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ELSIE FLETTE, AFFIRMED:

MR. TARLTON: This is in the matter of File Number T-1340-7008 before the Canadian Human Rights Tribunal. The Style of Cause being the First Nations Child and Family Caring Society of Canada and Assembly of First Nations, Complainants. Canadian Human Rights Commission and the Attorney General of Canada representing the Minister of Indian and Northern Affairs, and the Chiefs of Ontario and Amnesty International Canada.

And we're here today in accordance with the directions of the Tribunal to deal with the Cross-Examination of Ms Elsie Flette, on her Affidavit sworn the 11th day of February, 2010.

CROSS-EXAMINATION BY MR. TARLTON:

1. Q. Good morning, Ms Flette. I'm Jonathan Tarlton, and I am counsel for the Attorney General of Canada representing the Respondent, the Minister of Indian and Northern Affairs in this proceeding. I understand you have a copy of your Affidavit in front of you. Is that correct?

A. Yes, I do.

2. Q. All right. And just I guess for completeness' sake, if you could turn to Page 14 of your Affidavit?



1 A. Yes.

2 3. Q. You'll see below, the last paragraph which
3 is Paragraph 46 of the Affidavit, there's a signature
4 line with Elsie Flette in the signature. Is that your
5 signature?

6 A. Yes, it is.

7 4. Q. This was sworn as indicated, the 11th day of
8 February 2010. And this is a copy of your Affidavit?

9 A. Yes, it is.

10 MR. TARLTON: And I believe, Madame Reporter,
11 we'll enter it as an exhibit. We can mark that, I
12 think, in due course. Just for completeness' sake, we
13 did that with respect to Dr. Blackstock earlier. But
14 we'll deal with that in due course.

15 **EXHIBIT NO. 1:** Affidavit of Ms Elsie Flette,
16 sworn the 11th day of February, 2010.

17 BY MR. TARLTON:

18 5. Q. Ms Flette, if I can take you now to the
19 introductory paragraphs, if I can call it. In
20 particular, Paragraph 4 of your Affidavit. You indicate
21 that you're currently the Chief Executive Officer of the
22 Southern Authority?

23 A. That's correct.

24 6. Q. And according to your Affidavit, that
25 Authority is mandated by the provincial government. And



1 by that, we mean the province of Manitoba. Am I
2 correct?

3 A. The Authority is mandated under statute
4 which is known as the *Child and Family Services*
5 *Authorities Act*. It's provincial legislation.

6 7. Q. Yes, the province of Manitoba?

7 A. Yes, that's correct.

8 8. Q. "Mandate" is the language used by the
9 legislation. I understand and is it not true, as a
10 matter of fact, that there are a number of statutes and
11 regulations dealing with child and family services in
12 the province of Manitoba? The most important obviously
13 being the *Child and Family Services Act*, there's also
14 the *Child and Family Services Authorities Act* and their
15 regulations made under them, and the *Adoption Act* and
16 regulations made under them as well?

17 A. That's correct.

18 9. Q. Okay. And there may be others with respect
19 to -- we may get into this later -- the licensing of
20 foster homes or things like that. I believe there are
21 regulations or statutes relating to that. Is that
22 correct?

23 A. Yes, they fall under the same legislation.

1 10. Q. All right. The Southern Authority, as I
2 understand, it was created by statute in and around, I
3 think 2010. Is that correct?

4 A. No, November 2003.

5 11. Q. November 2003, okay. And that was when the
6 Southern Authority came into existence. It's a
7 corporation. Is that correct?

8 A. It's incorporated under statute.

9 12. Q. Yes, okay. And there is a Board of
10 Directors. Is that correct?

11 A. That's correct.

12 13. Q. That oversees and manages and operates the
13 Authority?

14 A. That's correct.

15 14. Q. And there are also executive members, one of
16 which being the executive officer, yourself. Is that
17 correct?

18 A. That's correct.

19 15. Q. There are, I believe, also financial
20 officers and others who are involved in the operation of
21 the Authority. Is that correct?

22 A. Yes, we have a CFO and myself and management
23 staff.

24 16. Q. Okay. In Paragraph 5 of your Affidavit, you
25 indicate that the Southern Authority funds agencies when



1 they provide child protection services off reserve. And
2 we'll get to that in a moment. The Authority or mandate
3 for the Southern Authority -- and for lack of a better
4 reason, we can call it "Southern Authority" or "Southern
5 ---

6 A. "Southern Authority" is fine.

7 17. Q. Okay. Again, I understand, and is it not
8 true as a matter of fact that that is set out in
9 regulations -- and not to get into the specific language
10 -- but there are a number of First Nations and agencies
11 that would fall under the mandate of the Southern
12 Authority. Is that correct?

13 A. There are 10 agencies, fully mandated.

14 18. Q. In addition to those agencies, they serve,
15 if my understanding is correct -- and please correct me
16 if I'm wrong -- approximately 34 or 36 First Nations in
17 total?

18 A. Yes, the Southern First Nations, there's 36.

19 19. Q. Thirty-six. And just for clarity's sake,
20 there's a Northern Authority in the province as well?

21 A. Yes.

22 20. Q. It is a corporate entity similar to the
23 Southern Authority and deals with obviously agencies and
24 First Nations that fall under its mandate according to
25 regulations, correct?

1 A. That's correct.

2 21. Q. And there's also, I think, a Métis
3 Authority?

4 A. Correct.

5 22. Q. And a General Authority?

6 A. That's correct.

7 23. Q. The Métis Authority would deal with those
8 who are deemed to be Métis. And the General Authority,
9 I take it, deals with those that do not fall under the
10 authority of the Northern, Southern, or Métis Authority.
11 Is that correct?

12 A. That's correct.

13 24. Q. I'm not from Manitoba. Again, just very
14 quickly, the name "Southern" suggests that there's a
15 geographic aspect to the Authority. Am I correct in
16 that? If you could sort of briefly describe for the
17 Record the territorial boundaries of the Authority?

18 A. Well, the Southern First Nations are, you
19 know, as the word would suggest, in the southern part of
20 the province. Some of those divisions have happened
21 probably more political lines. So, there's been in
22 Manitoba MKIO which governs the northern First Nations.
23 And the Authorities are kind of structured along those
24 same lines; so the southern First Nations and the
25 northern First Nations. But geographically as well.

1 MR. CHAMP: Mr. Tarlton, I'm having a shade of a
2 hard time hearing Ms Flette. I'm just wondering if I
3 could just break for about 90 seconds and we'll try to
4 get one of these microphones to work. Is that okay?

5 MR. TARLTON: By all means. Let's go off the
6 Record for a moment.

7 (OFF RECORD DISCUSSION)

8 BY MR. TARLTON:

9 25. Q. Now, you mentioned that there are 10
10 agencies under the Authority or under the mandate of the
11 Southern Authority, correct?

12 A. That's correct.

13 26. Q. And again not being from Manitoba, perhaps
14 just again for clarity of the Record, if you could name
15 them. I have some documents and I can, at a break or a
16 suitable time, I can show them to Mr. Champ just to
17 assist the Reporter in spelling them out. But if you
18 could briefly, you know, list or identify the 10
19 agencies under the Authority of the Southern?

20 A. Yes. There's Animikii Ozoson, there's
21 Anishinaabe Child and Family Services, there's the All
22 Nations Coordinated Response Network, there's Dakota
23 Ojibway Child and Family Services, Intertribal Child and
24 Family Services, Peguis Child and Family Services,
25 Sagkeeng Child and Family Services, Sandy Bay Child and

1 Family Services, Southeast Child and Family Services,
2 and West Region Child and Family Services.

3 MR. TARLTON: Do we need to go off for a minute?

4 MR. CHAMP: No.

5 BY MR. TARLTON:

6 27. Q. Okay. In your Affidavit, again going at
7 Paragraph 4, you mention that two of the agencies
8 operate exclusively off reserve. Let me just first ask
9 you so we're clear on our terminology: what's your
10 understanding when you say "off reserve"?

11 A. Well, they are fully funded only by the
12 province. And they don't provide or deliver any
13 services to children or families living on reserve.

14 28. Q. Okay. Of the ten you listed, which of the
15 two that provide services exclusively off reserve?

16 A. There's Animikii Ozoson which is responsible
17 for people in the City of Winnipeg who come from First
18 Nations in Ontario, particularly the Treaty 3 area
19 because many of them seek services in the City of
20 Winnipeg, but they essentially live off reserve. And
21 then the second one is the All Nations Coordinated
22 Response Network agency. That is a joint intake agency
23 providing intake in the City of Winnipeg on behalf of
24 all the agencies that operate there.

1 29. Q. The other eight that you listed off then,
2 they provide services to children who reside both on and
3 off reserve?

4 A. Yes, that's correct. In Manitoba, the First
5 Nations agencies since the restructuring and since about
6 '04 now have province-wide mandates, which means they
7 are mandated to provide child welfare services, both on
8 reserve and off reserve.

9 30. Q. And some of these agencies, I understand,
10 have been in existence for a few decades, going back, I
11 think, to approximately the early 1980s? I've seen
12 reference to that. For example, the Southeast and
13 others, they came into existence as a result of an Order
14 in Council or some statutory instrument around the early
15 1980s, and were service providers at that point in time.
16 Is that your understanding?

17 A. Yes. Dakota Ojibway was the first agency.
18 And then in '81/'82, there were tripartite agreements
19 signed in Manitoba, and a number of agencies came on
20 board at that time and were subsequently mandated.

21 31. Q. Right. By "tripartite agreements", you are
22 referring to agreements entered into between the
23 province of Manitoba, the Government of Canada and the
24 specific First Nations or their agencies?

25 A. The First Nations, yes.

1 32. Q. Okay. And up until this decade or the early
2 part of this decade, again, my understanding is those
3 agencies were solely providing child services or child
4 and family services and child protection services on the
5 reserve, to children who were on reserve. Is that
6 correct?

7 A. Their mandates restricted them to provide
8 statutory services on reserve. But all the agencies
9 also had outreach services operating off reserve.
10 Although, they had to involve the non-Aboriginal
11 agencies to deliver statutory services off reserve.

12 33. Q. But I'll take that then as the service
13 provider, and in accordance to the agreements, their
14 focus was providing services to children between the
15 ages of zero and eight -- or I guess, newly born and 18
16 years of age, who were registered as Indians or entitled
17 to be registered and who resided or were ordinarily
18 resident on a reserve at the relevant time. Is that
19 correct?

20 A. Well, their mandates restricted them to
21 that. The services in fact often extended off reserve,
22 including the outreach services. But children in care,
23 even if they were funded federally were oftentimes
24 placed off reserve in placements.

1 34. Q. But there would be another agency that would
2 be dealing with the provision of services off reserve.
3 Is that correct?

4 A. Yes, in Manitoba, prior to the restructuring
5 that happened there, the mandates of agencies were
6 geographic. Now, we have a system of concurrent
7 mandates.

8 35. Q. Okay. And that changed in approximately --
9 you mentioned the legislation, and the Authority came
10 into existence in 2003. So, that restructuring would
11 have come into place after 2003?

12 A. Well, the legislative base to do that, I
13 guess, came into play in November of '03. But the sort
14 of operationalizing it and transferring the resources
15 and the cases from the existing non-Aboriginal agencies,
16 that was a process that occurred throughout 2004 and
17 2005.

18 36. Q. Right. And transferring resources and
19 cases, I take it what that meant was that there were
20 cases dealing with off-reserve Indian children that were
21 the responsibility of other entities, were then
22 transferred and given to the authority of the agencies
23 that now formed the basis of these eight agencies in the
24 Southern Authority. Is that right?

1 A. Yes, because the mandates had been
2 geographic, so families and children who lived in
3 certain areas would be covered by the agency that
4 operated in that area. And with the shift to concurrent
5 mandates, those children and family files were
6 transferred to the appropriate First Nation agency.

7 37. Q. All right, and we may get back to that at a
8 later juncture. But I also notice in the -- and I
9 neglected at Paragraph 2 of your Affidavit, you
10 mentioned that you had been the Executive Director of
11 the West Region Child and Family Services. And that is
12 one of the agencies that still ---

13 A. Yes.

14 38. Q. --- exist and is under the authority of the
15 Southern Authority. Is that correct?

16 A. That's correct.

17 39. Q. And just, you mentioned that you were a
18 Director there for just under 20 years. Did your work
19 with the West Region Child and Family Services end when
20 you became involved with the Southern Authority?

21 A. I was the Executive Director at West Region
22 from February '84 until I left to go to the Southern
23 Authority in May of '03.

24 40. Q. '03, okay. Again, just so I'm clear, you
25 mentioned as well, you have undergraduate and post-

1 graduate degrees in social work. And in addition to
2 your involvement with being the Executive Director of
3 the Western Region and now with the Southern Region
4 other effort, I take it, are you or have you ever been
5 licensed to practise social work in the province of
6 Manitoba?

7 A. I'm eligible to be licensed. Manitoba
8 doesn't require and it's not compulsory there.

9 41. Q. Okay. Are you licensed to practise social
10 work anywhere else in the country, or just in Manitoba?

11 A. Just in Manitoba, although I'm eligible to
12 be licensed pretty much in any jurisdiction in Canada.

13 42. Q. Aside from the Western Region Child and
14 Family Services -- and I think the term was used the
15 other day -- is what we would think of as a front-line.
16 It's actually the point of first contact between a child
17 and his or her family, and the provision of services.
18 Do you agree with that sort of ---

19 A. Well, West Region is a fully mandated
20 agency, so they provide the whole range of services
21 under the CFS Act.

22 43. Q. But they would be sort of a point of first
23 contact, a first line?

24 A. Yes, they're a front-line.

1 44. Q. And your involvement as the Executive
2 Director there. Were you involved in obviously -- well,
3 actually, tell me, were you involved in front-line
4 activities in terms of direct contact with clients, or
5 was it more in terms of an operational or planning
6 aspect?

7 A. Well, it would be both. You know, as the
8 Executive Director of an agency, under the legislation,
9 there's many responsibilities you have that are directly
10 involved around cases; approving plans, hearing appeals,
11 dealing with community members, dealing with families.
12 So, you're involved in actual front-line contact with
13 clients. But as an ED, you're also involved with
14 managing and running the agency.

15 45. Q. And as you indicated, your involvement ended
16 somewhere towards the end of 2003, and now you're the
17 Executive Officer of the Southern Authority. Again, am
18 I correct, the Southern Authority does not receive any
19 funding or enter into any funding arrangements with the
20 Department of Indian Affairs, do they?

21 A. At the present time, the Southern Authority
22 is fully funded by the province.

23 46. Q. Okay. So the answer is, they don't at this
24 time.

25 A. Yes.

1 47. Q. Okay. Your responsibilities now as the
2 Chief Executive Officer -- as I mentioned, there's a
3 Board of Directors?

4 A. Yes.

5 48. Q. Your responsibilities vis-à-vis the Board of
6 Directors and the agencies that come under the
7 Authority, if you could just briefly describe that for
8 me?

9 A. Well, our Board of Directors sets the
10 broader policy and the goals and outcomes that the
11 Southern Authority hopes to achieve. And as Chief
12 Executive Officer, then I'm responsible to figure out
13 how to deliver on that. The Board is also responsible
14 for maintaining relationships with what we call our key
15 owners or our community groups and key stakeholders.
16 So, they're involved with that piece.

17 49. Q. Those key stakeholders would be the agencies
18 and the First Nations and their representatives?

19 A. Probably more the First Nations, the
20 communities themselves, not the agencies so much because
21 we actually have a monitoring and oversight role for
22 them. So, the Board is really not that engaged with the
23 agencies, that's more my job.

1 50. Q. The Board is composed of members of the
2 various First Nations that make up the Southern
3 Authority. Is that right?

4 A. Yes, the way it's structured is each of the
5 agencies can put forward names for the Board. The
6 actual Board appointments are done by the Assembly of
7 Manitoba Chiefs.

8 51. Q. All right. I guess turning to Paragraph 5.
9 And you mentioned just in the course of your last answer
10 that the Southern Authority provides as part of its
11 mandate, it provides an overseeing and monitoring role -
12 - Is that right? -- with respect to the agencies that
13 come under its, I guess, "authority" for lack of a
14 better word.

15 A. Our role as the Southern Authority is
16 broader than just monitoring and oversight. We in fact
17 mandate them. We have the authority under legislation
18 to remove or pull a mandate, we have the authority to
19 disband their Boards and appoint administrators. We are
20 also responsible to monitor the services, ensure that
21 they're compliant with standards and legislation,
22 conduct quality assurance reviews, program reviews and
23 so on.

24 52. Q. That mandate as you've described it would
25 apply to all the agencies that you've earlier described

1 in both your Affidavit and the questions I've put to
2 you.

3 A. It applies ---

4 53. Q. Whether they're exclusively providing
5 services off reserve or on and off reserve. Is that
6 correct?

7 A. It applies to all the agencies and it
8 applies to all the services they provide, regardless of
9 who's funding those services.

10 54. Q. I just want to -- and this is, as you said,
11 it's all in respect of -- your mandate and authority
12 comes via provincial legislation and regulations. I
13 want to turn to Paragraph 5 again. There's a second
14 sentence where you refer to services that are being
15 funded by the Indian and Northern Affairs or INAC as
16 it's noted throughout the remainder of your Affidavit.
17 Your third sentence in Paragraph 5 says:

18 "INAC officials also oversee and monitor
19 the child protection services provided
20 on reserves".

21 My understanding is -- and in the course of our
22 questions today, we'll focus on that -- INAC provides
23 funding to these agencies. Is my understanding correct?

24 A. They do that, yes. Not solely, but they do
25 that.

1 55. Q. And their overseeing and monitoring is in
2 relation to the funding that they provide, to ensure
3 that the funding and the uses made of the funding are in
4 accordance with the terms and conditions of the
5 agreements entered into between INAC and the various
6 First Nations agencies. Is that correct?

7 A. INAC's monitoring extends to ensuring that
8 agencies are compliant with legislation, that they're
9 following the provincial standards, that they are
10 delivering service in accordance with the legislation.

11 56. Q. INAC doesn't have the authority though to --
12 it's not mandated by the provincial legislation, is it?

13 A. INAC is not mandated by provincial
14 legislation, no.

15 57. Q. Okay. And the provincial legislation is
16 what mandates, as I think you've said earlier, these
17 various agencies to deliver services to children?

18 A. They are mandated under provincial
19 legislation, that's correct.

20 58. Q. And as you said, you have a whole umbrella
21 of various powers and duties under your mandate?

22 A. Yes.

23 59. Q. You're the one that, for example, if there
24 were an issue with how an agency was delivering services
25 either on reserve or off reserve, you would be the one

1 that ultimately would have to monitor, oversee, perhaps
2 even take some remedial action in terms of removing the
3 agency's mandate and putting someone else into place
4 such as an Administrator. Is that correct?

5 A. That is our job, yes.

6 60. Q. Yes. And you've done that, I think. My
7 understanding within the time period of this complaint,
8 it's happened approximately, I think, twice with respect
9 to two of the agencies in your region?

10 A. There are two agencies where we have
11 appointed Administrators. There's a number of others
12 where we're in the process of doing quality assurance
13 reviews.

14 61. Q. Yes, and we'll get into quality assurance
15 reviews as well. And I understand that as part of your
16 Board of Directors' directives and guidelines, quality
17 assurance is an important goal -- is it not? -- to
18 ensure that the services that are being provided are in
19 accordance with the legislative standards that are
20 currently in effect. Is that correct?

21 A. Well, clearly it's an important part of
22 services, yes.

23 62. Q. Yes, okay. I wanted now to take you if I
24 can to paragraphs -- questions are going to deal with
25 the section in your Affidavit which begins at Page 3,

1 and it's under the heading "Directive 20-1". And that's
2 essentially Paragraphs 6 through 9.

3 A. Yes.

4 63. Q. Are you there?

5 A. I am.

6 64. Q. Good. Let me just ask you: you've
7 mentioned in your Affidavit at the beginning, you have
8 personal knowledge. In terms of your familiarity, how
9 recently have you reviewed the so-called Directive 20-1?

10 A. Yesterday.

11 65. Q. Yesterday, okay. It's attached as an
12 exhibit to Cindy Blackstock, Dr. Blackstock's Affidavit.
13 And I take it, if I need to refer to anything, it's not
14 part of your Affidavit. But if you need any assistance
15 in terms of reviewing it or whatever, we can maybe take
16 a break and we can try and get a copy or some way that
17 you can refer to it.

18 A. Yes, thank you.

19 66. Q. But I have a few questions about that.
20 First of all in Paragraph 7, you're referring to the
21 Directive 20-1 being designed in 1988. And then your
22 second sentence was:

23 "It was amended slightly in 2004 but no
24 additional funding was provided
25 following the 2004 amendments."

1 And again, is that based on your -- granted, your
2 Affidavit was sworn last month, but did you review when
3 you were reviewing Directive 20-1 yesterday, was there
4 anything in the directive or any additional information
5 you found out about, Directive 20-1, subsequent to
6 swearing your Affidavit in February that would lead you
7 to change your comments in Paragraph 7?

8 A. I'm not sure what you're getting at.

9 67. Q. Well, my understanding is in fact that it
10 was the fiscal year 2005/2006 when the formula was -- if
11 you want to call it "changed" or you use the word
12 "amended". And I'll suggest to you, that in and of
13 itself is not a big difference but there are some other,
14 I would say discrepancies in what you're saying to what
15 I understand is the current situation with Directive 20-
16 1. And I'm going to put them to you, but I just
17 wondered if you've had a chance since February to review
18 any materials regarding Directive 20-1 that might lead
19 you to change what you said there. I just want to know
20 if that's the case.

21 A. Well, then not particular with the point
22 you're raising. And so perhaps when we look at the
23 directive again, I could point that out. But certainly
24 Directive 20-1 is a living and breathing document
25 unfortunately that we live with, and our agencies are

1 funded by it, so we are familiar with it. Now, if
2 there's a discrepancy in when amendments were made, that
3 may be, although I would like to check my document first
4 before I agree with that.

5 68. Q. Well, the other point I was going to raise
6 was your comment about no additional funding was
7 provided. And again, my understanding is that -- and
8 when we're talking about, before I get into it -- I
9 guess when we're talking about the funding formula in
10 the directives, we're talking, I take it, about there's
11 funding for what is described as operations, and there's
12 funding for what is described as maintenance. And I
13 think you go in later in your Affidavit to discuss
14 maintenance in particular. But so I understand it and
15 just so we're in concurrence here, maintenance is
16 something that, it deals with actual -- it's funded as a
17 reimbursement of what was described as actuals.
18 Maintenance is, for example, the actual costs associated
19 when a child is placed into care or protection, either
20 voluntarily or through an agreement between the parents
21 and the agency, or through operation of law, a Court
22 Order, et cetera. Is that your understanding?

23 A. Yes. When a child comes into care under
24 whatever sections of the legislation would apply to that
25 arrangement.

1 69. Q. Operations is different. It has a different
2 -- we get into a different function and different
3 definition to it. It's dealing with things to do with -
4 - well, there's a number of things, but for example,
5 start-up costs, the costs of renting an office, of
6 hiring staff; those sort of things are operations. Is
7 that your understanding?

8 A. Yes, those are operations. I would argue
9 they're not quite as separated from maintenance as what
10 I believe I heard you say. But they would cover those
11 costs that you mentioned, yes.

12 70. Q. But this is set out in Directive 20-1 which
13 I think is in Dr. Blackstock's Affidavit. So, how we
14 want to interpret it, the document speaks for itself.
15 But at least as I read it, there's a different funding
16 for operations and different funding for maintenance.
17 We can at least agree on that?

18 A. Yes, there's the two streams.

19 71. Q. Okay, there's the two streams. And as I
20 understand, and again operations, the formula for
21 calculating the operations funding changed in 2005/2006
22 and was increased by approximately 8.24 percent. Do you
23 have any knowledge of that?

24 A. I'm not sure I would agree with that, and I
25 would like to take a look at that directive before I

1 agree with that. I do know that there was no
2 substantial increase or new monies that flow to
3 agencies. There was an adjustment for the cost of
4 living that happened which was really money that the
5 department had owed the agencies for a considerable time
6 because the directive had always spoken to cost of
7 living increases.

8 72. Q. And we may be getting into difference of
9 opinions. Whether it's a cost of living adjustment or
10 described as something else, there was an increase. I
11 take it, your view is that, you know, the cost of living
12 had been delayed and deferred. But nonetheless, my
13 understanding is, the amount of funding under the
14 operations formula increased by approximately 8.2
15 percent beginning in the fiscal year 2005/2006.

16 A. Well, actually, INAC ended up paying a bill
17 that they'd owed the agencies for quite some time. And
18 some of the costs that were then paid out were actually
19 retro payments on what was calculated had been owed to
20 the agency. And what's actually increased is that they
21 are now paying a cost of living which they should have
22 paid all along, according to their own directive.

23 73. Q. Well, we'll leave it to others to determine,
24 interpret the directive in terms of what, if any,
25 obligations INAC had. But let's at least agree that

1 there has been an adjustment or an increase in the
2 amount of funding for operations. Can we at least say
3 that? I understand your position is that was something
4 that should have happened sooner rather than later?

5 A. Well, I object to the use of the word
6 "increase". I believe that INAC is now paying what they
7 should have paid and what their directive provided for
8 all along, so that is really not an increase.

9 74. Q. Well, let me put it in another way, Ms
10 Flette. According to some of the data -- and I think it
11 comes from Dr. Blackstock's Affidavit and others --
12 before the federal budget in 2005 under the operations
13 formula, there was a fixed amount of approximately
14 \$143,158.84 that would be paid to an agency where there
15 was a child population of greater than 800 or between
16 800 and 1,000. Is that your understanding?

17 A. Yes. That's correct, there's a fixed
18 amount.

19 75. Q. My understanding is that today, post-2005
20 budget, the amount is now \$154,955.13. Is that your
21 understanding?

22 A. Yes.

23 76. Q. Okay, that's an increase. Now, we can
24 debate -- you would agree with me that \$154,000 is
25 greater than \$143,000 just rounding it down for ---

1 A. Well, certainly, because the initial one was
2 based on '92/'93 dollar values and arguably should have
3 been adjusted all along to reflect cost of living
4 increases which was then finally done in '05 when the
5 amount increased.

6 77. Q. My question was simply whether the amount of
7 funding had increased. And if you wish -- I'm looking
8 at it as the dollar amount today.

9 A. Yes, but if I owe you money and then pay the
10 bill, that's not an increase, that's just paying what I
11 owe you. And essentially, that is what happened here.

12 78. Q. I also note in your Affidavit that you're
13 again talking about fixed amounts. Is there not also in
14 addition to this fixed amount and the adjustments that
15 were made in 2005, there's also an additional amount
16 that is added to that operational formula for each
17 member band that's part of the agency. Is that right?

18 A. Yes, there's a fixed amount if agencies are
19 multi-band.

20 79. Q. And it's gone from \$10,700 to, I believe now
21 it's \$11,596?

22 A. Um'hmm.

23 80. Q. And there's also an amount added per child
24 which again before 2005 was \$726.91 and it's now
25 \$786.81. Is that correct?

1 A. Yes.

2 81. Q. Okay. There's also an amount added to each
3 agency. The current number, as I understand, is
4 \$9,996.21. And that's adjusted, there's a multiple
5 figure for remoteness. So, it varies if an agency is
6 delivering services to children who are geographically
7 remote in their issues regarding transportation, et
8 cetera, there's an adjustment made for the remoteness?

9 A. There's a remoteness for those bands that --
10 those First Nations that are beyond a certain parallel
11 in Manitoba, yes.

12 82. Q. And likewise, there's also an adjustment or
13 an additional amount added for each band times the
14 remoteness. So, if you had an agency with more than one
15 band, there would be also an adjustment and a multiplier
16 for the remoteness as well, correct?

17 A. Yes.

18 83. Q. And likewise per child, per children. Each
19 ---

20 A. Yes.

21 84. Q. I understand there's an amount per child
22 times the average remoteness. Is that right?

23 A. That, I'd need to check on. I believe
24 that's the case.

1 85. Q. Yes, okay. The other thing in terminology
2 just so I'm clear -- and we'll get to it when we go
3 through one of the exhibits attached to your Affidavit,
4 operations, the funding or the formula and the funding
5 at least as provided by INAC is funded as what's called
6 a "Flexible Transfer Payment". Are you familiar with
7 that term?

8 A. Yes.

9 86. Q. Which means that the first Nation can retain
10 a surplus?

11 A. Yes.

12 87. Q. As opposed to maintenance which I understand
13 is funded as a contribution. And a contribution means
14 that it is funded and is not normally retained if, for
15 example, there were a surplus. It's based on the ---

16 A. Well, in fact, maintenance is funded as a
17 reimbursement of actuals.

18 88. Q. Yes, yes.

19 A. So, technically, you should not have a
20 surplus.

21 89. Q. No. Although I understand there are some
22 exceptions to maintenance funding being as contribution.
23 Is that right?

24 A. Yes, West Region was one of them.

1 90. Q. Yes. And it retains its maintenance funding
2 as a Flexible Transfer Payment, which means it can
3 theoretically retain a surplus?

4 A. Yes, there are restrictions though in the
5 agreement under the blocked funding of maintenance
6 around how that surplus can and cannot be used.

7 91. Q. And just again when we're dealing with
8 actuals because as you mentioned, maintenance being a
9 funding of actuals, there is, I understand as well, cash
10 advances given to agencies to start the year as part of
11 maintenance because obviously, there is time lines with
12 respect to the invoicing and accounting of those
13 expenditures?

14 A. Well, and also because agencies have to pay
15 the maintenance before they can send in the bill for
16 reimbursement. And then the turnaround time to process
17 those invoices.

18 92. Q. There's some time lengths that are
19 associated with that, correct?

20 A. And upfront costs and time lengths, yes.

21 93. Q. All right. You mentioned that the Authority
22 is funded provincially. In their regime, do they have
23 similar types of funding? I'm thinking the Flexible
24 Transfer Payment or the contribution. Is that the term
25 ---

1 A. Well, they don't use the language for the
2 Authority funding. We're essentially grant-funded by
3 the province. So, it would have some similarities, I
4 guess, to the flexible funding arrangements where we can
5 retain surpluses, and deficits are our own.

6 94. Q. The funding for the off reserve, for the
7 exclusively off reserve agencies, is it based on case
8 load at a given point in time?

9 A. Are you talking agency funding now?

10 95. Q. Yes.

11 A. When we did the transfer of resources
12 throughout the Aboriginal justice enquiry process, the
13 amounts that were transferred to agencies was based
14 primarily on case load and children in care, and family
15 files. That determined the level of staffing, the level
16 of operations that agencies received.

17 96. Q. And just again on that note, when there was
18 a transfer of cases from some of the off reserve
19 agencies to some of the agencies under the Southern
20 Authority that up until 2000 and, I guess, roughly
21 2003/2004, provided services on reserve, I understand
22 there was a -- if you want to call it a spike or an
23 increase in their case load. Is that right? Because
24 they were taking over off reserve files that normally
25 they weren't dealing with before that period of time?

1 A. Well, yes, there would have been an increase
2 because they were taking kids in care that had been in
3 care with another agency, and now they were being
4 transferred over. So, yes, clearly there would be an
5 increase in their case loads.

6 97. Q. Yes. Indeed, again my understanding of the
7 approximate numbers -- and correct me if I'm wrong --
8 currently, the authorities, the number of children,
9 approximately two thirds are provincially funded
10 children, and a third are funded federally?

11 A. In the Southern Authority when we average
12 out amongst all the agencies, it's about 60 percent
13 provincial, 40 percent federal. Within some of the
14 agencies, it's a bit different, it's 50/50. In others,
15 the federal kids are higher. Our federal cases are
16 higher than the provincial cases. I can't speak about
17 the Northern Authority, but I do know that in the north,
18 it's a little bit different, that the federal cases are
19 slightly higher than the provincial ones.

20 98. Q. When there was the transfer of cases from
21 some of the agencies that existed prior to the enactment
22 and the creation of the Southern Authority, do you have
23 any idea how many cases would have been transferred from
24 those pre-existing off reserve agencies to agencies that
25 up until that point had been focused on providing

1 services to on reserve Indian children? In the Southern
2 Authority.

3 A. In the Southern Authority. In Winnipeg
4 where we saw the highest volume, there were 900 children
5 in care transferred from Winnipeg Child and Family to
6 one of the Southern First Nations agencies. Primarily
7 permanent wards.

8 99. Q. So, 900 were transferred to one agency?

9 A. No, they would have been distributed amongst
10 the eight agencies.

11 100. Q. My understanding is the numbers were higher
12 than that.

13 A. Well, provincially. I'm speaking now
14 specifically Winnipeg Child and Family. There would
15 have been transfers done in Brandon in -- throughout the
16 province.

17 101. Q. And I understand again that the First Nation
18 agencies, the eight that are our primary focus, the ones
19 dealing with both on and off reserve, their case load
20 went from approximately 2,000 to dealing with up to
21 5,500 children?

22 A. At the present time within the Southern
23 Authority, there are about 7,000 children in care. And
24 ANCR which is one of the ten that we're not talking
25 about, does not carry a lot of children in care; they

1 maybe have twenty. And Animikii has just over 200. So,
2 all the others would be with the eight agencies that
3 we're primarily concerned with. And that would include
4 both federal and provincial.

5 102. Q. Right. And these agencies up until then,
6 because they were focusing on the on reserve children,
7 they would have been receiving funding through INAC
8 primarily?

9 A. They were receiving funding from both the
10 federal and provincial government. But until we did the
11 transfers, the majority of the funding would have been
12 on behalf of federally funded children.

13 103. Q. And the funding that was given to them from
14 the province as a result of this transfer, how much
15 would that have been?

16 A. I would need to check on that, I can provide
17 those figures. I don't know them offhand anymore.

18 104. Q. You don't know, okay.

19 A. No.

20 105. Q. Is it fair to say that the way the province
21 funds child protection in terms of case workers, that
22 that funding will vary or it will increase and decrease
23 as the number of children in care increases or
24 decreases. Is that how the funding process works?

1 A. There is no set funding model at the present
2 time that the province uses. We're in the process of
3 developing one -- there's one, I guess, before Treasury
4 Board right now -- but essentially when the transfers
5 were done based on case loads and then we've had the
6 opportunity to go back to the province and to the
7 provincial Treasury Board for adjustments to that
8 funding through work load relief initiatives, and those
9 are primarily driven by increase in volume.

10 106. Q. So, if I understand correctly, you're in the
11 process of -- or at least you and I take it, the other
12 Authorities are in the process of making a submission to
13 the provincial Treasury Board regarding funding and how
14 funding will be provided in the future?

15 A. Well, in fact, the Southern and Northern
16 Authorities and INAC and the province have been engaged
17 in this process for about 2 years now, so that we kind
18 of synchronize with some of the efforts on INAC to move
19 towards a Prevention Focused Approach. So, as part of
20 that exercise, we have developed a funding model that
21 will hopefully be applicable, both federally and
22 provincially.

23 107. Q. Leaving aside the work with INAC and the
24 efforts to reach synchronicity, and I don't want to go
25 too long, but I'm just trying to get a sense of, is

1 there a particular funding formula or approach as to how
2 provincial children cases are funded? Is it strictly on
3 a case by case, you know, *ad hoc* basis? Does the
4 funding vary depending on the case load of a given
5 agency? I mean, how does it work right now?

6 A. I would say, well, case load -- in Manitoba,
7 because we don't have a set funding model, it's
8 primarily been a historical model of how things have
9 been funded in the past. The main driver of that is
10 case load and volume that drives increase. But there's
11 a number of lines that we fund agencies for on the
12 provincial work load. For example, training costs,
13 computer information technology, those kinds of costs
14 that are also funded that are not driven by volume, but
15 they are ongoing funding to agencies.

16 108. Q. That would be like operations?

17 A. Yes, I mean, you can put it under
18 operations, it's a level of funding that they receive to
19 assist in their capacity to run efficient agencies.

20 109. Q. I'm just trying to get a sense. If a given
21 agency -- if their case load in one year is 100
22 children, and then the following year, it decreases to
23 50, does their funding change because of the case load?

24 A. The funding has not decreased for any
25 agency. Now, we have been able to go forward to the

1 province and get increases when there's been significant
2 volume increases.

3 110. Q. Again, you said the funding hasn't
4 decreased. But I'm just saying, in terms of how the
5 funding works, if an agency's case load decreases from,
6 as I said by 50 percent, will there be a change or
7 adjustment in their funding reflected on the volume of
8 case workers that are needed?

9 A. I think I've just said that when volume
10 decreases, there has been no change in the funding, but
11 there has been changes when there's increases in the
12 volume.

13 111. Q. So, the funding is always then going up?

14 A. I'm not aware of any circumstance where an
15 agency has had their funding decreased.

16 112. Q. Although it's not mentioned directly in your
17 Affidavit, we've heard some testimony and some questions
18 have been asked about the CSA, the Child Special
19 Allowance?

20 A. Yes.

21 113. Q. Are you familiar with that?

22 A. Yes.

23 114. Q. Okay. And we've heard some -- as I say,
24 there's been some questions and evidence asked about the
25 CSA in respect of INAC and federal children. Is it true

1 that -- my understanding is the province required -- for
2 provincially funded children, the provinces requires the
3 CSA to be remitted from the agency to them. Is that
4 correct?

5 A. Yes, they started that for the First Nations
6 agencies in '06/'07. Up until that time, the First
7 Nation agencies were able to retain it. But in '06/'07,
8 they required that that be remitted.

9 115. Q. That's a significant -- it can be a
10 significant amount of money. I think it's somewhere
11 around \$3,200, \$3,400 a year per child thereabouts. Is
12 that correct?

13 A. Well, it's close to \$300 per month, I guess,
14 per child in care. And it would go up and down based on
15 your children in care.

16 116. Q. I have seen in some reports produced by your
17 Authority that, for example, over a 2 or 3 fiscal year
18 period, that amount can translate into millions of
19 dollars potentially that is being remitted?

20 A. Yes, depending how many children in care.
21 But you know, certainly for some of our agencies, that
22 would be a significant sum.

23 117. Q. Let me turn now to, if I can just briefly,
24 to Paragraph 12 of your Affidavit where you're talking
25 about how:



1 "The funding provided to First Nations
2 agencies serving communities with less
3 than 1,000 eligible children is reduced
4 by up to 75 percent depending on the
5 child population."

6 Again, perhaps just as a matter to clarify, my
7 understanding is the -- I guess we're referring to the
8 amounts we discussed earlier. There's I guess a pre-
9 budget amount from 2005 and a post-budget amount. My
10 understanding is that amount is available if the
11 population is between 800 and 1,000 for the particular
12 agency or area. Is that correct?

13 A. Well, if you have 1,000 plus and then it's
14 reduced ---

15 118. Q. It's reduced if it falls under -- if it's
16 799 or less?

17 A. Yes.

18 119. Q. Then it would go down?

19 A. And then, there's a further reduction.

20 120. Q. And then, you hit a certain threshold. I
21 think it's 499 down to, say, 250. And then again, once
22 you drop below a certain point, there's a reduction.
23 I'm just curious in the Southern Authority, do any of
24 the agencies -- are their child populations all within -

1 - I understand they're all within the 800 to 1,000 child
2 population?

3 A. We have one agency that sees that reduction,
4 that would be Intertribal Child and Family.

5 121. Q. And how many children do they have?

6 A. I can't tell you that right now.

7 122. Q. Okay. But the other seven are all 800 and
8 above. Is that correct?

9 A. Yes, I believe that's correct.

10 123. Q. We were talking a bit earlier about the
11 Flexible Transfer Payments with respect to operations
12 and maintenance. At least, in certain circumstances.
13 And I believe you agreed with me that those can be
14 retained if there is a surplus?

15 A. In operations, yes.

16 124. Q. Yes. If I can turn your attention to
17 Paragraph 17 of your Affidavit.

18 A. Yes.

19 125. Q. First of all, can you tell me in light of
20 what you have testified earlier about the provincial
21 funding, does the province allow an agency to retain a
22 surplus if the surplus is obtained during the fiscal
23 year?

24 A. Well, it would now be the Southern Authority
25 in our case ---

1 126. Q. Or sorry, the Authority.

2 A. --- that funds them. So, it's our Funding
3 Agreement with agencies that dictate that. And yes, we
4 do allow them to retain surpluses in operations.

5 127. Q. In operations?

6 A. Yes.

7 128. Q. So, the Authority's agreements with the
8 First Nation agencies is reflective of the INAC
9 agreement. And then you have an operations and a
10 maintenance component. Is that right?

11 A. Our agreements with the agencies are --
12 they're called Service Purchase Agreements, SPAs.

13 129. Q. Yes.

14 A. And they relate at this point solely to
15 operation funding. The province continues to pay the
16 maintenance directly to the agencies. That is a piece
17 that under legislation falls under the Authorities, but
18 by agreement, we have for the time being left it with
19 the province. So, our arrangement and agreement with
20 agencies speaks almost solely to the operational program
21 dollars, project dollars.

22 130. Q. And on the subject of maintenance, if I
23 could just take you to Paragraph 18 on Page 6 of your
24 Affidavit. And this is in respect of maintenance
25 funding which again, we discussed or attempted to define

1 earlier. You say that INAC -- and this is in the second
2 sentence:

3 "This means that INAC reimburses most
4 costs relating to in-care options such
5 as foster care, group homes and
6 institutional care but not when at-risk
7 children remain with their families."

8 Again, my understanding is, children who are --
9 maintenance is triggered when the child is actually put
10 under -- is taken away or removed from their families
11 and placed under care?

12 A. Yes, that's correct.

13 131. Q. Okay. So, the situation here, an at-risk
14 child remaining with his or her family is not a
15 situation where maintenance would arise?

16 A. The definition that is used for maintenance
17 relates to the costs for children in care. Children at
18 risk is what child welfare deals with. And children who
19 are at risk within their own families is really where
20 both under law and as a matter of best practice,
21 services need to be provided to prevent those children
22 from entering care in the first place. Those services
23 with INAC are completely unfunded. Provincially, we
24 have a funding line called "Services to Family" which is
25 a flexible type of funding. It's grant-funded to

1 agencies that provide the money to, in fact, deliver
2 services to children still living in their own home
3 without having to take those children into care. With
4 INAC, we in fact have to take children into care in
5 order to access any kind of resource for that child.

6 132. Q. Well, and we'll get to the resources that
7 can be accessed and when and how they can be accessed.
8 But I guess my question is, this isn't really -- at
9 least according to the definition that I understood we
10 had agreed to -- this isn't maintenance.

11 A. It's not the definition of "maintenance"
12 that is used by either INAC or the province. It relates
13 strictly to children -- costs for children who are in
14 care.

15 133. Q. Thank you for clarifying that.

16 A. You're welcome.

17 134. Q. Again, if I can take you down now to
18 Paragraph 20 and 21 which again is at the bottom of Page
19 6, top of Page 7. And you indicate that there you are
20 aware of some cases recently where teenagers were put
21 into care and removed from their families in order to
22 access addiction services. I take it by that, you mean
23 you have personal knowledge of those ---

24 A. Yes, those are cases that exist in some of
25 our agencies, and I have knowledge of them through that.

1 135. Q. Okay. The knowledge, I take it, comes from
2 someone -- from the agency reporting that situation.
3 Someone from the agency or the First Nation reporting
4 that to you? You weren't first-hand there when the
5 child ---

6 A. It would come from the agency most often
7 raising it with us to ask our assistance to help resolve
8 it or find a treatment option or a resource for the
9 child in question.

10 136. Q. I'm just again -- it was raised directly
11 through you; was it a telephone call or a letter or some
12 other document?

13 A. It would typically come -- those kinds of
14 things would come to us through e-mail or a telephone
15 call.

16 137. Q. So, you're saying "us". Did it come to you
17 directly or did it come to someone else who forwarded it
18 to you via e-mail or other means?

19 A. I believe in at least three of those cases,
20 it came to me directly. And in the others, it would
21 come through our intake unit at the Southern Authority,
22 as part of the work we do with agencies.

23 138. Q. All right. An intake unit is, I guess, a
24 means by which you gather the information and determine
25 what, for example, what is the issue that requires

1 attention and what the potential response ought to be.
2 It's part of the initial information gathering process?

3 A. Yes, it's an assessment process as to what
4 action needs to take place.

5 139. Q. So, the three that came to you directly, did
6 they come -- do you remember, did they come through an
7 e-mail or through a letter or telephone conversation?

8 A. No, I believe I spoke with workers or
9 supervisors directly.

10 140. Q. Okay. Were the three in relation to a
11 particular agency or different agencies?

12 A. Three different agencies.

13 141. Q. Three different agencies, okay. Did you
14 take any further action or investigate the matter
15 further, or is this just information that you received
16 and have recorded and noted for future discussions?

17 A. Well, probably both. I mean, we would
18 assist or try and assist the agency in finding some
19 resolution or solution to a dilemma, if they were
20 needing a treatment resource for a teenager and had
21 brought it to our attention.

22 142. Q. Do you know if the agencies that contacted
23 you, for example, spoke to a Funding Service Officer
24 with INAC or spoke to anyone with INAC about the
25 situation?

1 A. I don't know that.

2 143. Q. You don't?

3 A. No.

4 144. Q. Okay. Do you know if the agency or the
5 person you spoke to had made any efforts to contact INAC
6 or any other department of the federal government in
7 respect of programs or assistance to address their needs
8 for addiction treatment?

9 A. I believe in all of those three cases, there
10 have been conversations with the agencies from the First
11 Nations Indian Health.

12 145. Q. Because, for example, I understand there may
13 be avenues or programs or resources available through
14 other departments aside from Indian Affairs. Through
15 Health Canada, for example, there are programs and
16 services offered that might address that. Do you know
17 if, for example, the agency made any contact or did you
18 or anyone from the Authority put them in touch with
19 representatives of Health Canada or other ---

20 A. Well, yes, that would be First Nations Inuit
21 Health, would be Health Canada that, I believe, in all
22 three cases, the agency had been in touch with them
23 because they'd explored funding through them.

24 146. Q. You believe or was that actually something
25 that was ---

1 A. That was the information I was given.

2 147. Q. Okay. From again the agency?

3 A. Yes.

4 148. Q. You didn't make a record of this, a written
5 record or anything as part of your practice?

6 A. We would have noted it on our file at the
7 Authority office, yes.

8 149. Q. It wasn't attached as an exhibit to the
9 Affidavit and I just ---

10 A. This case ---

11 MR. CHAMP: Let me make an objection, Mr.
12 Tarlton. There was no *subpoena duces tecum* here. If
13 you wanted documents, you could have requested them to
14 be produced. This is not an open Cross-Examination
15 before the hearing. If you want, when we get before the
16 merits, which I trust we will, then you can ask for
17 production of documents. Otherwise, I'm not sure what
18 your point is. *O*

19 BY MR. TARLTON:

20 150. Q. So, there were three that you had some
21 personal knowledge of. The other two, I take it, that's
22 come through other individuals with the Authority?

23 A. Yes, other staff in our office that have
24 raised those concerns with me. But they were the ones

1 directly speaking with the workers or supervisors at the
2 agencies.

3 151. Q. The workers of course, being there employed
4 by the agencies and they're familiar with the programs
5 and the delivery of child and family services on the
6 reserve. Let me just rephrase that. Do you know if as
7 part of any remedial or follow-up, has the agency or the
8 Authority had any further discussions with Health Canada
9 about this kind of situation and how it might be
10 addressed?

11 A. We had discussions with Health Canada, not
12 specifically about these three cases but the whole issue
13 of funding for medical needs children.

14 152. Q. Would you agree with me that there exists
15 programs and services offered with Indian Affairs and
16 other government departments of the federal government
17 that may address the concerns raised in Paragraph 20 of
18 your Affidavit?

19 A. That's only meaningful if in fact those
20 services are accessible and available. And in the cases
21 we're speaking about, that was not the case.

22 153. Q. Well, would you agree with me first of all
23 that they're available, that they exist?

24 A. Can you ---

1 154. Q. There may be a question of eligibility or
2 process as to how you engage or apply for them. But
3 would you agree with me that there are programs offered
4 that can address these concerns?

5 A. There are programs offered. They don't
6 address the concerns.

7 155. Q. And when you say "the concerns", are you
8 talking about concerns in the context of the delivery
9 and the mandate that the Authority has under the
10 provincial legislation?

11 A. We're talking about concerns related
12 specifically to the needs of children that CFS agencies
13 are asked to address. And when there are no options, no
14 accessibility and no funding available for services and
15 programs, then agencies are forced to step in.

16 156. Q. Well, would you agree with me that there may
17 exist funding and programs outside of what INAC provides
18 as part of child and family services to children on
19 reserve? There are, I understand, several programs. We
20 talked a little bit earlier about the Child Special
21 Allowance. That's not part of the Directive 20-1 or the
22 maintenance, that's something separate. There are also
23 programs offered through the Departments of Health and
24 others; they may be able to assist. Or is the focus

1 entirely about what exists under Directive 20-1, and the
2 Authority and the agencies don't look beyond that?

3 A. I think that the First Nations agencies
4 probably more so even than mainstream agencies are quite
5 expert at trying to source out and scope out any
6 possible means of funding for services because of the
7 need and the complexity of the services we deal with.
8 So, whether or not the federal government, INAC or
9 whoever says "We offer these", if in fact they are not
10 available on reserve, if they're not accessible on
11 reserve, if the criteria are such that the families and
12 children we work with don't qualify, it's essentially
13 meaningless to the child welfare agency who then has to
14 resort to the level of funding it receives to provide
15 services to those children and their families.

16 157. Q. Do you know if in the examples you gave in
17 Paragraph 20, there was any -- or 21, there was any
18 further follow-up with INAC or any other federal
19 departments? I mean, you've mentioned some discussions,
20 I think, being raised at a higher or at least a
21 different level. But you know, in terms of the outcome,
22 do you know if in the case of these families or these
23 children, that there was an effort to apply for any
24 other -- seek any other additional programs or services
25 and what the outcome was?

1 A. Yes, and the outcome at the end of the day
2 was children entered care unnecessarily, had that money
3 been there.

4 158. Q. Well, do you know if they exhausted all
5 their options or avenues or whether it was just --
6 because sometimes, people will often take an approach
7 they're most familiar with. And I take it, the people,
8 the workers in the agencies on these reserves are very
9 familiar with the provincial legislative framework, the
10 standards. They may not be as familiar with other
11 programs and services?

12 A. Well, I would argue they're quite familiar
13 with programs and services that may or could be
14 available when it comes to children in care or children
15 in need of care, or children at risk in their families.
16 The kinds of kids we're talking about under Section 21
17 there, when children have certain needs such as feeding
18 tubes, you don't have a whole lot of time to scope out
19 resources before you have to intervene.

20 159. Q. And that raises the issue of, I guess,
21 jurisdictional conflicts or Jordan's Principle as it's
22 known?

23 A. Yes.

24 160. Q. Am I right, I think that as of 2008, there
25 has been an agreement between the province and the

1 federal government with respect to -- if you just bear
2 with me for a moment, I believe it's:

3 "First Nations children living on
4 reserve with multiple disabilities who
5 access multiple service providers should
6 receive the same level of service in a
7 culturally appropriate way, as other
8 children with similar needs living in
9 similar areas"?

10 A. Yes.

11 161. Q. So, there's been an agreement there between
12 the federal government and the province of Manitoba?

13 A. What's the agreement specifically?

14 162. Q. Well, I understand -- and this is something
15 I obtained from a report at the Child and Family
16 Services Committee from the winter of 2008/2009:

17 "In September of 2008, the province of
18 Manitoba and the federal government
19 agreed to implement Jordan's Principle.
20 They agreed that First Nations children
21 living on reserve with multiple
22 disabilities who access multiple service
23 providers should receive the same level
24 of service."

1 A. Well, I would say to you that that Agreement
2 is more like a Memorandum of Understanding where
3 everybody agrees on the merits but, in fact on the
4 front-line for us, we are still resolving every one of
5 those cases on a case by case basis, which was exactly
6 the issue that led to Jordan's situation and his
7 subsequent death in hospital, because we were trying to
8 -- that case was being negotiated case by case. And we
9 are still really in the same situation notwithstanding
10 that governments have agreed that Jordan's Principle
11 should be implemented. It's not operationalized.
12 There's been no directives, instructions to the front-
13 line staff and agencies about how now to deal with the
14 situations. There's no mechanisms in place for the
15 'feds' and the province to get together to figure out
16 who pays the bills. So, subsequently that work is still
17 resting with agencies to sort out on a case by case
18 basis, who's going to pay their bill.

19 163. Q. This report from the ---

20 MR. CHAMP: Mr. Tarlton, if you've got a report
21 or document that you're referring to, maybe it might be,
22 in fairness to the witness, you should provide a copy to
23 her.

1 MR. TARLTON: Well, I was just going to say, my
2 understanding -- it was only with respect to the one
3 passage I referred her to, verbatim.

4 BY MR. TARLTON:

5 164. Q. This is prepared or at least, the Southern
6 Authority participates on that Standing Committee, don't
7 they? They provide input.

8 A. On the Standing Committee?

9 165. Q. Yes?

10 A. Yes.

11 166. Q. So, this document being a product of the
12 Standing Committee, I take it, you ---

13 MR. CHAMP: What document are you referring to,
14 Mr. Tarlton? I mean, in fairness ---

15 MR. TARLTON: It is "The Progress on the Changes
16 for Children's Initiative", a report from the Child and
17 Family Services Standing Committee. It's available
18 online by the government of Manitoba.

19 MR. CHAMP: Sorry, I didn't know I was supposed
20 to bring my laptop and printer with me. But maybe we
21 could have a break, Ms Flette's been on the stand for an
22 hour and a half.

23 MR. TARLTON: Sure, actually, I was going to
24 suggest that.

25 (SHORT RECESS)

1 BY MR. TARLTON:

2 167. Q. When we broke, I was asking you some
3 questions specifically in regards to Paragraphs 20 and
4 21. And I just want to follow up with a couple more
5 questions before we move on. Do you know if in the
6 province of Manitoba, is addictions treatment an insured
7 health service under the provincial legislation?

8 A. Yes, in Manitoba, the alcohol treatment
9 centre and beds are funded through the Alcoholism
10 Foundation of Manitoba.

11 168. Q. So, it is an insured health service. Is
12 that right?

13 A. I'm not sure if it's insured health, but
14 it's covered for people who want to take treatment
15 through the Alcoholism Foundation.

16 169. Q. Okay. I mean, in terms of process, does
17 that require an in-house treatment? Do you have to be
18 put into an addiction treatment centre or something in
19 order to receive that through that funding or program?

20 A. Well, they offer -- the AFM offers both
21 residential beds. They also offer day programs and
22 outpatient kind of programs, they're after-care
23 programs. They're essentially free for people who want
24 to use them. They're funded through the AFM.

1 170. Q. And it's my understanding that INAC doesn't
2 fund treatments with respect to the child service
3 agreements for insured health services. Is that your
4 understanding as well?

5 A. Could you just repeat that again? INAC
6 what?

7 171. Q. INAC is not normally funding treatments that
8 are covered under a provincial health insurance service?

9 A. If they're covered under provincial health?
10 No. There typically wouldn't be a cost to an agency if
11 they're fully covered that way.

12 172. Q. Now, there's also -- I understand there's
13 the national Native Alcohol and Drug Abuse Program
14 funding?

15 A. NADAP, yes.

16 173. Q. You're familiar with that?

17 A. Yes.

18 174. Q. And I know it requires, I think -- or at
19 least my understanding in Alberta, for example, there's
20 been some discussions about how to apply that with
21 respect to the delivery of child welfare services on
22 reserve in that province. In Manitoba, I take it, does
23 the Authority have any -- has it reached any
24 understanding with INAC or another federal department

1 with respect to funding of addictions treatment through
2 that program?

3 A. No, my knowledge of that program -- and
4 that's based on my work at West Region as well as my
5 knowledge of it through the agencies that we currently
6 work with -- is that the NADAP program is essentially
7 funded directly to Chief in Councils. And so, how it
8 plays out in most communities is by one or more NADAP
9 workers who provide, you know, counselling community
10 based services. There are a few First Nations, and I
11 believe some of those decisions were kind of made
12 regionally where there is a treatment centre. But it's
13 my understanding that those treatment centres are funded
14 through the First Nations Inuit Health, FNIH.

15 175. Q. So, the funding would flow for that sort of
16 -- under that program or the treatment centre you've
17 just described?

18 A. Under NADAP.

19 176. Q. Would flow under NADAP through agreements
20 between, I take it, the particular federal government
21 department and the Band in Council of the given First
22 Nation. Is that right?

23 A. Yes, that's my understanding how the NADAP
24 program works.

1 177. Q. Yes. And it wouldn't be captured under the
2 agreements that we're talking about in the context of
3 this proceeding, the agreements dealing with child
4 services on reserve. It would be a different agreement,
5 a different set of authorities?

6 A. Yes, it would be an agreement outside of the
7 CFS agency, it wouldn't involve them in any way.

8 178. Q. Yes. I take it, presently there aren't any
9 such treatment centres through NADAP on any of the
10 reserves that are within the authority of the Southern
11 Authority?

12 A. Well, I'm not sure it's NADAP that pays the
13 treatment centres. Now, I may be incorrect, but I
14 understand the NADAP program essentially funds those
15 community based services and workers, that the treatment
16 centres are funded through a different program. In the
17 south, there is a treatment centre at Fisher River. I'm
18 not sure if there's one at Peguis. So, there may be one
19 or two in some of the southern communities that are
20 funded federally.

21 179. Q. And I take it, the examples that we
22 discussed in respect of Paragraph 20, those didn't
23 involve -- you mentioned Fisher River and possibly
24 Peguis as having treatment facilities -- those weren't

1 the reserves that were subject of your enquiry, were
2 they?

3 A. What I referred to in Section 21 was
4 particularly children, and in most cases, we're talking
5 adolescents here if they're in need of alcohol or drug
6 treatment. FNIH will only pay for the cost of that
7 treatment or the child to go there if it's a FNIH
8 approved facility. And not all of the facilities in
9 Manitoba are approved under FNIH. There's others, for
10 example, the Behavioural Health Foundation in Manitoba
11 that offers drug and alcohol treatment for adolescents.
12 So, if in fact all the FNIH approved facilities are full
13 and a child wants treatment, FNIH will send them out of
14 province. If the parent objects to that or if that's
15 not a good plan for the child, really the only other
16 option is no treatment or the child welfare agency takes
17 the child into care and places them in a facility like
18 Behavioural Health, and then their costs are covered
19 through maintenance.

20 180. Q. Just before we move on, you just used an
21 acronym, FNIH?

22 A. Yes.

23 181. Q. Can you just for the Record ---

24 A. First Nations Inuit Health.

1 182. Q. If I can turn you to, I think it's now
2 Paragraph 21, you were just talking in that about
3 special needs, children with special needs, and you
4 refer to "respite and other forms of support" and the
5 funding issues you've identified with respect to that.
6 Again, I asked you earlier this morning if you were
7 familiar with the Directive 20-1. And I guess I'll ask
8 you now: are you familiar with the First Nations Child
9 and Family Services, the national program manual which
10 contains Directive 20-1?

11 A. Yes.

12 183. Q. I know it's not with your Affidavit, but
13 just to assist you ---

14 MR. CHAMP: I think we might have a copy
15 actually.

16 MR. TARLTON: And I can even just refer to it.

17 MR. CHAMP: That's fine.

18 BY MR. TARLTON:

19 184. Q. There's a passage I just wanted to share
20 with you, and I'll show it to you.

21 A. I brought a copy of it.

22 185. Q. Oh, you did? Okay. Well, just so we're all
23 in sync there, I'm referring to the manual that's
24 Exhibit "I" in Dr. Blackstock's Affidavit. And in
25 particular, there's Page 13 under Chapter 2.2,

1 "Operations" which is dealing with the operations
2 allocation which we discussed this morning. Do you see
3 that? And it's at the Page 13, I guess section or
4 clause 2.2.2?

5 A. Yes.

6 186. Q. And if you go down to the seventh bullet,
7 you'll see that operations can include -- it says:

8 "In-home services intended to maintain
9 the family and keep children at home"?

10 A. Um'hmm.

11 187. Q. So, I take it, in your example at least for
12 the respite, that's -- or some form of support that
13 would involve in-home services, that's something that
14 could be funded through operations, correct?

15 A. That manual was put together, I believe, in
16 '05. The Directive 20-1 came into play around '88/'89.
17 I can tell you that at the time, and because I was
18 involved at West Region before the directive came into
19 play when child welfare was funded on an agency by
20 agency, case by case basis, and then when the directive
21 came, it was put into effect. I was in fact involved in
22 committees and advisory groups, so to speak, that were
23 involved with that. I can tell you that at the time in
24 Manitoba, services to families that paid for homemakers
25 and respite workers were in fact included under

1 "maintenance". And agencies were able to bill those
2 actual costs as needed. When the directive came in,
3 there was no manual, there was no clear spelling out,
4 what was or was not intended under "operation". But
5 clearly at the time, services to families, homemakers
6 and respite were not intended to fall under that
7 directive because they were in fact paid as a
8 maintenance line.

9 188. Q. When you're saying "at the time", if I
10 understood you, that's in the late 1980s, early 1990s?

11 A. When the directive came into play. So, it
12 would have been '89, '90, '91.

13 189. Q. And of course just so we're clear, we're
14 talking the time frame from the complaint is forward
15 from that period of time. We're talking, I think the
16 complaint was filed in 2007 thereabouts, February. So,
17 we're looking forward. And at least, this manual was in
18 effect in May of 2005.

19 A. Okay, but if you would just let me finish, I
20 can probably clarify where I'm going with this. As you
21 know, one of our concerns has been that the Directive
22 20-1, in spite of the National Policy Review and other
23 mechanisms, has not been substantially changed and
24 operated with '92/'93 dollar values for a long time.
25 So, when the directive came into place, as I said,

1 family services, homemakers, respite workers were
2 considered to be under "maintenance".

3 Somewhere around '92/'93, INAC created a third
4 line of funding. Now, the directive was already in
5 place, had already delineated 'This is operations. This
6 is maintenance'. And INAC created a third line of
7 funding in our agreements which they call "development".
8 They then told us that the maintenance was no longer
9 going to cover homemakers and respite workers, and in
10 fact, they would be grant-funded now under this line
11 called "development". So, they did that, they
12 essentially capped it at that point. They were
13 operating with the directive. In spite of that, they
14 had this third line of funding for homemakers and
15 respite services.

16 They then subsequently informed us that they
17 were no longer going to pay, that service to families
18 was cut 100 percent in Manitoba. And we were told that,
19 "Oh, by the way, it's in Directive 20-1." So, we were
20 expected as agencies to now absorb this as part of our
21 operations. There was no significant increase or no
22 increase at all to Directive 20-1 to reflect that we
23 were now being asked to provide this service within the
24 same pot of money, under this directive. And in my
25 opinion, INAC pretty arbitrarily made the decision that

1 it was now included in the operations formula for
2 Directive 20-1. And they subsequently put out that
3 manual and included that line in there.

4 190. Q. Ms Flette, while I can appreciate your
5 desire to express your opinions and comments, my
6 question was very simple. And I just wanted -- whether
7 you would agree or disagree with me that the respite or
8 in-home care that you describe in Paragraph 21 is now
9 covered as -- at least in the manual dated 2005, is
10 contemplated through the operations funding. Yes or no?

11 A. I would strongly disagree with you.

12 191. Q. Well, I guess we'll leave it to the
13 document, it speaks for itself. And you're entitled to
14 disagree with me if you wish, but I will certainly ---

15 MR. CHAMP: Is there a question?

16 BY MR. TARLTON:

17 192. Q. Well, I guess my question is that there is -
18 - at least, I would submit to you, there is funding
19 through the operations for the example that you've given
20 in Paragraph 21.

21 MR. CHAMP: And I think she answered the
22 question.

23 BY MR. TARLTON:

24 193. Q. And you've indicated you've disagreed.

1 MR. CHAMP: That's right. She answered the
2 question.

3 MR. TARLTON: Yes.

4 MR. CHAMP: So, I guess we can move on.

5 MR. TARLTON: Yes, we can.

6 BY MR. TARLTON:

7 194. Q. There is just one question again with
8 respect to 21, not dealing with this. Does the province
9 have or fund a Children's Special Service Program?

10 A. The province does, yes.

11 195. Q. Okay. Just can you tell me, I understand
12 it's a program that it's not part of the statutory
13 scheme or the legislation. Am I right?

14 A. It's separate from the CFS Act.

15 196. Q. Yes, okay. And it's voluntary, is it not?
16 Like, in the sense that you can choose to participate or
17 become involved ---

18 A. It's not a statutory program.

19 197. Q. It's not a statutory program? And what
20 exactly does -- what sort of services are envisioned
21 through the Children's Special Services Program?

22 A. Well, there's services for children with
23 special needs that families can go to and request
24 financial assistance. And they would cover a whole
25 range of whatever the needs are from wheelchairs to

1 ramps to special vans, to 'renos' to a house, whatever
2 is required to be able to keep a child at home.

3 198. Q. And the source of the funding for this
4 program, I take it, it's coming out of the provincial
5 consolidated revenue fund, or is it funded through the
6 ministry? Is it Ministry of Family Services, that
7 department, or?

8 A. Well, it's definitely provincially funded.

9 199. Q. You don't know the ---

10 A. I believe it's under Family Services, but I
11 can't say that for certain.

12 200. Q. Okay, that's fine. And just while I think
13 of it, earlier this morning, I asked you and I believe
14 you've indicated that the Children's Special Allowance
15 is remitted back to the province for provincially funded
16 children. Is that right?

17 A. Yes, yes, that's correct.

18 201. Q. Do you know, what is done with that money?
19 Is it kept in an account for the children until they
20 reach the age of 18, is it put back into the
21 consolidated revenue fund, does it go to other programs
22 such as the Children's Special Services?

23 A. I don't know, I don't work for the
24 provincial government.

1 202. Q. Okay. No, that's fine, thank you. If we
2 can turn now -- Paragraph 22, in it, you refer to the
3 legislative framework in Manitoba. We won't go at
4 length with that. But I was curious. I note that in
5 Paragraph 22(a), the legislation in your Affidavit
6 "requires child protection agencies to take the
7 following measures prior to removing a child from their
8 home". And (a) mentions:

9 "Work with other human service systems
10 to resolve problems in the social and
11 community environment likely to place
12 children and families at risk."

13 And you're nodding your head. Just for the Record, you
14 have to say "yes" or "no".

15 A. Yes.

16 203. Q. Okay. I take it, that means then you work
17 with -- or the intention of the Act is to work with --
18 there are other support systems that can provide
19 services that might assist children and family outside
20 of the *Child and Family Services Act* statutory scheme,
21 correct?

22 A. There's other collaterals. And with child
23 welfare, there's probably four key ones that child
24 welfare is involved with.

25 204. Q. Justice would be one?

1 A. Justice and police would be one, health
2 would be one, education would be another one.

3 205. Q. Also, and I guess in the specific context of
4 when we're talking about Indian children registered or
5 entitled to be registered who were living on reserve,
6 there would also be working with the First Nations
7 authorities, the Band Council and I guess First Nations
8 employees for other social service agencies on a
9 reserve, Tribal Councils, those sort of ---

10 A. Well, we would certainly expect agencies as
11 part of providing services to, as much as possible,
12 engage other partners and network and partner up with
13 people. So, that would include various programs and
14 services that may exist in the First Nations.

15 206. Q. Earlier this morning -- and we've had some
16 differences, I guess I referred to a Funding Service
17 Officer who is, granted, not with the band per se, but
18 is an INAC official who has familiarity with various
19 funding service agreements in a given region or on a
20 given First Nation. That would be an important liaison
21 too, potentially?

22 A. It would be a liaison.

23 207. Q. Yes, okay. Again -- and we'll get to this
24 in greater detail later, and I think you referred to it
25 earlier this morning -- there is obviously a liaison

1 between the Authority, the agencies and the Department
2 of Indian Affairs or INAC, obviously?

3 A. Yes.

4 208. Q. So, you'd agree that it's important -- and I
5 take it from that, from Clause 22(a), it's important not
6 to just always focus within the specific child and
7 family services legislative or statutory scheme. Look
8 outward and see if there are other important -- yes, I
9 think you've described it, collaterals or contacts to
10 become engaged with, to assist children and their
11 families?

12 A. We would consider that best practice, yes.

13 209. Q. Yes, okay. And you have best practices,
14 both, I think in terms of the Authority and how it
15 conducts its business. And I take it, you would
16 encourage the agencies that you enter into agreements
17 with to develop best practices in that direction as
18 well, to look outward and try and develop the
19 collaterals and linkages that are important, correct?

20 A. Yes, we would expect agencies to practise in
21 a way that's good for children and families.

22 210. Q. All right. If I can turn you now to, I
23 think it's Paragraph 23. The second sentence, after
24 mentioning that the agencies in the Southern Authority

1 have to comply with the legislation -- and we just
2 discussed that -- you indicate that:

3 "INAC does not provide specific funding
4 for preventative measures".

5 And I guess I'm more trying to understand the meaning of
6 the word "specific". Would you agree with me that INAC
7 does provide funding, it just doesn't necessarily
8 delineate a specific amount of funding for what we would
9 describe as preventative. Is that correct?

10 A. INAC provides funding, but I think that was
11 the debate we were having before about my disagreement
12 that INAC does not provide preventative funding,
13 notwithstanding the clause they've put in their manual.

14 211. Q. All right. Would you agree with me, though
15 -- and we were describing that in the context of
16 operational -- but in terms of providing the funding, at
17 least in the operational side, there is some discretion
18 within the given agency as to how they want to allocate
19 the funding on the operational side?

20 A. Yes, you have discretion. I guess, though,
21 you know, having been an ED at an agency and when your
22 operations funding is not keeping pace with your cost of
23 living, your volume on your service end, and you're
24 struggling to just keep up with your salary payments to
25 your staff which are essential for your service, then at

1 some point, the discretion becomes whether you pay the
2 rent or buy the groceries. And it's not a discretion
3 whether you can enhance services or add to your
4 services. So, yes, there is some discretion from that
5 perspective.

6 212. Q. I appreciate you have views with respect to
7 the adequacy of the funding provided by INAC.

8 A. Um'hmm.

9 213. Q. But I just want to remind you that the
10 purpose for the Motion and the Affidavit you filed in
11 support, as I'm sure it's been explained to you, deals
12 with a more discreet issue jurisdiction. Adequacy will
13 be, to some degree, argued at a later date. And you or
14 others ---

15 MR. CHAMP: Is there a question, Mr. Tarlton?
16 Like, I will say on that issue, frankly all morning, I
17 would say in my view, about 80 or 90 percent of the
18 questions are irrelevant. I don't think many of your
19 questions had to do with the issue before us in the
20 Motion. I'm trying to think what's more efficient in
21 terms of getting the Cross-Examination done. But if
22 you've got a question for the witness, I would suggest
23 you make it.

24 MR. TARLTON: Well, my questions all relate to
25 the evidence and the information contained in the

1 Affidavit. So, I suppose if there's an element of
2 irrelevancy, it comes from the subject matter that I'm
3 having to cross-examine on. And indeed, you haven't
4 objected up until now, and I take it, you're not
5 objecting now. So, I'll take your comments. I'm just
6 simply ---

7 MR. CHAMP: No, I will let you know in terms of
8 after the break, I will start making objections. In
9 terms of your lengthy examinations about the services
10 provided by provinces, how that's funded, the
11 composition of the Board of the Southern Authority, I'm
12 not sure how any of that has any relevance to this at
13 all. So, the fact that I have not objected before
14 should not be taken as a waiver that I'm not going to
15 object to those issues in future. Thank you.

16 BY MR. TARLTON:

17 214. Q. Let me take you to Paragraph 24. And in
18 particular, I'm looking at the last sentence. I will
19 again, as I did before with respect to the earlier
20 paragraph, you say that -- you describe a number of
21 services, parenting courses, day care, et cetera, anger
22 management therapy, counselling, homemakers and respite.
23 You've indicated that the services are unavailable and
24 completely unavailable. And again, I guess I'll put to
25 you and you can agree or disagree with me: these are

1 measures that are available to First Nation agencies
2 through their operational fundings to provide, if they
3 choose to do so. Do you agree or not?

4 A. No.

5 215. Q. Why not?

6 A. Because they're not available. INAC cut
7 that money completely. And we are talking here
8 specifically about services to children in their own
9 homes. There was no money put into the agencies'
10 operation formulas to make up for the cut of that money,
11 and it's never been replaced. And so, agencies do not
12 have it available.

13 216. Q. Again, I guess we'll leave that for another
14 day. But I will suggest to you that in the operations
15 manual or 2.2.2, there are a number of items in the
16 operational funding side that could be directed towards
17 preventative measures such as these. But I take it your
18 answer is, you disagree, and we'll leave it at that.

19 A. Well, I'd just like to add to that, that as
20 an Authority, we are in a position to lay out standards
21 and expectations of what we expect agencies to do hand
22 in hand with that. And I can tell you, it's quite easy
23 to write up some standards and put in clauses. But hand
24 in hand with that is the capacity to do those things.
25 And it serves no value to us, and I would say to INAC,

1 to include those things in the manual when there is no
2 capacity at the agency level to actually deliver those.

3 217. Q. Before we break, let me turn you to your
4 Exhibit "A" to your Affidavit which is the comprehensive
5 funding arrangement?

6 A. Yes.

7 218. Q. This is an arrangement between the Southeast
8 agency and Her Majesty the Queen in Right of Canada.
9 And I think you've got a cleaner copy up there?

10 A. Yes.

11 219. Q. And you can certainly take it with you. I
12 take it, you had an opportunity to review it. You've
13 mentioned that you were looking at your materials in
14 your Affidavit the day before. Have you had an
15 opportunity to review this recently?

16 A. Yes.

17 220. Q. Okay. And just so we're clear, I think you
18 mentioned earlier this agency was put under
19 administration, I think, in 2008. Am I right?

20 A. Yes, March of '08.

21 221. Q. On the first page, there's a number of
22 "whereas" clauses. Just, I'll direct you to in the
23 middle of the first page, the fourth "whereas" clause
24 which has divided up into an "A", "B" and "C":

1 "Whereas the Agency recognizes a
2 responsibility to maintain a soundly
3 administered and managed organization."

4 "B) To maintain processes and procedures
5 to facilitate management of programs,
6 services and activities, and to support
7 financial control."

8 And "C) Account to the members' First
9 Nations in regards to the use of funds
10 provided, and results achieved with
11 those funds in terms of programs,
12 services and activities delivered, and
13 the overall financial position of the
14 agency."

15 You're familiar with those terms?

16 A. Yes.

17 222. Q. Would you agree with me that these are all
18 important in terms of achieving goals of quality
19 assurance and transparency?

20 A. We have no objections to those clauses, we
21 would agree they're important.

22 223. Q. They're important. And you mentioned that
23 the Authority enters into, I guess, a similar type of
24 agreement with the agencies for provincial children.



1 Does your agreement contain similar, either in the
2 "whereas" or in other parts, provisions?

3 A. It would have similar provisions.

4 224. Q. And if you want to turn now to -- we go
5 into, it's Part "B" and it's Page 6, I think at the
6 bottom. The "General Terms and Conditions" starting at
7 Page -- or starting with, I guess, Clause 1.0 and then
8 progressing?

9 A. Yes.

10 225. Q. It refers to:

11 "The agency shall deliver programs,
12 services and activities as set out in
13 Part "E"."

14 And funded under Part "D", which I think are setting out
15 programs, services, delivery requirements et cetera and
16 having, I guess, a budget line as to how it will be
17 done. And I take it, in order to receive the funding,
18 the agency in this case delivers the programs and
19 fundings which are set out in Part "E". And I guess
20 before I do that, I should refer back to the "whereas"
21 clause on Page 1 which is talking about -- the very
22 first, it talks about the agency having the mandate to
23 provide child and family services, including adoption.
24 And again, we discussed that this morning. So again, do
25 you have any issue with that clause?

1 A. No.

2 226. Q. And then, there is Clause 1.1(c):
3 "Maintain a system of accountability in
4 accordance with the framework set out in
5 Part (c)", the accountability framework.

6 And that is something that, I take it, deals with the
7 subject of how the agency reports and accounts for how
8 the money that it receives from INAC is spent?

9 A. Those are INAC's reporting requirements.

10 227. Q. And the Authority has reporting requirements
11 too for the funding that it gives?

12 A. Yes, we do.

13 228. Q. Okay. You mentioned earlier on that you
14 liaise with INAC and with the agencies on a number of
15 matters. One of them deals -- or have you liaised with
16 INAC and the agencies on reporting requirements?

17 A. Yes.

18 229. Q. To try and establish some framework or
19 consensus?

20 A. Yes, I believe as part of the process for
21 the Prevention Focused Approach, there's been a lot of
22 discussion around an accountability framework that we
23 could jointly agree on, that I believe we're on Draft 8.
24 But there are discussions, yes.

1 230. Q. There are discussions. And it's not just
2 the Southern Authority, the other ---

3 A. The Northern.

4 231. Q. --- impacted Authorities are involved, the
5 Northern one, correct?

6 A. It would be the Northern and the South that
7 would relate to INAC, yes.

8 232. Q. Yes. And I think there were some
9 discussions on that and other matters too going back to,
10 I guess, the end of 2009 calendar year in November. Is
11 that right? Meetings between representatives of your
12 Authority, INAC and the agencies?

13 A. Well, I think we've had over the last 2 or 3
14 years probably numerous meetings to do with funding and
15 accountability and compliance.

16 233. Q. And I take it, you have developed or the
17 Authority, you've developed a protocol or a process for
18 determining or dealing with the accountability,
19 identifying all the relevant data you need in order to
20 ensure that the funding that you are giving to an agency
21 is being spent for the purposes that the agreement
22 contemplates, and it's a way to do your quality
23 assurance check. Is that right?

24 A. Well, we have an accountability framework
25 which includes both financial accountability. But also

1 when we do quality assurance, we have a framework that
2 we use for that.

3 234. Q. You'll agree with me, INAC is providing the
4 funds. So, their focus is on financial, ensuring that
5 the money that they give is being spent according to the
6 terms and conditions as set out in this agreement?

7 A. I would say that INAC's role at the present
8 time more closely mirrors some of the things that we
9 also do, in that we both provide funding. But while we
10 are concerned about expenditures, we're also concerned
11 about quality and level of service. And I believe --
12 and certainly our discussions with INAC and our
13 involvement with them around their compliance reviews
14 would indicate that they do some of the same. So, it's
15 beyond just an accountability on the funding. INAC has
16 engaged with us, and continues to be involved in
17 discussions around outcomes, benchmarks, indicators,
18 requirements, terms and conditions for programs and
19 services which, in my opinion, goes beyond just simply,
20 'Here's the money we're giving you. How are you
21 spending it?'

22 235. Q. Let's get back just for a moment to the
23 financial accounting side of it, where you basically
24 have to go through a process to ensure that, for
25 example, when you're giving the actuals for maintenance,

1 the money is being flowed out based on what the
2 expenditures are for maintenance. And there would be a
3 process to verify that, for example, a given agency has
4 a given number of children in care, and the costs
5 associated with them are verified. You've developed a
6 process or a procedure or protocol to do that, to verify
7 that information?

8 A. Well, I think as I said, maintenance right
9 now provincially is still administered by the province.
10 We don't do that as an Authority at this point.

11 236. Q. Oh, you don't do that?

12 A. We've asked the province to do it on our
13 behalf.

14 237. Q. Okay. So, the province does that. But is
15 it your understanding or your knowledge that the
16 province has a process by which -- to verify that
17 information?

18 A. They have a process, yes, I would say.

19 238. Q. And that holds true for the Northern
20 Authority; the province again is doing all the financial
21 information?

22 A. At this point in time, yes, they have a
23 similar agreement to have the province do it on their
24 behalf.

1 239. Q. I take it, you would agree with me that it's
2 important to verify that -- you know, it's in the best
3 interest of the children to ensure that money that is
4 supposed to go for child and family services, be it
5 through maintenance or through operations, whatever,
6 that the money that's being given to an agency for that
7 purpose is actually being spent for that purpose?

8 A. Yes.

9 240. Q. Okay. And part of the reason why INAC and,
10 I take it, the province has a financial verification is
11 to ensure that that happens, correct?

12 A. Yes.

13 241. Q. And I take it, in your Affidavit, there's
14 been some friction or tension about some of the
15 information that has been sought with respect to
16 compliance reviews? Sometimes the word "audit" is used,
17 sometimes "compliance". But when INAC goes and seeks
18 documentation from an agency to verify that the money
19 that they have given to that agency has been spent for
20 what it's intended, they need or they sometimes -- they
21 need verification through documentation or other
22 information, correct?

23 A. Yes, they would.

24 242. Q. Yes, as with the province. But I mean, it's
25 just ---

1 A. Yes, as would we.

2 243. Q. Yes. And that would go back to the very
3 outset. I mean, obviously, if it's a federally funded
4 child, you'll need at the very intake, the information
5 to show that the child is, for example, registered as an
6 Indian, is ordinarily resident on the reserve. There
7 may be treaty numbers or other information that's
8 required to verify that, correct?

9 A. Yes.

10 244. Q. If the child goes into placement as part of
11 a maintenance, if they're put into a home, a facility,
12 there has to be some verification as to the placement, I
13 guess, and the expense associated with that. I mean,
14 treatment homes, be they foster or others, they would
15 charge like a per diem rate or something according to
16 provincial regulations. Is that right?

17 A. Whatever the set rates would be for the ---

18 245. Q. Yes, whatever the set rates would be.

19 A. Yes.

20 246. Q. So, there would be some invoice or something
21 to -- some record to show that the money being requested
22 for the maintenance of that child into treatment, that
23 there's some verification that the child is actually
24 being treated in that facility or placed in that,
25 correct?

1 A. Yes, our friction was not about INAC's
2 requirement for some type of audit trail.

3 247. Q. It seems to be -- and we can maybe get into
4 this more at the break, but I understood it had
5 something, or at least in your exhibits -- and we'll get
6 to it after the break. There was something to do with a
7 by-law and with respect to criminal records. Is that
8 right?

9 A. Yes.

10 248. Q. Okay. And just maybe on closing, it's my
11 understanding as a matter of fact, that there are under
12 the -- it may be the legislation or the regulation, I'm
13 not sure which, I think it's the regulations. There's a
14 provision for doing records checks of people who work
15 for an agency, who are going to be dealing with working
16 with children or involved with them in some capacity?

17 A. Yes, there are.

18 249. Q. I'm not quite sure of the exact wording, we
19 don't need that for this purpose, but that's the
20 understanding. And would that be part of the by-laws of
21 the agency to deal with that?

22 A. It might be.

23 250. Q. When I look at the letter -- and we can
24 review it after lunch -- are you suggesting that INAC

1 was instructing or directing the agency in question to
2 amend its by-laws?

3 A. I believe INAC's letter says that.

4 251. Q. Well, if we look at it, I confess I didn't
5 see it in quite that light. This is Exhibit "D". Maybe
6 we'll just very quickly go to that before we break.
7 This is Exhibit "D" to your Affidavit, a letter dated
8 December 14th, 2009. And this was addressed to a
9 Mr. Rundle from the Peguis Child and Family Services.
10 Do you ---

11 A. Yes.

12 252. Q. And I see in the third paragraph -- and this
13 is a result of a compliance review as described by INAC.
14 And in the third paragraph, the letter states:

15 "The following results/issues were
16 identified during the review of the
17 administrative component:"

18 Then we go down again, I think it's four bullets. Or
19 five bullets:

20 "The agency's By-Law #1, as approved by
21 the Board of Directors in 2002, did not
22 reflect the requirement for the Board
23 members to undertake a Child Abuse
24 Registry Check prior to their approval
25 as Board members."

1 So, is that what you're referring to?

2 A. Okay.

3 253. Q. Yes. So, I just want to get an
4 understanding. Is that where -- at least your view is
5 INAC is telling Mr. Rundle on behalf of Peguis to change
6 their by-law?

7 A. I'm not sure which letter you're looking at.
8 I have a couple of letters in this exhibit to Mr.
9 Rundle.

10 254. Q. Well, I have Exhibit "D", the first letter.

11 A. All right. So, the December 9th letter. Is
12 that the one you're talking to?

13 255. Q. Yes.

14 A. Okay. So, your question again, sorry?

15 256. Q. Well, again, I'm just trying to understand.
16 Because I take it, the essence of your complaint or your
17 position that INAC is involved in more than just
18 strictly doing an audit or review of how the money
19 flows, stems from what's contained in this letter. And
20 since you refer to the criminal record check or the by-
21 law, I'm just asking you: is that the source of your
22 view that INAC is attempting to direct the Board as to
23 how it should adopt by-laws?

24 A. Well, I guess first of all, the compliance
25 reviews are initially intended to review maintenance

1 expenditures. So, we have no problem with INAC coming
2 and saying, 'Where's the audit trail to show that this
3 child was in fact in care, was in fact treaty, did in
4 fact meet the residency requirements and so on?' My
5 question is, when you're doing a compliance review on
6 maintenance expenditures, why would there be a need for
7 INAC, if that is strictly its role, to review the HR
8 policy of the agency, to review the Board Meeting
9 Minutes, to review the Board by-laws, to point out where
10 INAC believes changes should be made. And in some of
11 the letters that they've sent, a little bit in this
12 December one, certainly in the October 26 one where they
13 also reference a number of areas, you know, giving the
14 agency 60 calendar days to comply. So, in our opinion,
15 INAC has certainly gone beyond its role of simply
16 reviewing whether there's an audit trail. I don't
17 personally think there's a problem with asking an agency
18 about its by-laws and its HR policy manual. But as I
19 said before, in my opinion, by doing those things, INAC
20 has taken itself well beyond just, 'We want to know how
21 you're spending our money', and has taken a role that
22 much more parallels the Authority's role. We certainly
23 ask agencies how they spend money we provide, but our
24 quality assurance framework includes many of these very
25 same items; by-laws, HR policy manuals. And in fact,

1 our discussions with INAC and our liaison with the folks
2 at the regional office have included discussions that we
3 are already doing this as part of a quality assurance
4 review. INAC as a funder does not need to go and do
5 these things. So, in our opinion -- in my opinion, INAC
6 is certainly seeing its role as well beyond just being a
7 funder and actually being very involved in how agencies
8 perform and deliver services.

9 257. Q. Okay. We'll renew this, but just before we
10 break, just to clarify so I'm clear. I earlier asked
11 you about the regulations and the legislation. Am I
12 correct in that an agency must conduct criminal record
13 checks with respect to people who come under its
14 employment, as part of either the regulations or the
15 law, or the statute?

16 A. We have a requirement for agencies and their
17 staff. There is no provincial standard or regulation or
18 even policy that speaks to criteria for Board members.

19 258. Q. My question though is: the agency -- and
20 I'm not talking about the Board members, but just the
21 agency as a whole -- there is a statutory or regulatory
22 obligation for them to undertake criminal record checks
23 of anyone who is going to be employed by them or working
24 with them with respect to delivering services to
25 children?

1 A. We expect that, yes.

2 MR. CHAMP: And just for clarity of the Record,
3 Mr. Tarlton, you acknowledge and recognize the letter
4 just refers to Board members?

5 MR. TARLTON: It says:

6 "-- requirement for the Board members to
7 undertake a Child Abuse Registry Check
8 prior to their approval as Board
9 members".

10 Yes, I just want to clarify what the statute is and the
11 regulation. I suppose we'll have to look at -- in due
12 course, we can examine that and see what it means.
13 That's more of a, I would think, a legal question. I'm
14 just trying to get an understanding of what ---

15 MR. CHAMP: Right. And just in your last couple
16 of questions, I think Ms Flette responded to that ---

17 MR. TARLTON: Yes.

18 MR. CHAMP: --- saying, to her knowledge, there
19 is no requirement whatsoever for Board members.

20 MR. TARLTON: Fair enough.

21 MR. CHAMP: And you said, 'Well, I'm not worried
22 about Board members, I'm worried about employees.'

23 MR. TARLTON: No, I'm asking about ---

1 MR. CHAMP: But just so we're clear. The letter
2 isn't speaking about employees, it speaks about Board
3 members.

4 MR. TARLTON: Yes, it speaks about Board members
5 in the agency and not having the -- and given our
6 discussions and exchanges last week, I don't want to get
7 into, you know, reading the -- looking at the regulation
8 of the Act, and I think that's more of a legal question
9 we can consider later. I understand what she's saying.
10 She views it -- her view is that, given the wording of
11 the letter, that it's focused on Board members, and I'm
12 content with that. And I just wanted to clarify what
13 the agency must do, and whether that's grounded in
14 legislation or regulation. We can look at that later
15 and decide how far it extends. Thank you very much.

16 (LUNCHEON ADJOURNMENT)

17 BY MR. TARLTON:

18 259. Q. Good afternoon, we're back on the Record
19 again. Ms Flette, before we broke for the lunch hour, I
20 believe I was asking you some questions pertaining to
21 Exhibit "D" to your Affidavit which is further discussed
22 at Paragraph 40, found at the bottom of Page 12 of your
23 Affidavit. So, maybe we could just return to that, I
24 just have a couple more questions in regards to that.
25 Do you have that in front of you?

1 A. Yes.

2 260. Q. Okay. Just so I'm clear to understand, is
3 it your understanding that as a result of this letter,
4 the Board -- and this is in respect of Peguis Child and
5 Family Services agency, correct?

6 A. Yes.

7 261. Q. Did the Board for that agency modify or
8 amend its by-laws?

9 A. The Board of the agency is undergoing a
10 quality assurance review by the Southern Authority right
11 now. And as part of that, we are making changes to the
12 by-laws. I don't know what stage that's at, at this
13 point, and if they've done that.

14 262. Q. Okay. But my question was -- and I
15 appreciate giving the context, but this letter is dated
16 December of last year. I guess at that time, the agency
17 was undergoing this quality assurance review you just
18 spoke of?

19 A. Yes.

20 263. Q. So, it's not the same though as being put
21 under administration, is it?

22 A. No.

23 264. Q. So, the agency still has a mandate under the
24 legislation, correct?

1 A. All the -- even under administration, they
2 still have a mandate. But Peguis in particular still
3 has a Board and an ED.

4 265. Q. The Board still has the ability to ---

5 A. Function as a Board.

6 266. Q. Function as a Board, okay. So, there's been
7 no action taken with respect to the by-laws or any
8 amendments dealing with criminal records or anything as
9 a result of this letter, correct?

10 A. I don't know if the agency has taken
11 actions, we have not.

12 267. Q. And that is again, as I think you've pointed
13 out earlier, both in your Affidavit and in your
14 testimony today, that's a function of the Authority.
15 That's its mandate under the legislation in terms of, it
16 can oversee and take even corrective measures with
17 respect to the operations of an agency under its
18 authority, correct?

19 A. Yes, and it can issue directives to agencies
20 as well.

21 268. Q. Sure, okay. Just before I leave the exhibit
22 and Paragraph 40, if I can turn you to the second page
23 of Exhibit "D". And I just want to be clear. There was
24 at the very bottom just above the final sentence in the
25 signature line, there's a request to the agency to

1 provide Board Meeting Minutes and a Chart of Accounts.

2 Do you see that?

3 A. Yes, I do.

4 269. Q. Okay. I take it, if I read the letter --
5 and I just want to know if you agree with me or not --
6 the agency's Board Meeting Minutes are not in respect of
7 this by-law that we were discussing earlier, it's just
8 the general, the Minutes for that period of time.
9 Because I see in the third bullet on the first page,
10 there's a reference to "The agency's Board Meeting
11 Minutes (year to date) were not provided". So, I take
12 it, reading that letter, do you agree with me that the
13 request there is not in respect of the by-law but in
14 respect of just providing a copy of the Board Meeting
15 Minutes for the year?

16 A. I don't know. I mean, certainly issues
17 relating to by-law amendments would be found in Board
18 Minutes. So, I'm not sure what the motive was for
19 asking for that, if it was just for the Meeting Minutes
20 or for more.

21 MR. CHAMP: Mr. Tarlton, just on that, just so I
22 understand your client's position. Is your client's
23 position that this is merely a suggestion to the Peguis
24 First Nation, that they must -- to amend their by-laws,
25 but it's not a requirement? Because if so, I'm sure we

1 could let that First Nation agency know, they'd be
2 pleased to hear it, no doubt.

3 MR. TARLTON: Well, I'm just trying to get --
4 the letter ultimately is the document, it'll speak for
5 itself. And I suppose we'll make arguments as to what
6 exactly is being said in that.

7 MR. CHAMP: But Mr. Tarlton, just to be clear,
8 it's your client, correct? It's your client's letter.

9 MR. TARLTON: Well, I'm asking about Ms Flette's
10 understanding because she's ---

11 MR. CHAMP: But you're putting things to her
12 that would be right in your client's mind. So, the way
13 you're suggesting it to her, it suggests that your
14 client means something different than what she put in
15 her Affidavit. If that's the case, I think that's
16 great, but we should know that.

17 BY MR. TARLTON:

18 270. Q. Well, let me rephrase the question. Do you
19 understand the request or the requirement -- or the
20 request at the bottom of the second page of Exhibit "D"
21 to be a request in respect of the Board Meeting Minutes,
22 the Board Meeting Minutes and the by-law, or both?

23 A. I see it as both.

24 MR. TARLTON: Okay, that's fine.

1 MR. CHAMP: Mr. Tarlton, could you just put on
2 the Record then what your client's position on that
3 issue is?

4 MR. TARLTON: I'm not going to put it on at this
5 point in time. But as I say, I just wanted to clarify
6 what Ms Flette, the Deponent's understanding of the
7 letter and the request being made by INAC.

8 MR. CHAMP: Well, I just will note for the
9 Record that if we do subsequently find out that that is
10 indeed what your client's position is with this First
11 Nation agency, I will be very troubled by you to be
12 putting an opposite proposition to this witness. Thank
13 you.

14 BY MR. TARLTON:

15 271. Q. I just want to move on now, I think we're
16 done with Paragraph 40 and Exhibit "D". If I can
17 perhaps go back just a little bit in your Affidavit. We
18 talked a little bit this morning about reviewing of
19 documents and verifying files. And in Paragraph 38 at
20 Page 12, you discuss that under the heading "Compliance
21 review". Do you see that?

22 A. Yes.

23 272. Q. It's my understanding -- and again, I'm
24 asking you if based on your knowledge, you agree or
25 disagree. When INAC is undertaking a compliance review

1 as they describe it, they will engage in a -- select a
2 monthly invoice in cases included on that invoice, using
3 a random selection process. Do you know that or not?

4 A. What INAC does is pick a month, and then
5 they review all of the child maintenance transactions in
6 that month.

7 273. Q. And the information that INAC is seeking, I
8 understand, does not include personal information
9 regarding the foster parents, but the agency is asked to
10 confirm that a home is appropriately licensed under the
11 legislation and regulations?

12 A. The compliance review auditors have in fact
13 asked agencies for child files and foster home files.

14 274. Q. Yes. And again, my understanding is -- and
15 we can get into this -- under the provincial
16 legislation, foster homes need to be licensed. Is that
17 correct?

18 A. That's correct.

19 275. Q. And what I understand INAC is looking for is
20 some verification that the foster home in question has
21 been licensed?

22 A. Which is well beyond a funding question.
23 That is a program and service. And in fact, services
24 under the Act that they are then asking to ascertain,
25 which is in our opinion -- my opinion -- not their role

1 if they are strictly a funder. The issue of whether
2 foster homes are appropriately licensed and whether
3 those licences are up-to-date fall under the Southern
4 Authority.

5 276. Q. Well, and thank you for your views on this
6 subject. I guess my understanding is -- again,
7 according to the legislation, the foster home has to be
8 licensed in order for it to meet the legislative
9 requirements?

10 A. In fact, there are a number of mechanisms
11 and different ways in which children in Manitoba can be
12 placed; a foster home and a foster licence is one.

13 277. Q. Yes. And if we're talking about a foster
14 home, it needs to be licensed. Is that correct?

15 A. By virtue of a licence, it becomes a foster
16 home.

17 278. Q. Okay. So, the home needs to be licensed in
18 order to become a foster home. Maybe if I can approach
19 it that way, correct? So, if an agency is submitting or
20 seeking reimbursement for a rate or an expenditure in
21 relation to a child being placed in a foster home, INAC
22 would want some verification that the home in fact is
23 licensed to be a foster home?

24 A. Well, then INAC is seeking a verification
25 that is not required by either the province or the

1 Southern Authority with respect to paying for children
2 in care. What INAC should be seeking is verification
3 that a) this child is in care, b) this child is treaty
4 in a federal responsibility, and in fact the agency had
5 an expense. The issue of the status of the home that
6 the child was placed in, if INAC is solely a funder and
7 acts that way, would not be something that they would be
8 verifying.

9 279. Q. Well, just again so I'm clear. In order to
10 be a foster home in the province of Manitoba, to be
11 determined that way for the purposes of the legislation,
12 it must be licensed, correct?

13 A. Foster homes need to be licensed. Children
14 are placed in foster homes and those costs are paid for
15 even in situations where there is not a licence.

16 280. Q. And they're paid for by the province?

17 A. They're paid for by the province, and they
18 should be paid for by INAC.

19 281. Q. The province is determined to pay for that
20 whether the home is licensed or not. Can that be found
21 in a legislation or is that in a policy or what sort of
22 ---

23 A. Well, we have provisions under our
24 legislation regulations that allow for agencies to
25 designate homes as places of safety, for example, that

1 don't require the same foster home licence. We have
2 provisions and leeway if a foster licence has expired,
3 to continue to pay until that licence is renewed, even
4 if at the time, there's no licence in place. Because
5 the outcome of a harsh financial application there would
6 mean children would have to be moved.

7 282. Q. And again you've mentioned -- your answer, I
8 think, also reflects some of what you've said in
9 Paragraphs 41 and 42. Again, is it your understanding
10 that the regional office of INAC and the Manitoba office
11 has been working in child and family service compliance
12 work since, I think, approximately 2006 or thereabouts;
13 is that your understanding?

14 A. I believe that -- I'm not going to say with
15 certainty, but I believe that's correct. The first
16 agency, when they started doing compliance reviews, was
17 one of the Southern Agencies as kind of a test, I guess.
18 And now this summer, they did quite a number of them.
19 But I believe it was about 2006.

20 283. Q. Okay. And I take it, the regional office of
21 INAC will work with both the Southern Authority and the
22 agencies in trying to address any issues such as
23 licensing, for example. Keeping in mind that the
24 licensing is a matter of provincial legislation and
25 responsibility, correct?

1 A. Well, we would expect INAC -- and we would
2 anticipate that INAC would do that if in their
3 compliance review, they found some concerns about that,
4 that they would discuss those with us and that we would
5 be then responsible for following up on any of those
6 concerns. That's not how things have transpired,
7 however.

8 284. Q. Do you have an example or do you know of a
9 situation where there has been a financial impact on an
10 agency because of an unlicensed foster home?

11 A. Well, I know of a situation right now where
12 INAC is demanding -- where there is a home that is not
13 licensed, and INAC is refusing to pay and not willing to
14 sit down and resolve the matter with us and the
15 province. And both the Southern Authority and the
16 province are in agreement with the agency's plan about
17 leaving those children there. INAC's demands would
18 result in kids being disrupted from a placement, being
19 placed in a shelter, strictly because of a requirement
20 that INAC is implementing, that in our opinion, it has
21 no authority to do.

22 285. Q. You mentioned that there have been
23 discussions with INAC about this. Have there also been
24 discussions about information to promote agency
25 compliance in terms of the financial accountability

1 requirements that INAC seeks, as between yourself -- or
2 the Southern Authority, the agency or agencies in
3 question under your mandate and INAC?

4 A. We've had discussions with INAC and
5 specifically with Audit Evaluation Services of INAC
6 about our concerns with the way they're conducting their
7 compliance reviews, and about possibly setting up a
8 protocol where those would be done more appropriately
9 and more limiting of INAC's role to what it should be.
10 So, those discussions are underway.

11 286. Q. And I take it, so there's two -- or there's
12 a couple of issues here, at least you on behalf of the
13 Southern Authority see. One is that, if I understand
14 you, the Authority has the mandate with respect to the
15 legislation and the delivery, and I guess supervising or
16 overseeing the agency as it delivers services. And as
17 well, there's an issue with respect to INAC in terms of
18 how it -- the type of information that it wants in order
19 to verify the terms and conditions under its agreement.
20 And I'm just curious, we can get that. We've discussed
21 that there have been discussions. I mentioned, I think,
22 to you earlier before we broke this afternoon for lunch,
23 I understood there's obviously been a series of
24 meetings. But there were meetings, I think, in late
25 2009 and perhaps even in earlier this year regarding, I

1 guess, INAC and the Southern Authority and the Northern
2 Authority and the agencies, and how this information
3 sharing could be done. Are you aware of those meetings?

4 A. I'm not sure exactly what you're getting at.
5 I think I've already said we've had a series and
6 continue to meet with INAC about ways in which
7 compliance can be done. We have objected to INAC's
8 requesting of foster home files and files that we
9 believe are protected under the CFS Act, and we've
10 voiced those objections. We believe that INAC is
11 seriously overstepping its role in demanding those from
12 agencies. And they've been very heavy-handed in their
13 request of agencies for those files.

14 287. Q. What do you mean, "heavy-handed"? Are there
15 situations where they have refused or withdrawn the
16 funding agreements with the agents?

17 A. Well, that's what they have threatened. We
18 have advised our agencies that under the CFS Act, it was
19 our opinion that they were not able to share those files
20 without breaking the law. And they've been told by INAC
21 that if they didn't produce them, they would not be
22 receiving their funding for the next month.

23 288. Q. So, we have an issue here involving the
24 sharing of information and what may or may not be
25 permitted under provincial legislation?

1 A. Well, it's very clear what's permitted under
2 provincial legislation, and it's also very clear what
3 INAC is or isn't entitled to, in our opinion based on
4 that legislation.

5 289. Q. I don't think for the purposes of this
6 afternoon, we need to go deeply into the reasons for
7 your opinion or why you feel it's appropriate. I
8 appreciate, you have views again on the subject. But
9 that's one issue. There are concerns about the
10 information that may or may not need to be shared and
11 whether it's protected by privacy or other legislation.
12 That's one concern, right?

13 A. Yes.

14 290. Q. And there are, I take it, also concerns
15 about -- and we've talked about the example with the
16 foster homes. Clearly, there's an approach the province
17 is taking with respect to how to deal with homes that
18 are not licensed, but because they're not being
19 licensed, they're not foster homes for the purpose of
20 the legislation. That's another issue you've
21 identified. You mentioned earlier today ---

22 A. Just, I'm not the one that said they weren't
23 foster homes. Just to clarify.

24 291. Q. Okay. Well, I understood a foster home
25 needs to be licensed.

1 A. Yes, but we clearly have foster homes who
2 are being paid as foster homes where licences need to be
3 renewed. And as I said, we have provisions that allow
4 us to continue to leave children in those homes and pay
5 for them.

6 292. Q. Okay. But are they -- and maybe you can't
7 answer this, it's a legal question. I take it, they're
8 a home like a foster home but not licensed?

9 A. Well, children are placed in those homes.

10 293. Q. They're placed in those homes but they're
11 not licensed, okay. And you've identified the issue
12 earlier with the by-laws and the question as to whether
13 or not there is a requirement for Directors of a Board
14 of an agency to undergo a criminal record check or what,
15 in fact, the regulations and the ---

16 A. Well, I know there is no regulation criteria
17 or standard for agency Board of Directors.

18 294. Q. And we can find that in the regulation, we
19 don't need to do that.

20 A. There is nothing in the regulation.

21 295. Q. All right. So, these are all areas of
22 concern. And you've met with officials from INAC, I
23 take it, in the region to try and resolve this. Is that
24 right?

25 A. Yes, we voiced our concerns with them.

1 296. Q. And to date, you haven't fully resolved
2 them, I take it; they're still ongoing. Is that right?

3 A. Well, we understand from a recent meeting
4 with Audit and Evaluation that they share our opinion
5 and that that should not have happened. And they've
6 apologized and said it won't happen again. So, we're
7 assuming that maybe the next time, we'll be on the same
8 page, but that remains to be seen.

9 297. Q. And it's important to be on the same page
10 and to try and coordinate as best as possible. Is that
11 right?

12 A. Well, to coordinate and for everybody to act
13 within the roles and responsibilities that they have and
14 not to overstep them.

15 298. Q. But again, would you agree with me, INAC has
16 no legislative authority. It's the Southern Authority
17 that would ultimately make the decision as to whether or
18 not to -- if I can use the expression -- pull or
19 terminate an agency's mandate to deliver services to the
20 First Nations and agencies under your authority. Is
21 that correct?

22 A. Yes.

23 299. Q. I just wanted to ask you now. And you've
24 identified some sources of friction or concern with INAC
25 in respect to their compliance or reporting. Would you

1 agree with me, however, that there are times when the
2 compliance undertaken by INAC has actually proved
3 helpful in identifying areas of concern for the delivery
4 of child services in a given agency?

5 A. Well, there are certainly benefits to a
6 compliance review. We're not taking issue with the fact
7 that they're doing compliance reviews on expenditures.

8 300. Q. Yes. And you're taking issue with the fact
9 that they may have, as you feel, overstepped their
10 authority, if I can use that word. You've spoken to
11 them about that. And based, I guess, on what I
12 understand you've just told me, they're aware of your
13 concern and they're going to, I take it, address it in
14 due course, correct?

15 A. Yes, maybe that's correct, although I must
16 say that the issue of this child in this foster home is
17 an ongoing one and a very real one. And so, there has
18 been no change of heart in that respect.

19 301. Q. I guess getting back to compliance or an
20 example where INAC has undertaken a compliance
21 assessment or an audit or whatever you would like to
22 call it ---

23 A. They call it a compliance review.

24 302. Q. --- that's been beneficial, you had
25 mentioned earlier a couple of the agencies are under

1 administration. I think one is the Southeast, which in
2 fact, the agreement attached to your Affidavit points
3 out?

4 A. Yes.

5 303. Q. And I understand that as a result of a death
6 of a child in care, there was an enquiry, a public
7 enquiry in respect of the Southeast agency which led to
8 your Authority undertaking a further review?

9 A. It was a recommendation in the inquest.

10 304. Q. Yes, it was a recommendation. And you
11 adopted that recommendation. Is that right?

12 A. Yes, we did.

13 305. Q. I think that led to, in 2008, the agency
14 being put under administration. Is that right?

15 A. That's correct.

16 306. Q. Is it not true that in conducting your
17 review, you looked at, I guess, transparency and clarity
18 from the perspective of governments and the relationship
19 between the Board of Directors or the Board with respect
20 to the Southeast agency or its Executive Director, and
21 other First Nations governance bodies. I think there
22 was a Southeast resource development council?

23 A. We looked at the governance structure of the
24 agency.

25 307. Q. Yes?

1 A. And what we found was an inter-relationship
2 with the Southeast Resource Development Council which is
3 the Tribal Council for the Southeast First Nations.

4 308. Q. And there were some problems identified with
5 that relationship. Is that right?

6 A. There were concerns identified.

7 309. Q. Yes, concerns. And you'll agree with me
8 that one of the concerns had to do with perhaps a lack
9 of transparency or arm's length dealings with respect to
10 some of the business ventures of the development
11 corporation and the services being provided by the
12 agency?

13 A. We had a concern about related party
14 transactions.

15 310. Q. Yes, related party transactions. I think I
16 recall reading something about that. And one of them
17 related to, I think it was a treatment -- a 4-bed
18 treatment ---

19 A. Yes.

20 311. Q. Which I think was -- well, actually, just
21 clarify for me. What exactly was that? It was a 4-bed
22 placement unit on the reserve?

23 A. It was a group that incorporated, that
24 operates a number of 4-bed units on reserve and off
25 reserve.

1 312. Q. Yes, okay. And there were some concerns
2 about, I guess, funding and reimbursement for funding
3 related to services that were being provided by that
4 facility. Is that ---

5 A. There were questions that we didn't have
6 answers for, that were asked.

7 313. Q. And some of the questions were raised in the
8 enquiry about them were as a result, I think, of INAC
9 conducting a compliance with respect to that?

10 A. With the four beds?

11 314. Q. Yes?

12 A. I don't believe that INAC, other than
13 perhaps what they looked at in that month of the
14 compliance review where they would have had some
15 involvement with the four beds because there would have
16 been children placed there. But an enquiry into the 4-
17 bed unit, I don't believe INAC has done that. INAC has
18 voiced concerns to us which we share and which we
19 outlined in our report.

20 315. Q. Just bear with me a moment. All right.
21 Well, let me restate it. And it may not have been
22 specifically with the 4-bed, but just so I understand.
23 As a result of the problems or concerns associated with
24 Southeast, a compliance review by INAC of the federal
25 maintenance -- the maintenance for federal children, was

1 conducted, I think in 2006/2007. And I understand that
2 there were discrepancies found as a result of that
3 review. Is that your ---

4 A. The review in 2006 was not as a result of
5 concerns. It was part of -- INAC was engaging on a new
6 process by which to verify maintenance billing. And
7 they were moving from a process by which they
8 scrutinized the bills every month to a process where, on
9 a regular basis, they would conduct a compliance review
10 of maintenance expenditures. They asked the Manitoba
11 agencies who would volunteer to be the first one. And
12 that was done on the condition that any discrepancies
13 found, there would be no financial implications because
14 they were volunteering to be a test case. And it was on
15 that basis that Southeast had their first compliance
16 review in 2006.

17 316. Q. And at the same time that INAC's compliance
18 review was going on, there was an agency audit. And I
19 don't know -- if you know, you can tell me -- I don't
20 know if it was initiated by the agency itself or whether
21 it was initiated by the Southern Authority. But I
22 understand there was an audit conducted around the same
23 fiscal year period as the INAC was. Am I correct in
24 that?

25 A. Well, we would not have done an audit.

1 317. Q. It would have been the agency?

2 A. It would have been the agency's audit. And
3 I believe it's the one we speak to in our report at
4 length.

5 318. Q. Yes. And I guess my point is, the auditor
6 identified some errors in the ward maintenance or the
7 federal child maintenance. And that was verified by the
8 compliance undertaken by INAC?

9 A. I believe that the auditor did a similar
10 test of some of the expenditures which had similar
11 results to the INAC compliance review.

12 319. Q. Yes. I think you indicate or the auditor
13 indicated they were consistent with DIAN's ---

14 A. Yes.

15 320. Q. Yes, okay. And just one other thing. So, I
16 guess my point is that it's again important to ensure
17 that the money is flowing to those that need it, the
18 children. You again take no issue with the idea of
19 having a compliance on the terms and conditions in the
20 INAC agreement. I take it, your difference is the
21 direction in which they sometimes are focused for the
22 questions or issues that are being raised, but not to
23 the idea itself of reviewing the expense or verifying
24 that the expenditures either in maintenance or through

1 operations are actually -- the money is going to what
2 they're intended to?

3 MR. CHAMP: I'm not sure I understand the
4 question.

5 MR. TARLTON: Sorry, I'll rephrase that, that's
6 all right.

7 BY MR. TARLTON:

8 321. Q. I'll suggest to you, the example I've given
9 you shows that it's important and sometimes helpful to
10 have verification of compliance by more than one body,
11 and it can be complimentary. Here, it was I guess the
12 agency's auditor and INAC, but the results were
13 consistent and, you would agree, they were helpful in
14 trying to get to the heart of the matter?

15 A. Is this an "end justifies the means" kind of
16 question?

17 322. Q. Well, I take it ---

18 A. I mean, we are fully committed and believe
19 that agencies should be monitored and scrutinized, and
20 subject to very regular quality assurance reviews, and
21 that there should be good oversight that in fact they're
22 engaging in good practice, that the money is being used
23 for the way its intended. Having said that, we would
24 not be anywhere near agreeing that INAC has a role in
25 doing all of that, that INAC may have a very limited

1 piece of that that's related to verifying expenditures
2 for which they provide the money. But it does not go to
3 deciding which foster homes are licensed, whether
4 children should remain in a placement or not, whether
5 you know, there should be criteria for the Board, what
6 kind of holidays the staff get. That's well beyond, in
7 our opinion, INAC's role. And so, while we fully
8 support oversight of agencies, it's not sort of *carte*
9 *blanche* to everybody overseeing everything.

10 323. Q. Okay. And I take it, that then is part of
11 the ongoing discussions between the Authority, the
12 agencies and INAC as trying to, I guess, delineate
13 boundaries?

14 A. Well, yes, it definitely would be part of
15 our discussion, although INAC has been doing this for a
16 while and in our opinion should be more aware of those
17 boundaries.

18 324. Q. All right, I'm just about done. If I can
19 just have a moment. If we can just go back, just one
20 other area I wanted to ask a couple of questions on.
21 Your Paragraph 30 at Pages 9 through 10. And also
22 Paragraph 31, I think, touches on this as well, and 32
23 to some degree. You mentioned the issue involving legal
24 counsel for agencies that was the subject of an inquest.

1 And we talked a bit -- I take it, the Southeast was one
2 of those agencies ---

3 A. Yes.

4 325. Q. --- that you've identified in this. And I
5 take it, there's another agency as well?

6 A. Yes.

7 326. Q. Again, so I'm just clear. The inquests are
8 triggered as a result of -- I take it there's a
9 legislation or a requirement to undertake an inquest
10 when a child under care dies?

11 A. In Manitoba when a child in care dies,
12 there's a review of the child death. Up until last
13 September, those reviews were done by the Chief Medical
14 Examiner's Office. They're now done by the Office of
15 the Children's Advocate. It's the Chief Medical
16 Examiner under the *Fatalities Act* that decides whether
17 an inquest is called. The Chief Medical Examiner in
18 Manitoba heads a committee called the Child Inquest
19 Review Committee that look at the facts of every case,
20 and then make a decision. So, it's not an automatic
21 outcome where a child in care dies that there is an
22 inquest, it is up to the CME to make that decision.

23 327. Q. And I take it, the agencies, they have
24 standing or they have a right to participate in the
25 conduct of the ---

1 A. Well, the inquest is really all about them.
2 I mean, the scope of those inquests are very much
3 focused on the role of the agency.

4 328. Q. Just again, and if you can help me. The
5 children who were the subject of these enquiries, were
6 they provincially funded or federally funded?

7 A. They were both federally funded.

8 329. Q. And I think one, if I understand, died in
9 care outside of -- off the reserve in, I think, it was
10 Winnipeg or somewhere?

11 A. Both of those children were in care, both
12 were federally funded. The Southeast one was a 14-year-
13 old girl who hung herself in Winnipeg.

14 330. Q. And you've mentioned that funding for legal
15 counsel was not provided by INAC. Is there funding
16 available through the province or through other means
17 for these agencies? Do they get funding for ---

18 A. Had those children been funded provincially,
19 the province would have paid their legal bill.

20 331. Q. And is that again through legislation, or is
21 it a program or how is that ---

22 A. Well, it's considered maintenance. It's
23 considered a cost of the child in care.

24 332. Q. The Peguis Child and Family Services, that's
25 referred to in Paragraph 31. You speak there of a legal

1 bill of \$28,000 in a month. And this is in respect of,
2 I take it, it was an appeal of an Order to remove a
3 child from his home and put him under protection?

4 A. The child is subject to an application for a
5 permanent Order of Guardianship by the agency, and the
6 parents are contesting.

7 333. Q. And again, I understand that at least for
8 the previous fiscal year, Peguis Child and Family
9 Services was not facing any significant deficit or in a
10 deficit situation. Is the \$28,000 the total of the
11 expenses?

12 A. It's one month. The matter is still before
13 the court.

14 334. Q. I see. It just initiated, it just began?

15 A. It's been underway for close to a year now.

16 335. Q. For a year, okay.

17 A. If the child in question were provincially
18 funded, those bills would be paid under maintenance
19 billings.

20 336. Q. Do you know if those legal bills can be
21 funded under operations?

22 A. Well, that's where INAC wants to put them.
23 But similar to the services to families funding -- and
24 you know, the story I told before about when Directive
25 20-1 came in, legal costs for children in care were

1 considered part of maintenance. There was no
2 contemplation at the time that agencies would now have
3 to take it out of operations. And again in, I believe
4 around '92, that was done again arbitrarily by INAC
5 where they advised agencies they were no longer going to
6 pay them. That was contrary to provincial policy and
7 that was contrary to past practice, and that was a
8 decision made by INAC. There was no subsequent increase
9 to agencies' operations to reflect the fact that they
10 were now being given this burden. And from my
11 involvement on the National Policy Review Committee, I
12 believe that everyone including INAC agreed with our
13 position on that matter, that these are maintenance
14 costs, they relate to children in care; they should be
15 paid, they should not be coming out of operations.

16 337. Q. So, I take it, your difference of opinion is
17 that you would agree they are funded or can be funded.
18 You are of the view it should be funded through
19 maintenance, whereas as the situation presently exists,
20 it's funded through operations?

21 A. They are costs directly related to children
22 in care, and that fits the maintenance definition and
23 they should be funded that way. And that is how the
24 province funds them, and INAC should be doing the same.

1 338. Q. But in either way, these expenses could be
2 funded either operations or, as you would prefer it,
3 through maintenance?

4 A. Well, they could be funded out of operations
5 if in fact operations were then increased to reflect
6 that those dollars were now going to come out of
7 operations. That did not happen.

8 MR. TARLTON: All right. I believe those are
9 all my questions, thank you very much.

10 THE WITNESS: Thank you.

11 MR. CHAMP: Mr. Tarlton, I was wondering, can we
12 just have a 5-minute break? I just want to review some
13 of my notes.

14 MR. TARLTON: Sure.

15 MR. CHAMP: I'll likely have a brief Redirect.

16 (SHORT RECESS)

17 **RE-EXAMINATION BY MR. CHAMP:**

18 339. Q. Ms Flette, I just have a few questions for
19 you on behalf of the First Nations Child and Family
20 Caring Society in Redirect. My friend Mr. Tarlton asked
21 you a number of questions with respect to Paragraph 20
22 of your Affidavit. And as I understand it, he asked you
23 a number of questions concerning services that might be
24 available through either federal government departments
25 for addiction services and so forth. And I just wanted

1 to ask you: if addiction treatment services were
2 available from Health Canada, would there be any reason
3 why this agency would not have availed themselves of
4 those services for these children?

5 A. No, and I think the three cases that I'm
6 particularly aware of, the agency tried to determine if
7 there were, and it was only when there was no other
8 option. Clearly, if there are services that we can
9 utilize for kids and families that are available,
10 agencies would do that.

11 340. Q. And with respect to these teenagers we're
12 speaking about here, if these children were being
13 followed by an off reserve agency that is provincially
14 funded as opposed to federally funded, what would happen
15 to those children; would they have to go into care?

16 A. Well, if they were accessing a treatment
17 centre in Manitoba, it would be covered through the AFM
18 or the Alcoholism Foundation that funds those resources.

19 341. Q. But would they have to go into care and be
20 removed from their families?

21 A. No, it's not a requirement that you have to
22 be in care in order to be placed in those resources.

23 342. Q. And in Paragraphs 41 and 42 of your
24 Affidavit, my friend asked you a number of questions
25 concerning foster homes and licensing of foster homes.

1 Just so I think we could get the Record clear, in those
2 two paragraphs, you make reference to foster homes and
3 places of safety. Can you explain the difference?

4 A. Well, a place of safety is a provision under
5 legislation, regulation and standard. It's spoken
6 primarily to in terms of the standards. But it's
7 recognized that there are times when you have to place
8 children. For example, if you have to apprehend a child
9 and the child knows the next-door neighbour or the child
10 has an aunt that's willing to take the child but that
11 home is not a licensed foster home. And licensing of a
12 foster home is a process that takes time. And instead
13 of placing a child in a home with strangers, agencies
14 are able to do a place of safety designation for a home
15 and place the child there.

16 343. Q. And a place of safety would get funding from
17 an off reserve agency ---

18 A. Yes.

19 344. Q. An off reserve agency would be able to get
20 funding for a place of safety?

21 A. Yes, yes, everybody -- all the agencies in
22 Manitoba use "place of safety". And they are considered
23 a placement that is paid for through maintenance.

1 345. Q. What's the difference for First Nation
2 agencies that are funded by INAC with respect to places
3 of safety?

4 A. They can use places of safety as well.

5 346. Q. Homes or places of safety that are waiting
6 to be licensed, where is the difference there about -- I
7 guess, can you just explain: where do those homes that
8 are not funded or where INAC refused to fund, where do
9 they fall into that continuum between places of safety
10 and foster homes?

11 A. They're both categories. In Manitoba,
12 there's a requirement for agencies to do annual reviews
13 and renewals of foster home licenses. And so, when a
14 foster home's licence is subject to renewal, let's say
15 it expires, you know, February the 1st and the renewal
16 doesn't get done until March, children are allowed to
17 remain in the home, and the agency is expected to, you
18 know, as soon as they can, get those renewals done. At
19 any point in time, we have any number of homes where the
20 licence has been expired. With a place of safety, the
21 standard provides for a child to be there up to 30 days
22 at which point, there has to be an application for a
23 foster home licence in play and underway, or the place
24 of safety designation really doesn't apply. Again, at
25 any point in time, any of the agencies including the non

1 First Nations one will have children in a place of
2 safety where they're past the 30 days. And the agency
3 may or may not be in the process of getting those homes
4 licensed. We recognize some of the realities for
5 children, I guess, and at the end of the day while we
6 would say it's important that all the homes are
7 licensed, and we certainly work with our agencies to do
8 that, we also recognize that it would be very short-
9 sighted to say 'Remove those children and put them with
10 strangers until we get this work done'. So, there is
11 provision and leeway. Neither the province nor the
12 Authority would order an agency to remove the child from
13 a home simply because the licence hadn't been renewed or
14 the place of safety wasn't properly -- or done in a
15 timely manner.

16 347. Q. And with respect to those homes that are
17 still in the process of getting licensed or whatever,
18 and INAC claws back the funds, where does that deficit
19 come from? Or what would be the implications for the
20 budget of a First Nation agency if INAC claws back funds
21 that they've paid for, for a home?

22 A. Well, the only other stream of funding that
23 those agencies have is operations. So, you know, they
24 would have a decision to take it out of operations or to
25 move the child.

1 348. Q. What are the implications of taking it out
2 of operations?

3 A. Well, they can be very expensive. In
4 Manitoba, just basic maintenance itself is around
5 \$23.00, \$24.00, depending on the age of the child. Many
6 of these children in these types of resources are what
7 we call special needs children. So, per diems in those
8 homes can range anywhere from \$30.00 to \$180.00, \$200.00
9 a day.

10 349. Q. Mr. Tarlton asked you a number of questions
11 about meetings between the Southern Authority, INAC and
12 some of the First Nation agencies trying to come up with
13 agreements around information for compliance reviews.
14 And you indicated that you were participating in some of
15 those meetings. Was Ms Odette Johnson present at any of
16 those meetings?

17 A. She's been present at the meetings where
18 we've had a tripartite process to look at a new funding
19 arrangement. I believe INAC refers to it as the
20 Prevention Focused Approach. There's been a table in
21 Manitoba underway for quite some time now. That is
22 looking at moving that forward, developing a model,
23 developing a framework for it. And she's been
24 participating in those meetings.

1 350. Q. Okay. In your testimony, you had mentioned
2 a situation or an example where there's waiting for a
3 placement or a placement has not yet been approved by
4 INAC?

5 A. I'm not sure what that ---

6 351. Q. Sorry, I'll ask you another question. Are
7 there any provincial requirements under the *Child and*
8 *Family Services Act*, that are not paid for by INAC? Are
9 there any services that are required by the legislation
10 that are not paid for by INAC?

11 A. Are you talking for maintenance now for
12 children in care?

13 352. Q. Yes.

14 A. For the most part, I believe INAC follows
15 the same guidelines that the province uses for what it
16 pays for under maintenance for children in care. I'm
17 trying to think if there's an example where -- I mean,
18 there's disputes all the time about what's allowable and
19 what isn't allowed. But for the most part, I believe
20 agencies do get their maintenance bills reconciled.

21 353. Q. There were a number of questions for you
22 with respect to legal funds, and where those legal funds
23 come from, particularly with respect to the inquest.
24 And there's some discussion about a specific inquest and
25 that the INAC was not providing funding for those legal

1 costs under the maintenance budget. And I understand
2 questions from Mr. Tarlton was that, well, those funds
3 are then in the operations budget. Is there actually
4 more money then in the operations budget that's provided
5 for by INAC for those kinds of costs?

6 A. No, when INAC made the decision that it
7 would no longer pay those costs out of maintenance and
8 directed agencies to take them out of operations, there
9 was no increase to their operations dollars. And just
10 to your previous question, that would be one example of
11 something that is paid for by the province under
12 maintenance that is not covered by INAC.

13 354. Q. And so, when a First Nation agency has to
14 pay for those kinds of legal costs out of their
15 operations budget, what are the implications for the
16 services they provide the children?

17 A. Well, again, you know, for all of our
18 agencies on your operations, salary is always your
19 biggest line. So, if you have any extraordinary costs
20 that's going to impact your salary line, which means
21 your front-line workers.

22 355. Q. Or prevention services?

23 A. Yes, or any programs that you're doing.
24 Even those, though, to deliver them, you need staff to
25 do it. So, it really will impact an agency's ability to

1 provide good case management services, have workers for
2 children and do preventive programs.

3 356. Q. And just with respect to that enquiry that
4 Mr. Tarlton was asking about. I'm just looking through
5 the report on Section 4, you have "Southeast Child and
6 Family Services". And near the end, there's a review of
7 the recommendations from the enquiry.

8 A. The inquest?

9 357. Q. Or the inquest, pardon me.

10 A. Yes.

11 358. Q. The coroner's inquest. And Recommendation
12 12 states:

13 "Urgent and continued discussions need
14 to be participated in to reappraise
15 appropriate funding mechanisms between
16 the federal and provincial governments
17 to deal with the critical child welfare
18 issues plaguing our First Nations
19 communities."

20 Can you tell us what was the concern underlying that
21 recommendation?

22 A. Well, a lot of testimony at the inquest -- I
23 was both there as a witness and as an observer -- had to
24 do with funding and the inequities of funding that exist
25 for on reserve services that are funded by INAC, as

1 opposed to what the province will pay for. So, that was
2 quite a large discussion at the inquest. Tracia Owen
3 who was the young girl involved in this was from Little
4 Grand Rapids which is a fairly remote community.
5 Services are funded by INAC in that community, and
6 Tracia was a federal responsibility. And so, many of
7 the questions that had to do with what was provided on
8 reserve, what was done to keep Tracia from having to
9 leave the community, to what options were there to stop
10 the spiral for her of in and out, in and out, in and out
11 of care, you know. And many of those questions centred
12 around, well, 'What's in the community? What services
13 are there? What capacity does an agency have with
14 federal dollars to provide services in that community?'
15 So, the whole issue of federal funding and the
16 inequities that exist were a subject, and if you read
17 the full report, are spoken to by Judge Guy.

18 359. Q. And this is the girl who committed suicide?

19 A. Yes.

20 360. Q. And so, one of the concerns raised by the
21 coroner was that one of the indirect or direct causes of
22 that child's suicide was problems around the
23 preventative services that were available to her?

24 A. Yes. One of the issues with Tracia, or one
25 of the factors with Tracia in her life was, she was from

1 this remote community. You know, she had family who
2 struggled with addictions and with poverty, and she was
3 moved back -- she was moved to Winnipeg and subsequently
4 ended up on the street and was sexually exploited and
5 into drug use which contributed to her death. And so,
6 the questions were, 'Well, why did you have to remove
7 her from the community? Why couldn't she stay home?
8 Why couldn't you provide services in the community?'
9 And so, that centred around the agency's capacity to
10 have programming, to have emergency shelters, to have
11 resources available that would have allowed that to
12 happen. Tracia was involved with the system and as a
13 federal responsibility most of her life, right from the
14 time she was less than a year old.

15 MR. CHAMP: Thank you, Ms Flette, those are all
16 the questions we have for you.

17 --- WHEREUPON THE CROSS-EXAMINATION ADJOURNED AT
18 THE HOUR OF 3:00 O'CLOCK IN THE AFTERNOON.

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I HEREBY CERTIFY THAT the foregoing is a true and accurate transcription from the Record made by sound recording apparatus, to the best of my skill and ability.

.....
Flavia Pella, Court Monitor.



Examination No. 10-0176

File No. T-1340-7008

THE CANADIAN HUMAN RIGHTS ACT

R.S.C., 1985, c. H-6 (as amended)

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 Indian and Northern Affairs)
RESPONDENT

- and -

CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA
INTERESTED PARTIES

CROSS-EXAMINATION OF ELSIE FLETTE ON AFFIDAVIT sworn
February 11th, 2010, pursuant to an appointment made on
consent of the parties to be reported by Cornell Catana
Reporting Services, held at the Canadian Human Rights
Tribunal, Place Bell, 160 Elgin Street, 11th Floor, Hearing
Room 2, in Ottawa, on March 3rd, 2010, commencing at the
hour of 10:10 in the forenoon.

APPEARANCES:



CORNELL CATANA REPORTING SERVICES, 800-170 Laurier Ave. W., Ottawa, ONK1P 5V5

Tel: (613) 231-4664

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Paul Champ
Anne Levesque

for the Complainants

Samar Musallam

for the Commission

Jonathan D.N. Tarlton

for the Respondent

This Examination was taken down by sound recording by
Cornell Catana Reporting Services Ltd., at Ottawa, Ontario.



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(i)

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ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 47

EXHIBITS

EXHIBIT NO. 1: Affidavit of Ms Elsie Flette, sworn the
11th day of February, 2010..... 3



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DATE TRANSCRIPT ORDERED: March 3rd, 2010

DATE TRANSCRIPT COMPLETED: March 8th, 2010

