much for
15 your evidence. Can I take it that your main role is to
16 ensure or try to ensure that spending is both accountable
17 and compliant? Is that kind of the function that you
18 perform in your role with ISC?

19 **A.** At a very broad level, yes, it's to ---

20 **Q.** I'm speaking broadly.

21 **A.** Yes, that is correct. It is to ensure
22 that when Parliament allocates -- has voted on money for
23 the Department, we spend the money within the allotment
24 provided by Parliament and that it is spent in accordance
25 with the policies and the laws of the Federal Government

1 and how they should be done.

2 **Q.** That's what I take from your affidavit
3 and your evidence, that that's -- in the global sense,
4 that's the main function. So, you don't -- correct me if
5 I'm wrong -- you don't comment on the appropriateness of
6 any particular policy that is whether or not to fund one
7 type of service, or to the extent that it's funded, as
8 opposed to something else, as long as it's within what's
9 been approved properly and it's compliant with the rules.
10 Am I correct? In other words, you don't make judgements
11 about those expenditures as in whether they're appropriate
12 or not appropriate, beyond the global requirement that they
13 be accountable and compliant.

14 **A.** In a very broad way, that is correct. I
15 would say that, in all large organizations or even small
16 ones, there is a delegation of responsibility for, you
17 know, taking an organization's large budget and then
18 allocating it to different sub-elements of an organization
19 for which they get, you know, a budget management
20 responsibility to manage within their own. So, if a
21 program ADM responsible for a program like Child and Family
22 Services has responsibility for Child and Family Services,
23 then they are responsible for that and are accountable for
24 the appropriateness of that spending. I don't comment on
25 it unless there is an issue related to -- as I mentioned

1 earlier with my interaction with Mr. Taylor, there is an
2 issue with regards to the internal controls and their
3 obligations in their fiduciary obligations related to the
4 application of Section 32 and Section 34 of the **Financial**
5 **Administration Act**, which is program aspects of financial
6 elements.

7 **Q.** So, for example, if the people who are
8 involved with policy -- and I'm particularly interested in
9 policy going forward because the context of what we're
10 doing today in hearing you is about jurisdiction, about
11 whether or not the Tribunal continues to exercise
12 jurisdiction. And for all intents and purposes, that
13 really has to do with the program going forward, with the
14 long-term reform of the system, rather than a number of
15 issues that we still have to deal with that we're
16 deliberating and we will, in time, make decisions on that
17 are before us, but don't involve long term, so that when
18 the policy people are conceiving of how to make the program
19 work best and comply with Human Rights legislation and our
20 decision, it's not your call to say that's good or bad.
21 Correct?

22 **A.** No, I'm not responsible for that. My
23 responsibility is when they develop program policy for
24 better socioeconomic outcomes. Then, depending upon what
25 they are going to propose, then my responsibility is to

1 ensure, as a Chief Financial Officer of a line department,
2 that the costing associated with that is the right number,
3 so that when -- if it requires more money, then I've costed
4 what they are proposing so that I can secure the funds from
5 the Minister of Finance and the Prime Minister and
6 ultimately the Parliament for that program reform. So,
7 it's a back end support ---

8 **Q.** Yes.

9 **A.** --- related to the financial
10 consequences of what they're proposing. But I don't engage
11 in the formulation of the proposed program policy.

12 **Q.** And I don't think this requires much
13 comment because you -- I'm sure you're aware that Canada
14 hasn't raised an issue of undue hardship so far as having
15 the funds available to -- theoretically to pay for
16 services. But do you get involved at all in your
17 interaction with Finance -- with the Finance Department in
18 any of the goals with respect to the bigger picture,
19 inflation, you know, the dollar, how deficits may be
20 increased because spending is greater, all of that kind of
21 thing? Do you ever weigh in on that in relation to any of
22 the program that is developed?

23 **A.** Sorry, I -- if there are -- I take the
24 impact of population on reserve, population pressures, and
25 costing inflation in when we look at the costing of the

1 program reform.

2 Q. Right.

3 A. Right? So I do it that way. And on
4 another initiative that I happen to be working on together
5 with the AFN with regards to a new fiscal relationship for
6 First Nations under the **Indian Act**, we have -- we are
7 looking at how do we provide an appropriate escalator for
8 cost inflation and population pressures, which was a
9 federal -- for 10-year grants for First Nations who wanted
10 -- that's a Federal Budget 2019 initiative -- and so, we --
11 I am discussing with Finance, to your question, issues such
12 as costs, inflation and population together with my
13 colleagues at the Assembly of First Nations together -- we
14 do it not just between me and the Department of Finance,
15 but I do it with my colleagues at the Assembly of First
16 Nations together with the Department of Finance on those
17 issues.

18 Q. So, you're saying that there's
19 collaboration with First Nations in that regard, but are
20 you in any way under direction, shall we say, from Finance,
21 from the Minister of Finance, finance officials, so that
22 they can achieve certain goals they may have with respect
23 to credit ratings, inflationary goals, any of that macro
24 economic -- value of the dollar and how strong or weak it
25 is -- any of that, that doesn't play into anything that you

1 do.

2 **A.** No, it doesn't. If I need more money,
3 particularly if it's a legal obligation, I submit it. Now,
4 as I said before, it's the Minister of Finance who will
5 take those issues that you've just cited into account in
6 looking at my submission for extra money. Now, if it's a
7 legal obligation as I framed anything related to the matter
8 in question, then I don't think that all those other
9 factors that you cited are at play. But if it's not
10 related to it, then I think -- then that's where the
11 Minister of Finance will come down and cite all those other
12 elements in saying "yes" or "no."

13 **Q.** I don't want you to say anything that
14 you don't know is correct, but is what you've just told me
15 that in looking at what you're doing, the Minister of
16 Finance -- and costs -- the Minister of Finance, in terms
17 of orders that you've just mentioned, is also -- or is he
18 not considering whether or not we're in a Human Rights
19 environment in terms of spending? Do you happen to know
20 that one way or the other?

21 **A.** I think that -- I do know that this
22 Minister of Finance is very committed to diversity and
23 inclusion. If you recall, this is the first government
24 federal budget that we've seen in Canadian history that is
25 based on gender -- gender based -- gender plus, and wants a

1 scorecard on their budget based on that. That has never
2 happened before by any other federal government in its
3 history. So, obviously, they will take diversity and
4 inclusion-related issues into account because that is what
5 they say they are elected on and have demonstrated through
6 their federal budgets.

7 **Q.** Okay. And finally, just getting back to
8 where we are in the process here of jurisdiction. It's
9 been very informative listening to you with respect to an
10 issue that isn't, strictly speaking, jurisdiction
11 allocation of funds, because that's very helpful to us and
12 that is an issue that we're still looking at. But with
13 respect to jurisdiction, the two previous witnesses who
14 appeared here in this part of the hearing before you,
15 yesterday and a week ago, spoke or wrote or swore to the
16 feeling that the Department might be better off without,
17 shall we say, the help of the Tribunal than with it in
18 terms of solving problems either directly with First
19 Nations collaboratively or through, ultimately, as was
20 mentioned yesterday, a possible alternative system of
21 adjudication other than the Tribunal. Do you express, in
22 your role, any view with respect to whether or not the
23 Tribunal should or should not remain seized to continue the
24 work in relation to what is outstanding? Do you have any
25 opinion at all on that subject?

1 **A.** I think the only thing I can say is is
2 that the Department has taken a lot of measures to respect
3 the Tribunal orders and to demonstrate that it is doing its
4 best in order to fulfill them. And I think the Department
5 has also demonstrated its sincere intent in terms of all
6 the policies, in terms of reform over the last couple of
7 years, in particular, how those reforms have been done in a
8 co-developed manner with indigenous groups, particularly
9 the AFN, the Metis National Council, and ITK on behalf of
10 the Inuit peoples. And I think that sincerity has also
11 translated into the development of the legislation that is
12 in budget implementation bill. I guess I defer to you on
13 how long you want to continue to oversee, but I think that
14 our track record to date has demonstrated a profound change
15 that is a marked departure from the old INAC, which had a
16 pre-reconciliation lens and frame. And so, I don't think
17 that ISC, the Department of Indigenous Services, should be
18 judged based on what is done over the last couple of years,
19 in particular, relative to the previous entity for which
20 the government had acknowledged had a different culture and
21 wanted to close.

22 **Q.** Thank you very much.

23 **THE CHAIR:** Thank you. So, Mr. Wuttke?

24 **MR. WUTTKE:** Yes, we are ready. If I can
25 take about 10 minutes just to organize my questions and ---

1 **THE CHAIR:** Sure. So, let's be back at
2 2:25.

3 --- Upon recessing at 2:15 p.m.

4 --- Upon resuming at 2:25 p.m.

5 **THE CHAIR:** Mr. Wuttke, was this sufficient?

6 **MR. WUTTKE:** Yes.

7 **THE CHAIR:** Okay.

8 --- **CROSS-EXAMINATION BY MR. WUTTKE:**

9 **Q.** Good afternoon, Mr. Thoppil. My name is
10 Stuart Wuttke. I'm counsel with the Assembly of First
11 Nations. I do have some questions for you. Hopefully it
12 won't be too long.

13 First of all, I'd like to refer to paragraph
14 8 of your affidavit. In the first line, you state that:

15 "Budgets within ISC are determined
16 based on anticipated needs which are
17 normally established through historical
18 trends and forecasting."

19 What are those historical trends based on?

20 **A.** Thank you for your question. So,
21 historical trends are, you know, usually past expenditures
22 as compared to budget, and that will demonstrate need.
23 And, you know -- and, therefore, the -- in the past, prior
24 to the Tribunal order, monies had been taken from other
25 programs in order to put into the social services and

1 housing programs in order to meet the needs there.

2 Q. Okay. And with respect to the
3 anticipated needs, what are the assumptions that the
4 Department uses to inform this process?

5 A. There are certain programs, for example,
6 such as Income Assistance, whereby we are price takers --
7 we call it price taker obligations, based on where
8 provinces have set their income assistance rates on, and
9 therefore, if a certain province decides to raise a rate,
10 they don't consult us, they do it for their provincial
11 recipients, but we have, therefore, an obligation to ensure
12 that those First Nation recipients in that province get the
13 same level. And those are sometimes anticipated and most
14 often not not. And then there's a catch-up that we have to
15 do.

16 Q. Okay. With respect to the Child and
17 Family Services context and then Jordan's Principle, this
18 panel has noted that the historical trends were really
19 discriminatory. Would you agree with that?

20 A. I believe that there was a chronic
21 underfunding of those programs.

22 Q. And with respect to the historical
23 trends, some of those were based on incomplete information.
24 Would you agree with that?

25 A. I believe that there was a desire by

1 those programs at that time to have more funds in order to
2 deliver on those programs, but approvals were not secured
3 in order to provide the adequate resources for those
4 programs to meet the needs at that time.

5 Q. Okay. So, with respect to the way the
6 program was developed in the past and the funding practices
7 that this panel has found discriminatory, would you agree
8 that a better approach at this point would be to build a
9 funding model based on needs and best interests of a child?

10 A. I think the utmost desire of the
11 Department is to ensure that the child is protected and
12 that their needs are met. If we can get to a place -- and
13 now I'm speaking personally and not professionally in my
14 capacity -- if we can get to a place that is agreed to, in
15 terms of what is that frame, and if there was a political
16 will by the government of the day, as well as Parliament,
17 to provide those funds, notwithstanding all the other needs
18 across the country, that would be wonderful.

19 Q. Okay. Paragraphs 20 through 30 of your
20 affidavit, you essentially talk about the temporary
21 reallocation, that each region must attest to the transfers
22 that will not impact a family or a First Nation child. Can
23 you provide us with some context of what that -- criteria
24 bureaucrats are basing that assessment on?

25 A. I'm sorry, the -- could you repeat it?

1 Q. The temporary reallocation, you
2 indicated that each region must attest that all transfers
3 will not impact a First Nation child or family. Can you
4 provide us some context of what that criteria looks like
5 that bureaucrats are using to make this assessment?

6 A. Well, at its fundamental nature, it's
7 the definition of the scope of the programs at play.
8 Right? And so, the Tribunal order was very clear in what
9 are some programs that need to be respected in that, and
10 then we added more on in terms of for the definition of the
11 scope of programs to be impacted for the reallocation, and
12 therefore -- I mean, that is -- you know, that's the first
13 lens, obviously, for my colleagues in the field, which is,
14 you know, how much are they having to avoid cash management
15 or reallocation from that scope.

16 Q. But as far as, you know, actual impacts
17 on children, do they look at, you know, services are being
18 denied, what could be denied, what could be offered? Does
19 that type of assessment come into play?

20 A. So, those actions are taken by region
21 program officials, and I don't have a lot of visibility on
22 that because that's not my frame of reference. All I know
23 is what I know anecdotally, is that their frame of
24 reference is to, at all desire, support the requests that
25 come in.

1 Q. Okay. Moving on to Exhibit E of your
2 affidavit. And My Friend from the Caring Society pointed
3 to it, but I'd like to refer to Section 5.6, which is on
4 page 3. In this section, there's a number of permissible
5 reallocations, the first one at 5.6.1, being that:

6 "The programs are not listed in the
7 policy; secondly, the program that..."

8 I mean ---

9 "...the transfers from a program not
10 listed in this policy into a program
11 that is listed in the policy; thirdly,
12 a transfer not to result in an adverse
13 impact to First Nation children and
14 families; fourthly, the funds cannot be
15 spent for their intended purposes at a
16 national level and cannot be carried
17 forward to the next fiscal year;
18 fifthly, the transfer is supported by a
19 policy decision; and lastly, where it's
20 clearly documented that a permanent
21 reallocation from a program listed in
22 this policy will not have an adverse
23 impact on First Nations family and
24 children."

25 You mentioned earlier -- I was wondering if

1 you could restate -- who makes the decision with respect to
2 these policies or the transfers itself?

3 A. It's done at the regional level.

4 Q. Would that be the Regional Director
5 General or the Regional (inaudible) Director General level?

6 A. Well, ultimately, those are the -- they
7 are the ones attesting in the monthly attestations. They
8 will be guided by both their program officials and their
9 finance officials in the implementation of that policy and
10 will -- and therefore, given the attestation requirement,
11 they will be guided by 5.6 to try to minimize this section.

12 Q. And with respect to the people making
13 the first determination on whether to reallocate the funds
14 or not, what type of test is being applied by that
15 official? Is it in a subjective test or is it more of an
16 objective test?

17 A. For -- could you clarify further your
18 question, please?

19 Q. For instance, if a reallocation needs to
20 occur or an official believes a reallocation is necessary
21 to cover an expense, and they have to look at whether that
22 will impact a First Nations family or child, do they look
23 at it through a subjective lens or an objective lens?

24 A. I think there's a number of criteria,
25 but obviously they're going to look at the impact on the

1 community and the child. They're also going to look at the
2 financial wherewithal that they've got in terms of their
3 budget. So, I think it's a multitude of elements that come
4 into that criteria, and that's where there's the
5 conversation and a discussion that's going to happen
6 foremost at the regional level by the Regional Director
7 General supported by his program and finance officials. I
8 would presume that there's going to be some consultations
9 with headquarters as part of the maturity of all this
10 process before they get to certain points.

11 **Q.** Okay. With respect to decisions that
12 are made, even at your level, you said before ADMs are
13 involved, is there going to be a contemplation of an
14 independent verification process with respect to decisions
15 that are being made that will not impact a First Nation
16 child or family?

17 **A.** I believe that all federal line
18 departments have internal checks and balances. For us, we
19 have the Chief Audit Executive, who is responsible for
20 internal audit and program evaluations. And so, they are
21 required by Treasury Board policy to do a life cycle of
22 internal audits and program evaluations over a period of
23 time in order to ensure that there's compliance. And so,
24 for me, you know, that will be, for me, you know, the real
25 check on compliance related to the financial policy because

1 it's going to be -- now that it's official, it'll be up to
2 the Chief Audit Executive and the internal audit when it
3 comes through their suite of internal audit rollout over a
4 defined period of time, which goes to a departmental audit
5 committee, which is made up of external parities, not
6 departmental officials, in terms of ensuring, okay, this is
7 a high risk, ensuring of -- and given the legal issues at
8 play, is the Department in compliance with its policy,
9 otherwise, will it be at risk of noncompliance with the
10 Canadian Human Rights Tribunal, then the internal audit
11 will probably ensure that they will do some internal audit
12 of this and they will be the ones that will tell us whether
13 we're out of bounds or not with -- whether we are in
14 compliance with the policy or not.

15 **Q.** And by the time that audit process takes
16 place, a number of months would have already passed from
17 when the decision was made. Is that correct?

18 **A.** So, the internal audits, much like
19 internal audits in any organization, are done at a defined
20 point in time, you know, over the years, and so, when they
21 will decide to do that is dependent upon all their suite of
22 internal audits that they'd have to do across all the
23 Department, what they perceive as what's higher risk versus
24 others, and when they do it and what is the accumulation of
25 evidence that they will have available in order to perform

1 their work. Right?

2 Q. So, it could be months or it could be
3 years.

4 A. It will be different from when the
5 attestation comes forward, for sure.

6 Q. Okay. Thank you. In responding to a
7 question by Mr. Taylor, you stated that an assessment of
8 impact will also depend on the contribution agreements
9 First Nations have with the Department and any commitments
10 that are there. Just to flip the side -- on the other side
11 of the coin with respect to that, I mean, what -- if
12 pressures do emerge in the future with respect to need to
13 reallocate resources, what guarantees will First Nations
14 have to ensure that their contribution agreements, the
15 amounts in the contribution agreements, won't be decreased
16 or stagnated in other areas to ensure that ISC has
17 substantial reserves for financial purposes?

18 A. So, if we have to take money out of --
19 so, is the -- just so I understand the question, is the
20 concern that, as we try to ensure that the funding in the
21 programs that are under the scope of application for the
22 policy, whether that will put at risk the funding for the
23 programs that aren't under the scope of application? And
24 are you worried about guarantees for those other programs?
25 Is that the nature of your question, sir?

1 Q. It's kind of like that. Or it could be
2 in the same program, for instance. Say, for instance, you
3 want to ensure that there's a reserve in housing, for
4 instance, if you needed to reallocate money in housing in
5 order to ensure that there's a sufficient financial pot
6 that's available in the future, is there any risk that
7 First Nation contribution agreements with respect to
8 housing programs will be kept the same as now and not rise
9 with inflation? I just want to ensure that -- well, I
10 mean, basically, what guarantees do First Nations have that
11 contribution agreements won't remain stagnant over the
12 years or won't be reduced to ensure that there is a pot of
13 money or a line of money that's available in emergency
14 situations?

15 A. I see. So, the government -- so, you
16 know, when this government got elected, there was a
17 tremendous housing shortage on reserve. I mean, I think,
18 by our own study, it was 86,000 housing units, I think,
19 nationally. And so, the government has allocated a lot of
20 money and I think there has been about 14,000 of that
21 86,000 that has been addressed. But that was at that point
22 in time, and therefore, there is -- and, of course,
23 probably since that point in time when we captured the
24 shortage, there's probably been as much more to the
25 shortage as much as we've done -- we've addressed 14,000 of

1 that 86,000. So, there's so much more. That being said,
2 the government has allocated significant amounts of money
3 for First Nations infrastructure. That has been through
4 the federal budgets, and those are in the fiscal framework
5 for the years. And so, they will continue moving on that.
6 And so, it's not necessarily the contribution agreement,
7 but those funding allotments in the fiscal framework that
8 has been given to us to perform. But given the magnitude
9 of the shortage, the fix is going to be, you know, multi-
10 generational probably. And this is why, you know, we're
11 working in lockstep with the Assembly of First Nations on
12 the housing strategy, as you may know, in order to figure
13 out how do we -- what can we do differently in order to
14 accelerate the elimination of that housing shortage.
15 Because it's not just about money, for sure. I mean, it's
16 about standards. It's about capacity. It's about
17 training. There's so many other elements in order to
18 address that. Funding is just one part of the equation,
19 but I think, collaboratively, we've been making a
20 tremendous amount of progress between the AFN and the
21 Department in terms of trying to get forward in the
22 development of that strategy. And I think that's the real
23 thing at play for a solution.

24 Q. All right. Thank you. With respect to
25 the reallocation policy in its entirety, would you agree

1 that the directive not to reallocate funds has had a
2 positive impact on the Department to ensure that they
3 examine their programs in more detail to see if there is
4 more resource -- I mean, if resources are sufficient?

5 **A.** I think as I tried to address in
6 response to Mr. Taylor's questions, seeking additional
7 funding requires political approvals. So, with all due
8 respect to a federal official, I can identify a need and I
9 can project need, but, in the end, there has to be a
10 political will and Parliament has to also -- has to approve
11 the funding. Right? And as long as that political will
12 and Parliament continues to vote on the funding, then the
13 Department, through the innate tabling of the legislation,
14 will ensure that those needs are met. And it's up to us
15 civil servants to work collaboratively with indigenous
16 peoples to ensure that those needs are identified and
17 costed and tabled in front of political leaders as fast as
18 possible so that the gap is addressed as soon as possible.

19 **Q.** And likewise, I mean, by restricting the
20 ability of the federal department to actually take money
21 from other social programs and being able to reallocate
22 that, it really has resulted in officials looking at what
23 line items they have and trying to fix and address problems
24 early on. Would you agree with that?

25 **A.** I think that the Department was

1 fundamentally aware for a long time of the chronic
2 underfunding and has put forward, over the years, needs for
3 supplemental funding. I think that what has come forward
4 through the Tribunal has been an assistance in
5 demonstrating the needs that the Department, over the
6 years, has already worked out and identified. For example,
7 I mentioned the 86,000 housing shortage. That was done by
8 the Department in collaboration with the Assembly of First
9 Nations because we knew there was a need. We needed to
10 work collaboratively to identify that need and alert that
11 to political decision makers to allocate the funds, and we
12 will continue to do so.

13 **Q.** All right. Thank you. With respect to
14 the use of supplemental estimates processes that you spoke
15 of earlier, would you agree that there is a possibility for
16 the Minister of Finance to basically say "no" at some point
17 to a supplemental estimate?

18 **A.** So, the Minister of Finance gets
19 involved in the off-cycle budget letter that's prior to
20 that supplementary estimate because, just for clarity, by
21 the time it's in the supplementary estimate, it means that
22 the Minister of Finance, the Prime Minister and the
23 Treasury Board have already agreed to its inclusion.
24 Right?

25 **Q.** Yeah.

1 **A.** So, the Minister of Finance would have
2 already said "yes," right, and therefore, what we need to
3 do to get to that supplementary interest on this point is
4 to ensure that Department of Finance officials are well
5 armed to secure the "yes" from the Minister of Finance with
6 all the information, including the reallocation policy, the
7 sharing of my affidavit today, and the Tribunal order to
8 make sure that the Minister of Finance says "yes" because
9 it is a legal obligation that he can't say "no" to.

10 **Q.** Okay. But, as far as other areas not
11 covered under the Tribunal order, such as social
12 assistance, for instance?

13 **A.** So, social assistance is defined under
14 our reallocation policy, so, we say that's a legal
15 obligation.

16 **Q.** Okay.

17 **A.** All right? So, the issue at play that
18 I've been working collaboratively with the Assembly of
19 First Nations, including the National Chief, is essentially
20 the other programs not on scope, and we work very closely
21 through the federal budget process in terms of our federal
22 budget advocacy, in terms of ensuring that we get the
23 sufficient funds, not only for this, but also for the other
24 programs that aren't under scope. And so, I have that
25 privilege of working very closely with the National Chief

1 Bellegarde on that.

2 Q. Going back to Exhibit C, the panel asked
3 you a question with respect to Section 8, regarding the
4 consideration or the references, and they asked you whether
5 or not the **Canadian Human Rights Act** is included in
6 considerations, and you appeared to say that it's not in
7 there. Are there any references in this with respect to
8 treaty obligations or other aboriginal rights obligations
9 in this policy?

10 A. Not in the Government of Canada's policy
11 on financial management. If you take a look at it, I don't
12 think those things that you have cited are referenced in
13 here. And I think there is a larger policy issue at play
14 that is currently in discussions at the new fiscal
15 relationship table and at other tables in terms of the
16 government's acknowledgement or how do we move forward in
17 terms of the treaties and the obligations inherent in that
18 treaties.

19 Q. Okay. Thank you. Now, when you look at
20 the Child and Family Services Program -- and this is
21 speaking to what the panel has found with respect to the
22 discriminatory funding practices -- there was -- the panel
23 found that when it came to prevention, the least disruptive
24 measures, while those programs were not available to First
25 Nations in the past, and as a result, First Nation kids

1 really didn't benefit from supports that other Canadian
2 kids were able to have, and as a result, there are
3 significant gaps in the system with respect to First Nation
4 children and families. With respect to all those gaps,
5 would you agree that, at present, ISC cannot really
6 quantify the whole issue as far as existing gaps?

7 **A.** Are you talking from a costing
8 perspective?

9 **Q.** From a costing perspective, yes, and
10 what other programs are available to other Canadian kids
11 that not necessarily are available to First Nation kids at
12 this point.

13 **A.** I don't think that's my determination in
14 my roles and responsibilities. I think that's a program
15 ADM's, I think, ability to kind of respond to your
16 question. I don't think I'm in a position to deal with ---

17 **Q.** Okay.

18 **A.** --- that question of what is the gap out
19 there between ---

20 **Q.** Um-hmm.

21 **A.** And so, I apologize for my ---

22 **Q.** No, that's perfectly fine.

23 **A.** --- my ignorance in that area, but it's
24 not my sphere of responsibility, I'm sorry.

25 **Q.** Thank you. Yesterday, Ms. Wilkinson

1 discussed how capital infrastructure is being provided to
2 First Nation communities. Can you provide some clarity on
3 how the budget for capital assets are budgeted by the
4 Department?

5 **A.** Only at a high level, if I could.

6 **Q.** Um-hmm.

7 **A.** So, we work with First Nations who self-
8 identify the asset condition, other infrastructure on
9 reserve, and then there is a national framework that
10 prioritizes those infrastructure across the First Nation
11 communities relative to others, based on health and safety
12 first, and then those priorities are addressed first on the
13 list before it goes to the others. Right? Based on, in
14 turn, the available funding available. And that is the
15 lens. So, that's where there is an inherent collaboration
16 or partnership between First Nation communities and the
17 Department in ensuring that the asset condition report that
18 First Nation communities do for the Department is integral
19 to the priority-setting exercise so that we go to -- that
20 funding goes to those First Nations that are the neediest.

21 **Q.** And that funding allocation, the budget
22 includes stuff as Child and Family Services offices,
23 schools, nursing stations, water treatment plants, that
24 type of thing?

25 **A.** If they put -- it's all about the First

1 Nation community identifying and assessing and putting it
2 in the report.

3 Q. All right. Thank you. Now, I'm going
4 back to the paper that was handed out by My Friends from
5 the Caring Society, and the last page where they pointed to
6 the budget. So, there is a budget figure for the first
7 three years with respect to Jordan's Principle. There's
8 nothing in the second year. I did some calculations.
9 Roughly, it could be between 1.1 to 1.4 billion dollars.
10 But essentially that caps out at -- or remains stagnant, so
11 it drops off at fiscal year '20, '22, '23.

12 A. So, there's a three-year profile that
13 you're referring to ---

14 Q. Yes.

15 A. --- on page 148, which is that, in the
16 public dissemination of the fiscal framework, they have
17 officially slotted three years in.

18 Q. Um-hmm.

19 A. Right?

20 Q. Yeah.

21 A. And then, theoretically, what has to
22 happen before the end of the third year is that the
23 Department has to work collaboratively with the Department
24 of Finance in order to seek its renewal of that level of
25 funding or whatever level of funding is required in order

1 to fulfill its obligations under the Tribunal orders. And
2 so, that amount on the renewal will depend upon what are
3 the needs at that point in time. And so, that could
4 require a number north of 400 million, say, 600 million or
5 700 million. Or, if we're all very fortunate, then -- and
6 we've made successful headway, then it could be based on
7 needs, a significant number that's smaller. So, as of --
8 you know, in the next year or two, we'll start working out
9 -- you know, start commencing the work necessary to figure
10 that out and go through the processes to ensure that there
11 is -- if there is a need, as of '22/'23, that the money is
12 available through the approval processes with the
13 government of that time and Parliament.

14 Q. And that's based on historical trends,
15 as you mentioned earlier.

16 A. Well, it is typically for those
17 programs. I think, with Jordan's Principle, we're seeing a
18 new dynamic at play, must like Child and Family Services
19 whereby historical is only one element of it. Right? And
20 we're also seeing, you know, a history, a legacy of chronic
21 underfunding, and so there's some catch-up in there, as
22 well, and some other parts of the country that have been
23 severely underserved, and so there is a difficulty of
24 forecasting that is beyond the normal historical trend
25 forecasting that we've done for other programs. So, the

1 ultimate thing is a number that essentially is sufficient
2 to deal with the needs of the day. Right? And so, part of
3 my challenge and my staff's challenge is to figure out how
4 do you cost that and make it credible so that ministers of
5 the day will say "yes." Right?

6 Q. Yeah.

7 A. And that's part of my challenge right
8 now. I don't feel -- there's a forecasting expertise in a
9 new way that I've got to figure out to ensure that I have
10 all the supporting documentation to make that a credible
11 ask in a program for which I don't have a lot of visibility
12 in terms of what is the actual, but we'll get there.

13 Q. Yeah, and as far as that forecasting, is
14 prevention, capital, poverty alleviation, and inflation
15 included in all that assessment?

16 A. You're missing remote communities ---

17 Q. Yes ---

18 A. --- fly-in/fly-outs, in particular.

19 Q. Um-hmm.

20 A. And the impacts of very small
21 populations, as well. Right? So, there are a lot of
22 factors at play, which is a heroic challenge in terms of
23 how do you cost it, for sure.

24 Q. All right. Perfect. Now, with respect
25 to the processes being utilized right now, we've talked

1 about the reallocation policy and basically borrowing money
2 from one program to meet shortfalls in the other program.
3 And with respect to the CFS Program, which this panel has
4 found with respect to discriminatory practices, I mean,
5 there is a limited amount of funding, there's inadequate
6 funding, the system itself is kind of broken, but yet
7 Canada continues to borrow money from one program to meet
8 the shortfalls. And as the population increases and the
9 issues continue to compound, would you agree, at some
10 point, that the system of borrowing money is not
11 sustainable?

12 A. Well, if you recall this morning's
13 testimony, there are two types of borrowings, and the one
14 that we're really trying to avoid is the permanent one, and
15 that, I think, through the past couple of years, I think
16 we've moved off of that one, which is permanent. So, now
17 we're into the segmentation related to temporary, which is
18 cash management, and that, I think there will always be --
19 it'll always be there due to the nature of the
20 organizational form, which is a line department and an
21 organization that has access to a line of credit with a
22 financial institution. Right? It's just the way -- it's
23 not a discriminatory thing, it's an organizational thing
24 about how departments deal with cash flow.

25 Q. But even right now where the Department

1 is paying on the actuals, a builder coming in, the
2 Department is paying that ---

3 A. Correct.

4 Q. --- it's pretty hard to do forecasting
5 on that where money is coming ---

6 A. Welcome to my world.

7 Q. There may be other issues that come up
8 in the future, and just -- really, continuing borrowing
9 money from one program to another, it really doesn't solve
10 the problem, it puts band-aids on.

11 A. Well, what we're trying to do is to get
12 a line of sight on those actuals so that we have the money
13 upfront so we don't have to do temporary cash flows.
14 Right?

15 Q. Um-hmm.

16 A. And so -- because if we can work closer
17 together in partnership to identify those actual claims
18 earlier on, so that we can secure the funding at the
19 beginning of the year, then we can get to a point whereby
20 we don't need to do even temporary cash management. Right?
21 That is the objective that we're all striving for.

22 Q. And in addressing that, you would agree
23 that we can't fix a multi-systemic, you know, multi-year
24 problem as exists with the chronic underfunding over the
25 past, you know, hundred years for First Nations, that,

1 really, you can't address any of that without sustainable
2 long-term funding. Would you agree with that?

3 **A.** Of course, because I have been working
4 very closely with the National Chief over the last couple
5 of years in order to achieve those objectives, and
6 therefore, we both agreed to move forward with something
7 called ten-year grants, for which I was -- where I worked
8 very closely with the National Chief. The National Chief
9 calls it a fiscal transfer, which is to treat financial
10 committees with the maturity that they deserve in terms of
11 how they get funding, which is a transfer much like at the
12 provincial level for those committees that have been able
13 to demonstrate, through financial standards, their ability
14 to act like a government. And so, we're very proud, the
15 National Chief and myself, in terms of how we're moving
16 forward together and achieving those objectives of
17 sustainability and predictability.

18 **Q.** Thank you. And you referenced it
19 earlier a couple times with respect to the new fiscal
20 relationship. I mean, we're dealing with issues of funding
21 now, and the funding (inaudible) available at this point.
22 Perhaps you can provide the panel with some context with
23 respect to the new fiscal relationship that's being
24 discussed at this time.

25 **A.** Well, I think that what we have done is

1 to not make it a negotiation, because an inherent
2 negotiation -- negotiating, by its very nature, is not
3 respectful. And so, what we've both agreed is that we need
4 to get Chiefs from across the country together with
5 technical experts such as Kevin Page, the former
6 Parliamentary Budget Officer, and Don Drummond, you know,
7 the former Chief Economist of the TD Bank, together to kind
8 of figure out what is a roadmap towards sustainable
9 predictable funding. And so, that Joint Advisory Committee
10 of the National Chief and the Minister for Indigenous
11 Services is working together on that roadmap, and I hope
12 that next month we'll see what those report recommendations
13 are.

14 **Q.** Okay. Subject to any further questions,
15 those are the questions of the Assembly of First Nations.

16 **THE CHAIR:** Thank you. Mr. Smith?

17 **MR. SMITH:** We have no further questions.

18 **THE CHAIR:** No?

19 **MR. SMITH:** I just want to say thank you to
20 Mr. Thoppil for his evidence today, but the few areas we
21 had intended to explore have actually been covered by
22 others over the course of the day, so, no further questions
23 from us.

24 **THE CHAIR:** Okay. Thank you. Re-
25 examination?

1 **MR. TARLTON:** Yes. Madame Chair, if I could
2 have a short recess, maybe 10 minutes at the most.

3 **THE CHAIR:** Of course.

4 **MR. TARLTON:** I anticipate very few
5 questions.

6 **THE CHAIR:** Okay. So, let's come back at
7 3:10. And if you need more time, please advise Ms. Dubois.

8 --- Upon recessing at 3:00 p.m.

9 --- Upon resuming at 3:10 p.m.

10 **THE CHAIR:** Mr. Tarlton?

11 **MR. TARLTON:** Thank you, Madame Chair. I
12 appreciate the brief recess. I only have one matter to
13 re-examine on.

14 --- **RE-DIRECT EXAMINATION BY MR. TARLTON:**

15 **Q.** Mr. Thoppil, earlier this morning, Mr.
16 Taylor asked you about a document in relation to a control
17 framework for Jordan's Principle. Is that document
18 entitled, "The Management Control Framework," to your
19 knowledge?

20 **A.** The Management Control Framework for
21 Jordan's Principle?

22 **Q.** Yes.

23 **A.** Yes.

24 **Q.** Okay. And are you aware of which, if
25 any, consultative tables where that document may have been

1 distributed?

2 **A.** No, I'm not aware.

3 **Q.** Okay. Thank you very much. Those are
4 all my questions.

5 **A.** Thank you.

6 **THE CHAIR:** Thank you. Thank you very much
7 for your evidence. It was really helpful, and we
8 appreciate your presence today. So, we are done with the
9 evidence, so, if you want to leave, it's fine.

10 We'll adjourn the hearing; however, I would
11 like to have a short discussion with parties. So, let's
12 just go off the record.

13

14 --- Hearing adjourned.

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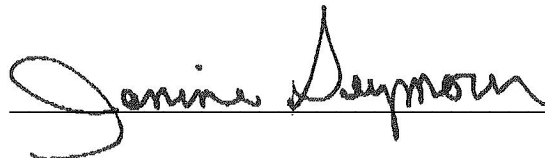
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A handwritten signature in black ink, reading "Janine Seymour", written over a horizontal line.

Janine Seymour

Court Transcriber (Reg. No. 2006-28)

Halifax, Nova Scotia

Thursday, May 23, 2019