

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**Between:**

**First Nations Child and Family Caring Society of Canada**

**-and-**

**Assembly of First Nations**

Complainants

**-and-**

**Canadian Human Rights Commission**

Commission

**-and-**

**Attorney General of Canada**

**(Representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

**-and-**

**Chiefs of Ontario**

**-and-**

**Amnesty International**

**-and-**

**Nishnawbe Aski Nation**

Interested Parties

**AFFIDAVIT OF PETER JOHNSTON**

I, Peter Johnston, Grand Chief of the Council of Yukon First Nations, 2166 2<sup>nd</sup> Avenue, Whitehorse, Yukon, affirm and say as follows:

1. I am the Grand Chief of the Council of Yukon First Nations (“CYFN”) and, as such, I personally witness the challenges and hardships of First Nation children in the Yukon to access and receive the public services they need when they them. As such, I have knowledge of the matters to which I herein depose. Where my statements are based on information and belief, I have so stated and where so stated, I believe those statements to be true.

2. I affirm this affidavit in support of the August 7, 2020 motion for non-compliance and immediate relief made by the First Nations Child and Family Caring Society of Canada (the “Caring Society”).

**The role of CYFN and authorities of self-governing Yukon First Nations**

3. CYFN is a society incorporated under the *Societies Act*, RSY 2002, c. 206, amended by SY 2010, c.17.

4. CYFN is the successor to the Council for Yukon Indians. The Council for Yukon Indians was originally formed in 1973 specifically to negotiate land claims. In 1980, its two parent organizations (the Yukon Native Brotherhood and the Yukon Association of Non-Status Indians) amalgamated with the Council for Yukon Indians and continued under that name. In 1995, the Council of Yukon Indians adopted a new constitution and changed its name to the Council of Yukon First Nations, the entity that exists today.

5. CYFN is comprised of nine of the fourteen Yukon First Nations members and each member of CYFN has entered into a treaty and self-government agreement with Canada and the Yukon government that, among other matters, provide the following.

- a) The Yukon First Nation has the power to enact laws in relation to guardianship, custody, care and place of its children, except licencing and regulation of facility-based services off its settlement land. See section 13.2.7 of the Yukon First Nation self-government agreements.
- b) Canada or Yukon government, as appropriate, may negotiate devolution of programs and services associated with the responsibilities of the Yukon First Nation as agreed in the self-government agreement, including: family and child welfare; programs for the mentally, physically, emotionally or socially disabled; and other health and social services that may be agreed to from time to time. See section 24.3.2.3 of the Yukon First Nation final agreements.

6. The *Constitution of the Council of Yukon First Nations* (the “Constitution”) establishes the Leadership, comprised of the Grand Chief and the Chiefs of its members plus a representative of each the Elders’ Council and Youth Council, as the executive body of CYFN to, among other matters, set general policy guidelines for CYFN and give direction to the Grand Chief.

7. CYFN establishes certain technical committees, such as the Yukon First Nations Health & Social Development Commission (the “Health Commission”) which is comprised of the senior health representatives of all Yukon First Nations, including Yukon First Nations that are not members of the CYFN, to make recommendations and provide advice to the Leadership from time to time.

8. While there is no delegated Indigenous child and family service agency in the Yukon, the Health & Social Department of CYFN:

- a) focuses on issues relating to First Nation physical and mental health and acts as an advocate regionally and nationally;
- b) advises and assists Yukon First Nation governments to develop, implement and evaluate health and social programs in their communities, where appropriate;
- c) identifies needs and alternatives to service delivery in conjunction with the Health Commission and Leadership; and
- d) is the service coordinator for the Yukon with respect to Jordan’s Principle since 2017.

9. Jordan’s Principle is a child-first program that aims to ensure that First Nation children are able to access all public services, including services that may be beyond the normative standard of care to ensure substantive equality, in a way that is reflective of their distinct cultural needs without experiencing any service denials, delays or disruptions related to their First Nation status.

10. In addition, the Yukon First Nations are engaged directly with Canada and the Yukon government with respect to various child and family services matters relating to their children and some have entered into various protocols and understandings with public governments with respect to certain child and family service matters.

11. During the course of my work as the Grand Chief of CYFN, I learned about the decision made by the Canadian Human Rights Tribunal (the “Tribunal”) in January 2016. While I am not intimately familiar with the decision, I am aware that the Tribunal found that the Department of Indigenous and Northern Affairs’ provision of the First Nation Child and Family Services (“FNCFS”) and the implementation of Jordan’s Principle is flawed, inequitable and, as a result, discriminatory under the *Canadian Human Rights Act* (the “2016 Decision”).

12. I am further aware that the Tribunal issued a remedial non-compliance order in 2018 (the “2018 Order”) in relation to the 2016 Decision that, among other matters, ordered Canada to develop an alternative system for funding prevention/least disruptive measures, intake and investigation, legal fees and building repair services for First Nations children and families on-reserve and in the Yukon. This system is to be based on actual needs and operate on the same basis as Canada’s current funding practices for funding child welfare maintenance costs, that is, by fully reimbursing actual costs for these services as determined by the First Nations child and family services agencies to be in the best interests of the child. While there are no First Nation child and family services in the Yukon, the Yukon was nevertheless included for action by Canada in the 2018 Order.

#### **Funding for Enhanced Prevention in the Yukon**

13. In response to the 2016 Decision, Canada and the Yukon government entered into a bilateral agreement in which Canada agreed to provide the following Enhanced Prevention funding to the Yukon government over a period of five years to address immediate funding gaps and provide support for front-line service delivery (the “Bilateral Agreement”):

a)	2016-17	\$924,696
b)	2017-18	\$1,387,045
c)	2018-19	\$5,153,193
d)	2019-20	\$3,666,230
e)	2020-21	\$3,666,230

14. The Enhanced Prevention funding provided under the Bilateral Agreement continues to be funded on the basis of Directive 20-1 which applied to the funding for First Nations Child and Family Services Programs for First Nation children in the Yukon before the 2016 Decision.

15. Neither CYFN nor the Yukon First Nations were consulted about the finite funding amounts agreed to in the Bilateral Agreement by Canada and Yukon government. CYFN and the Yukon First Nations had no involvement or input into the determination of the funding amounts set out in the Bilateral Agreement or how they would be spent by the Yukon government.

16. The full amount of Enhanced Prevention funding for 2016-17 was allocated to the Yukon government's own initiatives as well as the vast majority of funding for 2017-18. In 2018-19, each Yukon First Nation received a small allocation of \$120,000 each to carry out prevention activities.

17. The Trilateral Table for the Well-being of Yukon First Nations Children and Families - comprised of representatives of Canada, Yukon government, CYFN and Kwanlin Dün First Nation - was established and agreed in 2019 to provide the federal funding for Enhanced Prevention for 2019-20 and 2020-21 under the Bilateral Agreement and the unexpended monies for 2018-19 provided pursuant to the Bilateral Agreement to CYFN. CYFN committed to consult with Yukon First Nations about how prevention activities would be funded and carried out in the Yukon. However, we were still working within a fixed budget that was not developed in response to the communities' cultural, geographical and historical needs and circumstances.

18. In addition, the Yukon First Nations were also eligible to submit funding proposals for prevention initiatives to the new national funding stream within First Nations Child and Family Services program for Community Well-being and Jurisdiction Initiatives ("CWJI") which was established in 2018. The following approximate amounts, which were also not based on communities' needs and circumstances, were provided to CYFN in 2018-19 and 2019-20 and specific Yukon First Nations in 2020-21 with respect to CWJI proposals relating to prevention.

- a) 2018-19            \$1,116,459
- b) 2019-20            \$1,269,971
- c) 2020-21            \$1,395,574

19. Despite the proposal funding for prevention initiatives under CWJI provided to the CYFN and Yukon First Nations, the prevention needs for First Nation children in the Yukon exceeds the funding provided under CWJI.

20. The CYFN and Yukon First Nations wish to establish a process for collaborative planning with the Yukon government relating to the operation, administration and management of child welfare, including intake and investigation, placements and case planning, in the Yukon with respect to First Nation children.

**Non-compliance with the 2018 Order in the Yukon**

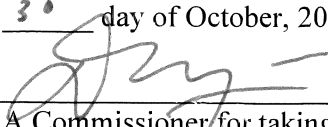
21. Although Yukon First Nation children and families received federal funding for Enhancement Services, in accordance with the funding provided pursuant to the Bilateral Agreement and CWJI proposals, Canada did not develop an alternative system for funding prevention measures in the Yukon, as required by the 2018 Order, based on actual needs that operates on the basis of fully reimbursing actual costs for these services as determined to be in the best interests of the child.


22. The federal funding provided for Enhanced Prevention pursuant to the Bilateral Agreement is wholly insufficient to meet the actual needs of First Nation children in the Yukon.

23. Canada did not advise CYFN or Yukon First Nations that they would be entitled to federal funding under a new alternative system for funding prevention, established by Canada in accordance with 2018 Order.

24. As a result, Yukon First Nation children and families did not receive any federal funding for prevention based on actual costs and needs. and First Nation children in the Yukon may not have been provided the range of prevention-based services that they actually needed.

25. In my view, it is imperative for Canada to comply fully with the 2018 Order and, in particular, develop an alternative system for funding prevention measures in the Yukon based on actual needs that makes the system child-centered, community directed and focused on prevention and early intervention and operates on the basis of fully reimbursing actual costs for these services as determined to be in the best interests of the child.

AFFIRMED BEFORE ME at the )  
City of Whitehorse in the )  
Yukon Territory, Canada, this )  
3<sup>o</sup> day of October, 2020 )  
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\_\_\_\_\_)  
A Commissioner for taking affidavits in )  
Yukon Territory )

  
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PETER JOHNSTON )