

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)**

Respondent

- and -

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

AFFIDAVIT #6 OF DOREEN NAVARRO

**I, Doreen Navarro, of the City of Ottawa, in the Province of Ontario, SOLEMNLY AFFIRM
THAT:**

1. I am employed as a legal assistant at Conway Baxter Wilson LLP/s.r.l., counsel for the complainant First Nations Child and Family Caring Society of Canada (“**Caring Society**”) in this matter. Part of my responsibilities involve assisting David Taylor with the Caring Society file, both with respect to proceedings before the Canadian Human Rights Tribunal and with respect to consultations at the Consultation Committee for Child Welfare. I have knowledge of the facts

hereinafter deposed to except for those matters which are stated to be based upon information provided by others, all of which information I believe to be true.

2. In March 2018, Canada proposed a scope of work and ethical research guidelines to guide the FNCFS Agency needs assessment ordered by the Tribunal. This information was provided to the Tribunal on March 5, 2018. A true copy of the reporting letter from Robert Frater, Q.C., with attachments, is attached to my affidavit as **Exhibit “A”**.

3. The Caring Society made submissions to the Tribunal identifying the Institute for Fiscal Studies and Democracy (“IFSD”) as an option to carry out the FNCFS Agency needs assessment on March 6, 2018. A copy of the March 6, 2018 letter from the Caring Society’s counsel, David Taylor, to the Tribunal is attached to my affidavit as **Exhibit “B”**.

4. On March 8, 2018, the Panel directed the other parties and interested parties to file submissions regarding Canada’s proposal and the Caring Society’s response by March 15, 2018. A copy of Ms. Dubois’ March 8, 2018 letter conveying the Panel’s direction is attached to my affidavit as **Exhibit “C”**.

5. On March 14, 2018, the Canadian Human Rights Commission responded to the Panel’s March 8, 2018 direction. A true copy of a March 14, 2018 letter from Brian Smith, counsel for the Commission, is attached to my affidavit as **Exhibit “D”**.

6. On March 15, 2018, Nishnawbe Aski Nation (“NAN”) responded to the Panel’s March 8, 2018 direction. A true copy of a March 15, 2018 letter from Julian Falcony, counsel for NAN, is attached to my affidavit as **Exhibit “E”**.

7. On March 15, 2018, Chiefs of Ontario (“COO”) responded to the Panel’s March 8, 2018 direction. A true copy of a March 15, 2018 letter from Krista Nerland, counsel for COO, is attached to my affidavit as **Exhibit “F”**.

8. On March 15, 2018, the Assembly of First Nations responded to the Panel’s March 8, 2018 direction. A true copy of a March 15, 2018 letter from David Nahwegahbow, counsel for the Assembly of First Nations, is attached to my affidavit as **Exhibit “G”**.

9. On March 15, 2018, the Caring Society responded to the Panel's March 8, 2018 direction to provide an update regarding discussions with IFSD. A true copy of Mr. Taylor's March 15, 2018 letter is attached to my affidavit as **Exhibit "H"**.
10. On March 22, 2018, Canada requested an extension to April 9, 2018 to submit its response regarding its plan to implement the Tribunal's order regarding FNCFS Agency needs assessments. A true copy of a March 22, 2018 letter from Patricia MacPhee, counsel for Canada, is attached to my affidavit as **Exhibit "I"**.
11. On March 23, 2018, the Panel granted Canada's requested extension.
12. On April 9, 2018, Mr. Tarlton provided Canada's response regarding its plan to implement the Tribunal's order regarding FNCFS Agency needs assessments. A true copy of Mr. Tarlton's April 9, 2018 letter, along with its enclosures, is attached to my affidavit as **Exhibit "J"**.
13. On April 19, 2018, the Panel indicated its agreement with the plan outlined in Mr. Tarlton's April 9, 2018 letter. A true copy of the April 19, 2018 letter from Judy Dubois, Canadian Human Rights Tribunal Registry Officer, conveying the Panel's direction is attached to my affidavit as **Exhibit "K"**.
14. On March 15, 2019, Mr. Taylor wrote to Robert Frater, Q.C., counsel to Canada, raising the Caring Society's concerns regarding Canada's slow progress in following up on IFSD's work. A true copy of Mr. Taylor's March 15, 2019 email, and its attached correspondence of the same date, is attached to my affidavit as **Exhibit "L"**.
15. On March 20, 2019, Mr. Taylor and Mr. Frater exchanged emails with respect to follow-up on IFSD's work. A true copy of this email correspondence is attached to my affidavit as **Exhibit "M"**.
16. On March 26, 2019, Martin Orr, a Senior Policy Analyst with the Assembly of First Nations who supports the Consultation Committee on Child Welfare ("CCCW") secretariat, forwarded to CCCW members an exchange of emails between Cindy Blackstock, Executive Director of the Caring Society, and Joanne Wilkinson, Indigenous Services Canada's ("ISC") Assistant Deputy Minister for Child and Family Services dating from February 6, 2019 to March

26, 2019 with respect to the follow ups related to IFSD's recommended further research. Mr. Orr then forwarded IFSD's proposal regarding further research to the CCCW on March 27, 2019. Akosua Matthews, counsel for the Interested Party Nishnawbe Aski Nation ("NAN") responded on March 29, 2019 to confirm NAN's position with respect to the required further work from IFSD. A true copy of this email correspondence, from Dr. Blackstock's February 6, 2019 email to Ms. Matthews' March 29, 2019 email is attached to my affidavit as **Exhibit "N"**.


17. A true copy of the IFSD proposal regarding further research to support the implementation of a new funding approach for the First Nations Child and Family Services Program is attached to my affidavit as **Exhibit "O"**.

18. A true copy of the draft Record of Decision from the April 2, 2019 CCCW meeting is attached to my affidavit as **Exhibit "P"**.

19. A true copy of an April 25, 2019 email from Mr. Taylor to Mr. Frater requesting an update regarding how ISC would move forward with the next phase of IFSD's work is attached to my affidavit as **Exhibit "Q"**.

20. A true copy of an April 29, 2019 email from Mr. Orr to CCCW members advising that the May 10, 2019 CCCW meeting would need to be rescheduled is attached to my affidavit as **Exhibit "R"**.

AFFIRMED BEFORE ME this)
1st day of May, 2019 in the)
City of Ottawa, in the Province)
of Ontario.)



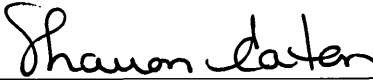
Commissioner for taking affidavits



DOREEN NAVARRO

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.

This is **Exhibit "A"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



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March 5, 2018

Our File Number: 800702

BY EMAIL

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

Dear Ms Dubois:

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

Please direct this correspondence to the attention of the Panel.

Canada would like take this opportunity to reiterate we remain fully committed to implementing all of the orders in the February 1, 2018 ruling of the Tribunal, and to consulting with the parties throughout this process.

Canada is writing to report on progress in implementing paragraph 421 of the Tribunal's ruling, which states:

*[421] The Panel, pursuant to section 53 (2) (a) and (b) of the CHRA, orders Canada, to provide by **March 5, 2018** a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting indigenous peoples that include protection of Indigenous intellectual property for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.*

Canada

Canada has developed a Statement of Work to guide the above cited research. A draft of the Statement of Work was shared with the parties and revised in response to feedback from the Caring Society.

As outlined in the Statement of Work (**Annex 1**), Canada is proposing that the research will be conducted by experts/consultants using a three phased approach, with each phase building on each other.

- **Phase One** involves the review and analysis of the completed needs assessments from First Nations Child and Family Services Agencies (FNCFS Agencies). As no template was distributed for this process, a flexible approach will be taken using content and document analysis methods that prioritize and acknowledge the distinct needs and circumstances – including cultural, historical, and geographical needs and circumstances – of FNCFS Agencies and the children and families they serve. This phase will also identify gaps in existing data (e.g., for a particular region or in a particular area of service like prevention needs);
- **Phase Two** involves reviewing the work of Phase One and refining the methodology for and plan for Phase 3 (including the associated data collection, analysis and reporting methodology); and
- **Phase 3** involves implementing the refined methodology from Phase 2 to do a cost-analysis of the actual needs of First Nations agencies. This phase will involve collecting additional data from agencies if needed to address gaps, reviewing financial data from agencies, as well as potentially consulting with other experts and stakeholders. It will also involve providing guidelines and advice on how to best monitor and respond to actual agency needs.

To support ongoing consultations with the parties throughout the duration of the research and consistent with the Consultation Protocol, Canada has proposed creating a Project Team. The parties (Assembly of First Nations, First Nations Child and Family Caring Society; Nishnawbe Aski-Nation; Chiefs of Ontario; Amnesty International; and the Canadian Human Rights Commission) have been invited to be part of the Project Team, which will review project deliverables and provide guidance and advice to the experts/consultants. The Department of Indigenous Services will serve as the liaison between the Project Team and the consultants, and has invited the parties to identify a representative for this Project Team.

Over the past month, Canada and the other parties have been discussing who will conduct the research and when each phase of it will be completed. Discussions are ongoing and we are hopeful that we will reach a decision within the next week.

Regarding the development of ethical research guidelines to be applied to the research, the Caring Society recommended that Canada base the ethical research guidelines on the Tri-Council Research guidelines as well as the Ownership, Control, Access and Possession of

Data (OCAP) principles. Canada has provided draft ethical research guidelines to the parties (**Annex 2**).

Canada will work with the parties, experts and consultants to refine both the data collection and analysis, reporting methodology, and the draft ethical research guidelines, in response to feedback received today (March 5, 2018) and as the work proceeds.

Canada would like to receive approval from the Tribunal on this proposed approach by March 9, 2018, in order to allow the work to proceed as expeditiously as possible.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Robert Frater, Q.C.', with a stylized flourish at the end.

Robert Frater, Q.C.
Chief General Counsel
Civil Litigation and Advisory Services

RF/ab

cc: David Taylor/Anne Levesque/Sarah Clarke/Stuart Wuttke/David Nahwegahbow/Daniel Poulin/Brian Smith/Justin Safayeni/Maggie Wentz/Krista Nerland/Julian N. Falconer/Akosua Matthews/Anthony Morgan/Jonathan Tarlton/Patricia MacPhee/Kelly Peck

Annex 1: Draft Statement of Work

Annex 2: Draft Ethical Guidelines

Statement of Work

Project Title:

Analyzing First Nations Child and Family Services (FNCFS) Agency Needs

Objective:

Undertake a three-phased analysis to: (i) analyze the needs assessments completed by FNCFS Agencies, and identify gaps in existing data, (ii) review the first phases of research and develop a plan to undertake a broader costs analysis; and (iii) conduct a broader cost analysis of the needs of FNCFS agencies, in order to advise Canada on how best to monitor and respond to actual agency needs.

This research will be guided by ethical research guidelines respecting Indigenous peoples. These guidelines will be provided by Canada to the contractors and will be based on the Tri-Council Policy Statement on Ethical Conduct for Research involving Humans and OCAP principles. The project will be overseen by Canada, with Canada consulting parties and intervenors to the Canadian Human Rights Tribunal on the deliverables produced as part of the research.

The proposal developed for this project needs to include a reliable data collection, analysis and reporting methodology for analyzing the needs of FNCFS Agencies.

The deadline for receiving the proposal to undertake this work is March 2, 2018. The proposal, and the project deliverables, will be shared with the project team (see below) and the Canadian Human Rights Tribunal.

Background:

The over-representation of Indigenous children in care is a significant issue across Canada and the Government of Canada is committed to working with its partners to change this reality. Since the Fall of 2016, Canada has been engaging with its partners about what needs to change in order to better meet the needs of First Nation children and families. The Canadian Human Rights Tribunal (CHRT), in its January 2016 decision and subsequent rulings, has found that Canada has used a discriminatory funding approach for FNCFS agencies.

Canada is committed to fully implementing these orders. Beginning immediately, Canada is funding agencies actual costs in multiple areas, thereby providing agencies with funding to meet the best interests and needs of First Nations children and families, and removing any incentive to taking First Nations children into care, while the alternative system is fully developed.

This project will support the implementation of the following specific orders:

1. Work with experts to develop a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines, for analyzing the needs of First Nations agencies (Order 421; Canada to complete and report on this by March 5, 2018);
2. Canada to analyze the needs assessments and do a cost-analysis of the needs of agencies, in consultation with the parties and other experts (Orders 408 and 418; Canada to report to the Tribunal by May 3, 2018)

In support of Canada's efforts to develop an alternative system to fund First Nations child and family services, Indigenous Services requires the services of a funding/technical and research expert with knowledge of Indigenous issues, and Indigenous practices with respect to data collection and Indigenous intellectual property as well as child and family services.

Specifically, the Contractor will be called upon to provide technical expertise to analyse agency needs and provide strategic advice on how to best monitor and respond to actual agency needs, based on an analysis of and understanding of the current approach and assessments done by agency service providers.

This work is to build on the extensive body of previous research in this area, including the Joint National Policy Review of First Nations Child and Family Services; Wen:de: We are Coming to the Light of Day; Wen:de: The Journey Continues; Decision and Orders of the Canadian Human Rights Tribunal; and phase 1 of the Remoteness Quotient research.

In addition to reviewing existing agency needs assessments, other data sources include: existing research (as outlined above); connecting with agencies (or a representative sample of agencies) to gather information where data gaps exist; agency annual statements outlining their surpluses and deficits (and reasons why they exist); reviewing information provided to Indigenous Services regarding actual expenditures (beginning February 2018). Indigenous Services would also recommend the researchers engage with others doing work in this area, including Dr. John Loxley and the Institute of Fiscal Studies and Democracy (IFSD).

Scope of Work:

Phase 1:

- Analyze agency needs assessments to identify agency needs related, but not limited to:
 - prevention/least disruptive measures;
 - intake and investigation;
 - building repairs;
 - legal fees related to child welfare;

- child service purchase amount; and,
 - actual needs of small First Nations agencies.
- Identify gaps in the data on the needs of FNCFS Agencies;
- Meet with contracting authority to review progress on Phase 1 as well as to receive feedback from project team **the week of April 16, 2018**
- Provide an analysis of agency needs assessments and a summary of gaps in data **by April 27, 2018;**

Phase 2 (Preparatory Period):

- Review plan for Phase 3 , based on findings of Phase1
- Meet with contracting authority discuss proposed plan for Phase 2 of the research the **week of May 7, 2018**
- Finalize detailed plan for Phase 3 of the research by **May 16, 2018**

Phase 3:

- Undertake a cost-analysis of the actual needs of First Nations agencies, including but not limited to the areas of:
 - prevention/least disruptive measures;
 - intake and investigation;
 - building repairs;
 - legal fees related to child welfare;
 - child service purchase amount; and,
 - actual needs of small First Nations agencies.
- Note that this cost analysis must build on Phase I of this project, take into consideration existing research, and include reviewing agency financial information (provided by Indigenous Services). The cost analysis should also take into account costs agencies face pertaining to: travel distances; case load ratios; remoteness; potential gaps in available services due to agency location/lack of surrounding services; as well as other particular circumstances agencies face (which may include; population density; socioeconomic factors; and supporting children and families who may be experiencing historical trauma).
- Provide a written update on the progress of Phase 3 **by June 21, 2018.**
- Meet with the contracting authority to discuss progress and receive feedback from project team the **week of June 25, 2018.**
- Provide a written report outlining findings of research on cost-analysis of FNCFS agency needs as well as clear guidelines and advice on how to best monitor and respond to the actual needs of agencies **by July 30, 2018.**
- Note: the final timelines and plan for Phase 3 may be adjusted based on the outcomes of Phase 1. This would be done through a mutually agreed upon amendment to the contract.

Tasks/Technical Specifications:

Canada will establish a project team to guide this work. Canada will invite representatives from the Assembly of First Nations, the First Nations Child and Family Caring Society, the Nishnawbe Aski-Nation, the Chiefs of Ontario, Amnesty International and the Canadian Human Rights Commission to part of the project team. Canada will liaise with this project team to ensure that the project is proceeding towards a mutually understood and accepted goal.

The project team will meet after the receipt of each deliverable, with the intent of providing feedback and refining next steps, and as is required by the proponent to engage the team on project work. If all team members agree, a telephone or email exchange can take the place of a given in-person meeting.

Constraints:

It is understood that the depth and complexity of the analysis may be constrained by technical considerations related to the data.

Annex A: Possible Research Questions

Agency Needs

1. What are the primary cost drivers for agencies currently – for their general operations, as well as for protection and prevention work?
2. What are the primary budget areas that result in deficits and/or surpluses? What are the drivers of deficits and/or surpluses?
3. What is encompassed by the term “prevention”? What factors would best determine need and uniquely affect Indigenous child protection service provision? What types of prevention activities should agencies be responsible for, understanding the context of communities wanting to assume a greater role in the provision of community well-being and prevention services?
4. How can funding be delivered in a way that enables agencies to be responsive to the unique needs of First Nations children, youth, families and communities?
5. Are data available that would support/track considerations and needs unique to specific First Nations communities?
6. What types of accountability mechanisms would be important to ensure agency/community needs are being met? How do these mechanisms interact with existing accountability requirements (e.g. accountability agreements and reporting of performance indicators)?
7. What are appropriate models to predict agency needs for technology, infrastructure, administration and travel costs?
8. What are the core administrative staffing and related requirements of small agencies? How are these different than larger agencies?
9. What is the minimum size of agency and related population consistent with good social work practice?¹

¹ Wen:de: We are coming to the light of day p. 47

Ethical Research Guidelines

Analysis of First Nations Child and Family Services Agency Needs Assessments
Department of Indigenous Services Canada

Preamble

In January 2016, the Canadian Human Rights Tribunal (CHRT) ordered the Government of Canada to cease its discriminatory practices and reform the First Nations Child and Family Services Program to reflect the findings in its decision. In February 2018, the CHRT issued subsequent orders that included a specific order to analyze the needs assessments completed by First Nations agencies in consultation with the Parties and other experts, and to do a cost-analysis of the real needs of First Nations agencies. Canada was also ordered to provide “a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property”.¹ This document represents the ethical research guidelines that will guide the implementation of these orders.

It has been common knowledge that research has had a negative effect on Indigenous communities, Indigenous individuals, and countless relationships between people and organizations. This is important to acknowledge in ethics guidelines that involve research with and for Indigenous peoples, as non-Indigenous peoples owe a “historic debt to First Nations that is created by the unjust research practices that have been inflicted upon them” (Assembly of First Nations, 2009, p. 5). The Royal Commission on Aboriginal Peoples echoed this sentiment in their final report, saying that

The gathering of information and its subsequent use are inherently political. In the past, Aboriginal people have not been consulted about what information should be collected, who should gather that information, who should maintain it, and who should have access to it. The information gathered may or may not have been relevant to the questions, priorities and concerns of Aboriginal peoples. Because data gathering has frequently been imposed by outside authorities, it has met with resistance in many quarters. (Royal Commission on Aboriginal Peoples, 1997, p. 498)

The government research guidelines, such as the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (2010), and the First Nations-developed principles like Ownership, Control, Access, and Possession (OCAP) have expressed similar concerns (AFN, 2009; FNIGC, 2015; First Nations Centre, 2007). Guidelines like these are necessary due to historical and ongoing asymmetrical power relationships between First Nations and settler populations that stem from colonial narratives and structures (Schnarch, 2004).

Ethics in Research with and for Indigenous Peoples

Many existing guidelines recommend establishing concrete parameters for research (AFN, 2009; Canadian Institutes, 2010; Schnarch, 2004). This document outlines Ethical Research Guidelines (‘Guidelines’) that will support the analysis of the needs of First Nations Child and Family Services Agencies. These Guidelines aim to create an environment for the research to be conducted that minimizes harm to the greatest possible extent. In child and family services,

¹ *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada) 2018 CHRT 4 at para 421. Available on the First Nations Child and Family Caring Society’s website: https://fncaringsociety.com/sites/default/files/2018%20CHRT%204_1.pdf

decisions need to be made in the best interests of the child; in research involving Indigenous peoples or their data, decisions need to be made “in the best interest of Aboriginal [*sic*] communities” (Schnarch, 2004, p. 84). It should be acknowledged that these Guidelines were created after the project and data collection had begun.

The basis for these Guidelines is Chapter 9 of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, supplemented by First-Nations developed principles like OCAP. It should be noted that the Tri-Council guidelines detail when approval from a Research Ethics Board is needed to conduct research in an ethical manner. As this research represents “quality assurance and quality improvement studies, program evaluation activities, and performance reviews,” approval by a Research Ethics Board is not needed (Canadian Institutes, 2.5).

Also, these guidelines will not be able to foresee all potential circumstances or questions or concerns that may be raised throughout the course of the research, but it will serve as the foundation of the work and be reviewed and revised as required. Questions or concerns about the guidelines and the research will be discussed with the experts and the proposed Project team.

Definitions

The following definitions provide context for the Guidelines, but do not represent an exhaustive list of all definitions related to research with Indigenous communities and data. These definitions are to be read in concert with Indigenous ways of knowing and conducting research.

Research: “an undertaking intended to extend knowledge through a disciplined inquiry and/or systemic investigation. The term ‘disciplined inquiry’ refers to an inquiry that is conducted with the expectation that the method, results, and conclusions will be able to withstand the scrutiny of the relevant research community” (Canadian Institutes, 2.1).

First Nations Data: “includes any information or data collected, created or held by an individual or organization, now or in the future, that is capable of identifying First Nations communities, First Nation membership, Indian status, or residence in a First Nation community” (First Nations Information Governance Centre, 2015).

Community: “describes a collectivity with shared identity or interests, that has the capacity to act of express itself as a collective. In this Policy, a community may include members from multiple cultural groups. A community may be territorial, organizational or a community of interest” (Canadian Institutes, 9A)

Organizational Community: “have explicit mandates and formal leadership (e.g., a regional Inuit association or a friendship centre serving an urban Aboriginal community). In...organizational communities, membership is defined and the community has designated leaders” (Canadian Institutes, 9A).

Principles

The following principles will guide the research process as appropriate. They are not prescriptive in nature. Organizations and individuals have a responsibility to understand the intention behind these principles and to conduct research accordingly with a genuine best effort.

1. *Respecting First Nations worldviews and the diversity found within*

Most research has been conducted within colonial frameworks that determine research processes ranging from the initial motivation for research to be conducted, to the storage of data

upon completion of the study. For research to be conducted ethically with and for First Nations people, there is a responsibility to “[e]nsure that First Nations distinct worldviews, knowledge systems and codes of research practice are integrated into the design of the project, and carried throughout all phases” (First Nations Child and Family Caring Society, n.d., p. 2). Included within this is a personal responsibility for researchers “who are not insiders in the community” to “take responsibility for learning as much as they can about that community” (First Nations Child and Family Caring Society, n.d., p. 2), which may require “the education or re-education of researchers” (Schnarch, 2004, p. 84). Together, these Guidelines and the resources cited within them provide a general approach to the conduct of ethical research, understanding that research must also be approached and applied in a manner consistent with local customs. Many First Nations have created their own processes and frameworks for research that is to be conducted within their community or with data that describe their members. For example, research conducted on Six Nations of the Grand River Territory must be approved by the local Research Ethics Committee, who have established their own protocols for the conduct of research (Six Nations Council, 2014a, 2014b). This means that these guidelines are not prescriptive, and must evolve and adapt according to the local context in collaboration with communities. For the purposes of this project and in line with CHRT orders, this research needs to be conducted in a manner that respects the diversity of the communities served by First Nations Child and Family Services agencies.

2. *Reciprocity, Trust, and Mutual Benefit*

First Nations communities and their data has been the subject of countless original inquiries by outside researchers without benefit being given back to the community. Reckless use of First Nations information has harmed relationships and trust between communities and those who conduct research. Maintaining trust is a critically important activity for researchers to prioritize when conducting research with and for First Nations communities and populations. Part of building and maintaining that trust is through the principle of reciprocity, or mutual benefit stemming from research, as research and its outcomes should “benefit the participating communities (e.g., training, local hiring, recognition of contributors, return of results), as well as extend the boundaries of knowledge” (Canadian Institutes, 9.13).

3. *Ownership, Control, Access, Possession (OCAP©)*

OCAP© represents the principles of ownership, control, access, and possession that “crystallize themes long advocated by First Nations in Canada” (Schnarch, 2004, p. 80). These principles are increasingly being used by First Nations and organizations that work closely with First Nations. OCAP represents self-determination of First Nations related to their information, which includes “recognition of First Nations jurisdiction over research in their communities” (Schnarch, p. 89). Each principle has a specific meaning that captures their right to self-determination:

- *Ownership* “refers to the relationship of a First Nations community to its cultural knowledge/data/information” and “states that a community or group own information collectively in the same way that an individual owns their personal information”;
- *Control* “asserts that First Nations Peoples, their communities and representative bodies are within their rights in seeking to control all aspects of research and information management processes which impact them”;
- First Nations Peoples, must have *access* to information and data about themselves and their communities, subject to the *Privacy Act*; and,
- The “*possession* (of data) is a mechanism by which ownership can be asserted and protected” (Schnarch, 2004, p. 81).

4. *Respect human dignity*

Respect for human dignity is the underlying value that informs the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, and includes three core principles:

1. Respect for Persons;
2. Concern for Welfare; and,
3. Justice (Canadian Institutes, 1.1).

When conducting research with and for First Nations, the concept of “collective welfare” accompanies these three core principles, so that research is conducted in a manner that is in the “best interest of Aboriginal communities” (Schnarch, p. 84).

5. *Integrity*

Much like the most recent CHRT orders are prefaced with direction that “separating the orders from the reasoning leading to them will not assist in implementing the orders in an effective and meaningful way” (407), these Guidelines need to be understood in a broader context. The Assembly of First Nations (AFN) articulated this best:

While research protocols and ethics guidelines can provide useful lists of ‘rules’ for researchers to follow, they must be applied with a degree of integrity that is based upon an understanding of the intent behind each rule or protocol. There will be no single rendition of an ethical practice, and the success of the research will depend in the end on the relationships that are developed through the research and the degree of moral integrity with which the principles are applied...so as to fulfill the purpose which they were drafted to support. (AFN, 2009, p. 23)

The department is committed to consulting experts and the proposed Project team to seek direction and revise the Guidelines as required.

Proposed Project Team

The proposed Project Team will provide advice on how to apply these guidelines throughout the course of the research. As outlined in the Statement of Work for the proposed analysis, this will include the proposed Project Team meeting after the receipt of each deliverable, with the intent of providing feedback and refining next steps to support the project moving forward. The proposed Project Team can also offer “culturally informed advice” (Canadian Institutes, 9.28) or guidance to on issues that may arise during the research process. If all team members agree, a telephone or email exchange can take the place of a given in-person meeting. The Parties to the CHRT (Assembly of First Nations, First Nations Child and Family Caring Society; Nishnawbe Aski-Nation; Chiefs of Ontario; Amnesty International and the Canadian Human Rights Commission) were invited to participate on this team. The Department of Indigenous Services Canada (the Department) will serve as the liaison between the proposed Project Team and consultants/experts.

Data Collection

Like above, it is difficult to apply an ethics framework to the data collection phase of research when the data has already been collected. However, it is still possible to discuss how the data were collected, in respect of these Guidelines. First Nations agencies were tasked with collecting data about their operations in a manner they deemed appropriate. Agencies could apply for \$25,000 from the Department to assess their distinct needs and circumstances to

inform funding practices in the future. Agencies were also given additional time if needed to complete these assessments. Of the agencies that have provided an assessment of their needs, the approach varied with some using the funds to conduct community engagement sessions, others provided an assessment based on their ongoing reporting and internal needs assessments, while other hired consultants to conduct community-based research or a more academic report.

The research will involving collecting and reviewing additional data, including from agencies, in order to do a cost analysis of agency needs as ordered by the Tribunal. Moving forward, these Guidelines will apply, in addition to the Privacy Act, especially if the contractor needs to contact agencies and/or communities for additional information. The proposed Project Team and any local protocols will be consulted on this process. In this engagement and data collection, consent from any individual must be established in a manner that is voluntary, informed, and ongoing (Canadian Institutes, 2010, 3.1, 3.2, 3.3). Any data that are publicly available are exempt from any Guidelines related to data collection, such as annual reports. Some of the data that are to be used, such as financial information that has been submitted to Indigenous Services Canada as part of standard reporting requirements, will be considered relevant “quality assurance and quality improvement studies, program evaluation activities, and performance reviews,” and are not subject to these Guidelines (Canadian Institutes, 2.5).

Data Analysis

Each phase of this research will be reviewed by the proposed Project Team who will provide feedback to refine next steps (Canadian Institutes, 9.1; 9.17). Methods should be used that respect First Nations worldviews (First Nations Child and Family Caring Society, n.d., p. 2).

Knowledge Mobilization

Although this project does not require approval from a Research Ethics Board, the Tri-Council Policy Statement specifically related to Aboriginal ethical research acknowledges the importance of *privacy* in that

findings of such research nevertheless may have an impact on the identity or heritage of persons or communities. To minimize any harm, researchers should seek culturally informed advice before use of such data to determine if harms may result and if other considerations such as sharing of the research results should be explored. (Canadian Institutes, 9.2)

This is particularly important when “information can be identified as originating from a specific community or a segment of the Aboriginal community at large, seeking culturally informed advice may assist in identifying risks and potential benefits for the source community” (Canadian Institutes, 9.21). The proposed Project Team will provide direction wherever these Guidelines are silent, and they will assist in interpreting the intent of terms included. In general, research is to be conducted in a manner that minimizes harm to the individual and the community, and in accordance with legislation. There is almost always some level of risk to the participant in the conduct of research, but this must be minimized to the extent possible (Canadian Institutes, 2.8, 9.17, 9.21; Schnarch, 2004, p. 92).

To respect the *Intellectual Property Rights* of Indigenous peoples, caution is necessary regarding information about local customs and knowledge. If the contractors wish to use any of this knowledge in their reporting, they must confer with the proposed Project Team and/or follow local protocols if established. The final product must acknowledge all contributors to the project,

including First Nations Agencies and the proposed Project Team, and the product must be provided to all Agencies who participated in the research (AFN, 2009).

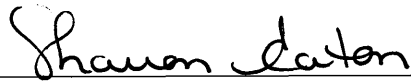
Other Items

After the final deliverable has been submitted, the researchers must remain available to Canada and the proposed Project Team to answer questions about the analysis and results. All data must be returned to Canada and stored securely during the course of the research (Canadian Institutes, 2009, 9.8).

References

- Assembly of First Nations. (2009). *Ethics in First Nations Research*. Environmental Stewardship Unit. Retrieved from https://www.afn.ca/uploads/files/rp-research_ethics_final.pdf
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- First Nations Centre. (2007). *OCAP: Ownership, Control, Access and Possession*. Sanctioned by the First Nations Information Governance Committee, Assembly of First Nations. Ottawa: National Aboriginal Health Organization
- First Nations Child and Family Caring Society. (n.d.). *First Nations Children's Action Research and Education Service: Guidelines for Ethical Research*. Retrieved from https://fncaringsociety.com/sites/default/files/FNCARES%20Guidelines%20for%20Ethical%20Research_Jan2014.pdf
- Kovach, M. (2009). *Indigenous Methodologies: Characteristics, Conversations, and Contexts*. Toronto: University of Toronto Press.
- Schnarch, B. (2004). Ownership, Control, Access, and Possession (OCAP) or Self-Determination Applied to Research: A Critical Analysis of Contemporary First Nations Research and some Options for First Nations Communities. *Journal of Aboriginal Health*, 1(1), 80-95.
- Six Nations Council. (2014a). Conducting Research at Six Nations. Retrieved from <http://www.sixnations.ca/admEthicsPolicy.pdf>
- Six Nations Council. (2014b). Six nations Council Research Ethics Committee Protocol. Retrieved from <http://www.sixnations.ca/admResearchEthicsProtocol.pdf>
- Walter, M., & Andersen, C. (2013). *Indigenous Statistics: A Quantitative Research Methodology*. London: Routledge.

This is **Exhibit "B"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.

CONWAY

Litigation/Litige

David P. Taylor
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March 6, 2018

VIA EMAIL

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

Dear Madam:

**RE: FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL. V. ATTORNEY GENERAL OF CANADA
T#1340/7008**

OUR MATTER ID: 5204-002

I write further to Mr. Frater's March 5, 2018 letter, reporting on progress in implementing paragraph 421 of the Tribunal's February 1, 2018 ruling. Please bring this correspondence to the Panel's attention as the Caring Society's response.

FNCFS Agency needs analysis and cost assessment

The Caring Society supports the three-phase approach to conducting the FNCFS Agency needs assessment and cost analysis ordered by the Tribunal. As noted in the context of the immediate relief motions heard in March 2017, the Caring Society has significant concerns regarding the adequacy of the data collection process initiated by INAC in October 2016, which was launched without input from the parties and without expert guidance. While the responses received from FNCFS Agencies must be analyzed, it is likely that the greatest purpose served by the first phase of the FNCFS Agency needs assessment and cost analysis will be to inform the parties of the ground that remains to be covered in light of the gaps in the data available.

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The Statement of Work lays out a timeframe for work on the FNCFS Agency needs analysis and cost assessment that would see this work completed after the May 3, 2018 deadline in the Tribunal's February 1, 2018 ruling (at paras 409 and 419). The Caring Society agrees that, given the state of existing data, the full FNCFS Agency needs assessment and cost analysis required cannot be completed by May 3, 2018. As such, the Caring Society agrees with the proposal to complete Phase One of the FNCFS Agency needs assessment and cost analysis by April 27, 2018, followed by the development of detailed workplans with timeframes to complete the remaining tasks. The April 27, 2018 date will provide the parties with ample time to report back to the Tribunal by May 3, 2018.

The Caring Society also agrees with the proposed May 16, 2018 deadline for Phase 2 (establishing a detailed plan for Phase 3 of the research). In the Caring Society's view, Canada should report the detailed research plan (with time frames) developed in Phase 2 to the Tribunal by May 18, 2018, as a continuation of the Panel's February 1, 2018 order that the data collection, analysis and reporting methodology are to be approved by the Tribunal.

The Caring Society does not yet have sufficient information to agree to the July 30, 2018 deadline proposed for the conclusion of Phase 3. In particular, the Caring Society does not yet have sufficient information regarding the gaps in the existing data, which will inform the nature and amount of work to be done in Phase 3.

Additionally, the Caring Society notes the person(s) or organization to be tasked with conducting the FNCFS Agency needs assessment and cost analysis has not yet been identified. The Caring Society and Canada have been discussing the person(s) or organization to be engaged since February 6, 2018. Regrettably, Canada's failure to provide information regarding the firm it was considering retaining in a timely way delayed the pace of these discussions. In particular, the Caring Society requested information from Canada to substantiate the proposed firm's expertise. The Caring Society has asked Canada to be more timely in its provision of such information in the future, in order to avoid unnecessary delays.

The Caring Society's position is that the person(s) or organization retained to conduct the FNCFS Agency needs assessment and cost analysis must have knowledge and background in matters related to First Nations child and family services, and must be capable of gaining and maintaining the community's confidence in carrying out this work.

The Caring Society has advised Canada that, in its view, the Institute of Fiscal Studies and Democracy ("ISFD") is well-placed to conduct the FNCFS Agency needs assessment and cost analysis. The ISFD has been assisting the National Advisory Committee in its deliberations for many months, such that they are well-versed in the subject matter, has already completed an analysis of some of the data that was collected from FNCFS Agencies through the October 2016 process, and has made significant progress in developing community relationships. To that end, Dr. Blackstock will be meeting with representatives of the ISFD on March 8, 2018 with the goal of receiving a research proposal for the FNCFS Agency needs assessment and cost analysis. Representatives of Canada have been invited to attend this meeting.

Ethical research guidelines

The Caring Society received the draft ethical research guidelines appended to Mr. Frater's letter on March 2, 2018. The Caring Society has provided some initial comments to Canada, but is continuing its review. Most importantly, the Caring Society has expressed concern regarding the scope of the exemption from Research Ethics Board review in Article 2.5 of the Tri-Council Policy Statement (cited at page 2 of the draft guidelines), as the Caring Society does not see the FNCFS Agency needs assessment and cost analysis as an internally-focused "quality assurance" exercise.

Please advise if the Panel has any questions, or requires further submissions.

Yours truly,



David P. Taylor

Copy to: **Robert Frater, Q.C., Jonathan Tarlton, Patricia MacPhee, and Kelly Peck**
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow and Stuart Wuttke
Co-counsel for the complainant Assembly of First Nations

Daniel Poulin and Brian Smith
Co-counsel for the Canadian Human Rights Commission

Maggie Wentz and Krista Nerland
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni
Counsel for the interested party Amnesty International

Julian Falconer, Akosua Matthews, and Anthony Morgan
Co-counsel for the interested party Nishnawbe Aski Nation

Anne Levesque and Sarah Clarke
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

DPT/dn

This is **Exhibit "C"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.



March 8, 2018

By E-mail

(See Distribution List)

Dear Counsel:

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

The Panel is in receipt of the AGC's letter dated March 5, 2018 and attached documents following the Panel's order in paragraph 421 of 2018 CHRT 4. The AGC is seeking the Panel's approval of its approach by March 9, 2018 in order to move forward expeditiously.

The Panel is also in receipt of the Caring Society's letter dated March 6, 2018 in response to the AGC's March 5, 2018 letter.

The other parties and interested parties have not yet had an opportunity to file a response.

The Panel appreciates and understands Canada's desire to move expeditiously. This being said the order in paragraph 421 states the following:

The Panel, pursuant to section 53 (2) (a) and (b) of the *CHRA*, orders Canada, to provide by March 5, 2018 a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.

The Panel's intent was to have a consultation protocol in place by February 15, 2018 in order to facilitate consultation on all the other orders in the ruling. The consultation protocol was delayed for a number of weeks and the Panel does not know if this impacted the March 5, 2018 deadline. In any event, the order reproduced above is clear, the parties have the right to file further submissions before the Panel makes its determination on the approval of the methodology and process.

The Panel directs the other parties and interested parties to file their submissions if any, as soon as possible and, no later than March 15, 2018.

The Panel would appreciate an update from the Caring Society following the March 8, 2018 meeting as soon as possible and, no later than March 15, 2018.

The AGC is directed to respond to all the parties' responses by March 22, 2018.

If you have any questions or concerns further to the above, please do not hesitate to contact the undersigned by email at registry.office@chrt-tcdp.gc.ca.

Yours truly,

A handwritten signature in blue ink that reads "Judy Dubois". The signature is written in a cursive style with a large initial "J".

Judy Dubois
Registry Officer

DISTRIBUTION LIST

TO:

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Stuart Wuttke
General Counsel
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Justin Safayeni
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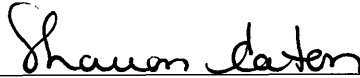
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Toronto ON M5H 3E5

This is **Exhibit "D"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharron Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

Legal Services
Division

Division des services
juridiques

Direct Line / ligne directe: (613) 943-9205
Facsimile / télécopieur: (613) 993-3089
Email / courriel: Brian.Smith@chrc-ccdp.gc.ca

VIA EMAIL

March 14, 2018

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

Dear Registry Officer Dubois:

Re: *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada*
Tribunal File No.: T1340/7008

I am writing in response to the Tribunal's e-mail of March 8, 2018. In that e-mail, the Tribunal gave the parties and interested parties until tomorrow (March 15, 2018) to file any submissions in response to:

- the AGC's letter of March 5, 2018, and its attachments (Statement of Work, and Draft Ethics Guidelines); and/or
- the Caring Society's letter of March 6, 2018, in response to the AGC's letter and attachments.

Needs Assessment Methodology

In its letter dated March 6, 2018, the Caring Society indicated that, in light of the existing state of available data, it agrees with (i) the three-phase approach set out in the Statement of Work, and (ii) the proposed deadlines for completion of Phase One (i.e., April 27, 2018), and Phase Two (i.e., May 16, 2018).

The Commission also agrees with these elements of the methodology.

The Commission further agrees with the Caring Society that it is difficult to set a fixed deadline for completion of Phase Three at this time, since the nature and amount of work to be done at that stage will depend on the outcomes of Phases One and Two. In general, the Commission supports the principle that the needs assessment should be done as quickly as is reasonably possible, in all the circumstances.

Experts to be Retained

The Caring Society has stressed its view that any person or organization retained to conduct the needs assessment should have knowledge and background in matters relating to First Nations child and family services, and be capable of maintaining the confidence of the interested stakeholders and communities.

The Commission agrees with these statements of principle.

In this regard, the Commission looks forward to hearing more about the outcome of Dr. Blackstock's proposed meeting with the Institute of Fiscal Studies and Democracy (IFSD), an organization that would appear to respect these principles.

Ethical Guidelines

The Commission has no comments to make about the draft Ethical Guidelines at this time, but looks forward to receiving copies of any additional comments the Caring Society or others may provide.

If the Tribunal has any questions, or requires anything further, please do not hesitate to let us know.

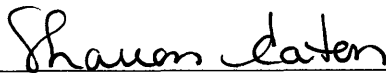
Yours truly,



Brian Smith
Senior Counsel

CC. David Taylor, Sarah Clarke and Anne Levesque, **Counsel for First Nations Child and Family Caring Society of Canada** (by e-mail)
David Nahwegabow and Stuart Wuttke, **Counsel for the Assembly of First Nations** (by e-mail)
Maggie Wentz and Krista Nerland, **Counsel for the Chiefs of Ontario** (by e-mail)
Julian Falconer and Akosua Matthews, **Counsel for NAN** (by e-mail)
Justin Safayeni, **Counsel for Amnesty International** (by e-mail)
Robert Frater, Jonathan Tarlton, Patricia McPhee, **Counsel for Canada** (by e-mail)

This is **Exhibit "E"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharron Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
ASHA JAMES, B.A., LL.B., J.D.
MEAGHAN T. DANIEL, B.A., LL.B.
KRYSTYN ORDYNIEC, H.BHSc., LL.B., J.D.



MARC E. GIBSON, B.A., M.A., J.D.
ANTHONY MORGAN, Hon. B.A, B.C.L., LL.B.
AKOSUA MATTHEWS, B.A., MPHIL (OXON), J.D.
ELYSIA PETRONE-REITBERGER, H.B.A. M.E.S., J.D.

SENT VIA EMAIL

March 15, 2018

Ms. Judy Dubois, Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, ON K1A 1J4
E-mail: judy.dubois@tribunal.gc.ca and to
registry.office@chrt-tcdp.gc.ca

Dear Ms. Dubois:

RE: *First Nations Child and Family Caring Society v. Canada, Tribunal File #T1340/7008*

I am writing on behalf of Nishnawbe Aski Nation (“NAN”), and pursuant to the following correspondences: Canada’s letter of March 5, 2018, containing a Statement of Work and Draft Ethics Guidelines concerning Agency needs assessments; the Caring Society’s correspondence of March 6, 2018; and, the Tribunal’s email and direction to the Parties of March 8, 2018.

NAN agrees with the proposed three-phase approach set out in Canada’s Statement of Work and the proposed deadlines for completion of Phase One (April 27, 2018) and Phase two (May 16, 2018). In concert with the Caring Society and the Commission, NAN also takes the position that it is difficult to assess the reasonableness of the proposed deadline for Phase three (July 30, 2018) at this point in time.

Regarding the person or organization retained to analyse the Agency needs assessments, NAN agrees with the Caring Society and the Commission that this person/organization must be experienced in matters relating to First Nations child and family services.

Finally, NAN does not have comments to make about the draft Ethical Guidelines at this time.

Should the Tribunal or Parties require further clarification, please do not hesitate to contact the undersigned or my colleague Akosua Matthews (akosuam@falconers.ca).

Yours Very Truly,
FALCONERS LLP

Julian N. Falconer



Cc (all via email): Jonathan Tarlton, Robert Frater, Q.C., Patricia MacPhee, and Kelly Peck Co-counsel for the respondent Attorney General of Canada

David Taylor, Anne Levesque, and Sarah Clarke Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

David Nahwegahbow and Stuart Wuttke Co-counsel for the complainant Assembly of First Nations

Daniel Poulin and Brian Smith Co-counsel for the Canadian Human Rights Commission

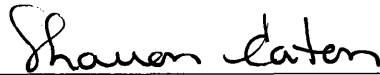
Maggie Wentz and Krista Nerland Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni Counsel for the interested party Amnesty International

W:\General\Doc\N\NAN Corporate Services – Legal Support CCCYF.2031-16\Correspondence\L - NAN to CHRT, March 15, 2018.docx



This is **Exhibit "F"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



Krista Nerland
knerland@oktlaw.com
(416) 981-9356
(416) 981-9350

March 15, 2018

By email

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

Dear Registry Officer Dubois:

Re: First Nations Child and Family Caring Society of Canada v Canada, Tribunal File No: T1340/7008

This letter is in response to the Tribunal's email of March 8, 2018, asking for the Interested Parties to file submissions in response to the Attorney General's letter of March 5, 2018, regarding para 421 of the Tribunal's Ruling:

*[421] The Panel, pursuant to section 53 (2) (a) and (b) of the CHRA, orders Canada, to provide by **March 5, 2018** a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting indigenous peoples that include protection of Indigenous intellectual property for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.*

COO supports the positions taken by the Caring Society in its letter of March 6, 2018. COO has no further submissions to make on the Statement of Work and Draft Ethical Guidelines at this time.

Yours truly,



Krista Nerland

cc:

c:

Daniel Poulin, Brian Smith *Counsel for the Canadian Human Rights Commission* (via email)

David Taylor, Sarah Clarke and Anne Levesque, *Counsel for First Nations Child and Family Caring Society of Canada* (via email)


David Nahwegabow and Stuart Wuttke *Counsel for the Assembly of First Nations* (via email)

Justin Safayeni, *Counsel for Amnesty International* (via email)

Julian Falconer and Akosua Matthews, **Counsel for NAN**

Robert Frater, Jonathan Tarlton, Patricia McPhee, and Kelly Peck, *Counsel for Canada* (via email)

This is **Exhibit "G"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharron Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.l.,
Barristers and Solicitors. Expires June 12, 2021.



BY EMAIL

March 15, 2018

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

Dear Ms. Dubois:

Re: FNCFCSC et al. v. Attorney General of Canada (Tribunal File T1340/7008)

This is further to the Panel's letter of March 8th, 2018, and the order in paragraph 421 of 2018 CHRT 4, which states the following:

The Panel, pursuant to section 53 (2) (a) and (b) of the *CHRA*, orders Canada, to provide by March 5, 2018 a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.

We are in receipt of Mr. Taylor's letter of today's date and the Assembly of First Nations agrees with its contents. In this regard, we expect to come to a consensus with Canada and the Caring Society, as well as the other parties on a way forward for Canada to fulfil the requirements of the above-noted order, by tomorrow or soon thereafter. In the circumstances, it might be appropriate to consider extending the time for the completion of this order.

Sincerely,

NAHWEGAHBOW, CORBIERE

Per: **David C. Nahwegahbow, IPC, LSM, LL.B.**
dndaystar@nncfirm.ca



copies.

David P. Taylor, Anne Levesque, and Sarah Clarke
Counsel for the Complainant First Nations Child and Family Caring Society of Canada

Robert Frater, QC, Jonathan Tarlton, Patricia MacPhee, and Kelly Peck
Counsel for the Respondent Attorney General of Canada

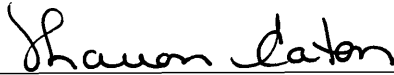
Daniel Poulin and Brian Smith
Counsel for the Canadian Human Rights Commission

Maggie Wenté and Krista Nerland
Counsel for the Interested Party Chiefs of Ontario

Julian Falconer, Akosua Matthews, and Anthony Morgan
Counsel for the Interested Party Nishnawbe Aski Nation

Justin Safayeni
Counsel for the Interested Party Amnesty International

This is **Exhibit "H"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.

CONWAY

Litigation/Litige

David P. Taylor
Direct Line: 613.691.0368
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Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

March 15, 2018

VIA EMAIL

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

Dear Madam:

**RE: FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL. V. ATTORNEY GENERAL OF CANADA
T#1340/7008**

OUR MATTER ID: 5204-002

I write in response to the Panel's March 8, 2018 direction to the Caring Society to provide an update following the March 8, 2018 meeting with the Institute for Fiscal Studies and Democracy ("IFSD") by March 15, 2018.

As advised in my March 6, 2018 letter, Dr. Blackstock met with the IFSD on March 8, 2018. This meeting was also attended by Jonathan Thompson on behalf of the Assembly of First Nations ("AFN") and by Paula Isaak and Salena Brickey of the Department of Indigenous Services Canada ("DISC"). Kevin Page (M.A.), Sahir Khan (M.B.A.) and Helaina Gaspard (Ph.D.) attended on behalf of the IFSD.

It was clear from our March 8, 2018 meeting that IFSD has full capacity to do the work required by under the FNCFS Agency needs assessment and cost analysis ordered by this Tribunal. DISC has indicated that it is in agreement in principle with tasking IFSD with this work, and the AFN and the National Advisory Committee are in agreement that IFSD is suitable as well.

Conway Baxter Wilson LLP/s.r.l.

400 - 411 Roosevelt Avenue, Ottawa ON K2A 3X9

Tel: 613.288.0149 Fax: 613.688.0271

www.conway.pro

Following the March 8, 2018 meeting, IFSD was to revise its proposal and submit it to DISC, which was done yesterday evening. There is another meeting scheduled for tomorrow, March 16, 2018, to discuss implementation of the FNCFS Agency needs assessment and cost analysis.

Please advise if the Panel has any questions, or requires further submissions.

Yours truly,



David P. Taylor

Copy to: **Robert Frater, Q.C., Jonathan Tarlton, Patricia MacPhee, and Kelly Peck**
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow and Stuart Wuttke
Co-counsel for the complainant Assembly of First Nations

Daniel Poulin and Brian Smith
Co-counsel for the Canadian Human Rights Commission

Maggie Wenté and Krista Nerland
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni
Counsel for the interested party Amnesty International

Julian Falconer, Akosua Matthews, and Anthony Morgan
Co-counsel for the interested party Nishnawbe Aski Nation

Anne Levesque and Sarah Clarke
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

DPT/dn

This is **Exhibit "I"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



Department of Justice
Canada

Ministère de la Justice
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Our File: AR-800702
Notre dossier:

Your file:
Votre dossier:

Via Email

March 22, 2018

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


Dear Ms. Dubois:

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

Further to the Panel's Direction dated March 8, 2018, we write to ask for an extension of time until April 9th to provide our response to the parties' replies to Canada's plan to implement paragraph 421 of 2018 CHRT 4. Canada is meeting with the Caring Society, the Assembly of First Nations, and the IFSD to discuss the proposed approach and timelines early next week, and will then consult all parties.

Thank you for your consideration.

Yours truly,



Patricia MacPhee
Counsel
Civil Litigation and Advisory Services

PM/ab
cc: David Taylor/Anne Levesque/Sarah Clarke/Stuart Wuttke/David Nahwegahbow/Daniel Poulin/Brian Smith/Justin Safayeni/Maggie Wentz/Krista Nerland/Julian N. Falconer/Akosua Matthews/Anthony Morgan/Robert Frater, Q.C./Jonathan Tarlton/Kelly Peck

Canada

This is **Exhibit "J"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



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Our File: AR-800702
Notre dossier:

Your file:
Votre dossier:

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

April 9, 2018

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

Dear Ms. Dubois:

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

Further to Canada's March 5, 2018 submission to the Tribunal, and the responses of the parties, Canada has been working with the parties and engaging experts on its supplemental response to paragraph 421, and on its approach to implementing the orders concerning the cost analysis of agency needs. This letter represents Canada's April 9th reply to the Tribunal. Copies of this correspondence were provided to counsel earlier today.

Based on a meeting on March 26, 2018 with the Caring Society, the Assembly of First Nations and the Institute of Fiscal Studies and Democracy (IFSD), the approach to addressing paragraph 421 and the related orders on analyzing agency needs is outlined below.

- The research to analyze agency needs assessments and do a cost-analysis of agency needs will be conducted by the Institute of Fiscal Studies and Democracy (IFSD), recognizing their previous work with the National Advisory Committee and the relationship they have with communities and agencies (proposal attached);
- The IFSD's research will be subject to Tri-Council Policy Statement on Ethical Conduct for Research involving Humans and OCAP principles;
- The research will involve the following four phases/timelines:
 - Phase 1, Needs Assessments: analyze existing needs assessments by April 15, 2018 and develop an indicators table to inform needs analysis by July 31, 2018;

Canada

- Phase 2, Baseline Definition and Gap Analysis: develop a baseline of agency resource inputs, define a detailed costing procedure, and identify missing data by September 30, 2018;
- Phase 3, Cost Analysis: undertake a cost analysis for each type of agency by November 2, 2018; and
- Phase 4, Final Reports: develop a final report and make recommendations to support a new funding approach: November 15, 2018.
- The National Advisory Committee will be invited to provide expert advice on the research as it proceeds; the Consultation Committee will be asked to review all deliverables;
- Canada will share data with the IFSD; the IFSD will consider and link to existing research in this area and in response to the orders, including NAN's remoteness study and the Ontario Special Study.
- This research will inform the development of an alternative funding system.

Based on this approach, Canada is proposing that the orders be revised as outlined below. These timelines follow the proposal from IFSD, and allow Canada to report on the first part of phase one by May 3, 2018, on progress on phase 2 by October 12, 2018, and on the final results by December 10, 2018.

Research methodology and ethical research guidelines:

- [421] The Panel, pursuant to section 53 (2) (a) and (b) of the *CHRA*, orders Canada, to provide by **March 5, 2018** a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property, to be supplemented by Canada's April 9, 2018 submission, for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.

Analysis of needs assessments and cost-analysis of agency needs:

- [408] The Panel, pursuant to section 53 (2) (a) and (b) of the *CHRA*, orders Canada to analyze the needs assessments completed by First Nations agencies in consultation with the Parties, interested parties (see protocol order below), and other experts; and to do a cost-analysis of the real needs of First Nations agencies including prevention/least disruptive measures, intake and investigation, building repairs and legal fees related to child welfare taking into account travel distances, case load ratios, remoteness, the gaps and/or lack of surrounding services and all particular circumstances they may face.

- [409] Canada is ordered to analyze the needs assessments completed by First Nations agencies, identify gaps in data and report to the Tribunal by **May 3, 2018**, and to complete this analysis by **November 15, 2018**.
- [419] Canada is ordered to analyze the needs assessments completed by First Nations agencies, identify gaps in data and report to the Tribunal by **May 3, 2018**, and to complete this analysis by **November 15, 2018**.

Development of alternative funding system

- [410] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada, pending long term reform of its National FNCFS Program funding formulas and models, to eliminate that aspect of its funding formulas/models that creates an incentive resulting in the unnecessary apprehension of First Nations children from their families and/or communities. To this effect, and pursuant to Section 53 (2) (a) of the CHRA, the Panel orders INAC to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees, and building repairs services for First Nations children and families on-reserve and in the Yukon, based on actual needs which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFC agencies to be in the best interests of the child and develop and implement the methodology including an accountability framework in consultation with AFN, the Caring Society, the Commission, the COO and the NAN (see protocol order below), by **December 10, 2018**, and report back to the Panel on progress by **October 12, 2018**.
- [416] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada to develop an alternative system for funding child service purchase amount services for First Nations children and families on-reserve and in the Yukon, based on actual needs, which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFC agencies to be in the best interests of the child and develop and implement the methodology including an accountability framework in consultation with AFN, the Caring Society, the Commission, the COO and the NAN (see protocol order below), by **December 10, 2018**, and report back to the Panel on progress by **October 12, 2018**.

- [420] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada, pending long term reform of its National FNCFS Program funding formulas and models, to eliminate that aspect of its funding formulas/models that creates an incentive resulting in the unnecessary apprehension of First Nations children from their families and/or communities. To this effect, and pursuant to Section 53 (2) (a) of the CHRA, the Panel orders Canada to develop an alternative system for funding small first nations agencies based on actual needs, which operates on the same basis as INAC's current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services, as determined by the FNCFC agencies to be in the best interests of the child; and develop and implement the methodology including an accountability framework in consultation with AFN, the Caring Society, the Commission, the COO and the NAN (see protocol order below), by **December 10, 2018**, and report back to the Panel on progress by **October 12, 2018**.

Given the proposed timelines for the research, Canada would support the period of the Tribunal oversight being extended, and an amendment to paragraph [444] as follows:

- [444] The Panel retains jurisdiction over the above orders to ensure that they are effectively and meaningfully implemented, and to further refine or clarify its orders if necessary. The Panel will continue to retain jurisdiction over these orders until **March 31, 2019** when it will revisit the need to retain jurisdiction beyond that date. [...]

Further, Canada would like to advise the Tribunal that it has been in ongoing discussions with the parties regarding the time lines for reimbursing actual expenses and the language of the related orders. Canada remains committed to being flexible and to working with First Nations Child and Family Services agencies to claim actual costs for prevention, intake and investigation, building repairs, legal fees, the child service purchase amount and for small agencies, retroactive to January 26, 2016, and until an alternative system is in place.

To support this flexible approach, Canada has agreed to extend the Tribunal's ordered deadline of April 2, 2018 by nearly one year to **March 31, 2019**, Canada has also agreed to implement a broad definition of acceptable proof through documentation, as it did in relation to the order on Band Representatives.

Regarding the specific timelines for reimbursement, Canada requires up to 15 days to process a claim and respect its financial accountability requirements. This includes up to 10 days to: review the claim; to go through the internal process to adjust the funding agreement; and meet legislative requirements of sections 32, 34 and 33 of the *Financial Administration Act*. It also includes up to 5 days for Public Services and Procurement Canada (PSPC) to do a direct deposit. The PSPC service standard of 5 days depends on

various factors, including the volume of direct deposits being processed (i.e. all Government of Canada volumes), and individual banking timelines.

The Caring Society does not consent to our request for a 15-business day timeline for the reimbursement of retroactive expenses under paragraphs 411, 417, and 421. Its position remains the same as the one taken on February 12, 2018 regarding reimbursement of retroactive expenses under paragraphs 426 and 427: expenses should be reimbursed within 10 business days of the request being made. The Commission has taken no position.

The 15-day timeline is the same as what was agreed to for paragraphs 426 and 427 concerning mental health services and Band Representative services in Ontario, and is significantly more expedient than regular processing timelines, which range between 30 and 60 days.

In the case of meeting actual costs moving forward, Canada is providing all agencies with an initial allocation as of April 1, 2018 and is committed to paying expenses where this initial budget is not sufficient to meet needs in prevention, intake and investigation, legal fees, building repairs, child service purchase amount or for small agencies. This allows agencies some time to plan and forecast their needs, for example for new staff or additional prevention activities. Should Canada hear from an agency about an urgent need that requires costs be paid more quickly than the 15-day timeframe (e.g., a building repair), we will address it.

On the issue of documentation, Canada is open to being flexible should receipts or invoices not be available, but requires some form of documentation to meet its financial accountability requirements. Should there not be an invoice or receipt, the Department will work with the requestor to do a declaration and/or provide some other form of documentation (e.g., audited financial statements that already exist, general ledgers or email confirmation from suppliers) to process the claim.

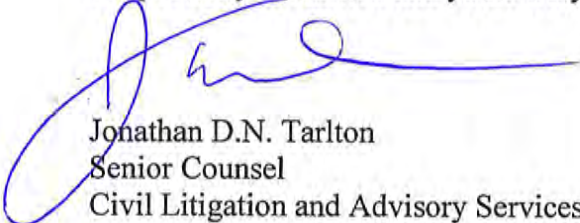
As such, Canada recommends the related orders be revised as follows:

- [411] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada to cease its discriminatory funding practice of not fully funding the costs of prevention/least disruptive measures, building repairs, intake and investigations and legal fees. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada, to provide funding on actual costs for least disruptive measures/prevention, building repairs, intake and investigations and legal fees in child welfare to be reimbursed retroactive to January 26, 2016 within 15 business days after receipt of documentation of expenses. FNCFS agencies must submit documentation of expenses for retroactive payments to Canada no later than March 31, 2019.

- [417] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada to cease its discriminatory funding practice of not fully funding the costs of child service purchase amount. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada to provide funding on actual costs for child service purchase amount in child welfare to be reimbursed retroactive to January 26, 2016 within 15 business days after receipt of documentation of expenses. FNCFS agencies must submit documentation of expenses for retroactive payments to Canada no later than March 31, 2019.
- [421] The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada to cease its discriminatory funding practice of not fully funding the small first nations agencies' costs. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada to provide funding on actual costs small first nations agencies to be reimbursed retroactive to January 26, 2016 within 15 business days after receipt of documentation of expenses. FNCFS agencies must submit documentation of expenses for retroactive payments to Canada no later than March 31, 2019.

Canada looks forward to hearing from the Panel at its earliest convenience on these proposals.

Respectfully submitted and yours truly,



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

JT/ab

Enclosures

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

Engagement Budget Explanatory Note

Analyzing First Nations Child and Family Services (FNCFS) Agency Needs

This explanatory brief is designed to accompany the proposed engagement budget and to supplement the notes on the cost estimates therein. The IFSD will engage with the Assembly of First Nations (AFN) as the project contract holder.

The majority of the budget is associated with the project's methodology – an approach that has been successfully applied on previous projects including First Nations child welfare – for which there is no markup. As an affiliate of the University of Ottawa, the Institute of Fiscal Studies and Democracy (IFSD) is guided by ethical research guidelines respecting Indigenous peoples, the project will follow the Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans and OCAP principles in all of its work.

There are two principal cost-categories (see **Figure 1** and **Table 1** for a more detailed analysis of the cost categories):

- 1) Fees associated with research and analysis
- 2) Direct costs associated with the project's execution and results delivery

Note: Harmonized Sales Tax (HST) is added only to fees as it is included in other cost-estimates.

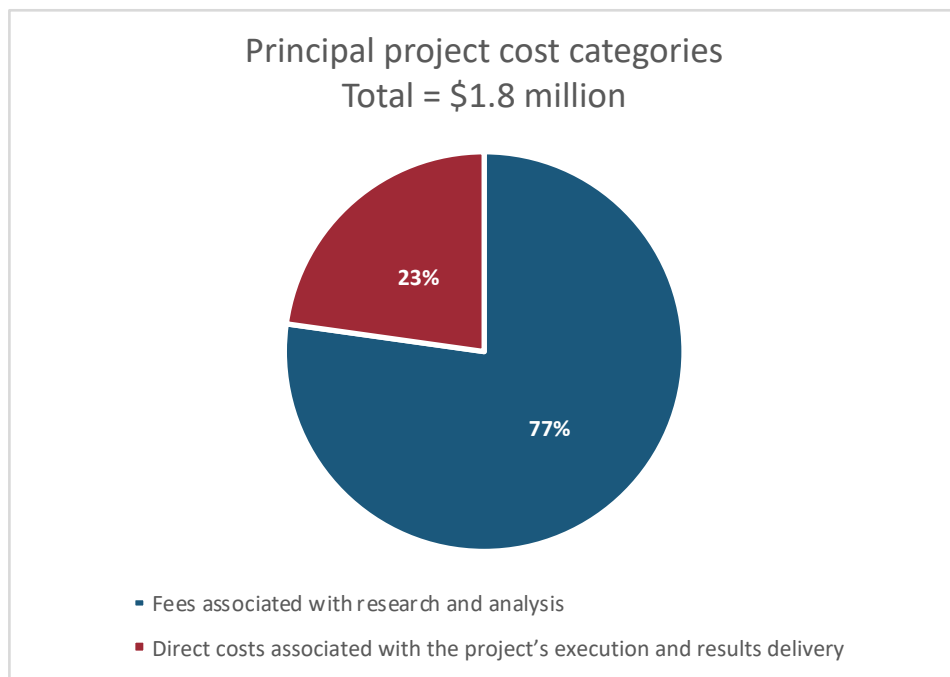


Figure 1: Principal project cost categories (total = \$1.8M before HST).

Category	Cost	HST	Total w/HST
Fees associated with research and analysis			
IFSD Principals	\$ 673,500	\$ 87,555	\$ 761,055
Other staff and fees	\$ 765,000	\$ 99,450	\$ 864,450
Category subtotal	\$1,438,500	\$ 187,005	\$ 1,625,505
Direct costs associated with the project's execution and results delivery			
Air travel	\$ 76,800		\$ 76,800
Lodging	\$ 96,192		\$ 96,192
Workshops	\$ 112,516		\$ 112,516
IT resources	\$ 138,848		\$ 138,848
Category subtotal	\$ 424,356		\$ 424,356
Assembly of First Nations (AFN) administration fee	\$ 37,257	\$ 4,843	\$ 42,100
Grand totals	\$1,900,113	\$ 191,848	\$ 2,091,961

Table 1: Detailed cost breakdown.

Fees associated with research and analysis

The fees associated with research analysis reflect the fees of IFSD Principals as well as the costs of other staff and fees, i.e. cost of reducing barriers to participation for agencies, expert consultant honorariums, etc. (see **Figure 2**). The majority (i.e. 53%) of the \$1.4 million budget associated with research and analysis is dedicated to shouldering the costs (human and operational) of data collection that will serve as the foundation of the project's analysis. The costs include for instance, third party experts, and the direct engagement of agencies.

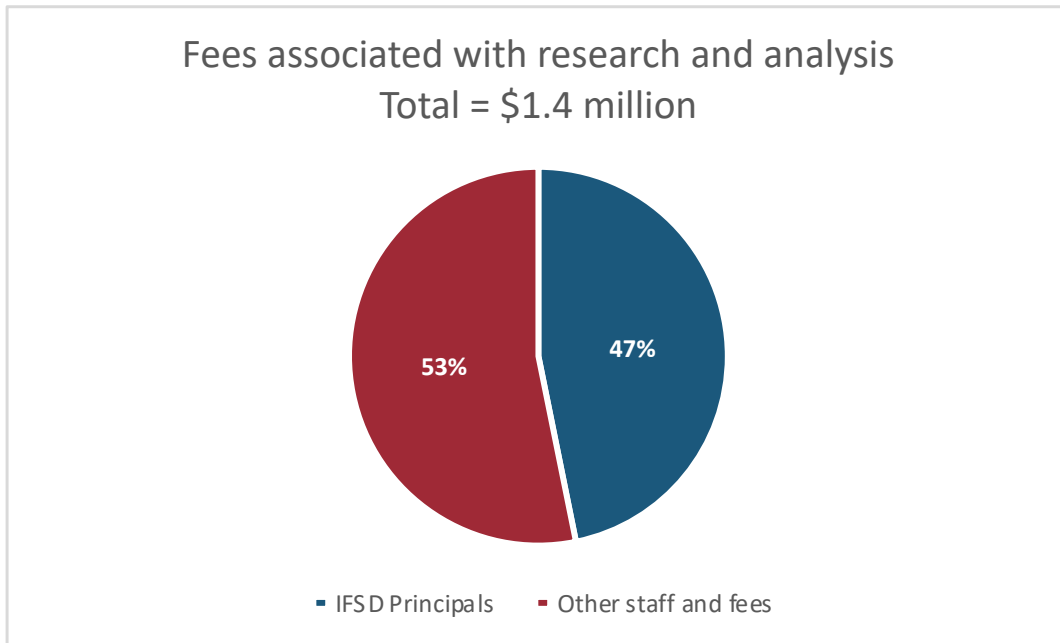


Figure 2: Fees associated with research and analysis (total = \$1.4 million).

The other costs and fees associated with the project reflect the IFSD’s commitment to engaging agencies and its recognition of the importance of the engagement of other experts. Most of the fees in this category are dedicated to reducing barriers to participation for agencies with a grant of approximately \$3,000 per agency (total = \$330,000). The intention of these grants is to defray the costs of agency representatives attending the regional workshops to support the project’s agency baseline definition and gap analysis.

Supplementing the critical participation of agencies are the insights of expert advisors. Based on previous IFSD project experience, engaging experts through for instance, an unsalaried board of advisors or expert consultations can be accomplished more effectively by offering modest honorariums in recognition of their time and contributions and by covering travel costs.

The IFSD is a not-for-profit entity funded by a grant. The engagement of its IFSD principals for the better part of a year represents a lost opportunity cost for the organization that is reflected in its consulting rates. These rates are consistent with previous projects for various national, sub-national, and international governments and organizations and significantly below the rates of major consulting firms. Further, the fees include the IFSD’s overhead for the project.

Direct costs associated with the project’s execution and results delivery

In its decision-support focused work, the IFSD recognizes the importance of face-to-face engagement with project participants to build its understanding of issues and to learn from those on the front lines. To pursue its primary research, the IFSD has allocated nearly half of its direct costs in this category for travel and lodging following the cost guidelines of the National Joint Council’s travel directive (see **Figure 3**).

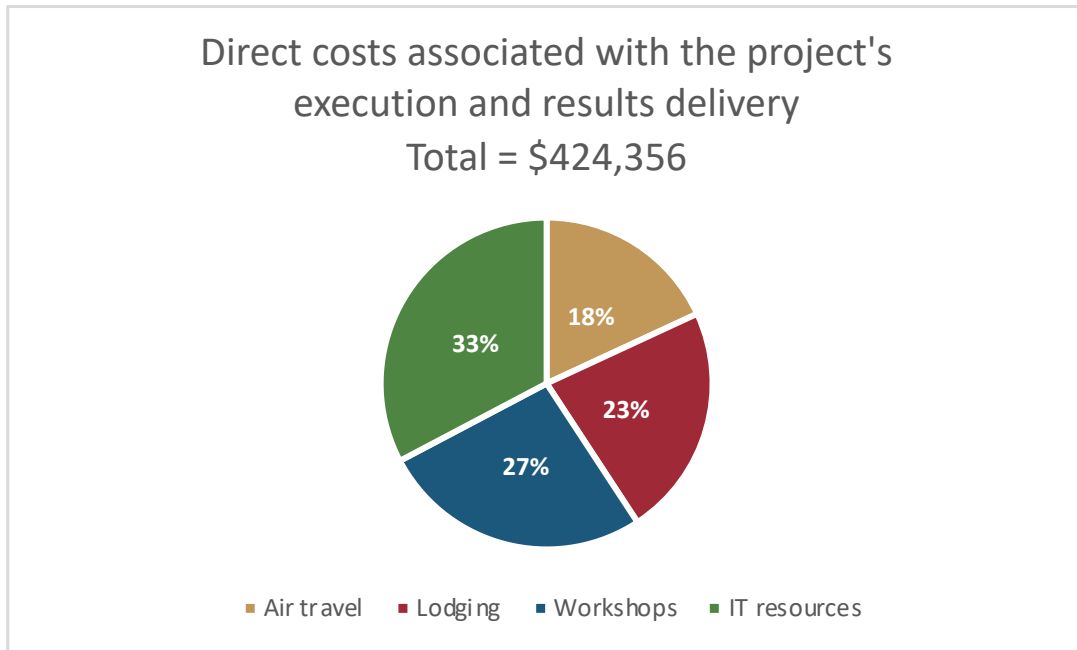


Figure 3: Direct costs associated with the project execution and results delivery (total = \$424,356).

To support dialogue and consensus building among the project’s primary stakeholders, the IFSD has allocated nearly one third of the project’s direct costs to workshops. Two workshops will be held at the IFSD offices in Ottawa convening agency representatives, experts, and leaders from the Assembly of First Nations, the National Advisory Council, the Caring Society, and Department of Indigenous Services (DISC). These two workshops will focus on approval and consensus of high-level indicators and approaches to guide baseline definition and a program architecture for the final report.

Approximately ten regional workshops will be hosted to convene agency representatives in their respective provinces. With travel funded by the above-mentioned agency grant, these project-focused workshops will provide IFSD researchers the opportunity to interact directly with agency representatives and to learn from their experiences. During these one-day workshops, the approach to the baseline definition and gap analysis will be discussed and reviewed to support active agency involvement by reducing barriers to participation.

Following the principles of transparency and communication, the IFSD has allocated a budget for IT resource development. A project website for public updates on progress and aggregate interim results reporting can be designed, built and maintained for 12-months for less than \$30,000. The website, based on a content management system, will be a useful platform both for engagement and a means of keeping all stakeholders abreast of the project's progress.

Included in the IT resource category, is requirements scoping for software for results tracking, measurement and reporting. This first phase of the software development process, includes: needs definition, software requirements and development of a wire frame (i.e. visual mock-up), has an estimated cost of \$113,000 (out of \$138,000 category subtotal). Leveraging the project's findings and analysis (based on primary research with the agencies) would be a logical means of designing a future software solution that aligns to the mandates, planning and results monitoring activities of agencies. Further, it is our experience on major IT projects that the diligence of the front-end work tends to reduce the both the costs and risk of future development and implementation processes.

Key questions to answer for this component of the project include:

- 1) What is the current baseline of technology infrastructure among the 109 agencies?
- 2) Do existing provincial data management systems provide relevant information for agencies and DISC and how might they be leveraged for a future solution?
- 3) What data is currently collected by provinces?
- 4) What data do First Nations agencies consider to be useful for monitoring and planning?
- 5) What baseline information can be collected across agencies? What are the common standards for data collection that can be defined? How should existing agency reporting requirements be taken into consideration?

The second potential phase of the software component is beyond the scope of this current proposal but would include, among other things, the architecting, development and implementation of a software solution.



Engagement Budget

Analyzing First Nations Child and Family Services (FNCFS) Agency Needs
March 2018-December 2018 (or March 2019)

Consulting Rates	Days	Rate		Notes	
Kevin Page	50	\$ 2,000	\$ 100,000	Rates consistent with previous projects for various national, sub-national, and international governments and organizations. <i>Discussion required on how IFSD employee time will be counted.</i>	
Sahir Khan	50	\$ 1,900	\$ 95,000		
Helaina Gaspard	210	\$ 1,500	\$ 315,000		
Azfar Ali Khan	25	\$ 1,500	\$ 37,500		
Janoah Willisie	252	\$ 500	\$ 126,000		
			\$ 673,500		
Project Manager/Comptroller	130	\$ 500	\$ 65,000		
Research Assistant	252		\$ 30,000		
Research Assistant	252		\$ 30,000		
Research Assistant	252		\$ 30,000		
Senior Analyst	252	\$ 500	\$ 120,000	Including travel, honorariums Travel and accommodation costs for agency representatives at \$3,000 per agency	
Expert Advisory services			\$ 130,000		
Agency regional experts/champions			\$ 330,000		
			\$ 765,000		
Subtotal fees			\$ 1,438,500.00		
Air Travel					All travel pursuant to National Joint Council (NJC) guidelines
Round trip cost per flight (domestic)	\$ 1,600				
Number of Trips (two per moth, May-August)	16				
Team size for each trip	3				
Subtotal air travel			\$ 76,800.00		
Lodging				CAUBO preferred rates used whenever possible All per diems pursuant to NJC guidelines	
Hotel (with Tax)	\$ 230	\$ 66,240			
Per Diem	\$ 104	\$ 29,952			
Nights per Trip	6				
Travel Days in 2016/17	288				
Subtotal lodging and per diem			\$ 96,192.00		
Workshops				This first phase of the software development process, includes: needs definition, software requirements and development of a wire frame (i.e. visual mock-up). The second potential phase of the software component is beyond the scope of this current proposal but would include, among other things, the architecting, development and implementation of a software solution.	
Workshop #1 (National, 35 participants)					
Hospitality	\$ 220	\$ 7,700			
Speaker travel, three speakers (air travel + two nights hotel + per diem)	\$ 7,686	\$ 23,058			
AV support		\$ 5,000			
Miscellaneous		\$ 3,000			
Workshop #2 (National, 35 participants)					
Hospitality	\$ 220	\$ 7,700			
Speaker travel, three speakers (air travel (\$1,500) + three nights hotel (\$250) + three per diems (\$104))	\$ 7,686	\$ 23,058			
AV support		\$ 5,000			
Miscellaneous		\$ 3,000			
Regional Workshops (average, one per province, approximately 40 people)					
Hospitality	\$ 2,000	\$ 20,000			
AV support	\$ 500	\$ 5,000			
Miscellaneous	\$ 1,000	\$ 10,000			
Subtotal workshops			\$ 112,516.00		
IT Resources					
Project website (incl. design and setup)	\$ 15,000	\$ 15,000			
Monthly website fees	\$ 10,848	\$ 10,848			
Requirements and scoping of software for results tracking, measurement and reporting		113,000			
Subtotal IT resources			\$ 138,848.00		
Subtotal			\$ 1,862,856.00		
Assembly of First Nations (AFN) administration fee		2%	\$ 37,257.12		
HST (on IFSD and AFN fees only)			\$ 191,848.43		
TOTAL COSTS			\$2,091,961.55		

Project Plan

Analyzing First Nations Child and Family Services (FNCFS) Agency Needs

Context

The Canadian Human Rights Tribunal (CHRT), in its January 2016 decision and subsequent rulings, has found that Canada has used a discriminatory funding approach for FNCFS agencies. Canada states it is committed to implementing these orders.

In support of Canada's efforts to develop an alternative system to fund First Nations child and family services, Indigenous Services Canada requires the services of a funding/technical and research expert with knowledge of Indigenous issues, and Indigenous practices with respect to data collection and Indigenous intellectual property as well as child and family services.

Purpose

Our understanding of your needs suggests that the purpose of this project is to develop reliable data collection, analysis and reporting methodology for analyzing the needs of FNCFS Agencies. Specifically, this project will support the implementation of the following orders:

- 1) Work with experts to develop a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines for analyzing the needs of First Nations Agencies (Order defined in par. 421);
- 2) Canada is accountable for analyzing the needs assessments and undertake a cost-analysis of the needs of agencies, in consultation with the parties and other experts (Orders defined in pars. 408 and 418).

If selected as the Contractor, the Institute of Fiscal Studies and Democracy (IFSD) at the University of Ottawa will provide technical expertise to analyze agency needs, will provide strategic advice on how to best monitor and respond to actual agency needs from fiscal and governance perspectives, with an approach informed by understanding, existing research, and analysis of assessments done by agencies and communities.

The IFSD will engage with the Assembly of First Nations (AFN) as the project contract holder.

Guiding questions

- 1) What are agencies' needs in *protection* (e.g. intake and investigation, least disruptive measures (secondary, tertiary prevention and family case conferencing)), *prevention* (e.g. child purchase amount and primary prevention needs (public education, early childhood interventions etc.)), *operations* (e.g. salaries, legal fees related to child welfare), *capital* (e.g. building repairs, vehicles, information technology), and *governance/reporting*?
- 2) What are the gaps between the current and desired states of agencies?

- 3) What are the funding requirements to support these agencies at the desired state (i.e. cost analysis)?
- 4) How can agencies' defined needs and their costs be translated into a new vision for First Nations child and family services, that focuses on leveraging cultural approaches and best evidence to support healthy families and communities and ensure the best interests of children?
- 5) How can agencies establish performance measures and conduct evaluations that promote organizational learning and development?

Methodology

As an affiliate of the University of Ottawa, IFSD is guided by ethical research guidelines respecting Indigenous peoples, the project will follow the Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans and OCAP principles in all of its work.

This means that IFSD will be subject to the University of Ottawa's ethics board review per the Tri-Council Policy Statements on Ethical Conduct for Research involving Humans.

Part 1: Needs assessments

Defining needs in a way that articulates the problem and performance objectives will drive design, governance, reporting, and implementation strategies.

- 1) Propose categories of agency activities in table form. Seek approval of table from stakeholders during April 2018 workshop at IFSD. This portion of the project will seek consensus to define elements of a desired future state for First Nations child welfare. Proposed global indicators include:
 - a. Protection
 - b. Prevention
 - c. Operations
 - d. Capital
 - e. Governance/reporting
 - i. Policy development capacity
 - ii. Organizational evaluation and learning
 - iii. Community communication and engagement

The proposed indicators are intended to enable agencies to define their needs on an activity basis and to facilitate the costing of these needs (i.e. desired outcomes) and initiatives in Phase 3. This part of the project will invite agencies to present their desired or normative state of operations, including multi-year funding structures to support long-term planning and program sustainability.
- 2) Analyze existing needs assessments undertaken by agencies and communities. Any gaps in data will be identified and filled by liaising directly with agencies or more granular research will be undertaken as required to support robust program design, effective governance, reporting and sustainable implementation strategies.

- 3) Leverage results of NAC-IFSD First Nations agency surveys to develop typology of agencies based on mandates, size, and needs.

NOTE: IFSD will produce monthly updates to communicate project progress and interim results to the project's stakeholders. These written updates (submitted via email and potentially posted on the project website) can be supplemented with briefings to interested parties by IFSD.

Part 2: Baseline definition and gap analysis

- 1) Define current baseline of agency *resource inputs* (i.e. financial, human resources (including regular working hours, and those supplementary hours worked without pay) budgets and *outputs* (i.e. activities). Design a survey to assess agency baseline indicators. Test the survey with agencies in different regions and of different sizes (based on NAC-IFSD survey research on agency characteristics).
Note: A more granular assessment of the current state can be undertaken by IFSD with agency/community visits. Having built existing research partnerships with various jurisdictions, IFSD understands the challenges and importance of building trust, and co-developing research approaches with agencies and members of their communities. Establishing a clear current baseline across inputs, outputs, and outcomes will be paramount to defining the gap between the current and desired state of agencies.
- 2) Review results from Phase 1. Scrub data and prepare for program-level bottom-up costing, based on aggregated agency needs data for each type of agency.
- 3) Define detailed costing procedure and sources of actual cost data from agencies. Consider factors (beyond those defined in the needs assessment in Part 1) such as:
 - a. Cross-agency collaborations on items such as peer support, professional development, communications, etc.
 - b. Lost purchasing power related to the lack/insufficiency of inflation adjustments in Directive 20-1 and EPFA
 - c. Identify extraordinary cost items that may require the establishment of national or regional pools such as liability costs, natural disaster contingencies, community emergency response contingencies)
- 4) Identify any missing data or other required analytic elements before proceeding with costing.

Part 3: Cost analysis

- 1) For each type of agency (defined in Part 1), cost agency needs by leveraging actual cost data. Costing will be undertaken on an indicator-basis (protection, prevention, operations, capital, governance/reporting), with line-items generated based on agency needs assessments.
- 2) Produce an overview of the costing exercise by agency type (for projections, cost analysis will include inflation).
- 3) Seek acceptance of findings during stakeholder workshop at IFSD in September 2018.

Phase 4: Final reports

- 1) Produce an initial assessment of findings:
 - a. Cost analysis (by agency type)
 - b. What does the agency organization have to look like to close the gap between the desired and current state?
 - c. What procedure can be integrated for monitoring on-going agency and governance across inputs, outputs and outcomes?
- 2) Present report to stakeholders for feedback.
- 3) Allow for minor corrections or minor revisions to report based on stakeholder feedback.
- 4) The final report will make recommendations for DISC in pursuit of reforms to support a new funding approach, that promote long term planning and program sustainability (i.e.: multi-year funding, avoiding reliance on proposal-based projects).

Timelines and deliverables

See Annex A

NOTE: Timelines are indicative and subject to the pace of data availability and acquisition commensurate with the needs and resources of the project. Based on previous experience, acquiring sufficient and reliable data is critical to establishing a strong foundation for subsequent stages of the project including the development of a forward strategy for First Nations child welfare. Data collection should be considered an ongoing exercise in continual improvement.

Data sources

This work is to build on the extensive body of previous research in this area, including (but not limited to):

- Bridging Econometrics with First Nations Child and Family Services (Joint National Policy Review of First Nations Child and Family Services);
- Wen:de: We are Coming to the Light of Day;
- Wen:de: The Journey Continues;
- Decision and Orders of the Canadian Human Rights Tribunal;
- Phase 1 of the Remoteness Quotient research;
- Auditor General of Canada Reports (2008, 2011);
- NAC-IFSD survey of First Nations child welfare agencies;
- Existing agency and community needs assessments;
- Data requested from Indigenous Services Canada;
- National Advisory Committee Interim Report (2018);
- Other publicly available data and research relevant to the project.

Future research directions

It is expected that this research project will inform a new program architecture for funding First Nations child welfare and inform the following questions:

- 1) To what degree have agencies been supported to design culturally appropriate long-term plans for the communities they serve? If agencies were supported, how were they funded and at what rate (\$)? How was the implementation of existing plans supported in an evolving community context? For those agencies that did not have support, what inputs and implementation supports would be required to produce a long-term plan and implement it?
- 2) What are the primary current cost drivers for agencies in the areas of operations, protection, and prevention?
- 3) What are the costs associated with culturally based child welfare policy and program development and evaluation?
- 4) What are the most significant spending areas in agency budgets?
- 5) Are most agencies in surplus or deficit statuses?
- 6) How should “prevention” be defined? How should agencies define their prevention services? How can agencies foster a greater community role in providing well-being and prevention services? To what degree is effective prevention related to a need for equity in other federally funded services? How can prevention services be structured to ensure effective program development and sustainable operations?
- 7) How can funding be delivered in a way that enables agencies to be responsive to the unique needs of First Nations children, youth, families and communities?
- 8) What data architecture should be in place to identify and track the needs of First Nations child welfare agencies? What data architecture can agencies use to track the needs of their communities? What supports are needed for agencies to set community based performance measures and institute regular evaluations to enhance organizational learning?
- 9) What governance arrangements would support the achievement of agreed outcomes for First Nations child well-being? Would the governance arrangements differ based on agency type/characteristics? How does each governance arrangement define accountability, reporting, and evaluation (based on key performance indicators)?
- 10) What are appropriate models to forecast future agency needs for technology, infrastructure, administration and travel costs?



- 11) What are the core administrative staffing and related requirements of small agencies?
How are these different than larger agencies or multi-site agencies?

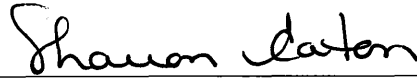
- 12) What is the minimum size of agency and related population consistent with good social work practice to ensure the adequate provision of protection and prevention services based on community needs? What supports can be provided to First Nations communities without a First Nations agency regardless of population (e.g. primary prevention resources)?

Deliverable	Description	Accountability & resources	Deadline
Phase 1			
Approved project plan	– Client approves project plan and timelines	IFSD	April 5, 2018
Ethics reviews	– Submit ethics review to the University of Ottawa Research Ethics Board and to any First Nations communities as needed	IFSD	April 15, 2018
Analysis of existing needs assessment	– Evaluate content of agency needs assessment collected by DISC – Release public letter (addressed to Caring Society, AFN, and DISC) noting relevant data from the needs assessments and any gaps, given the diversity of the cost submissions and narratives	IFSD	April 15, 2018
Indicators table and survey design	– Define needs indicators that will inform needs analysis and costing exercise – Needs indicators will serve as cost categories – Prepopulate indicators (or request where not public available) to capture contextual data including special considerations for child need, agency demographics, community demographics, etc.	IFSD in consultation with client	May 15, 2018
Workshop #1	– Convene stakeholders to seek approval and agreement of indicators table	IFSD in consultation with AFN, NAC, Caring Society	May 2018 (date TBC)
Analysis of existing assessments	– Collect and analyze existing agency and community assessments to inform needs analysis – Liaise directly with agencies to fill any data gaps – Are there needs trends in agencies based on characteristics such as mandate, region, size, etc.?	IFSD in consultation with agencies and communities (as required)	July 31, 2018
Phase 2			

Gap analysis	<ul style="list-style-type: none"> – Undertake a deep-dive analysis of current agency cost data across Canada – Define current baseline budget and cost information for agencies based on agency consultation visits 	IFSD	September 30, 2018
Define costing procedure	<ul style="list-style-type: none"> – Produce costing procedure plan and approve with client 	IFSD in consultation with client	
Cluster agencies based on typology	<ul style="list-style-type: none"> – Using NAC-IFSD survey data, cluster agencies into characteristic-based typologies – Seek client approval of agency typologies – Prepare to produce aggregate costing based on agency typology 	IFSD in consultation with client	
Define and fill data gaps prior to costing	<ul style="list-style-type: none"> – Confirm access and availability of all costing-related data 	IFSD	
Phase 3			
Costing assessment table	<ul style="list-style-type: none"> – Produce costing assessment based on agency typology – Present in table form based on needs indicators 	IFSD	October 31, 2018
Draft findings	<ul style="list-style-type: none"> – Produce draft report on high-level findings of costing – Review results with client 	IFSD in consultation with client	October 31, 2018
Workshop #2	<ul style="list-style-type: none"> – Convene stakeholders to seek approval of costing findings – Discuss paths forward for the development of a new program architecture for First Nations child welfare 	IFSD in consultation with AFN, NAC, Caring Society	November 2, 2018
Phase 4			
Final report	<ul style="list-style-type: none"> – Leverage project and related analysis to respond to research questions in “Future research directions” section of project plan – Align needs and costing assessments to way forward for improved outcomes in First Nations child welfare 	IFSD	November 15, 2018

Stakeholder feedback	<ul style="list-style-type: none"> – Review final report with client for feedback – Share final report with stakeholders for feedback – Allow for minor revisions and minor adjustments to final report 	IFSD in consultation with client and stakeholders	November 15, 2018
Project completed			

This is **Exhibit "K"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



April 19, 2018

By E-mail

(See Distribution List)

Dear Counsel:

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

The Tribunal writes to the parties to provide updates on a number of issues addressed in recent correspondence.

1. Tentative Hearing on May 9, 2018

The Parties have indicated their availabilities for a hearing on **May 9, 2018** to cross-examine Canada's affiant. The Tribunal has set aside this date for a potential hearing and requests the parties to reserve this date.

2. 2018 CHRT 4 paras. 421, 408, 409, 419 and 444 orders on the Research methodology, ethical research guidelines and Analysis of needs assessments and cost-analysis of agency needs and retaining jurisdiction.

The Panel has reviewed the parties' correspondence in addressing paragraphs **421 b, 408, 409, 419 and 444** of 2018 CHRT 4 and the related orders and the parties' proposal.

The Panel agrees with the Project Plan Analyzing First Nations Child and Family Services (FNCFS) Agency Needs included in the AGC's reply dated April 9, 2018 (**Reply**) and agreed to by Canada, the Caring Society and the AFN. The Panel also understands there was no objection to this plan expressed by anyone else in this case.

The Panel agrees with the parties' amendments' proposal and plan and has no other question or direction on this question.

The Panel will include this decision in **Schedule B** which will be released once it has made its decision on the other amendments proposed by the parties. In the meantime, the parties can consider this letter as confirmation that the amendments to paras. **421, 408, 409, 419 and 444** of 2018 CHRT 4 are amended as proposed by the parties in the **Reply** and reproduced below. The changes are underlined in the orders.

Para. 421: The Panel, pursuant to Section 53 (2) (a) of the CHRA, orders Canada to cease its discriminatory funding practice of not fully funding the small first nations agencies' costs. In order to ensure proper data collection and to be responsive to the real needs of first nations children, the Panel orders Canada to provide funding on actual costs small first nations agencies to be reimbursed retroactive to January 26, 2016 by **April 2, 2018**.

The Panel pursuant to section 53 (2) (a) and (b) of the CHRA, orders Canada, to provide by **March 5, 2018** a reliable data collection, analysis and reporting methodology, as well as ethical research guidelines respecting Indigenous peoples that include protection of Indigenous intellectual property, to be supplemented by Canada's April 9, 2018 submission, for approval by the Panel upon further submissions by the parties, to be applied to said research, guide the data collection process launched following its October 28, 2016 letter to FNCFS Agencies, and to guide the data collection process resulting from all the orders for actual costs in this ruling.

Para. 408: The Panel, pursuant to section 53 (2) (a) and (b) of the CHRA, orders Canada to analyze the needs assessments completed by First Nations agencies in consultation with the Parties, interested parties (see protocol order below), and other experts; and to do a cost-analysis of the real needs of First Nations agencies including prevention/least disruptive measures, intake and investigation, building repairs and legal fees related to child welfare taking into account travel distances, case load ratios, remoteness, the gaps and/or lack of surrounding services and all particular circumstances they may face.

Para. 409: Canada is ordered to analyze the needs assessments completed by First Nations agencies, identify gaps in data and report to the Tribunal by **May 3, 2018**, and to complete this analysis by November 15, 2018.

Para. 419: Canada is ordered to analyze the needs assessments completed by First Nations agencies, identify gaps in data and report to the Tribunal by May 3, 2018, and to complete this analysis by November 15, 2018.

Para. 444: The Panel retains jurisdiction over the above orders to ensure that they are effectively and meaningfully implemented, and to further refine or clarify its orders if necessary. The Panel will continue to retain jurisdiction over these orders until March 31, 2019 when it will revisit the need to retain jurisdiction beyond that date. [...]

3. The proposals to amend the Panel's orders in paras. 410, 411, 416, 417, 420, 421 a

While the Panel understands that the other amendments to the Panel's orders found in paras. **410, 416, 420 and 421 a**, requested by the parties, are logically connected to the proposed plan and timelines in the **Reply**, the Panel has questions on the paragraph reproduced below and found at page 5 of the **Reply**. Before the Panel considers making amendments to its other orders as suggested in the **Reply**, it would like its questions answered by the AGC by **April 27, 2018** and also receive submissions in response to the AGC's explanations from the Caring Society, the AFN, the COO, the NAN and the Commission by **May 4, 2018**. If the hearing takes place on May 9, 2018 the AGC could provide its reply, if any, orally at the hearing.

“ In the case of meeting actual costs moving forward, Canada is providing all agencies with an initial allocation as of April 1, 2018 and is committed to paying expenses where this initial budget is not sufficient to meet needs in prevention, intake and investigation, legal fees, building repairs, child service purchase amount or for small agencies. This allows agencies some time to plan and forecast their needs, for example for new staff or additional prevention activities. Should Canada hear from an agency about an urgent need that requires costs be paid more quickly than the 15-day timeframe (e.g., a building repair), we will address it”.

- A. What was the initial allocation provided to the Agencies on April 1, 2018 and how was it determined?
- B. Can you confirm the funds were transferred on April 1, 2018?
- C. Aside from what is explained in the paragraph above, what is the current process between April 1, 2018 and the extension of 8 months of the Panel’s orders and requested by the parties, for agencies that need more funding than the initial allocation?
- D. In addition to the allocations transferred on April 1, 2018 and the commitment to fund deficiencies in the allocations when they arise as provided for above, what process and funding is in place now to address the children’s prevention needs today?

If you have any questions or concerns further to the above, please do not hesitate to contact the undersigned by email at registry.office@chrt-tcdp.gc.ca.

Yours truly,



Judy Dubois
Registry Officer

DISTRIBUTION LIST

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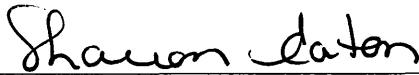
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This is **Exhibit "L"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**

From: David Taylor
Sent: Friday, March 15, 2019 10:04 AM
To: Frater, Robert
Cc: Tarlton, Jonathan; MacPhee, Patricia; Peck, Kelly; Binnie, Max; 'David Nahwegahbow'; 'Stuart Wuttke'; 'tmilne@nncfirm.ca'; 'Brian.Smith@chrc-ccdp.gc.ca'; 'Jessica.Walsh@chrc-ccdp.gc.ca'; 'Daniel Poulin'; 'Maggie Wente'; 'sdearman@oktlaw.com'; 'Kaitlin Ritchie'; 'Justin Safayeni'; 'BenK@stockwoods.ca'; 'Julian Falconer'; 'Akosua Matthews'; 'mollyc@falconers.ca'; 'Sarah Clarke'; 'barbara@mcisaaclaw.com'; 'nmchaffie@stikeman.com'; Doreen Navarro
Subject: CCCW - Letter re Long-term reform
Attachments: 2019.03.15 - LT R Frater (re FNCFS Program long-term reform).pdf

Hi Rob,

Please see attached my letter of today's date. It has now been three months since IFSD delivered its final report and it would appear that we are nowhere nearer to making progress on long-term reform than we were in December. As detailed in the letter, our view is that we cannot wait until the next CCCW meeting to start making progress. I hope we will receive a response from your client as soon as possible.

Best,

David

CONWAY

Litigation/Litige

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March 15, 2019

VIA EMAIL

Robert Frater, Q.C.

Chief General Counsel
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Mr. Frater:

**RE: CONSULTATION COMMITTEE ON CHILD WELFARE
FOLLOW-UP ON THE INSTITUTE FOR FISCAL STUDIES AND DEMOCRACY'S DECEMBER 15, 2018
REPORT**

OUR MATTER ID: 5204-006

I write with regard to the Institute for Fiscal Studies and Democracy's ("IFSD") report respecting First Nations Child and Family Services Agency ("FNCFS Agency") needs, dated December 15, 2018, and further to the emails exchanged between Dr. Blackstock and Ms. Wilkinson.

The Caring Society is very concerned about Canada's slow progress in following up on IFSD's December 15, 2018 final report concerning FNCFS Agency needs. The report was delivered three months ago today, and the parties have been left with only the vaguest sense of how Canada plans to proceed.

At the February 12, 2019 meeting of the Consultation Committee on Child Welfare ("CCCW"), Ms. Wilkinson raised a need for more discussions regarding the interplay between the IFSD report and the work underway with the Ontario Special Study and at the Nishnawbe Aski Nation Remoteness Quotient Table. However, Canada is the only party raising the need for such further

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discussions. The Caring Society, the Assembly of First Nations, the Chiefs of Ontario, and the Nishnawbe Aski Nation have all indicated that they want to see IFSD continue its important work.

Furthermore, the First Nations members of the National Advisory Committee formally endorsed IFSD's report and supported IFSD in completing the next phase of research identified in the December 15, 2018 report at its February 21, 2019 meeting. Regrettably, Canada abstained from both motions.

Long-term reform ordered by the Tribunal

Since its January 26, 2016 Order, it has been clear that the ultimate outcome of this proceeding must be a substantive and wholesale reform of the First Nations Child and Family Services Program. At paragraphs 462-463 of 2016 CHRT 2, the Panel held:

[...] Despite not being experts in the area of child welfare and knowing that funding according to its authorities is often insufficient to meet provincial/territorial legislation and standards, AANDC insists that FNCFS Agencies somehow abide by those standards and provide reasonably comparable child and family services. Instead of assessing the needs of First Nations children and families and using provincial legislation and standards as a reference to design an adequate program to address those needs, AANDC adopts an *ad hoc* approach to addressing needed changes to its program.

This is exemplified by the implementation of the EPFA. AANDC makes improvements to its program and funding methodology, however, in doing so, also incorporates a cost-model it knows is flawed. AANDC tries to obtain comparable variables from the provinces to fit them into this cost-model, however, they are unable to obtain all the relevant variables given the provinces often do not calculate things in the same fashion or use a funding formula. By analogy, it is like adding support pillars to a house that has a weak foundation in an attempt to straighten and support the house. At some point, the foundation needs to be fixed or, ultimately, the house will fall down. Similarly, a REFORM of the FNCFS Program is needed in order to build a solid foundation for the program to address the real needs of First Nations children and families living on reserve [emphasis in original].

In its February 1, 2018 ruling, the Panel made it clear that the data and information needing to be gathered to support this long-term reform had to be guided by a plan. At paragraph 155 of 2018 CHRT, it held:

Canada says it needs data and information to understand specific needs and therefore it needs to discuss the same with all its partners. This is all legitimate. However, now a clear plan needs to be established to ensure this will be done and not perpetuate the negative cycle: I cannot fully fund because I do not have the data.

The clear plan established followed on the Panel's order at para 265 of 2018 CHRT 4 to provide a reliable data collection, analysis and reporting methodology.

The Caring Society's goal in seeking such an order during the immediate relief non-compliance motions heard two years ago, in March 2017, was to support long-term reform. Canada acknowledged as much in Mr. Tarlton's April 9, 2018 letter to the Tribunal setting out Canada's approach to implementing the agency needs assessment work ordered. Mr. Tarlton's letter stated that "[t]his research will inform the development of an alternative funding system."

Nearly one year later, Canada's path forward with respect to developing an alternative funding system remains entirely unclear.

Discussions between our clients regarding the continuation of IFSD's work on long-term reform

On February 6, 2019, Dr. Blackstock wrote to Ms. Wilkinson and asked for: 1) an update regarding Indigenous Services Canada's ("ISC") response to IFSD's report (whether Canada accepted the findings, and if not why, and if recommendations were only partially accepted, which have been rejected and why); and 2) an update on the plan for IFSD to continue with the work identified in the December 15, 2018 report.

Dr. Blackstock raised this issue again at the CCCW at its February 12, 2019 meeting. Your client was not prepared to respond at that time.

Ms. Wilkinson wrote to Dr. Blackstock on March 1, 2019, indicating that ISC agrees that more work is needed to reflect the impacts of Budget 2018 funding and the payment at actuals for FNCFS Agencies pursuant to the Tribunal's February 1, 2018 order, and to ensure a comprehensive approach to developing a new funding methodology. Ms. Wilkinson expressed an interest in receiving a proposal from IFSD, an interest in soliciting proposals from other "service providers" for "transparency and accountability" reasons, and expressed a desire for ISC to be a "full partner" in research going forward. With respect to IFSD's recommendations, Ms. Wilkinson stated that more work was required to understand how IFSD's funding estimates "align with current and future funding", without specifying the nature of that work.

The same day, Dr. Blackstock responded, asking what Ms. Wilkinson was contemplating in terms of "full partnership" by ISC. On March 5, 2019, Ms. Wilkinson stated that ISC had a desire to play an active role in framing the research, participating in the direction and scope of questions, having access to raw data, and having its input taken into consideration with other partners. On March 6, 2019, Dr. Blackstock expressed concerns with the compliance of ISC's desired role under the OCAP Principles, and advised that it was likely that FNCFS Agencies would be unwilling to participate in further study if Canada was too involved.

Dr. Blackstock concluded her March 6, 2019 email by stating that it was important that the parties meet promptly to discuss this matter so that the critical work of long-term reform would not be delayed.

Dr. Blackstock did not receive a response to her March 6, 2019 email and there has been no meeting to discuss follow-up on IFSD's December 15, 2018 report.

Next steps on long-term reform

The Caring Society reiterates its numerous requests that your client identify in detail its response to the IFSD December 15, 2018 report. The response should include which findings and recommendations in the IFSD's report Canada agrees with and commits to implement. Where Canada does not agree, in whole or in part, it needs to identify the specific element of disagreement, its rationale for disagreement and an alternative proposal based in evidence (along with copies of any supporting studies). In Ms. Wilkinson's correspondence with Dr. Blackstock, she stated that ISC agrees more work is needed to reflect the impacts of Budget 2018 funding, the payment of actuals to FNCFS Agencies per the Tribunal's February 1, 2018 order, and to "ensure a comprehensive approach" to developing the new funding methodology. It would be very helpful if your client specifically details the work it requires to "ensure a comprehensive approach" prior to a meeting with my client, the Assembly of First Nations, and IFSD.

The Caring Society understands that IFSD provided a proposal to Ms. Wilkinson weeks ago for the next phase of its work. In the meantime, Ms. Wilkinson has raised concerns regarding "transparency and accountability" in terms of IFSD being asked to complete the next stage of the work ordered by the Tribunal. The Caring Society does not share these concerns. IFSD is a reputable research organization housed within a respected academic institution: the University of Ottawa. There is no question that IFSD is qualified to do this work; indeed, the quality of IFSD's December 15, 2018 report and Dr. Gaspard's presentations to the CCCW speak for themselves. Putting the second phase of this work through a bidding process will only serve to delay the very important work of long-term reform. The National Advisory Committee has endorsed IFSD as the contractor for the remaining research.

Moreover, we are seeking written assurances from Canada that any funding regimes contemplated, inferred or arising from Bill C-92 (or the Act when proclaimed) by Canada will comply with the Tribunal's orders for culturally based, needs based and substantive equality for both First Nations child and family services. We seek similar assurances regarding Canada's obligations to fund Jordan's Principle. We view the Tribunal's orders as minimum standards. These standards are applicable regardless of the funding approach Canada takes.

Once the Caring Society and the other Parties to the case are furnished with the information requested above, a meeting should be convened as a matter of urgency to determine if there is a basis for agreement to proceed by consent on long-term reform.

In its February 27, 2019 direction, the Panel extended its jurisdiction "past March 31, 2019 until it has ruled on the matters before it." Long-term reform is one of the matters before the Panel, such that Canada will not be able to avoid dealing with this matter. If our clients are unable to agree to a way forward on long-term reform by March 29, 2019, my instructions are to bring a motion before the Tribunal so that the long-term relief process can continue.

Yours truly,



David P. Taylor

Copy:

Jonathan Tarlton, Patricia MacPhee, Kelly Peck and Max Binnie
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow, Stuart Wuttke and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith, Jessica Walsh and Daniel Poulin
Co-counsel for the Canadian Human Rights Commission

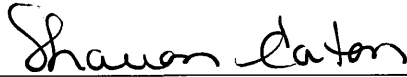
Maggie Wente, Sinéad Dearman and Kaitlin Ritchie
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni
Co-counsel for the interested party Amnesty International

Julian Falconer, Akosua Matthews and Molly Churchill
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Barbara McIsaac, Q.C. and Nicholas McHaffie
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

This is **Exhibit "M"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**

From: David Taylor
Sent: Wednesday, March 20, 2019 2:53 PM
To: Frater, Robert
Cc: Tarlton, Jonathan; MacPhee, Patricia; Peck, Kelly; Binnie, Max; 'David Nahwegahbow'; 'Stuart Wuttke'; 'tmilne@nncfirm.ca'; 'Brian.Smith@chrc-ccdp.gc.ca'; 'Jessica.Walsh@chrc-ccdp.gc.ca'; 'Daniel Poulin'; 'Maggie Wente'; 'sdearman@oktlaw.com'; 'Kaitlin Ritchie'; 'Justin Safayeni'; 'BenK@stockwoods.ca'; 'Julian Falconer'; 'Akosua Matthews'; 'mollyc@falconers.ca'; 'Sarah Clarke'; 'barbara@mcisaaclaw.com'; 'nmchaffie@stikeman.com'; Doreen Navarro
Subject: RE: CCCW - Letter re Long-term reform

Hi Rob,

Yes I have seen Ms. Wilkinson's email, but no it is not satisfactory. Please let me know if you don't have access to the email and I will forward to you, so you and your team can compare it against my letter.

My client has been asking for a detailed response from ISC regarding the December 15, 2018 report, including which findings and recommendations Canada agrees with and will implement, and specific elements with which it disagrees, the rationale for the disagreement, and the alternative proposed. Beyond saying that ISC "appreciates the report's insights", there is not much of a response beyond identifying other areas that ISC wants considered (impact of Budget 2018 funding, impact of payment of actuals per the CHRT orders, comparison with other systems, and proposing a new formula).

With respect to next steps, Ms. Wilkinson notes her concern that the IFSD proposal is for a further year of work, appears to note that ISC does not have funds to pay for further work from IFSD (which is very surprising to us given the opportunity to seek such funds in yesterday's budget, which appears to include no new funds for the FNCFS Program), and expresses a desire to include Indigenous researchers (without proposing any ideas of who this might be). Ms. Wilkinson's email does not indicate why this is being raised now – the NAC and CCCW members who are First Nations have indicated they are fully satisfied with the IFSD, and as is evident from the Phase 1 report, First Nations were engaged in the research design and implementation at all stages (workshops, progress reports, validation, etc).

The upshot of Ms. Wilkinson's email is that IFSD's work should be discussed more at the April 2 CCCW meeting. With respect, we have already had fairly one-sided "further discussions" regarding the IFSD report at two CCCW meetings. As noted in my letter, we are looking for movement from your client before March 29, not for "further discussion" on April 2. Our experience over the last year has been that "further discussion" in the absence of a proposal or reaction from your client does not lead to progress. This cannot carry over again until the May CCCW meeting.

My client and the AFN have proposed a way forward: continue with Phase 2 of the IFSD's work as set out in the proposal provided on March 6 (two weeks ago now). Ms. Wilkinson's response suggests that this is not satisfactory to Canada, without proposing an alternative. There is no reason that an alternative can't be proposed before April 2.

Look forward to hearing your thoughts on next steps.

Best,

David

From: Frater, Robert <Robert.Frater@justice.gc.ca>
Sent: Wednesday, March 20, 2019 8:58 AM
To: David Taylor <DTaylor@conway.pro>
Cc: Tarlton, Jonathan <Jonathan.Tarlton@justice.gc.ca>; MacPhee, Patricia <Patricia.MacPhee@justice.gc.ca>; Peck,

Kelly <Kelly.Peck@justice.gc.ca>; Binnie, Max <Max.Binnie@justice.gc.ca>; 'David Nahwegahbow' <dndaystar@nncfirm.ca>; 'Stuart Wuttke' <swuttke@afn.ca>; 'tmilne@nncfirm.ca' <tmilne@nncfirm.ca>; 'Brian.Smith@chrc-ccdp.gc.ca' <Brian.Smith@chrc-ccdp.gc.ca>; 'Jessica.Walsh@chrc-ccdp.gc.ca' <Jessica.Walsh@chrc-ccdp.gc.ca>; 'Daniel Poulin' <Daniel.Poulin@chrc-ccdp.gc.ca>; 'Maggie Wente' <MWente@oktlaw.com>; 'sdearman@oktlaw.com' <sdearman@oktlaw.com>; 'Kaitlin Ritchie' <KRitchie@oktlaw.com>; 'Justin Safayeni' <justins@stockwoods.ca>; 'BenK@stockwoods.ca' <BenK@stockwoods.ca>; 'Julian Falconer' <julianf@falconers.ca>; 'Akosua Matthews' <akosuam@falconers.ca>; 'mollyc@falconers.ca' <mollyc@falconers.ca>; 'Sarah Clarke' <sarah@childandfamilylaw.ca>; 'barbara@mcisaaclaw.com' <barbara@mcisaaclaw.com>; 'nmchaffie@stikeman.com' <nmchaffie@stikeman.com>; Doreen Navarro <DNavarro@conway.pro>

Subject: RE: CCCW - Letter re Long-term reform

David, I understand that the issues with respect to the IFSD work were addressed in in correspondence from Ms. Wilkinson to your client yesterday. Please let us know if you are looking for something further.

From: David Taylor [<mailto:DTaylor@conway.pro>]

Sent: March 15, 2019 10:04 AM

To: Frater, Robert <Robert.Frater@justice.gc.ca>

Cc: Tarlton, Jonathan <Jonathan.Tarlton@justice.gc.ca>; MacPhee, Patricia <Patricia.MacPhee@justice.gc.ca>; Peck, Kelly <Kelly.Peck@justice.gc.ca>; Binnie, Max <Max.Binnie@justice.gc.ca>; 'David Nahwegahbow' <dndaystar@nncfirm.ca>; 'Stuart Wuttke' <swuttke@afn.ca>; 'tmilne@nncfirm.ca' <tmilne@nncfirm.ca>; 'Brian.Smith@chrc-ccdp.gc.ca' <Brian.Smith@chrc-ccdp.gc.ca>; 'Jessica.Walsh@chrc-ccdp.gc.ca' <Jessica.Walsh@chrc-ccdp.gc.ca>; 'Daniel Poulin' <Daniel.Poulin@chrc-ccdp.gc.ca>; 'Maggie Wente' <MWente@oktlaw.com>; 'sdearman@oktlaw.com' <sdearman@oktlaw.com>; 'Kaitlin Ritchie' <KRitchie@oktlaw.com>; 'Justin Safayeni' <justins@stockwoods.ca>; 'BenK@stockwoods.ca' <BenK@stockwoods.ca>; 'Julian Falconer' <julianf@falconers.ca>; 'Akosua Matthews' <akosuam@falconers.ca>; 'mollyc@falconers.ca' <mollyc@falconers.ca>; 'Sarah Clarke' <sarah@childandfamilylaw.ca>; 'barbara@mcisaaclaw.com' <barbara@mcisaaclaw.com>; 'nmchaffie@stikeman.com' <nmchaffie@stikeman.com>; Doreen Navarro <DNavarro@conway.pro>

Subject: CCCW - Letter re Long-term reform

Hi Rob,

Please see attached my letter of today's date. It has now been three months since IFSD delivered its final report and it would appear that we are nowhere nearer to making progress on long-term reform than we were in December. As detailed in the letter, our view is that we cannot wait until the next CCCW meeting to start making progress. I hope we will receive a response from your client as soon as possible.

Best,

David

David Taylor

Conway Baxter Wilson LLP/s.r.l.

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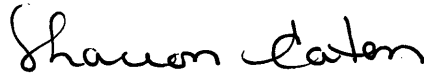
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This is **Exhibit "N"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**

From: Akosua Matthews <akosuam@falconers.ca>
Sent: Friday, March 29, 2019 2:50 PM
To: Cindy Blackstock; Martin Orr; Alvin Fiddler; Bobby Narcisse; Brian Smith; David Taylor; Evelisa Genova; GC Joel Abram; Jessica Walsh; Joanne Wilkinson; Jon Thompson; Julie McGregor; Lisa Nafziger; Maggie Wentz; Molly Churchill; nhansen@nan.on.ca; Odette Johnston; Robert Frater; Ruby Miller; Sarah Clarke; Sinead Dearman; Stephanie Wellman; Stuart Wuttke
Cc: Kara Kennedy; Julian Falconer; Molly Churchill
Subject: RE: Follow up on IFSD recommended research

Good Afternoon,

In catching up on email exchanges from earlier this week, I wish to clarify what NAN's position has been to date regarding the IFSD work. Specifically, NAN has not provided "resounding endorsement" of the IFSD report or work. Rather, NAN (along with others) agreed that the IFSD's final report should be filed with the Tribunal. Counsel for NAN reminded the consultation committee of the ongoing RQ work. The same issue was raised regarding the Ontario Special Study by Counsel for COO. Everyone at the Consultation Committee agreed that work on the Ontario Special Study, the Remoteness Quotient work, and IFSD's work could proceed in tandem and that no study had to get in the way of the other.

To date, NAN has not had an opportunity to review the new proposal for further work by IFSD that was just recently circulated, and therefore has not expressed any opinion on it.

Regards,

Akosua



AKOSUA MAY MATTHEWS, B.A (Hons), MPhil (Oxon), J.D

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From: Cindy Blackstock <cblackst@fncaringsociety.com>

Sent: March 26, 2019 4:10 PM

To: Martin Orr <MOrr@afn.ca>; Akosua Matthews <akosuam@falconers.ca>; Alvin Fiddler <afiddler@nan.on.ca>; Bobby Narcisse <bnarcisse@nan.on.ca>; Brian Smith <brian.smith@chrc-ccdp.gc.ca>; David Taylor <dtaylor@conway.pro>; Evelisa Genova <evelisa.genova@coo.org>; GC Joel Abram <jabram@aiai.on.ca>; Jessica Walsh <Jessica.walsh@chrc-ccdp.gc.ca>; Joanne Wilkinson <joanne.wilkinson@canada.ca>; Jon Thompson <JThompson@afn.ca>; Julie McGregor <JMcGregor@afn.ca>; Lisa Nafziger <lisa.nafziger@canada.ca>; Maggie Wenthe <mwenthe@oktlaw.com>; Molly Churchill <mollyc@falconers.ca>; nhansen@nan.on.ca; Odette Johnston <odette.johnston@canada.ca>; Robert Frater <robert.frater@justice.gc.ca>; Ruby Miller <ruby.miller@coo.org>; Sarah Clarke <sarah@childandfamilylaw.ca>; Sinead Dearman <SDearman@oktlaw.com>; Stephanie Wellman <SWellman@afn.ca>; Stuart Wuttke <stuartw@afn.ca>

Cc: Kara Kennedy <KKennedy@afn.ca>

Subject: Re: Follow up on IFSD recommended research

Hi Martin

Can you also circulate the IFSD proposal for the reflection of the group?

Thank you

Cindy Blackstock, PhD

Executive Director, First Nations Child and Family Caring Society of Canada

Professor, School of Social Work, McGill University

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From: Martin Orr <MOrr@afn.ca>

Sent: March 26, 2019 4:06 PM

To: Akosua Matthews; Alvin Fiddler; Bobby Narcisse; Brian Smith; David Taylor; Cindy Blackstock; Evelisa Genova; GC Joel Abram; Jessica Walsh; Joanne Wilkinson; Jon Thompson; Julie McGregor; Lisa Nafziger; Maggie Wenthe; Martin Orr; Molly Churchill; nhansen@nan.on.ca; Odette Johnston; Robert Frater; Ruby Miller; Sarah Clarke; Sinead Dearman; Stephanie Wellman; Stuart Wuttke

Cc: Kara Kennedy

Subject: FW: Follow up on IFSD recommended research

For your review, please see email exchange below regarding IFSD report and recommended further research. Feel free to send any comments and for further discussion at our upcoming meeting.

Thanks,
Martin

From: Wilkinson, Joanne (AADNC/AANDC) [<mailto:joanne.wilkinson@canada.ca>]

Sent: Tuesday, March 26, 2019 12:48 PM

To: 'Cindy Blackstock'

Cc: Jon Thompson; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC); Martin Orr

Subject: RE: Follow up on IFSD recommended research

Hi there,

While I appreciate your frustration, I need to emphasize that we only received the proposal for the new IFSD work on March 6 and to my knowledge it has not been circulated to the full CCCW for review, nor am I aware that the Chair of NAC has reviewed it. I am certainly happy for our full exchange of correspondence to be shared more widely and to hear feedback from all of the Parties in terms of any concerns that they may have and/or reaction to the issues like the impact of new funding, comparisons to other systems and linkages to a new funding methodology that we have flagged.

I also need to clarify that funding for this type of work needs to be done through grants and contributions designed for external recipients, not internal operations and maintenance. We have been working to try to identify a source of funds, but given the reallocation policy, it will need to come from within existing program resources, which is why I have suggested that we would benefit from a CCCW conversation to ensure no surprises in terms of impact.

Thanks very much,
Joanne

From: Cindy Blackstock [<mailto:cblackst@fncaringsociety.com>]
Sent: Tuesday, March 26, 2019 10:47 AM
To: Wilkinson, Joanne (AADNC/AANDC)
Cc: 'Jonathan Thompson'; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC); Martin Orr
Subject: Re: Follow up on IFSD recommended research

Hello Joanne

With respect, we have already canvassed the IFSD report and suggestions for further work at CCCW and all the First Nations parties agreed that IFSD should proceed as they outline in their report. NAC has similarly reviewed and approved both the IFSD report and the second phase of research. With your consent and by copy of this email, I will ask Martin to circulate your email below to all CCCW members so they are up to speed.

I have heard no concerns on the First Nations side about moving forward with IFSD to complete the remaining work. On the contrary, there have been concerns expressed at the CCCW and by the Chair of NAC about Canada's delays in moving forward with the needed research.

As far as budget is concerned, this is a small amount of money that could easily be pulled from the amounts Canada afforded itself from Budgets 2016/18 to cover INAC related costs.

It has been over three months since Canada received the IFSD report and had the Department acted quickly IFSD could have been well into the research phase to inform long term reform per the CHRT orders. Unfortunately, Canada's delays have the effect of fettering long term reform to the detriment of First Nations families, youth and children.

If Canada has specific questions to pose to CCCW, that should be done in writing before the meeting taking into full account the resounding endorsement First Nations members of the CCCW has already given to proceed with the the IFSD work.

Please let Martin know if you are comfortable with him sharing the email below and my response.

Thank you

Cindy Blackstock, PhD
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From: Wilkinson, Joanne (AADNC/AANDC) <joanne.wilkinson@canada.ca>
Sent: March 26, 2019 10:34 AM
To: Cindy Blackstock
Cc: 'Jonathan Thompson'; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC)
Subject: RE: Follow up on IFSD recommended research

I wanted to provide a follow-up email based on correspondence received by Rob Frater from David Taylor on March 20.

As it relates to the existing IFSD report, we have certainly shared the report with senior management within the department (and the Deputy Minister has accepted their request to brief him directly this week) and with central agencies; as I have mentioned at Consultation Committee, we view it as a helpful piece of research to be considered in moving toward a new funding methodology but not a report that requires a detailed Government response. We do need to move forward on addressing the issues that we have consistently mentioned, including the impacts of Budget 2018 funding and the payments of actuals, comparisons with other systems, and how we move toward a new funding methodology.

With respect to the proposal received on March 6, we have not had a Consultation Committee meeting since that time, so my expectation has been that all members of the Committee would want to discuss it to ensure that their needs are met and they agree with how the proposal is presented before any decision is made on proceeding. We have also been consistent in raising the issue that we need to identify a source of funds for such work; given that the Program has no research budget and the Committee's previous engagement around recommendations for funding decisions, that is a question that I feel is important for the Committee to discuss. I note as well that Mr. Taylor refers to "Phase 1" and "Phase 2" of the report, which is new language and not what was expected when funds were originally identified for IFSD work.

With regard to the point that I made around including Indigenous researchers, this is in follow-up to the question that I previously posed to IFSD about how many students hired in the existing work project were Indigenous, and the answer was none. I am not seeking to influence the make-up of the research team but rather want to ensure that significant dollars spent on research can also be leveraged to bolster

employment opportunities for Indigenous students and increase institutions' awareness of and capacity to enhance opportunities for Indigenous researchers, particularly in this case where the desire is for a second sole-source contract.

As we move forward, I note Mr. Taylor's request that this issue be discussed prior to the end of March; however, my understanding has always been that the Consultation Committee is the agreed-upon forum for this type of review to ensure that all parties' needs and concerns can be addressed. If IFSD can provide some assurances on the points raised above and in previous correspondence before that time, then that would certainly be helpful from my perspective toward being able to land on a path forward as quickly as possible.

Many thanks.

From: Wilkinson, Joanne (AADNC/AANDC)
Sent: Tuesday, March 19, 2019 6:21 PM
To: 'Cindy Blackstock'
Cc: Jonathan Thompson; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC)
Subject: RE: Follow up on IFSD recommended research

Hello again,

I completely agree that research and a new funding methodology represent critical issues in moving forward on comprehensive reform.

With regard to the work that IFSD conducted during the current fiscal year, as mentioned on March 1, ISC certainly appreciates the report's insights into agency needs and gaps and agrees more work is needed to address the fundamental questions underlying a move toward a new funding methodology. The current body of work does not take into account such elements as the impacts of the significant new Budget 2018 funding or the payment of actuals; provide a comparison with other systems; or propose a new formula. As such, it is premature to anticipate any new funding uniquely to address the report's recommendations, and they would need to feed into the Government's usual policy development and financial management processes.

In terms of future work, ISC is now in receipt of a proposal from ISFD, via the Assembly of First Nations on March 6, for work sought over the 2019-20 fiscal year. Like you, I am firmly committed to integrity and objectivity, and it is certainly not the Department's intention to influence respondents in their provision of information to any researchers; however, it is important that we are able to ensure that the research's parameters and scope can assist in meeting our shared objectives like correlating research from multiple sources; building towards a comprehensive data and reporting strategy; and filling in the gaps needed to build the required business case for a new funding methodology as well as its eventual implementation.

Given that the IFSD proposal sets out a full extra year of work, I am concerned that this would push out even further the potential for landing on a new funding methodology that meets the needs of all recipients of funding related to First Nation child and family services. As mentioned previously, I respect our partners' preference that IFSD perform this work, but we would need to identify a source of funds from within existing resources for 2019-20 and I continue to believe that IFSD should recruit some Indigenous researchers as part of their team. I remain happy to discuss this matter further at the Consultation Committee meeting of April 2 as well as the next NAC meeting.

Many thanks,
Joanne

From: Cindy Blackstock [<mailto:cblackst@fncaringsociety.com>]
Sent: Wednesday, March 06, 2019 8:39 AM
To: Wilkinson, Joanne (AADNC/AANDC)
Cc: Jonathan Thompson; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC)
Subject: Re: Follow up on IFSD recommended research

Hi Joanne

I think a conversation about this is important.

On its face, the proposal below is not consistent with OCAP (https://fnigc.ca/sites/default/files/docs/ocap_path_to_fn_information_governance_en_final.pdf) Tri-Council research policies* aimed at ensuring objectivity and integrity in research practices (<http://www.pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/chapter9-chapitre9/#toc09-1>)

*Although the link takes you to Chapter 9 Respecting research with First Nations, Metis and Inuit the requirements of that chapter are nested within the broader Tri-Council policy available at that same link.

Based on my experience with Wen:de and the other research projects I have been, or am currently involved with, it is unlikely First Nations and First Nations agencies would participate if INAC exercised influence over research questions and had access to the raw data.

For greater clarity, the Caring Society has never asked for input over on questions or access to raw data nor do we intend to make such a request for the second phase of research.

We have seen via the IFSD process how First Nations and First Nations agencies will engage if the process is compliant with OCAP and Tri-Council Research Ethical requirements and subject to review by a credible and independent university ethics board.

Adhesion to these ethical guidelines via the IFSD work has already yielded high quality research that can inform an evidence-informed path forward for CHRT compliant funding approaches to First Nations child and family services. First Nations delegates at NAC and CCCW have expressed their unanimous support for the IFSD work completed thus far and their engagement in the second phase of research. This work is arguably even more important with the advent of Bill C-92 that has no concrete funding provisions.

There may be other ways to achieve what INAC needs by having greater clarity on what purposes it aims to achieve by the involvement enumerated below. A discussion between the parties at the earliest opportunity could help resolve these matters so that the critical work of long term reform is not delayed.

Thank you

Cindy

Cindy Blackstock, PhD
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Professor, School of Social Work, McGill University
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From: Wilkinson, Joanne (AADNC/AANDC) <joanne.wilkinson@canada.ca>
Sent: March 5, 2019 2:42 PM
To: Cindy Blackstock
Cc: Jonathan Thompson; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC)
Subject: Re: Follow up on IFSD recommended research

Hi there.

In terms of being a full partner, I'm referring to our desire to play an active role in such areas as discussions framing research; participating in the development of the direction and scope of questions; having access to raw data; and generally having our input taken into consideration along with other partners as we move toward developing a new funding methodology. Happy to discuss this further.

Cheers,
Joanne

From: Cindy Blackstock
Sent: Friday, March 1, 2019 5:04 PM
To: Wilkinson, Joanne (AADNC/AANDC)
Cc: Jonathan Thompson; Johnston, Odette (AADNC/AANDC); Gideon, Valerie (SAC/ISC)
Subject: Re: Follow up on IFSD recommended research

Thanks Joanne

This is helpful. Can you let me know what you mean by ISC being a “full partner” in the research going forward? What specific role do you want the department to take?

Thanks and have a good evening

Sent from my iPhone

On Mar 1, 2019, at 17:59, Wilkinson, Joanne (AADNC/AANDC) <joanne.wilkinson@canada.ca> wrote:

With apologies for the delay, I am following up on recent discussions regarding the IFSD report; I've not copied all members of the Committee but since I understand this was discussed at the last meeting, I am happy to share with everyone if you are OK with sharing your original email.

ISC appreciates the comprehensive work undertaken by IFSD with First Nations child and family services agencies across the country. While the report provides valuable information on agencies' needs and key gaps, we agree that more work is needed to reflect the impacts of Budget 2018 investments and the payment of actuals for First Nation agencies, and to ensure a comprehensive approach to developing a new funding methodology.

As mentioned in our meetings, the Department would need to receive a proposal for any further work in this area and while we would recommend, for transparency and accountability reasons, that proposals be solicited for a variety of possible service providers, I appreciate the view of partners that you have a preference for IFSD to perform further work in this area. We look forward to receiving a proposal and working with you to identify a potential source of funds for such work.

In addition, I would note that ISC will need to be a full partner in any research going forward to ensure that we could work together toward the development of options for a new funding methodology and an effective transition into any new funding system. I note that IFSD will be presenting their findings to our Deputy Minister shortly.

With respect to the recommendations made by IFSD, it is clear that more work is required on the development of a new funding methodology and to better understand how the funding estimates made in IFSD's report align with current and future funding. In this context, it is premature to anticipate any new funding to address the recommendations themselves, and they would need to feed into the usual policy development and financial managements processes. Our work ahead needs to be rooted in the development of a holistic new funding model and related program authorities that can be presented for the Government's consideration.

I look forward to discussing this further with you at the next Consultation Committee meeting.

Thank you,
Joanne

From: Cindy Blackstock [<mailto:cblackst@fncaringsociety.com>]

Sent: Wednesday, February 06, 2019 12:58 PM

To: Wilkinson, Joanne (AADNC/AANDC)

Cc: Jonathan Thompson

Subject: Follow up on IFSD recommended research

Good afternoon Joanne

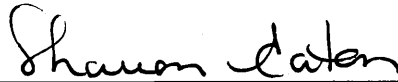
As you can imagine we are keen to continue building on the IFSD work to develop a funding approach for First Nations CFS. At the last CCCW you said you were still considering ISC's response to the report which was provided to all the parties in December of 2018. Speaking for the Caring Society, we are keen to see IFSD get the contract required to build on the solid foundation provided and develop the funding approach in consultation with the Parties and NAC.

Can you please update me on: 1) ISC's response to the IFSD report (do you accept the findings, if only partially which recommendations does ISC adopt and which have been rejected and why); 2) status of consideration/process for IFSD to continue with work identified in the report.

Thank you

Cindy

This is **Exhibit "O"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**

Enabling First Nations Children to Thrive Project plan for further research

Context

The Assembly of First Nations (AFN) and the Caring Society requested that the Institute of Fiscal Studies and Democracy (IFSD) at the University of Ottawa produce a response to Canadian Human Rights Tribunal (CHRT) (2018) orders 408, 418 and 421, related to the discriminatory funding approach applied by Canada for First Nations child and family services (FNCFS) agencies.

IFSD's 2018 final report made eight recommendations for funding and structural changes to the FNCFS program, as well as three recommendations for further research. The National Advisory Committee (NAC) accepted the report in full in February 2019 (awaiting confirmation by ISC). The report was previously submitted as evidence to the CHRT by the Caring Society in January 2019.

In brief, the report highlights funding shortfalls in prevention, capital and IT, as well as contextual and funding structure challenges that must be addressed to change outcomes for children, their families and their communities.

Purpose

Following the acceptance of IFSD's report, *Enabling First Nations Children to Thrive* by NAC, this follow-on study aims to develop a bottom-up community needs-based **implementation plan**.

The plan is to include:

- 1) A full allocation and expenditure analysis for the FNCFS program.
- 2) An assessment of the impact of CHRT-mandated spending on FNCFS agency results.
- 3) A performance framework.
- 4) Funding model options.
- 5) A transition plan to move from the current state to IFSD's recommended outcome-based funding operating model (based on NAC's input).

STAGE 2 (Supplemental additive study, based on requests from NAC)

- 1) *An assessment of need (protection and prevention) for communities not served by a First Nations child and family services (FNCFS) agency.*

At the request of AFN and NAC, IFSD has prepared a high-level project plan to address the research considerations raised in the report. Our understanding of the request is to identify options and plans for a change in structure and resources to transition agencies to a future-focused approach for First Nations children, enabling them to thrive.

This work will include needs assessments of communities served by a delegated FNCFS agency, as well as those that are not served by an agency. It is our understanding that NAC wishes to

consider the ability of First Nations off-reserve to access child and family services from a FNCFS agency.

With input from experts and practitioners, this project will work to define a performance framework, related funding model options and a transition plan, while accounting for communities not served by agencies and the lessons from recent one-time investments in FNCFS.

Guiding questions include:

- 1) What is the spending breakdown of all FNCFS-related funding?
- 2) How have additional monies (from CHRT mandates) been spent? What are the impacts of the additional monies on children? On the capacity of agencies to provide services?
- 3) What is the performance framework and related indicators that should underpin a FNCFS system that enables children to thrive?
- 4) What are the funding models that would support an enhanced performance framework?
- 5) How can agencies (and communities) transition to a future state in full consideration of data, human, capital and governance requirements?

STAGE 2 (Supplemental additive study, based on requests from NAC)

- 1) *How can communities without a FNCFS transition to an improved future state? What would be the range of possible fiscal costs to achieve the change?*

Approach

This research will be informed by OCAP® principles. As an affiliate of the University of Ottawa, IFSD is guided by ethical research guidelines respecting Indigenous Peoples and complies with the Tri-Council Policy Statement on the Ethical Conduct for Research Involving Humans in all its work.

It is anticipated that a mix of primary data (new data, as well as the findings from the report *Enabling Children to Thrive*), and secondary data (e.g. peer-reviewed research, data from Statistics Canada etc.) will be used in this study.

Should IFSD undertake this work, its approach and schedule of deliverables should be endorsed and supported by NAC. NAC's outreach and advocacy efforts were instrumental in the success of the 2018 report.

Interim deliverables will be defined in consultation with the contract holder. Updates related to those deliverables will be presented to NAC and the contract holder for their consideration and feedback.

IFSD will continue its agency- focused approach from its 2018 work. Site-visits will be crucial for understanding operational nuances, contextual specificities and for building representative cases. Workshops will be important in convening experts and for consensus-building among stakeholders.

IFSD will leverage the www.ifsd.ca/fncfs project page to post monthly updates on the project’s progress, as well as interim findings. As with the previous report, IFSD will release its updates via email to interested stakeholders.

Methodology

Part 1: Funding breakdown

Defining the existing baseline of FNCFS program expenditures and allocations.

What is the spending breakdown of all FNCFS-related funding?

- 1) Obtain full expenditure and allocation profile from ISC.
 - a. Identify spending categories and lowest-level program details available.
- 2) Define performance information.
- 3) Assess program results against spending information.

What are the results of CHRT-mandated investments in FNCFS?

- 1) Obtain allocations of recent CHRT-mandated investments (e.g. allocation to capital, prevention services, etc.), presumably from ISC.
- 2) Identify the agencies and communities that received the funding. From this group, identify agencies willing to discuss the results/outcomes of the supplementary investments.
- 3) Using the case studies as a baseline, assess the impacts of the CHRT-mandated investments to identify areas of interest for future funding considerations.

Deliverables: Spending overview and performance assessment of the existing FNCFS program; impact assessment of CHRT-mandated investments with a focus on instructive results from recent expenditures.

Part 2: Performance framework

Defining a measurable future state from which to build a funding formula for thriving children.

What is the performance framework and related indicators that should underpin a FNCFS system that enables children to thrive?

- 1) Leveraging findings from the 2018 report, cluster agencies by the characteristics of the communities they serve (e.g. poverty, economic trends, education, etc.), using the profiles compiled by IFSD using Statistics Canada data. Include communities without agencies in regional-level analysis.
 - a. Define need (e.g. protection and prevention challenges) as well as gaps in context (e.g. poverty, lack of housing, limited broadband etc.).
 - b. Are there typologies of agencies that can be defined for performance and funding purposes (i.e. other than provincial boundaries)?
- 2) The performance framework to be developed with First Nations will meet all requirements noted in the Treasury Board Secretariat [guide to evaluation and performance](#), complete with program profiles, and modelling and measurement strategies. Building on the work from the 2018 expert roundtable, IFSD will work to build consensus among First Nations on the indicators that should be measured to assess outcomes for First Nations children.
 - a. Consider how the relevant metrics and data will be collected on-reserve and off-reserve.
 - b. Establish a long-term tracking and reporting approach to assess results over time (similar to the Mid-West study).
- 3) Identify a number of cases that reflect different starting points/contexts with a variety of characteristics against which future state and funding model implications can be assessed and benchmarked (these cases will also be used to test funding models).
 - a. Report findings on needs (e.g. case complexity, program challenges, etc.) and cost-drivers, e.g. road accessibility of communities, etc. should be applied in the case study selection to ensure a representative sample.
 - b. Communities that are not served by a FNCFS agency will be included in the sample.
 - c. The clustering of agencies may be applied in approaches to transition, as they have similar points of departure.

Deliverables: performance framework with relevant indicators; plan for data collection and analysis; community categories and case studies; workshop for consensus building on performance framework and indicators with experts and representative group of agencies.

Part 3: Funding models

Identifying approaches to funding that support improved outcomes for children.

What are the funding models that would support an enhanced performance framework?

- 1) Review existing practices and benchmarks for social policy funding formulas. Identify jurisdictions, e.g. United States, state of Kentucky, Victoria State, Australia, who may have approaches or lessons to leverage on the funding of child and family services.

- 2) Using 2018 report findings and the needs-assessments from Part 1, develop bottom-up, needs-based funding model options.
- 3) Develop a framework for assessing the attributes and drawbacks of the defined funding models, against the agreed performance framework, with consideration of the following:
 - a. Policy consideration: What is the goal of the funding model, e.g. need-based allocation, per capita allocation, delivery of specific program, desired outcome?
 - b. Cost of service issues: How does the model capture capital and operating expenditures?
 - c. Contextual considerations: Does the funding formula consider contextual factors that may influence program development and delivery? Such factors include, poverty levels, infrastructure, human resources etc.
 - d. Responsiveness/assessing drivers: Does the model respond to demand-style pressures (e.g. community crisis) or is it driven by demographics? Will the funding model support outcome-based funding (responsive to need and results reporting)?
 - e. Governance considerations: How are the results of the model evaluated?
 - f. A test of the models will be undertaken with the cases from Part 1, including financial and social outcomes impact analysis. A methodology to aggregate the results of the cases will be developed.

Deliverables: funding model options; cost-benefit type consideration of the options relative to the performance framework and related considerations; expert roundtable to assess funding formula options and trade-offs.

Part 4: Transition

The approach to and considerations in moving to a new system of performance and funding focused on thriving children.

How can agencies transition to a future state in full consideration of data, human, capital and governance requirements?

- 1) Link transition to changes to the performance framework and funding formula.
 - a. Define the processes and steps an agency will undergo to transition to a new performance framework and funding model with a focus on operating, capital, and programmatic considerations.
 - b. Accounting for contextual differences, identify opportunities and challenges in the transition period.
- 2) Develop a macro-level view of transition of different groups of agencies (based on their characteristics).
 - a. Define the implications for communities, agencies and Indigenous Services Canada, and provinces.

- b. What are the timelines for a full transition?
 - c. What are the provisions that should be put in place to support unforeseen challenges/circumstances in transition?
- 3) Identify differences in transition considerations for agencies.

Deliverables: transition plans for agency/community typologies; macro-level transition overview.

STAGE 2: Assessments

Assessments of need for communities without FNCFS agencies.

What are the needs (protection and prevention) of communities without FNCFS agencies?

- 1) *Identify communities without the services of FNCFS agencies and build profiles of community-based service offerings (should they exist).*
- 2) *Develop a needs-assessment tool for communities to understand programming, operating and capital needs to support FNCFS-like services for the community (likely, focused on prevention).*
- 3) *Benchmarking from known costs for FNCFS agencies, estimate costs for communities to develop CFS programming. Consider leveraging data from existing programs, e.g. community initiatives, Martin Family Initiative’s Early Years program, etc.*
- 4) *Produce an assessment of the specific needs of communities without a FNCFS agency. Define the considerations for performance metrics, funding, and transition.*

Deliverables: Community-based assessment of need for those without FNCFS agencies; expenditure, performance and transition considerations for future programming.

Timelines and schedule of deliverables

Deliverable	Description	Accountability & resources	Deadline
PART 1: Funding breakdown			
Spending overview	Detailed overview of how the FNCFS program (including transfers, capital, operating, etc.)	IFSD; ISC; AFN	May 2019
Performance assessment	Assess program effectiveness against existing performance metrics (typically, output based) and results for children and communities (outcomes).	IFSD	May 2019

Impact assessment of CHRT-mandated investments	Analysis of the outcomes of recent investments and lessons for future funding and performance considerations.	IFSD; agency representatives; ISC (TBC)	June 2019
PART 2: Performance framework			
Research and review of materials	Review of existing literature and report findings to develop a culturally-informed and comprehensive baseline of performance outcomes and indicators for First Nations children.	IFSD	May 2019
Performance framework and indicators draft	Develop a draft performance framework with indicators to be measured.	IFSD; experts and agency representatives identified with the assistance of NAC	June 2019
Workshop #1	Workshop for consensus building on performance framework and indicators with experts and representative group of agencies.	IFSD; experts and agency representatives	June 2019
Final performance framework and indicators	Performance framework that will underpin the development of funding models and inform transition.	IFSD	August 2019
Data collection plan	An overview of how agencies will collect relevant data to inform the performance framework.	IFSD; experts and agency representatives	September 2019
Defining agency clusters	Based on characteristics and other factors, e.g. expenditure patterns, develop clusters of agencies to identify cases for analysis.	IFSD	September 2019
PART 3: Funding models			
Research and review	Review of existing literature and cases from different jurisdictions to identify leading practices and lessons in the development and outcomes of social policy/child welfare oriented funding formulas.	IFSD	October 2019

Workshop #2	Convene an expert roundtable to review the trade-offs of different funding models identified in IFSD’s review.	IFSD; experts and agency representatives	November 2019
Report on funding model options (incl. trade-offs)	Analytic assessment of funding model options with cost-benefit analysis and IFSD’s recommended approach for consideration by NAC.	IFSD	November 2019
PART 4: Transition			
NAC’s recommendation	Based on findings in Parts 1 & 2, NAC should inform IFSD on its selected funding formula to inform a transition plan.	IFSD and NAC	December 2019
Transition plan	With a focus on programmatic, operating, capital and governance, the transition plan will work through the organizational changes required of a new funding formula for different clusters/typologies of agencies.	IFSD; experts and agency representatives	February 2020
Workshop #3	Agency and expert roundtable on considerations for transition, with the preferred funding formula.	IFSD; experts and agency representatives	February 2020
Macro-level overview of transition	An assessment and overview of the transition process, potential opportunities and challenges, as well as proposed approaches to manage unforeseen circumstances.	IFSD	March 2020
STAGE 2: Supplemental additive study			
Community-based need assessments	Understanding need (protection, prevention etc.) of communities without FNCFS agencies. Results should inform expenditure, performance and transition considerations for future programming.	IFSD; community representatives	July 2019

Considerations

The importance of relevant data cannot be overstated. IFSD is fortunate to have a well-developed baseline of agency costs from the 2018 report but will require assessment of contextual factors to ensure bottom-up performance and cost models are developed.

It is expected that this research will combine data from agencies and communities, as well as findings and practices from other jurisdictions.

Support from NAC, AFN and the Caring Society will be imperative in bridging gaps in understanding, in connecting with stakeholders and in promoting the work.

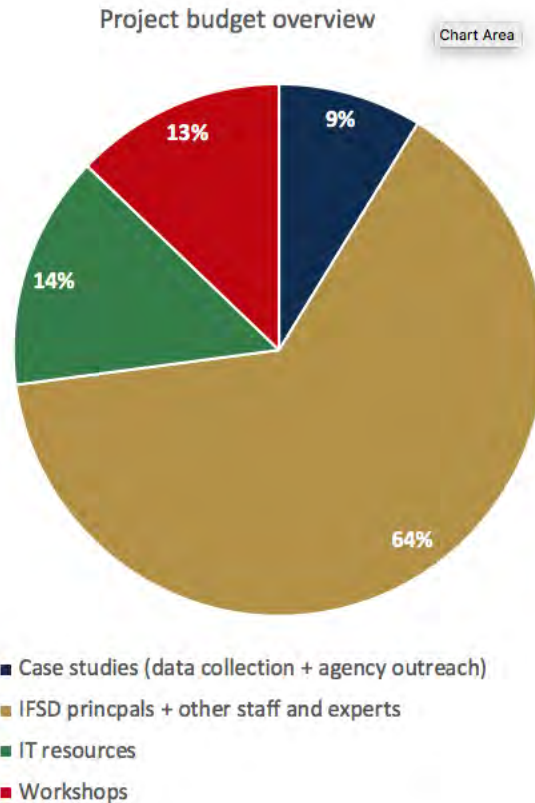
In an effort to ensure the feasibility and reasonability of the proposed measures, it may be advisable to leverage the perspectives and profiles of an expert review group (this would be in addition to NAC's usual advisory role). Composed of former deputy ministers (e.g. Finance), former prime ministers, etc. the group would verify the project's approach for political and bureaucratic matters, helping to ensure its promotion and defensibility.

Budget

***NOTE: Supplemental study is not included in this budget.**

The **quantum of work** proposed for this project is substantial and extends across a calendar year. Building on its recent experience, IFSD understands the cruciality of accurate, substantial and representative agency data. IFSD appreciates the substantive effort required to successfully develop, execute and deliver on its work. The majority of the project's resources are allocated to research, analysis and data and outreach-focused travel (see Project budget overview).

IFSD's approach to FNCFS analysis is built on **trust**. Having worked to foster relationships with agencies and their leadership, IFSD appreciates the necessity of respectful, trusting and collaborative relationships with agency partners. IFSD is proud of its previous work and notably, the participation of 76% of FNCFS agencies whose confidence, perspective and data sharing made the analysis possible. Receiving messages of support, thanks and encouragement from agency leadership via email, in person or at NAC meetings, are a source of pride of IFSD. The confidence of agencies is imperative in continuing to build on the cost and structure baseline established with their participation and support. The economics of this proposal are based on the trusted relationships with FNCFS agencies.



The majority of the project budget is allocated to research and analysis mainly undertaken by IFSD principals, with the support of staff and selectively retained external experts. The IFSD is a not-for-profit entity funded by a grant that enhances its independence. Further, the IFSD can commit its senior resources to the engagement throughout the project timetable. The IFSD per diem rates are consistent with previous projects for various national, sub-national, and international governments and organizations and significantly below the rates of major consulting firms. Further, the fees include the IFSD’s overhead for the project.

From a **value-for-money** perspective, IFSD is a responsible choice with a track-record of going above-and-beyond stated engagement requirements to fulfill its contracts in pursuit of excellence. Beyond its knowledge and access to data used to develop the existing cost baseline, IFSD has relationships with and a strong understanding of the federal government’s central agencies. IFSD’s expertise and experience drafting cabinet documents, Treasury Board submissions, their due-diligence processes and the responsible office holders, represents an amplification of its research and analysis. With intimate and largely unmatched experience applying findings for decision-support, IFSD is prepared to leverage its relationships and understanding of federal processes for the purposes of this engagement.



DRAFT - For discussion only
Commercial-in-confidence

Engagement Budget

Analyzing First Nations Child and Family Services (FNCFS) Agency Needs
March 2019-March 2020

Consulting Rates	Days	Rate	Notes
Kevin Page	50	\$ 2,000	Rates consistent with previous projects for various national, sub-national, and international governments and organizations. <i>Discussion required on how IFSD employee time will be counted.</i>
Sahir Khan	50	\$ 1,900	
Helaina Gaspard	210	\$ 1,500	
Azfar Ali Khan	25	\$ 1,500	
Mostafa Askari	25	\$ 1,500	
Taylor Rubens-Auguston	252	\$ 500	
		\$ 711,000	
Research Assistant	252	\$ 30,000	
Research Assistant	252	\$ 30,000	
Research Assistant	252	\$ 30,000	
Research Assistant	252	\$ 30,000	
Expert Advisory services		\$ 150,000	
		\$ 270,000	
Subtotal fees			\$ 981,000.00
Case studies and outreach			
Round trip cost per flight (domestic)	\$ 1,500		All travel pursuant to National Joint Council (NJC) guidelines
Number of Trips (two per moth, May-November)	14		
Team size for each trip	3		
Lodging			
Hotel (with Tax)	\$ 230	\$ 48,300	CAUBO preferred rates used whenever possible All per diems pursuant to NJC guidelines
Per Diem	\$ 108	\$ 22,680	
Nights per Trip	5		
Travel Days in 2019	210		
Subtotal lodging and per diem			\$ 133,980.00
Workshops (three)			
Two-day, national, 25 participants			
Hospitality	\$ 220	\$ 11,000	
Travel fees (air travel + two nights hotel + per diem), 20 participants outside of Ottawa	\$ 2,324	\$ 46,480	
AV support		\$ 5,000	
Miscellaneous		\$ 3,000	
Subtotal workshops			
IT Resources			
Project website (updates and maintenance)	\$ 7,000	\$ 7,000	
Monthly website fees	\$ 10,848	\$ 10,848	
Development of software for results tracking, measurement and reporting		200,000	
Subtotal IT resources			
Subtotal			\$ 1,529,268.00
Assembly of First Nations (AFN) administration fee		2%	\$ 30,585.36
HST (on IFSD and AFN fees only)			\$ 131,506.10
TOTAL COSTS			\$ 1,691,359.46

This is **Exhibit "P"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

**Sharron Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.**



**Consultation Committee on Child Welfare
Assembly of First Nations (AFN)
Sheraton Hotel - 150 Albert Street (Penthouse A&B)
April 2, 2019 (1:00pm -4:30pm)**

DRAFT RECORD OF DECISIONS

In Attendance:

Ms. Irene Lindsay, Elder (Wolf Clan)
Dr. Cindy Blackstock, Caring Society, Co-Chair
Mr. Jonathan Thompson, Assembly of First Nations, Co-Chair
Mr. Martin Orr, Assembly of First Nations
Ms. Julie McGregor, Sr. Legal Counsel, AFN
Mr. Stuart Wuttke, Legal Counsel AFN
Dr. Valerie Gideon, PhD, Senior Assistant Deputy Minister (FNIHB-ISC)
Ms. Isa Gros-Louis, Director General (ISC)
Mr. John McLean (ISC)
Ms. Pamela Burr, (FNIHB, ISC)
Mr. David Taylor, Legal Counsel, Caring Society
Ms. Sarah Clarke, Legal Counsel, Caring Society)
Ms. Kara Kennedy, Assembly of First Nations
Ms. Lorna Martin, Assembly of First Nations
Mr. Brian Smith, Canadian Human Rights Commission
Ms. Jessica Walsh, Canadian Human Rights Commission
Mr. Louis-Alexandre Guay, Department of Justice

Via Teleconference:

Ms. Odette Johnston, A/Director General of Children and Families (ISC)
Ms. Akosua Matthews, Legal Counsel, Nishnawbe Aski Nation (NAN)
Ms. Stephanie Wellman, Assembly of First Nations
Ms. Ruby Miller, Director of Social Services (COO)
Ms. Judith Rae, Legal Counsel, (COO)

Regrets:

Ms. Joanne Wilkinson, Assistant Deputy Minister, Children & Families Branch (ISC)
Mr. Robert Frater, Q.C., Chief General Counsel, Department of Justice
Ms. Sinéad Dearman, Chiefs of Ontario
Ms. Maggie Wenthe, Chiefs of Ontario

1. Opening Remarks and Introductions

Before officially calling the meeting to order, Elder Irene Lindsay offered an opening prayer. Mr. Thompson welcomed committee members to the CCCW meeting, followed by a roundtable of introductions.

2. Review of Agenda (April 2, 2019)

An overview of the agenda was provided. Tabs containing documents corresponding to each agenda item were included in the meeting package. It was noted that there has been no official announcement on the tabling of the Act of the Office of the Commissioner for Children and Young Persons in Canada (*Private Member's Bill C-420*) as it was targeted for today, but given current events may have been delayed. There were no additions or changes requested to the agenda.

3. Review of Record of Decisions (January 17, 2019 and February 12, 2019)

Minor changes were flagged and applied to the January ROD, which can now be finalized. CCCW members were requested to forward editorial comments on the February 12th ROD to Martin's attention for final approval at the next meeting. Action Items deriving from the latest ROD were reviewed. Although several items will be dealt with under ISC updates and Jordan's Principles updates, the following action items remain outstanding and will be followed up on:

- *J. Thompson to schedule a special teleconference with Laurel Lemchuk-Favel, during which time she can directly answer any questions. It was also recommended scheduling a call with Kevin Page to determine a structure that reduces the government discretion to deny requests for needs: Still in progress*
- *ISC website to reflect items eligible for funding and those that are not. In addition, ISC was requested to develop a communiqué specific to capital needs, along with associated timeframes: It was confirmed that while the Terms and Conditions have been posted on the Department's website, a communiqué specific to capital needs has yet to be developed. O. Johnston was unable to provide a clear timeframe for posting the info but estimated providing a response in the coming weeks as work on the written directive must be undertaken first and further clarification on the infrastructure required, which has now been clarified.*

This outstanding issue was originally brought forward in October, and is now up for discussion before the Tribunal on April 23rd, 2019. To the extent that this matter can be sorted by agreement and the proposal of a plan ahead of the Tribunal's date, the CCCW would be amenable to a final discussion with Canada towards a speedy resolution as further review is no longer an option.

New Action Item: *Even in draft format, O. Johnston was requested to provide written assurances on the directive specific to capital needs, and if possible prior to April 12th given the horizon on the Tribunal's timeframe and set dates.*

- *Canada to confirm whether capital expenditures associated with new prevention programs on actuals are eligible under the current Terms and Conditions, as well as confirm whether band reps requests in terms of capital have all been approved: O. Johnston will report back to the table on the eligibility of capital expenditures. With respect to band reps, she alluded to the challenges in defining which expenditures fall under capital, as often claims received do not reflect a cost breakdown.*
- *Canada to provide guiding national principles for incoming requests to ensure equality at the regional level, as well as provide information on the adjudication process for the distribution of CWJI for next year: O. Johnston will follow up on the CWJI, but stated that each region has consulted with their First Nation partners on the allocation of CWJI and generally speaking, items that received funding last year can likely expect continued funding. O. Johnston will also confirm whether the \$50M drawn from the CWJI that was disbursed to the Saskatoon Tribal Band will be reimbursed by INAC through another funding mechanism giving their special circumstance.*
- *O. Johnston was requested to perform a regional inquiry into why agencies are being instructed to redirect funds from Jordan's Principle for reimbursement of expenses: Dr. Gideon confirmed having performed an analysis for Ontario outlining the number of requests funded through Jordan's Principle submitted by agencies. The language in the Terms and Conditions on prevention under the FNCFS program is subject to interpretation, making it difficult to clearly define what's under Jordan's Principle and what's under prevention. One of the Orders under Jordan's Principle specifies that requests received must be determined on an individual basis, and if deemed eligible expense under prevention, it can be charged in the back-end of that budget. As per ISC request, the performance of a broader national analysis is currently underway.*

New Action Items: *Canada was requested to draft a memo that provides specific instructions to CFS staff, which will first be shared secretarially with the CCCW for review. In addition, Dr. Gideon will share the analysis developed for the Ontario region*

4. ISC Updates

Legislation: Bill C-92 is progressing through the parliamentary process, and will conceivably include consideration of the Bill by the House of Commons and the Senate Committee. The second reading at the House of Commons began on March 19th and will continue at a later date to be determined by Parliament. In an effort to streamline the process, Isa Gros-Louis reported that the Senate adopted a motion on March 19th authorizing the Senate Committee on Aboriginal Peoples to undertake a pre-study of the Bill to ensure its tabling by the end of June. The CCCW is eagerly awaiting a response from

Minister Seamus O'Regan to the Chief's letter regarding the process going forward, which will be critical ahead of testimonies during the pre-study stage.

Although the Department is well-aware of the issue, there have been no conversations with the Rights Holders currently objecting to Bill C-92. As it stands, the process to voice impending concerns is either by making submissions to the House of Commons Committee or Senate Committee, or by becoming a witness. As an enabling legislation, I. Gros-Louis stated it isn't imposed on any First Nations and that the framework applies to a wide range of scenarios: from communities lacking the capacity and wanting to continue to operate with provincial services, to communities looking to exert partial or full jurisdiction. Under Section 20.1 of the legislation, it enables communities to do so without having to enter into an agreement with the province. In the event an agreement on the operationalization of the legislation exercised by the community is required, a request for a tripartite coordination agreement with the respective province or territory of residence must be put forth, which must be reached within 12 months. At the conclusion of the 12-month period, the legislation then becomes federal law with precedence over provincial law in the area of child and family services.

Being a federal legislation, clarification was sought to ascertain whether it's at the province's discretion to provide that higher standard, or if the decreased standard would be layered in addition. In response, D. Taylor stated that according to the paramountcy provision, in the circumstance of an inconsistency between the two standards whereby the province exceeds service levels, those services would continue in accordance with the province's law; however if the province was delivering lower standards of services, it would necessitate an augmentation to federal standards. In the event a province was to repeal its legislation, federal precaution previously in place would be in effect at that point.

Concerns around the funding provisions were broadly shared, mainly around the strategy for applying standards within the collaborative agreements to ensure the province does not revert to lower ones, and whether Canada intends on funding optimal standards selected by First Nations. I. Gros-Louis stated that funding was not addressed in the legislation as further conversations with NIO partners within the context of the transition governance structures (*i.e.: distinction-based underpinnings*) to identify overlaps and gaps will be required. Available funding at the provincial and federal level will also be addressed, as well as within the context of coordination agreements with PTs, which will all occur during the second phase of the engagement process. Although the Department is at the preliminary stage of considering the transition governance structures, it will be ensured that proper representation is in place. Rather than focusing on a dollar figure, Canada was urged to instead consider the implementation of a funding approach geared towards the achievement of outcomes and principles. Given the absence of any safeguards in this particular piece of the legislation, the CCCW requested obtaining a firm commitment that funding will reflect the standard of substantive equality included in the Bill.

Action Items: *For transparency sake, Canada was requested to provide written assurances for the communities as this consultation process unfolds. Also, confirmation that initial funding for FNs to develop their laws and institutions will be available, as well as for the*

negotiation of coordination agreements was requested. Lastly, in light of the Bill undergoing an unusual process taken up by the Senate Committee while remaining before the House, it was requested that status of the Bill and the opportunity to provide input be clearly communicated

Budget 2019: \$1.2B over a 3-year period has been earmarked for Jordan’s Principle and \$220M was allotted towards the Inuit-specific Child First Initiative, which will be cash managed until funds can be accessed through supplementary Estimates (A). On the CFS side, O. Johnston confirmed no reduction on the funding projections for the CWJI (*i.e.: \$1.4B rolled out over 3 years*) advised of last year has been applied, and that funding for the years 2019/2020 will remain available. It was commented that the absence of any surplus for CFS funding highlights the lack of funds for Budget 2019. Though not reflected in the Budget decision, Dr. Gideon confirmed approval to return to the adoption of a long-term strategy was granted, which warrants further discussion on the implications particularly with the exclusion of continuum of care or service model for aging out in First Nations communities. The framework developed during the first phase of IFSD’s work along with other ongoing studies can be expanded upon, and subsequently dovetailed in the broader approach.

IFSD Proposal: Canada had nothing further to add subsequent to ADM Wilkinson’s email dated March 26, 2019. The Caring Society, COO and AFN were all in agreement, along with NAN who confirmed having no objection to proceed with IFSD’s proposal as written, bearing no reason to forestall the process. Further to ADM Wilkinson’s email and to ensure nothing unforeseen in terms of impact, an update on the identification of a funding source within existing program resources as a result of the Reallocation Policy was requested. O. Johnston was unable provide a definitive answer but explained that the Department has reached its budget ceiling and that in light of claims received, all financial resources will be required to implement the Order. It was reminded that the onus is on the Department to propose an alternative source of funding that avoids adversely hurting children, families and communities, and to fund the long-term reform as a requirement by the Tribunal.

Action Item: *O. Johnston will inform ADM Wilkinson of the unanimous consensus reached among the parties to move forward with IFSD’s proposal*

Update on Claims: With 15 small agencies having all been subject to downward scaling, ISC was asked to speculate on the relatively low number of CFS retroactive claims received from Quebec agencies in contrast with other regions. It was confirmed that both the regions and the AFNQL were made aware of their eligibility with Canada having followed up on this issue several times. O. Johnson attributed this to a business model currently being worked on, as well as a more upfront approach by the Quebec region.

Further clarification on Canada’s process for the adjudication of cases and methodology for applying the retroactive portion of the Order under Jordan’s Principle was sought, citing a particular case filed 12 years ago of a child recently attained the age of majority and suffered acute trauma. In response, it was confirmed that a review of all cases previously denied under Jordan’s Principle was undertaken and tabled in the affidavit presented to the

Tribunal, though no deliberate process for the adjudication of this case was instituted. Dr. Gideon has contacted key leads to provide assistance with that particular community in identifying services that can be provided to youths.

Action Item: *Dr. Gideon will confirm whether the information submitted on retroactive cases dated March 14th is reflected in the current SOP*

It was recommended convening more discussions on the matter to service young people who faced discrimination and avoid penalizing them from receiving service merely because at the time it was not available.

5. Jordan's Principle Update

Joint Appeals Workplan Proposal: The Joint Appeals Workplan Proposal along with the Statement of Work for the Consultant reflecting amendments from the Caring Society was attached in the meeting package. The objective is to issue the RFP in the imminent future in order to initiate undertaking of the work. The framework outline process would still be in effect. New information arising will be forwarded to the ADM of Regional Operations for reconsideration. To avoid incurring a cumbersome workload, an amendment was proposed by Dr. Gideon whereby rather than assigning the review of appeal assignments to the Appeals Committee Chair, she suggested reflecting that the Secretariat would propose appeal assignments to the Appeals Committee Chair to review. Subject to minor editorial changes, the CCCW was in agreement to accept the Statement of Work as presented.

Action Item: *ISC was requested to capture the information in the stats as well*

Common Secretariat: In an attempt to address some of the administrative hurdles encountered over the last couple of years, the establishment of an ISC Common Secretariat is currently underway. To ensure a transparent process, a basic job description outlining the role of the Common Secretariat was drafted. Directing all materials through ISC will result in better streamlining, coordination, sharing and tracking of documentation, as well as enable the provision of enhanced support to committees such JPOC, the NAC etc. The individual would act as the issuer of communication and will be tasked to develop a tracking sheet to monitor feedback sources and submissions. A one-month timeframe was estimated for the creation of the email followed by identifying a suitable candidate (*likely at an AS-2 level*).

Reporting Framework: Intended for the CCCW, the reporting framework will require several adjustments as the Department continues to operate from manual-based systems. In terms of information to capture around compliance, it was deemed valuable for the CCCW to provide outcomes-based subsets to achieve under Jordan's Principle. The objective is to initiate the work on the adjustment of data collection sometime in June. Although a date has yet to be determined, a more extensive data workshop for Jordan's Principle aimed at identifying key indicators to track and offer assistance with the FNIGC, the long-term survey, with information systems etc. will soon be organized. Provided that

the workshop encompasses adequate representation comprised of key regional and national players, the CCCW was supportive of the concept. The Department had no objection to exchanges with additional factions and confirmed the ability to suggest variables. Dr. Gideon stated having conducted an initial assessment of what could be regarded as provincially/territorially insured services, and gauge what is within or outside the limited standards. The IOG can provide assistance in performing a more in-depth analysis. AFN has agreed to facilitate the contracting process, and once finalized the analysis will be shared with this table.

Action Item: *CCCW members were requested to forward comments on the reporting framework to Dr. Gideon's attention by April 12th*

Jordan's Principle Authorities: Despite ongoing efforts, Dr. Gideon was unsuccessful in obtaining approval from the PCO to share the decision made by the Prime Minister, still efforts will persist to ensure Jordan's Principle authorities are truly reflective of the Orders.

HEALTH BREAK

**To accommodate early departures, it was requested immediately addressing the Compensation Issues and resuming with Jordan's Principle Updates thereafter*

6. CHRT Issues (Compensation)

Canada's counsel on the class action has yet to be appointed and the CCCW will be informed once the information is available. Deadlines will be set with the case management judge. Over and above the submission that will be filed tomorrow, the Caring Society anticipates filing a notice of motion for Jordan's Principle children deemed ineligible as a result of the discriminatory definition applied by Canada to broaden the scope of the compensation request so it also includes children placed out of home care from 2006 forward. The Caring Society remains open to mediation with the pre-cursor that Canada's position on items raised be pre-identified.

Jordan's Principle Updates: (Cont'd)

Car Seat Approvals: A comprehensive analysis for the refinement of car seat requests data was performed, including the amendment on the number of approved requests to reflect 24 in lieu of 26. To date, only one case with a linkage to a hospital visit was received.

Best Interests of the Child: A draft document on the principles for safeguarding the best interests of the First Nations child, which assimilated comments by the Caring Society, NAN and other regional offices was included in the meeting package. The objective is to help situate this particular aspect of the CHRT Order as it applies to Jordan's Principle and would replace the section around the best interests of the child in the SOP. Subject to minor wordsmitting, the CCCW was in agreement to accept the document as presented.

Action Item: *Dr. Gideon and Louis-Alexandre Guay will confirm whether the information on the document is in alignment with the draft legislation on the Best Interest of the Child*

In addition to this document, focal points put forth a request to obtain information originating from an operational lens. Accordingly, Dr. Gideon suggested distilling material from the document into a 1-pager tear out sheet in order that focal points can use as a refresher to the Best Interest of the Child application. A draft would first be presented to the JPOC to determine whether a formal decision is required.

Service Coordinator Key Messages: Key messages oriented towards the continuity of Jordan's Principle were formulated. The document will be shared with Regional Service Coordinators to facilitate providing assurances on the legal obligations, on the budget decision and on the Interim Relief Order as it currently stands. The document will be circulated to AFN and PTOs as well. It was commented that substantive quality may not be a consideration the requestor would be able to provide to focal points, which would also apply to community and group requests.

Action Items: *ISC was requested to consider adding a prompt for the service coordinator to refer to the Synergy in Action database or to use a community profile in order that socio-economic conditions can be identified to alleviate the burden on the requestor. In addition, it was requested categorizing child receiving palliative care as urgent cases, which will also require amending the SOP*

Policy on Clinical Case Conferencing: Concerns by the Caring Society relating to the decision as to whether or not to use Clinical Case Conferencing were brought forward. There was agreement in convening more fulsome discussions on the procedural approach.

Action Items: *CCCW members were requested to provide feedback on the draft Policy and Procedures document to Dr. Gideon's attention by April 12th. The Department was requested to provide a list of the conditions or criteria under which Canada would seek a second opinion, and more explicitly when not to do so, as the Tribunal is very clear on the matter. Lastly, it was requested engaging in consultations with recognized colleges to confirm consistency with their guidelines on second opinions*

Executive Staff Performance Measures: A blurb of the performance objectives with proposed language by ISC was attached in the meeting package. Though not yet created, input from the CCCW on the executive staff performance agreements was solicited. ISC's performance objectives will be tabled in the coming month at the ADM level and subsequently disseminated to the staff throughout the Department. FNIB's performance objectives can be shared with this table upon request.

Action Item: *CCCW members were requested to forward comments on the performance objectives to Dr. Gideon's attention by April 12th*

Information Update on SOP: The Jordan's Principle SOP's update was included in the meeting package. Extensive work in coalescing comments received by the Caring Society

and regional focal points is currently underway. A subsequent draft will be developed and presented at the next JPOC.

Action Item: *Dr. Gideon will confirm whether clean versions of the SOP were submitted due to certain items in revisions marked urgent that require verification of reflection and implementation on revised phraseology of these sections*

Management Control Framework: Through its detail, the framework provides a sense of the process surrounding this piece. The second phase of internal audits is underway and regional site visits are currently being conducted. Results of Phase 3 will be available in the fall. The internal Phase 1 audit report is not yet available but once publicly released, it will be shared with this table. It could not be confirmed as to when the Auditor General of Canada will be releasing their overall CFS audit report.

Due to the majority of work performed in-house coupled with the lack of expertise at HQ on CFS, the Department was requested to consider having independent observers on the CFS Appeals Committee. As a member of the Appeals Committee, Dr. Gideon confirmed having received one appeal towards the end of March which has been filed for judicial review at the federal court. The CFS Appeals Process was built within the JP Appeals Process and added to the Statement of Work.

Action Items: *Dr. Gideon will follow up with ADM Wilkinson to confirm if approval for the development of a Jordan's Principal Appeals Process has been granted. In addition, she will relay the CCCW's request to allow an independent observer on the CFS Appeals Committee to ADM Linda Clermont. Also, Dr. Gideon will confirm whether the CFS denial letters will follow the same process in the event an appeal is denied*

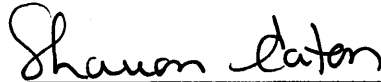
7. Closing Remarks / Next meeting date

Several CHRT dates have been scheduled for the month of April. The next CCCW meeting was tentatively scheduled for May 10, 2019 (*Bear Witness Day*) and it was requested setting aside the entire work day if needed.

Meeting Adjournment

Elder Irene Lindsay closed the meeting with a final prayer. The CCCW meeting adjourned at 4:08 p.m.

This is **Exhibit "Q"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019



A Commissioner for Taking Affidavits

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.

From: David Taylor
Sent: Thursday, April 25, 2019 10:08 AM
To: Frater, Robert
Cc: Tarlton, Jonathan; Sarah Clarke; Stuart Wuttke; 'Maggie Wente'; 'Akosua Matthews'; 'Brian.Smith@chrc-ccdp.gc.ca'; 'Jessica.Walsh@chrc-ccdp.gc.ca'
Subject: FNCFCSC et al v AGC - Long-term reform

Rob,

Further to our brief discussion this morning, I wanted to follow-up on where we are at with the next phase of IFSD's work. Unfortunately we are no further along on this than we were when we exchanged emails on March 20.

On March 26, Ms. Wilkinson wrote to Dr. Blackstock advising of a number of things:

1. That the IFSD report had been shared with senior management in the department and with central agencies.
2. That IFSD would brief Mr. Tremblay and Mr. Perron (I understand this happened later that week)
3. That there would not be a detailed government response to the IFSD report
4. That the next stage of research needed to address Budget 2018 impacts, the impacts of 2018 CHRT 4, comparison to other systems, and a new funding methodology
5. That the IFSD proposal needed to be put to the CCCW to ensure the members' needs were met and that they agreed with the proposal
6. There is no source of funding
7. The need to include Indigenous researchers/students

Your client has also raised procurement concerns. We do not understand why these concerns are being raised for this study, which has a smaller budget than the study approved last year. Indeed, the proposal under consideration is for \$1.7 million, while the 2018 proposal that was approved was for \$2.1 million. We had also understood that funding being provided through AFN obviated some of the federal procurement concerns.

The IFSD report was discussed at the April 2, 2019 CCCW meeting. Canada advised that there was nothing to add following Ms. Wilkinson's March 26 email. The Caring Society, COO and the AFN were all in agreement with the IFSD proposal and NAN stated that it had no objection to the work proceeding. The Caring Society requested an update regarding the identification of a funding source for the report, but Ms. Johnston said she did not have an update to provide. The action item arising from this was that Ms. Johnston would advise Ms. Wilkinson of the consensus reached amongst the parties.

We do not see why the remaining concerns cannot be addressed in the scope of the proposal that is on the table.

When will we have an answer from your client regarding how the next phase of IFSD's work will move forward? It has now been nearly a month since Ms. Wilkinson's last email on this, and all we have to show for it is more lost time.

We look forward to hearing from you soon on this.

Best,

David

This is **Exhibit "R"**
to the affidavit of
Doreen Navarro
Affirmed before me this
1st day of May, 2019

Sharon Eaton

A Commissioner for Taking Affidavits

Sharon Doreen Eaton, a Commissioner, etc.,
Province of Ontario, Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires June 12, 2021.

From: Martin Orr <MOrr@afn.ca>
Sent: Monday, April 29, 2019 1:54 PM
To: Akosua Matthews; Alvin Fiddler; Bobby Narcisse; Brian Smith; David Taylor; Dr. Cindy Blackstock; Evelisa Genova; GC Joel Abram; Jessica Walsh; Joanne Wilkinson; Jon Thompson; Julie McGregor; Lisa Nafziger; Maggie Wenthe; Martin Orr; Molly Churchill; nhansen@nan.on.ca; Odette Johnston; Pamela Burr; Robert Frater; Ruby Miller; Sarah Clarke; Sinead Dearman; Stephanie Wellman; Stuart Wuttke; Valerie Gideon
Cc: Kara Kennedy; Lorna Martin
Subject: Next CCCW Meeting-May 10-Cancelled

Hi All,

We are having to cancel the next CCCW scheduled for May 10. We'll send a note soon and canvass for new meeting dates.

Take Care,

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