

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Ottawa, Canada K1A 1J4

BETWEEN/ENTRE:

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

Complainant

Plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

Commission

and/et

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

Respondent

Intimée

and/et

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Parties intéressées

BEFORE/DEVANT:

Sophie Machildon
Edward Lustig

CHAIR
PANEL MEMBER

Judy Dubois

REGISTRY OFFICER

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Darian Baskatawang

for Chiefs of Ontario

Jessica Walsh
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Commission

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1 Via Zoom Videoconference

2 --- Upon commencing on Tuesday, April 2, 2024

3 MS. DUBOIS: Today is April 2nd,
4 2024. We're here on the matter of the First
5 Nations Child and Family Caring Society of Canada
6 and the Assembly of First Nations, and the Canadian
7 Human Rights Commission, and the Attorney General
8 of Canada, with the interested parties Chiefs of
9 Ontario, Nishnawbe Aski Nation and Amnesty
10 International, and we're here for the motion
11 hearing on the relief.

12 Can I call for appearances please,
13 starting with the Complainants?

14 MR. TAYLOR: Good morning, it's
15 David Taylor and Sarah Clarke and Kevin Droz at the
16 Caring Society. We're joined this morning by Dr.
17 Cindy Blackstock and Brittany Mathews.

18 MS. ANDERSON: Good morning, Dayna
19 Anderson, Kevin Staska and Samantha Gergely for the
20 Attorney General.

21 MR. WUTTKE: Good morning, it's
22 Stuart Wuttke and Lacey Kassis for the Assembly of
23 First Nations.

24 MS. DUBOIS: And for the
25 Respondents?

1 THE CHAIR: They already did --

2 MS. ANDERSON: It's for the
3 Attorney General

4 THE CHAIR: They already got
5 introduced.

6 MS. WALSH: Sorry to interrupt,
7 Madam Chair. Jessica Walsh and Brian Smith, for
8 the Canadian Human Rights Commission.

9 MR. BASKATAWANG: Darian
10 Baskatawang, for the Chiefs of Ontario.

11 THE CHAIR: I'm sorry, there's
12 feedback. It always tests out better. We have
13 some (inaudible).

14 While we're resolving this, other
15 counsel that are present can just go ahead and
16 state their names. Thank you.

17 MR. HYER: Good morning, it's
18 Michael Hyer, for Nishnawbe Aski Nation.

19 THE CHAIR: Anybody else?

20 Okay. So we'll try to resolve the
21 echo. That may be challenging, especially for the
22 affiants.

23 --- PAUSE

24 THE CHAIR: Good morning again. I
25 think -- it seems a little better. Do you

1 think...? I don't hear a second -- okay, a second
2 echo.

3 Before we begin, we would like to
4 acknowledge that the Tribunal is holding this
5 hearing on the traditional and unceded territory of
6 the Algonquin Peoples, so we honour them.

7 We are proceeding in the Caring
8 Society's motion on Jordan's Principles
9 implementation. Today we will hear from affiants
10 who have provided affirmed declarations. We would
11 like to pause and tell the parties that we
12 appreciate the motion, but also the cross-motion.

13 So the motion brings important
14 issues before us. And the cross-motion shows a
15 real effort to bring possible solutions forward.
16 So we're here to listen. I personally have a lot
17 of questions. But if the affiants need any breaks,
18 feel free to ask.

19 Because this is a Tribunal
20 process, we would like to reaffirm the affiants, if
21 nobody objects? So we're ready to begin, if you
22 are. And I know that there's a clerical point that
23 needs to be addressed and I would also ask counsel
24 to lead the affiant in general questions for
25 introduction, and then we'll go from there. And we

1 will have Ms. Dubois affirm the affiant.

2 Thank you.

3 MS. DUBOIS: Do you solemnly
4 affirm that the evidence you are about to give to
5 this Tribunal is the truth, the whole truth, and
6 nothing but the truth?

7 DR. GIDEON: I do.

8 AFFIRMED: DR. VALERIE GIDEON

9 THE CHAIR: Thank you, Dr. Gideon,
10 for being here in your busy schedule. If at any
11 point you need a break, just let me know. I'm here
12 to make sure that you are -- this is not traumatic
13 for you. So just feel free to let us -- let me
14 know, and we'll take a break.

15 So I will ask counsel to start
16 with the clerical clarification.

17 UNIDENTIFIED FEMALE: So the
18 clerical error is in the Affidavit of Pene(ph)
19 Cinquobang(ph). So we would propose to deal with
20 that tomorrow.

21 THE CHAIR: Perfect, thank you.

22 I don't know who can ask general
23 questions just to lead Dr. Gideon?

24 UNIDENTIFIED FEMALE: For just
25 introductory?

1 THE CHAIR: Pardon me? Yes.

2 UNIDENTIFIED FEMALE: Just
3 introductory? I can.

4 THE CHAIR: Yes. Thank you.

5 UNIDENTIFIED FEMALE: Good
6 morning, Dr. Gideon. Can you please cover your
7 (inaudible)?

8 DR. GIDEON: I'm Deputy Minister,
9 Crown-Indigenous Relations and Northern Affairs.
10 I'm also the President of Federal -- I should say
11 Regional Economic Development Agency for Northern
12 Ontario.

13 UNIDENTIFIED FEMALE: And prior to
14 that, what was your occupation?

15 DR. GIDEON: I was the Associate-
16 Deputy Minister for Indigenous Services Canada from
17 September 2020 until November 25th, 2023, and I was
18 the President of (inaudible) since October of 2022.

19 UNIDENTIFIED FEMALE: And can you
20 speak just a little bit to your involvement with
21 Jordan's Principle?

22 DR. GIDEON: My involvement with
23 Jordan's Principle I think substantively began in
24 2017 when I returned from my second maternity
25 leave. I was the Assistant Deputy Minister of

1 Regional Operations at the First Nations and Inuit
2 Health Branch, which was part of Health Canada.
3 And then transitioned into Indigenous Services
4 Canada when it was established, and continued in
5 the First Nations and Inuit Health Branch until
6 September of 2020 when I became the Associate
7 Deputy Minister.

8 So I'd say between 2017 and
9 November 2023 in my various responsibilities I did
10 touch upon Jordan's Principle at various points.

11 UNIDENTIFIED FEMALE: Okay, thank
12 you very much.

13 THE CHAIR: Thank you. Are you
14 ready?

15 MR. TAYLOR: I'm ready. Thanks,
16 Member Machildon, appreciate it.

17 THE CHAIR: Thank you.

18 EXAMINATION-IN-CHIEF BY MR. TAYLOR:

19 Q. Good morning, Dr. Gideon.

20 A. Good morning.

21 Q. So my friend's covered off my
22 first couple of questions. But just to confirm,
23 that since November 25th, you're now the Deputy
24 Minister at CIRNAC, Crown-Indigenous Relations and
25 Northern Affairs Canada?

1 A. That's correct.

2 Q. And I'm right understanding
3 then as a result you no longer attend meetings of
4 Jordan's Principle Operations Committee?

5 A. Correct.

6 Q. And you also no longer attend
7 meetings of the Jordan's Principle Action Table?

8 A. That's correct.

9 Q. Do you recall the last meeting
10 you attended of either JPOC or JPAT?

11 A. I don't.

12 Q. And you also no longer attend
13 meetings of the Expert Advisory Committee that was
14 provided for this Tribunal's March 2022 Consent
15 Order?

16 A. (inaudible/off mic).

17 Q. And you're no longer a member
18 of the Committee dealing with Indigenous Cultural
19 Competency Training for ISC executives and staff?
20 You talk about that at paragraph 34 of the Tri-
21 Chair Committee?

22 A. That's correct.

23 Q. And your successor, as
24 Associate Deputy Minister at ISC, is that Michelle
25 Kovacevic?

1 A. That's correct.

2 Q. And can you confirm that prior
3 to becoming Associate Deputy Minister at ISC she
4 was the Senior Assistant Deputy Minister at
5 Department of Finance, or a Senior Assistant Deputy
6 Minister?

7 A. I would say a.

8 Q. A? A, more than one, of
9 course. Now, just at paragraph 4 of your affidavit
10 you talk about having affirmed affidavits in this
11 proceeding on April 15th, 2019 and April 30th,
12 2020. Do you remember affirming any other
13 affidavits in this proceeding? It's just in the
14 second line there.

15 A. Sorry, do I recall...?

16 Q. Do you recall if you've
17 affirmed any other affidavits in this proceeding?

18 A. I have affirmed other
19 affidavits in this proceeding, yes.

20 Q. A memory test, just to run
21 through them, at least as I understand them. So
22 there was a May 24th, 2018 affidavit that dealt
23 with Jordan's Principle?

24 A. Yes.

25 Q. And that was a reporting

1 affidavit. And there was a May 24th, 2018
2 affidavit on mental health, also a reporting
3 affidavit?

4 A. Yes.

5 Q. And June 21st, 2018 affidavit
6 that was in reply of that reporting (inaudible), do
7 you remember that?

8 A. Remember that, yes.

9 Q. And December 21st, 2018
10 affidavit about essentially the interim review on
11 (inaudible) children without *Indian Act* status
12 (inaudible)?

13 A. Right.

14 Q. March 4th, 2022 on the consent
15 measures that flowed out of the long-term reform
16 AiP?

17 A. Yes.

18 Q. July 6th, 2022 supporting
19 Canada and AFN's joint motion on the final
20 settlement agreement about compensation?

21 A. Should be right.

22 Q. And then June 30th, 2023
23 supporting Canada's, AFN's and Caring Society's
24 joint motion on approval of the compensation
25 settlement?

1 A. Yes.

2 Q. And so you remember those
3 seven additional affidavits?

4 A. I have not reread them all,
5 but yes.

6 Q. No, that's fine. And is there
7 a reason that those other affidavits weren't noted
8 in your affidavit today?

9 A. No particular reason.

10 Q. Paragraph 4 of your affidavit
11 says that, "This affidavit is intended to
12 supplement my earlier evidence." And so would you
13 be -- is it fair for me to say that it's
14 supplementing those seven affidavits as well?

15 A. Some of them are less
16 relevant.

17 Q. Right. But they'd all kind of
18 stand as your affiant evidence --

19 A. My experience.

20 Q. -- at the Tribunal?

21 A. Yes.

22 MR. TAYLOR: So you've got -- I
23 should just say this is small housekeeping now that
24 we're kind of halfway in, you should have two
25 volumes in front of you; one is a brief that's

1 Q. And this looks similar to the
2 site as it was when you were Associate Deputy
3 Minister, yes?

4 A. I would believe so, yes.

5 Q. And if you just turn over to
6 page 4, and unfortunately there's no page numbers,
7 but it's one that -- yes, the box in the top left-
8 hand there, and \$1.48 million?

9 A. Yes?

10 Q. So this figure notes the
11 number of requested (inaudible) being July 2016 and
12 January 31, 2024 as being \$4.48 million product
13 services and supports. Do you understand that as
14 accurate?

15 A. Yes, that's in (inaudible).

16 Q. Yes. And that's -- in
17 fairness to you, that's what you say in paragraph 6
18 of your affidavit as well. You say, between July
19 2016 and January 31, 2024 more than \$4.4 million
20 product services and supports had been approved.
21 So a little bit closer to \$4.5, that's fair?

22 A. Yes.

23 Q. Now, I just have a few
24 questions about the figures in --

25 THE CHAIR: I'm sorry. Just to

1 interrupt. I was wondering if we had an electronic
2 version of this that could be sent to Member
3 Lustig?

4 MR. TAYLOR: I should say, sorry,
5 the -- my colleague, Mr. Droz, circulated about 50
6 PDF, both documents. So Ms. Dubois was on that.

7 THE CHAIR: Okay.

8 MR. TAYLOR: So I'm hoping that
9 it's made its way to Member Lustig, but if not I
10 can pause.

11 MS. DUBOIS: I will forward that.

12 THE CHAIR: Member Lustig, do you
13 have it?

14 MEMBER LUSTIG: Yes, I do.

15 THE CHAIR: Okay, thank you.
16 That's all I wanted to know.

17 BY MR. TAYLOR:

18 Q. So there's a table under
19 paragraph 6 in your Affidavit.

20 A. Yes.

21 Q. And it's titled growth and
22 request volume. And so I just wanted to check a
23 few things on the figures. So if you flip to Tab B
24 in that exhibit brief. So we'll just, kind of for
25 this portion, if you can have the table and then

1 Tab B. And this is an excerpt from -- well, it's
2 in the record, it's Exhibit 3 to Dr. Blackstock's
3 first affidavit on this motion. And it's now
4 Jordan's Principle administrative data tables.
5 You'd agree, this is colloquially referred to as
6 the deep dive? And so the first table that you
7 have here, which is Table 1 -- sorry, my colleague
8 reminds me, if you could say, yes, that it's
9 colloquially referred to --

10 A. Yes.

11 Q. -- yes. Sorry about that,
12 it's just for the benefit of the transcriptionist.
13 Now, in the first table it's titled region-approved
14 request, request type region and fiscal year. And
15 do you see, if you just kind of have both tables
16 together, do you see that in the first line of your
17 affidavit table it says that there were 14,765
18 requests approved --

19 A. Yes.

20 Q. -- representing 140,332
21 products? That number's the same as the one in the
22 deep dive table?

23 A. Yes.

24 Q. Now, for the next three, 2019-
25 20, 2020-21, and 2021-22, which is all that the

1 deep dive table covers, do you agree that just
2 looking between the two it's slightly lower in your
3 affidavit than each of the three --

4 A. In my affidavit it's slightly
5 lower, yes, correct.

6 Q. And do you know why that would
7 be?

8 A. I'd have to see it. But I'd
9 have to look at all the notations. I can't see
10 offhand why the numbers would be slightly
11 different.

12 Q. And, in your view, I'm not
13 asking you to kind of dig into anything you don't
14 have with you, so between the deep dive and the
15 affidavit how it was produced, which of the two
16 versions should the Tribunal take as being
17 authoritative?

18 A. Again, I think I'd have to see
19 what the difference is so that I would be able to
20 answer that question authoritatively.

21 Q. So you're not sure?

22 A. Sometimes it depends on the
23 date of extraction out of the GC Case system.
24 They're noted here under footnote 8, but they're
25 not noted in my affidavit. First, I would have to

1 check that.

2 Q. Would it be fair to say though
3 that your affidavit would have been extracted more
4 recently?

5 A. That would be fair to say.

6 Q. And so would the more recent
7 number be the more accurate one in your view?

8 A. (inaudible/off mic).

9 Q. And just -- I will try not to
10 belabour this, but just looking at Table 5, which
11 is the next one over --

12 A. Initially, David, if you don't
13 mind --

14 Q. Yes?

15 A. -- I'm just (inaudible) that
16 you're pointing me to the individual request or
17 you're pointing me to the (inaudible/speaking
18 simultaneously)?

19 Q. Oh, I'm sorry. The total --
20 the total at the bottom, yes. So just for the
21 benefit of viewers at home, so with 2018-19 it's
22 140,332, which is the same. But then just taking
23 2019-20 as an example it's 350,078. And the deep
24 dive table 347,616 in your chart. Again, not to
25 belabour it, but the other -- the next two tables,

1 which are Table 5 and Table 18, and that's back in
2 Exhibit 3, Table 5 is approved requests, and this
3 is broken down, the request type. But just looking
4 at the total at the bottom, would you agree with me
5 then again that the total for 2018-19 is the same
6 42,765, but we have slightly lower totals for 2019-
7 20 through 2021-22 than what's in your affidavit?

8 A. Just double checking, you're
9 on Table 18?

10 Q. Table 5 for now.

11 A. Table 5. Oh, okay, yes.

12 Q. And then if you look in your
13 table, that's kind of the first line of figures
14 provided in that third column, which is the -- I
15 take it that's the number of requests that were
16 approved?

17 A. Sorry, you'll have to repeat,
18 I'm trying to --

19 Q. Okay. No, it's all right,
20 I'll -- there's a lot of numbers here.

21 A. Yes.

22 Q. So in your affidavit you have
23 the total number of requests approved in the
24 middle-ish column here is 14,765. That was --
25 that's your affidavit's evidence of the total

1 number of requests approved in 2018-19?

2 A. Yes.

3 Q. And then in the deep dive
4 table that number's the same in Table 5. When you
5 look under 2018-19 all the way at the bottom the
6 total is 14,765.

7 A. Yes.

8 Q. Now, if we go down to the next
9 row, 24,590 is the number in your affidavit. But
10 then in the deep dive it's 24,588. That's only
11 two, so it's pretty close.

12 A. Yes.

13 Q. And then 34,278 in your
14 affidavit versus 34,299 in the table. And then in
15 your affidavit 51,144, and then in the table
16 51,192. So, again, figures are relatively close.

17 A. Quite, quite close.

18 Q. But the affidavit's a bit
19 lower. So just to confirm again that you agree
20 that there is a discrepancy in those figures?

21 A. There is a small discrepancy,
22 yes.

23 Q. And then just on Table 18,
24 which is the approved funds, and that's the last
25 kind of line in text, if you will, in that column

1 we've been looking at in your affidavit. Just if
2 you can take a look and let me know if you agree
3 that again it's slightly lower in your affidavit in
4 that total line at the bottom of Table 18 than
5 what's in the deep dive?

6 A. (inaudible/off mic).

7 Q. (inaudible/off mic), exactly.

8 A. There's a small discrepancy.

9 Well, there's not a discrepancy, but a difference.

10 Q. And, do you know, was the same
11 source used for the deep dive as was used for this
12 table in your affidavit?

13 A. I don't -- I can't recall.

14 Q. Did you prepare this table
15 yourself then?

16 A. I didn't.

17 Q. And do you know who did?

18 A. The Jordan's Principle team
19 (inaudible/off mic). But I don't have access to
20 that data.

21 Q. In your new job, right, of
22 course.

23 A. That's correct.

24 Q. I'm sure that's good IT
25 information management policy, et cetera. Okay.

1 So you can set aside the exhibit brief there for
2 now. I'll move onto another topic. And so just
3 looking back at your affidavit, so paragraph 7 of
4 your affidavit, 7 starts on page 3, but goes over
5 onto page 4. No, I'm sorry, it's page 3, it's the
6 start of the paragraph. You say that:

7 "The growth in volume of
8 requests may be related to
9 the impacts during and after
10 the COVID-19 pandemic,
11 increases in the cost of
12 living and public safety
13 emergencies such as
14 wildfires."

15 And then over the page you talk
16 about the parties awareness raising efforts. And
17 I'm going to have more questions for you in a bit
18 on Back-to-Basics. But would you include the
19 success of the Back-to-Basics is a factor leading
20 to increased number of cases?

21 A. I would.

22 Q. And when you talk about an
23 increase here at paragraph 7 being related to COVID
24 impacts, cost of living, public safety emergencies,
25 is there any specific internal analysis that that's

1 based on?

2 A. I am sure that that relates to
3 what they saw in the deep dives as well as the
4 experience that regional focal points will be
5 recording in their regular check-ins with the
6 department or the headquarter team. And I would
7 say that, you know, just to add to the COVID
8 impacts, that's also the catch-up with respect to
9 education, health care services, things that were
10 put on hold during COVID. So we would know that
11 that's also something that's been reported in
12 national news as a phenomenon across the country
13 and not just specific to personal issues.

14 Q. So is it fair to say that the
15 statement at paragraph 7 is essentially the
16 reflection of the general sense within ISC's
17 (inaudible) about what's driving demand?

18 A. Correct.

19 Q. Now, on the COVID factor you
20 noted essentially stationed between maybe I'll call
21 it public health-related COVID concerns and then,
22 you know, maybe social disadvantage that's driven
23 by COVID, whether it's gap in services that are
24 there, characterization of your remark there?

25 A. Could you explain what you

1 mean by public health?

2 Q. Sure. It's a more, you know,
3 isolation-related or, you know, the situation, you
4 know, because someone's got COVID in the home as
5 opposed to, you know, service interruptions that
6 were -- you know, that arose during COVID.

7 A. I don't recall seeing a lot
8 of, you know, public health-related requests
9 relating to COVID per se. But I would say things
10 like the medical transportation and the rise in
11 medical transportation would be an indication of
12 people that are now able to access regular
13 appointments, screening services and things that
14 they were not able to access in the same way during
15 COVID.

16 Q. Right. And then I think where
17 I'm going to go next is just the -- at the second
18 book, the IFSD report. Seems to me that -- and
19 this is a little bit of an editorial, so you let me
20 know if you agree. But I think IFSD would agree
21 with that, if you go to 63 -- so when I say agree
22 with that, I mean the kind of more limited nature
23 of the public health-related requests. In the
24 bottom of 63 here there's a heading, it says Figure
25 57.

1 A. Yes.

2 Q. And then the text under that
3 is in 2019-20 roughly 1 per cent of requests
4 (inaudible) COVID-19 (inaudible) approximately 10
5 per cent in 2020-21. So you would agree with data
6 about that kind of 1 to 10 per cent, it would have
7 been kind of COVID-19 (inaudible)?

8 A. I mean, I didn't look at their
9 data analysis itself, but I -- it sounds -- it
10 looks like it's aligned with my experience, not
11 just in the context of Jordan's Principle, but
12 COVID-19 response for Indigenous Services Canada we
13 did have separate sources of funds that were
14 available on a needs-basis for public health for
15 First Nations across the country as well as for
16 other (inaudible) public health (inaudible).

17 Q. And so would that be an
18 example then where the presence of the government
19 (inaudible/off mic) take centre stage in terms of
20 responding to that (inaudible)?

21 A. I'd have to say that the
22 government -- if the government had not been as
23 responsive with respect to those measures, we
24 likely would have seen more pressure on Jordan's
25 Principle.

1 Q. Have you reviewed -- and I
2 know I saw you look at your -- before we started
3 today, but have you reviewed IFSD's data analysis
4 more generally?

5 A. I remember reviewing it in the
6 context of our negotiations table at the time when
7 it was presented.

8 Q. And would you have reviewed it
9 aside from that in your role as Associate Deputy at
10 ISC or would that have been more the Jordan's
11 Principle team taking that on?

12 A. I would have reviewed it in
13 the context of my role in the negotiations.

14 Q. Okay. So just looking at
15 pages 21 and 22 of the report, a couple of
16 questions for you about some analysis that they've
17 done. So if you look -- I'm just going to put two
18 statements that they made to you just to see if you
19 agree. Page 21 in the first full paragraph, the
20 second sentence here is:

21 "Counting how many children
22 receive approved requests for
23 products or services does not
24 explain why the requests were
25 being made and what

1 gaps/shortfalls Jordan's
2 Principle is covering."

3 Do you agree with that?

4 A. If you don't mind, I'm just
5 going to reread it myself.

6 Q. Yes, please take your time.

7 A. Absolutely, it would only be
8 one element that would give us that insight. It's
9 not a close analysis.

10 Q. And then over the page, on 22,
11 in the second paragraph, which is again the first
12 full paragraph, IFSD says:

13 "What is known about Jordan's
14 Principle is it requests an
15 expenditure, to increase it,
16 what is known (inaudible/off
17 mic) is that there are
18 shortfalls. Where and why
19 those shortfalls exist should
20 be better understood to
21 develop an approach to
22 respond to and correct
23 matters substantive of
24 quality that Jordan's
25 Principle was intended to

1 address."

2 Would you agree with that as well?

3 A. I agree.

4 Q. So you'd agree that volume
5 alone doesn't help us determine causes underlying
6 the change in volume?

7 A. Correct.

8 Q. And so would you agree that
9 there's more to the story than the COVID-19, costs
10 of living, public safety emergencies and the success
11 of Back-to-Basics?

12 A. There could be other factors.
13 Those are the ones that stand out.

14 Q. And you'd agree that more work
15 needs to be done to have better understanding of
16 the increase in volume?

17 A. I agree.

18 Q. We're going to talk about
19 backlogs in minute. But I just want to ask you a
20 few questions about paragraphs 48 to 50 of your
21 affidavit. This is kind of in the more operational
22 section of it, about how -- I guess mechanics of
23 how Jordan's Principle is working now (inaudible)
24 approvals. So paragraph 48, I think it's fair to
25 say you talk about there's thresholds essentially

1 for what focal points (inaudible). And on an
2 individual request they could make approvals up to
3 \$100,000, and group requests up to \$500,000, is
4 that right?

5 A. Correct.

6 Q. And then 49 talks about past
7 that, so \$101,000, \$501,000 and up goes to
8 something called the National Review Team, that's
9 right?

10 A. Correct.

11 Q. And then 50 talks about who's
12 on the National Review Team, which is, you know,
13 Regional Directors, Regional Executives, and
14 Regional Directors General. And so the question I
15 have is where a focal point had something that was
16 \$101,000 or \$501,000, that exceeded the threshold,
17 can they go to their own Regional Director or
18 Regional Director General or Regional Executive for
19 approval, or does it have to go to this committee
20 (inaudible)?

21 A. So I'd have to -- I would say
22 that wherever possible, the direct relationship
23 between the focal point and the regional office
24 would be encouraged, but it would also depend on
25 availability in that particular context.

1 Q. And when we're talking with
2 this chain, because I've also seen it referred to
3 as the National Review Committee, is it multiple
4 people who have to get together to consider these
5 above-threshold requests, or is it the case that,
6 you know, you have one level of delegation of the
7 focal point, and then at the executive level you
8 could have one decision maker making the decision,
9 or do they have to gather that?

10 A. So these -- the delegation of
11 escalation sort of occurred in the context of my
12 transition. So I would encourage that question to
13 be posed to Candice St-Aubin to make sure that I'm
14 not misrepresenting the operations.

15 Q. That's very -- here, I'll put
16 it my notes. Thank you. So these thresholds would
17 have all been introduced in that kind of Q3...?

18 A. We had a threshold for the
19 value of group requests going to the Regional
20 Executive within that region. So that existed
21 years prior. I believe it is actually in one of my
22 affidavits from either 2018/2019. I think the
23 difference is that the escalation decisions were
24 being made by national senior managers. So either
25 the Assistant Deputy Minister of Regional

1 Operations, which was my first position when I
2 became in Jordan's Principle implementation and I
3 had created that model, or a delegated authority
4 that could be the Chief Nursing Officer or the
5 Executive Director of Jordan's Principle. But
6 because of the volume increases, there was a
7 decision encouraged and made to have more senior
8 decision makers available to render those
9 escalation decisions, and then those were then --
10 those then involved Regional Executives. But
11 Regional Executives were involved sooner than that
12 because they were also involved in decisions with
13 respect to the eligibility of individuals and
14 requests. So there was some forms of delegations
15 that were made in an incremental measure until this
16 approach came in, which is why I prefer that
17 Candice answer the details of those because they
18 have evolved over time, and I have not been
19 connected enough to the operational details to be
20 able to be 100 per cent.

21 Q. No, and that's fair enough.
22 But I guess just to kind of pause and go back on
23 one piece of what you were noting. So you used the
24 term escalation. And so is it a fair statement to
25 say that one of the reasons or the main reasons

1 that you might have escalated in the early years
2 that Jordan's Principle was a focal point was
3 looking at it and saying I'm going to recommend a
4 denial, and focal points didn't have denial
5 authority, so that would go up to be looked at. Is
6 that right?

7 A. We removed it because we were
8 concerned that they -- the focal point level of
9 delegation was not senior enough to be able to make
10 a decision, that could potentially have harmful
11 impacts to the child, yes.

12 Q. And these escalations would
13 be, to the extent that escalation is the right --
14 actually it is, at paragraph 49 you use the word
15 escalate -- but these escalations would give a
16 different -- in that these would be approvals. So
17 a focal point is looking at this and saying I'd
18 like to approve it --

19 A. Correct.

20 Q. -- and be going up for
21 confirmation by somebody?

22 A. That's right. That's right,
23 because of the financial value.

24 Q. And is that financial value
25 decision, where to draw the line; \$100,000,

1 \$500,000, is that decided within ISC or is that
2 something that Treasury Board or Finance --

3 A. That's decided with ISC.

4 Q. And do you know -- I don't
5 know if this is pushing the limits of your time at
6 ISC, but do you know if these thresholds were
7 discussed JPOC?

8 A. I don't know precisely.

9 Q. Would they be public knowledge
10 in terms of, you know, would service coordinators
11 know if they're bringing up requests for \$105,000?

12 A. I don't know if service
13 coordinators would have been informed. There's no
14 reason why they couldn't.

15 Q. So just to move onto the
16 backlogs. So back in the exhibit brief, that's the
17 tabbed volume you've got --

18 A. Sorry, which tab?

19 Q. Oh, Tab C please.

20 A. Tab C, okay.

21 Q. And this is Exhibit 5 to Dr.
22 Blackstock's first affidavit in this -- on this
23 motion. And this is just an excerpt since the
24 whole document's --

25 A. The departmental plan?

1 Q. -- quite voluminous. Exactly,
2 exactly. So if you look over at page 4 -- or 3 and
3 4, so if you flip over to just before the green
4 sheet there.

5 A. Okay.

6 Q. See the key risks for the
7 health service area?

8 A. Yes.

9 Q. And just over on the next page
10 here, this is the last paragraph above the heading
11 where at the bottom of page 4 it says:

12 "Finally, there's also a risk
13 that the increase in volume
14 with incoming requests for
15 health and social programs
16 may affect the department's
17 ability to process them and
18 make decisions within the
19 compliance timelines for
20 Jordan's Principle ordered by
21 the Canadian Human Rights
22 Tribunal in 2017. To
23 mitigate this, continuous
24 monitoring and assessment of
25 request trends is being

1 conducted to increase
2 efficiency and effectiveness
3 of service provision and seek
4 (inaudible) resources when
5 needed to meet our legal
6 obligations."

7 You see that there?

8 A. Yes.

9 Q. And so would you agree that
10 the government was aware of the risk of backlogs
11 developing when this was put forward, this
12 departmental plan?

13 A. Yes. This is 2023-24 --

14 Q. 2023-24. And that would have
15 been about this timeish last year.

16 A. So we generally start
17 developing the departmental plans in the fall.
18 They're reviewed at a deputy level around the
19 holiday period, right, so Christmas holiday period.

20 Q. And then they feed in --

21 A. And then they're reviewed in
22 January and February until they're tabled.

23 Q. And they're tabled as part of
24 the estimates process is my understanding?

25 A. That's correct.

1 Q. Okay. so would it be fair to
2 say then that this kind of concern around backlogs
3 wouldn't apply, certainly it's the end of 2022?

4 A. The end of the calendar year,
5 yes.

6 Q. Yes.

7 A. No, sorry, the end of 2023 --
8 2022, yes, I'm sorry, I'm trying to --

9 Q. Because this would have been -
10 -

11 A. -- yes, we just --

12 Q. No, no, the fiscal events --

13 A. We just did 2024-25. I'm
14 good, yes.

15 Q. Yes. The fiscal calendar --

16 A. Yes, the end of the calendar
17 year 2022.

18 Q. -- or Q3 of 2022-23 fiscal
19 would be the other way of saying. And so you'd
20 agree that Q3 range would be somewhere -- Q3 of
21 fiscal 2022-23 would be somewhere in the range when
22 this would have been identified?

23 A. Yes.

24 Q. And would you agree that that
25 that issue wasn't raised directly with the Caring

1 Society in that timeframe?

2 A. Was raised directly by?

3 Q. Was not raised directly by the
4 Caring Society in that timeframe?

5 A. I wouldn't know. I'm not a
6 part of all the conversations the department would
7 have with the Caring Society.

8 Q. Do you have any reason to
9 dispute the Caring Society's version of events;
10 that JPOC didn't find out about the backlogs until
11 August of 2023?

12 A. I have no reason to dispute
13 that.

14 Q. The next tab in this brief is
15 Tab D, which is I think -- I'm going to call this
16 Minister's Briefing Book for Parliamentary
17 Committee titled Appearance Before the Standing
18 Committee on Indigenous and Northern Affairs
19 (inaudible) on the 2023-24 (inaudible) 2023. So
20 this would be kind of a later step in that process
21 than the departmental report is part of?

22 A. (no audible answer)

23 Q. Say yes or no.

24 A. Yes, and I have been
25 (inaudible).

1 Q. Yes. Well, that was one of my
2 next questions. So this, again, is just excerpts
3 because the whole document's 190 pages. And so
4 what you've got is the content that we'll just
5 again confirm, if you go over to page 3, you're
6 listed as part of the second panel from 4:30 to
7 5:30, Associate Deputy Minister Valerie Gideon?

8 A. Yes.

9 Q. And then over the page this
10 is, you know, skipping through the document, is
11 what's referred to in the table of content is a hot
12 issue sheet for Jordan's Principle. And so you
13 remember this appearance?

14 A. So I'm just looking at the
15 page after I'm listed?

16 Q. Yes, that's right.

17 A. You're asking me to look?
18 It's not another tab?

19 Q. No, no, it's all in the same
20 tab. It's just skipping ahead in the document, if
21 you will.

22 A. Okay.

23 Q. If we were on a computer,
24 you'd be scrolling down.

25 A. Yes.

1 Q. So just before I ask questions
2 about this text. So do you remember this committee
3 appearance in May of 2023 to the extent any of them
4 stand out in your memory?

5 A. I'd have to look at a bit of
6 the transcripts to just rejoin my memory. Like,
7 I've done a number of different appearances.

8 Q. But if the briefing binder
9 says that you were attending --

10 A. No, of course. Of course.
11 It's if you're asking me to distinguish between
12 this one or the other one or the other one, I'm
13 just trying to situate my mind to it.

14 Q. Because of the duty of
15 Parliamentary privilege, I can't actually ask about
16 anything you said at the committee, so it's all
17 good. But I just have a question about the binder
18 first. And so I was just wondering if you were
19 aware that these binders get posted online pursuant
20 to s.74(a) of the *Access to Information Act*?

21 A. I am aware of that, yes.

22 Q. Okay. So this is a document
23 you'd be familiar with in terms of --

24 A. I would have reviewed it.

25 Q. -- (inaudible/off mic), okay,

1 thank you. Okay. So looking now at the heading
2 that -- the hot issue sheet, which is page 5 of the
3 tab. The text of the heading it says, this is the
4 first paragraph here, it says:

5 "Jordan's Principle is a legal
6 obligation under the
7 Government of Canada to
8 ensure all First Nations
9 children living in Canada can
10 access the products, services
11 and supports they need when
12 they need them. Funding is
13 demand-driven and helps with
14 a wide range of health,
15 social and educational needs
16 (inaudible/off mic) other
17 programming at the federal,
18 provincial, territorial
19 and/or local levels."

20 Would you agree that's an accurate
21 summary of Jordan's Principle?

22 A. I do.

23 Q. And do you agree that the
24 focus of Jordan's Principle is on First Nations
25 children and their wellbeing and best interests?

1 A. I agree.

2 Q. Now, the excerpt is this kind
3 of hot issues sheet, excerpt's about seven pages
4 long. You know, feel free to flip through it. But
5 my question about it is kind of more of a higher
6 level. Did you recall, in preparing -- you know,
7 preparing for this appearance, whether issues
8 related to the actual or possible backlogs in
9 Jordan's Principle requests were raised at that
10 time?

11 A. I (inaudible/off mic).

12 Q. When did you become aware
13 yourself that the backlogs were in fact a problem
14 that ISC was dealing with?

15 A. I honestly can't recall the
16 precise moment. I mean, we were having very
17 regular discussions as part of the negotiations.
18 It's very difficult. I try to think about -- try
19 to pinpoint from my memory, but I can't.

20 Q. Do you (inaudible/off mic) in
21 mind?

22 A. I mean, I -- we were often
23 talking about providing updates to the
24 accountability work plan through that process and I
25 remember certainly becoming aware of the increased

1 volumes and the challenges that regional staff are
2 having with respect to the processing. There were
3 also discussions about the national call centre at
4 the time and making improvements to the national
5 call centre. So it was in the context of those
6 conversations.

7 Q. That's fine. It's not a
8 memory test, so that's all right. And then just
9 the last question or series of questions about
10 backlogs is just kind of the conceptual level. So
11 when we talk about a backlog, what we're talking
12 about is requests that are made on behalf of
13 children who need a product services report, but
14 they're stuck in one part of this process. Do you
15 agree with that?

16 A. I would agree with that.

17 Q. And they could be -- I kind of
18 can see that there's three place they could be
19 stuck. They could be stuck in the intake where
20 they haven't been looked at or opened yet, is that
21 fair?

22 A. That's fair.

23 Q. Or they could be stuck after
24 they've been escalated for review at the National
25 Review Team or they're waiting for determination

1 there?

2 A. Yes.

3 Q. And then they could be stuck,
4 if they're a denial, in the appeal process if
5 they're waiting for a determination by the Appeal
6 (inaudible/off mic)?

7 A. Correct.

8 Q. And you'd agree the backlog
9 requests could include urgent requests for a child?

10 A. I agree.

11 Q. You've got a calculator in
12 front of you. Your choice whether you want to use
13 it or not. There's a little bit of math in this
14 part, which is about paragraph 12 of your
15 affidavit. I want you to have access to the
16 calculator so you don't have to just rely on what
17 I'm saying. But I've done the math, checked it
18 again this morning before we started. So I just
19 want to see -- just want to kind of correct a
20 couple of things here, and (inaudible). So this
21 paragraph 12, it deals with essentially, you know,
22 I'll try to put a colloquial term, (inaudible) the
23 proportionate group to individual funding versus
24 requests, is that a fair statement?

25 A. Just reread it right now?

1 Q. Yes, for sure.

2 A. Yes, the proportionate funding
3 that has been approved that relates to group versus
4 individual requests.

5 Q. Yes, I think that's -- one
6 second.

7 MR. TAYLOR: Did we lose Member
8 Lustig?

9 MS. DUBOIS: No, he's just shut
10 his camera off.

11 BY MR. TAYLOR:

12 Q. Sorry about that, Dr. Gideon,
13 I got distracted for a moment. So you said this is
14 the individual versus group requests in terms of
15 the number of requests and the amount of funding
16 for each category, is that fair?

17 A. It's the amount of funding,
18 not the number of requests. It's the amount of
19 funding directed to group requests that would of
20 course be, out of the total amount, the funding for
21 approved requests.

22 Q. And just in terms of how this
23 table works that's under paragraph 12 here, we have
24 the first kind of line of figures I can say would
25 be that maybe a number of requests were made

1 through categories. So in the kind of the box here
2 just looking at 2018-19 individual requests it says
3 13,776, then it says 93 per cent, representing
4 \$51.4 million. So that would be, just to kind of
5 put it in words as opposed to a table, in 2018-19
6 there were 13,776 individual requests and there was
7 \$51.4 million in funding associated with those
8 13,776 requests. Is that about right?

9 A. Yes.

10 Q. So your table provides the
11 percentages for the individual requests and the
12 group requests kind of relative to each other. You
13 know, essentially you've got 93 per cent for
14 individuals, 7 per cent for groups, and then 100
15 per cent for total in the first line. Do you see
16 that?

17 A. Yes.

18 Q. And then it doesn't do the
19 same exercise for the proportion of funding. If
20 you note in the kind of header paragraph over the
21 table it says:

22 "...majority of Jordan's
23 Principle funding approved by
24 ISC is used for group
25 requests, which accounts for

1 approximately 80 per cent of
2 total funding provided by ISC
3 through Jordan's Principle."

4 So I've done the exercise and this
5 is where the calculator comes in. I'm just kind of
6 tracking those percentages across the table. So in
7 the first line here you've got, you know, just
8 looking at the group requests about \$259.9 million
9 in funding that's group requests. And the total of
10 \$311.3 million. Do you follow me?

11 A. Yes. Yes, I'm following you.
12 Yes, \$260 versus \$311.

13 Q. Yes. And when I ran those
14 numbers that was 83 per cent.

15 A. Okay.

16 Q. Now, the next line just shy of
17 \$303 million and then just shy of \$402 million.
18 And when I ran those numbers, that was 75 per cent.

19 A. Seventy-five.

20 Q. And then we have just over
21 \$361 and just shy of \$505 for 2022 -- sorry, 2020-
22 21. And by my math, that was about 72 per cent.
23 And then over the page we've got just shy of \$321
24 million for 2021-22, and then just shy of \$523
25 million for 2021-22. With my math, that was 61 per

1 cent. Do you agree?

2 A. Yes, I'm sure, it looks right.

3 Q. And then 2022-23 about \$638.8
4 million for group requests, and then \$1,086 million
5 or \$1.09ish million, and I've got 59 per cent there
6 for that portion. Does it seem objectionable?

7 A. No.

8 Q. No? And then the last line
9 \$789.8 million for group requests funding approved
10 in the first three quarters of 2023-24 and then
11 \$1,241 million, i.e. a little bit less than \$1.25
12 million, and I've got about 64 per cent for that.
13 So just to go through those percentages that was:
14 83 per cent for 2018-19; 75 per cent for 2019-20;
15 72 per cent for 2020-21; and 61 per cent for 2021-
16 22; 59 per cent for 2022-23, and 64 per cent for
17 2023-24. So you'd agree that those numbers are
18 right, that's -- except the first year, that's all
19 less than 80 per cent?

20 A. In terms of a range, it would
21 have been accurate to say between 60 to 80.

22 Q. Thank you. Now, if you tally
23 the whole thing, which I won't ask you to do, but
24 it comes out to about 65 per cent. But folks can
25 check that at home. Did you check the math in this

1 table before you affirmed the affidavit?

2 A. I didn't.

3 Q. And a question about
4 resourcing. So when you have teams and focal
5 points that are handling requests, do you have --
6 and that happens at the regional level, I'm right
7 about that, that focal points and --

8 A. Yes.

9 Q. -- we're moving on from the
10 numbers --

11 A. Yes. Sorry, yes.

12 Q. -- the calculator can go away.
13 So just to change gears. So you've got a focal
14 point... So you've got focal points for the region
15 and they're assigned. Are they assigned
16 exclusively to deal with individual requests versus
17 group requests, or do they deal with both?

18 A. I can't confirm how all the
19 regional offices designate. I know there's been a
20 lot of shifts and they do it based on volume, as
21 well availability, search capacity. There's many
22 factors.

23 Q. And do you know if ISC has
24 done any analysis of how the FTDs (inaudible/off
25 mic) equivalents are used at the regional level for

1 the individual groups?

2 A. They have definitely done some
3 analysis with respect to FTD and structuring and
4 need, but I don't know if they've done it on the
5 basis of delegation between group and individual.
6 I do know that some regional offices have
7 designated focal points for group requests, or had.
8 But again, I can't speak to what's happening today.

9 Q. Okay. Just one moment. Okay,
10 moving onto another theme. So this is, these
11 questions deal with essentially what your update
12 characterizes as the change in Jordan's Principle
13 requests having to deal with socioeconomic
14 supports.

15 A. Yes.

16 Q. And so we're looking at
17 paragraph 13 of your affidavit, which is just under
18 that table we were looking at. And so here you
19 say, that's the first line:

20 "The range of approved
21 expenses has shifted notably
22 from Jordan's Principle's
23 initial trend of requests
24 related to health and
25 education, socioeconomic

1 supports like groceries and
2 rent payments, mortgage
3 payments, requests for new
4 homes and renovations, as
5 well as items such as
6 personal vehicles and
7 recreational requests such as
8 sports camp fees."

9 Do you see that?

10 A. Yes.

11 Q. And then at paragraph 14, just
12 kind of partway through the paragraph, say:

13 "...Jordan's Principle has
14 been approving a range of
15 socioeconomic supports such
16 as rent, groceries and
17 utilities for periods of 6 to
18 12 months or longer."

19 Do you see that?

20 A. Yes.

21 Q. And would you agree that some
22 supports in this regard have only been approved for
23 up to three months?

24 A. I would agree, yes, that has
25 occurred.

1 Q. And did you look at Mr. Craig
2 Gideon's(ph) affidavit prior to today?

3 A. I did, and I read it, yes.

4 Q. And did you know, in his
5 evidence, that he says as of January 2024 he has
6 been imposed a three-month timeframe for housing
7 and rental supports?

8 A. I am not familiar with that
9 sort of imposition of the three-month rule.

10 Q. Do you know if ISC tracks
11 whether these kinds of -- this kind of family of
12 socioeconomic support requests, if those come
13 (inaudible)?

14 A. They do.

15 Q. I'm wondering if we have -- if
16 we could have those relative percentages for 2022-
17 23, so that would be the proportion of the
18 socioeconomic, you know, request family of services
19 that would be coming from off-reserve versus on-
20 reserve requests (inaudible)?

21 A. I think the team put together
22 this.

23 Q. Okay. So if we go back to the
24 tabbed book now. This is Tab D, we're back to the
25 deep dive tables again -- sorry, Table 34.

1 A. Okay.

2 Q. And do you see it says,
3 adjudicated requests and their corresponding
4 (inaudible) request type category and final
5 decision. This would be year 2021-22. Do you see
6 that?

7 A. Yes.

8 Q. Now, looking down at the total
9 kind of row or row of rows, for lack of a better
10 descriptor of it, the top three here are education,
11 medical transportation and allied health.

12 A. That's correct.

13 Q. And just in terms of the
14 percentages approved which is the second column, if
15 I'm reading this table right, do you agree that
16 that second column is the approved -- the
17 percentage of approved requests of the total?

18 A. Yes.

19 Q. So 22 per cent for education,
20 19 per cent medical transportation, and 8 per cent
21 for allied health. Do you agree with that?

22 A. I'd agree that those are the
23 numbers, yes.

24 Q. And do you know, and you may
25 not, but do you know the top three categories in

1 terms of percentages of approvals per category of
2 service would be for the first three quarters of
3 2023-24?

4 A. For the first three quarters,
5 I don't. But I would say that the information that
6 I've received is that medical transportation,
7 education, socioeconomic supports, I just don't
8 talk in percentages, are quite significant in terms
9 of their (inaudible).

10 Q. Not a memory or a database
11 test, so it's all okay. Because I understand --
12 I'm wondering if you have the top three categories
13 of approved requests for the first three quarters
14 of 2023-24 and for 2022-23?

15 A. Yes, I will see if those are
16 available.

17 Q. Now, if you could just go -- I
18 guess it's not really over the page, it's the next
19 -- I'll need you to flip it over, there's Table 55
20 is on the back of that one. And titled here is
21 health development -- health and child development-
22 related requests and they're associated each by
23 request types of category final decision. And is
24 it fair to say that this table is essentially
25 breaking down the kinds of items for approvals that

1 you would then (inaudible/off mic) that category of
2 health and child development?

3 A. Yes.

4 Q. And so just -- if you can kind
5 of have the -- read over the both pages, if you can
6 look at 34. The fourth line here was health and
7 child development, that's just under allied health,
8 and that's 8 per cent.

9 A. Yes.

10 Q. And then the health and child
11 development here on 55, so this Table 55 would kind
12 of would be the breakdown and it's in that 8 per
13 cent, is that right?

14 A. Yes.

15 Q. And so looking at the items
16 here, just the individual -- or either individual
17 or total, do you agree with me that the kinds of
18 items that are in this Table 55, and we're talking
19 rent, utilities, groceries, clothing, shoes and
20 accessories, (inaudible) programs related to health
21 and child development, are those the kinds of
22 things you're talking about when you're saying --
23 when you're referring to socioeconomic supports in
24 your affidavit?

25 A. Yes, I'd say that's fair.

1 Q. And just staying on 55 for a
2 moment. So the total here at the bottom, it says
3 -- under approved it says just shy of 4,100, denied
4 it says just over 1,000, and there's this figure
5 here 80 per cent, which is the third number on the
6 bottom left near the total. Is that 80 per cent
7 approval?

8 A. I'm sorry, are you looking at
9 individual requests --

10 Q. Just in the total.

11 A. -- the total line -- the total
12 line for everything?

13 Q. Okay.

14 A. I see, okay, at the bottom, 80
15 per cent.

16 Q. And then it says denied, it
17 says 19.7, so call it 20 per cent?

18 A. That's right.

19 Q. So would it be about 80 per
20 cent approved and 20 per cent denied for that
21 socioeconomic category in 2021-22?

22 A. That's how I read it.

23 Q. So if we go back to paragraphs
24 14 and 15 of your affidavit. So you have in 14 at
25 the bottom there, you note that the first three

1 quarters of 2023-24 was 21,000 requests.

2 A. M'hmm.

3 Q. And then you have about 1,200
4 denials noted in paragraph 15. Do you see that?

5 A. Yes.

6 Q. And so would you agree with me
7 that, you know, 1,200 out of 21,000 is about 5 per
8 cent?

9 A. Yes. (inaudible/off mic)
10 math, yes.

11 Q. And you've got the calculator
12 still there. So is it fair to say then that the
13 denial rate for the socioeconomic support requests
14 would have been 20 per cent in 2021-22, and we're
15 looking at 5 per cent now in the first three
16 quarters of 2023-24?

17 A. So the denial rates have
18 overall been significantly reduced over the last
19 two years.

20 Q. And that would be following
21 Back-to-Basics?

22 A. That would be following Back-
23 to-Basics.

24 Q. So is it fair to say that --
25 so in your affidavit you're citing, you know, post-

1 pandemic conditions as something that could cause
2 more requests to come in?

3 A. In this category.

4 Q. In this category. But is it
5 also possible that, you know, we've seen a general
6 increase in requests across the board with Jordan's
7 Principle, is that fair? There are more requests
8 coming across at large --

9 A. Yes.

10 Q. -- and then there's also been
11 a decrease in the denial rate in this category?

12 A. Correct.

13 Q. And so that could be another
14 reason for --

15 A. Could be (inaudible/off mic).

16 Q. Based on your recollection of
17 the IFSD data analysis, do you remember them
18 looking at requests related to socioeconomic
19 condition as part of their report?

20 A. I remember -- I'd have to go
21 back to the categories that they did -- but they
22 looked at all of the data --

23 Q. And we will, it's just --

24 A. -- but would have included
25 this.

1 Q. -- it's just a general
2 question, to be fair, to see what your recollection
3 is.

4 A. Yeah.

5 Q. And just before we look at
6 that, would you agree with me that that request can
7 enter the poverty of socioeconomic conditions, so
8 that's the gap that Jordan's Principle follows as a
9 category. Your issue is more that there's more of
10 those requests now, but it's something that has
11 always been a driver of Jordan's Principle
12 requests?

13 A. Yeah. I mean, I'm trying to
14 remember the early years. I would say that we
15 started to see them more in the northern context
16 initially. But in a territorial context, like they
17 weren't -- it wasn't as prominent I would say
18 across all regions, that's what I (inaudible/off
19 mic).

20 Q. So page 56 of the IFSD report,
21 that's the second (inaudible) here. And so 55
22 talks about IFSD's needs cluster analysis. So they
23 kind of, just looking at the first paragraph of
24 that heading, IFSD develop a set of needs-based
25 categories (inaudible/off mic) based variable only

1 available after 2021 the category developed by
2 cluster-regulated indicators (inaudible) 265
3 defined in (inaudible) case, then they give a list,
4 et cetera. And so were you aware of that kind of
5 needs clustering analysis that IFSD was doing?

6 A. Yes.

7 Q. And then over the page they
8 say, this is the second paragraph, just about the
9 chart on the IFSD needs clusters, health and mental
10 health have the largest number of requests, 24,000
11 (inaudible/off mic), nearly 13,000 and poverty
12 nearly 12,500.

13 A. Yes.

14 Q. And so is it fair to say that
15 this IFSD analysis based on the data going forward
16 in 2021 the poverty requests were in the top three
17 (inaudible)?

18 A. That explain their analysis,
19 yes.

20 Q. And you'd agree with me that a
21 child's wellbeing is impacted by living in poverty?

22 A. Yes.

23 Q. So a few more questions now on
24 paragraph 15 of your affidavit, which is addressing
25 the denials due to Jordan's Principle not being an

1 income supplement.

2 A. M'hmm.

3 Q. And so you note that 28 per
4 cent of the 1,271 were denied for that reason, that
5 Jordan's Principle is not an income supplement, is
6 that right?

7 A. That's what I'm saying, yes.

8 Q. And by my math, that's about
9 355 requests denied for that reason?

10 A. Yes.

11 Q. And so in the situation of
12 those 355 kids where if they still have unmet needs
13 due to poverty at the end of the three-month or
14 six-month or twelve-month term that ISC is
15 approving for under Jordan's Principle, would you
16 agree with me the need is just as important at the
17 end of that interim period as it was during the
18 interim period?

19 A. It would depend on whether the
20 family has navigated to a public program such as an
21 assistance on reserve or a social assistance
22 program (inaudible) context, or circumstances of
23 the family may have changed as well.

24 Q. They've got a job or would
25 have been different means to support --

1 A. Could have been a temporary
2 measure as well.

3 Q. Yes, I think that's what
4 you're talking about at the bottom of page 6. You
5 say:

6 "This is because while
7 Jordan's Principle may be
8 used as a bridge, or
9 temporary relief measure, to
10 address immediate risk
11 factors to children, it is
12 not intended nor structured
13 to displace government income
14 assistance programs."

15 A. That's correct.

16 Q. So would it be fair to say
17 that what you're saying in this paragraph is that
18 Jordan's Principle shouldn't be used to lift the
19 ceiling that's imposed by a federal or a provincial
20 assistance program?

21 A. Lift the ceiling?

22 Q. So if they essentially -- you
23 know, they've defined an amount, a monthly benefit
24 or if there's an income or eligibility threshold,
25 that those -- you know, those eligibility

1 requirements through the provincial or federal
2 assistance programs, those shouldn't be disturbed
3 by Jordan's Principle?

4 A. Jordan's Principle would not
5 replace those programs.

6 Q. Now, if those programs though
7 were insufficient, would Jordan's Principle have a
8 role to play in that regard?

9 A. I would say that we would do
10 it more at a systemic level in terms of looking at,
11 for example, programs within a federal
12 responsibility to see if there are gaps in those
13 programs. Then we would put forward business cases
14 in those contexts.

15 Q. Those business cases would
16 take some time to work --

17 A. It would, yes.

18 Q. And so for the 355 families,
19 if they still have need, they'd have to wait for
20 those business cases to come to fruition?

21 A. They would have access to the
22 appeal mechanism.

23 Q. Would the appeal body be able
24 to overturn or (inaudible) the reason was that it
25 wasn't an income assistance program?

1 A. It could, yes, depending on if
2 they -- the assessment or the information on that
3 particular case, they could.

4 Q. So the three or six or 12-
5 month, you know, time limit, is that something
6 that's within ISC' authorities for Jordan's
7 Principle or is that a policy measure that ISC
8 adopted itself?

9 A. I don't understand the
10 difference between those two options, I'm sorry.

11 Q. We may have to come back to
12 that during housing. But just at a general level,
13 there are some reasons for Jordan's Principle
14 denials that, do you agree, where there's a denial
15 because there's no authority for that kind of
16 expenditure, correct?

17 A. Correct. And then there are
18 reasons where Indigenous Services Canada has put a
19 measure in place in order to ensure that it is not
20 displacing public programs.

21 Q. And so this would be an
22 example of the latter kinds essentially, Indigenous
23 Services as a policy measure is saying our policy
24 is three or six or 12 months, is the limit for this
25 kind of support, versus when it comes to

1 expenditures on major capital, so to talk about
2 where they're saying there's no authority in the
3 initiative for that?

4 A. I would say that's correct.

5 Q. And so would you agree with me
6 that like I'll call them again ceilings or there'd
7 be a better adjective for them, but the existing
8 government programs, whether federal or provincial,
9 would set certain measures (i.e. the amount of a
10 benefit or, you know, eligibility based on income
11 or assets), that those would be examples of the
12 normative standard?

13 A. The public programs would be
14 examples of normative standard, yes.

15 Q. And so Jordan's Principle does
16 though go past normative standard ceilings in other
17 cases, like the number of days of therapy a child
18 with a developmental delay might be eligible for?

19 A. Yes. And I believe it's the
20 same thing with socioeconomic supports. That's why
21 we are actually approving bridging measures until
22 families are able to access supports through public
23 programs.

24 Q. But where those public
25 programs are insufficient to meet the need, those

1 cases should still be eligible for support under
2 Jordan's Principle?

3 A. They should be assessed on a
4 case-by-case basis, yes.

5 Q. I mentioned housing, so we'll
6 go to housing next. I just want to see how you're
7 doing. So it's 10:10. Are you doing all right?

8 A. I'm fine.

9 MR. TAYLOR: Madam Machildon,
10 you're all right?

11 THE CHAIR: I'm doing great. I
12 was wondering if you have done -- has the
13 department done any systemic analysis on the other
14 programs, and how they would bridge gaps for
15 children. And if this has been done, can we obtain
16 a copy of this?

17 DR. GIDEON: So there was systemic
18 analysis that was initiated, I'm trying to remember
19 the timeframe, if it was in the beginning of 2023
20 or earlier in 2022, I'm not sure if it is complete.
21 But it is something that certainly Candice St-Aubin
22 could speak to. She would have more knowledge of
23 the current level of readiness for sharing it.

24 But I would say that every time
25 that we have put forward a business case for an

1 existing program, like as part of a budget process,
2 we do take a look at indicators of need that we
3 have access to. So that could be, you know,
4 obviously demographic, cost of living pressures.
5 But we also -- I've also encouraged everyone to
6 look at the Jordan's Principle data or the Inuit
7 Child First Initiative data as well to include that
8 within the budget submissions or the policy
9 submissions that we are making.

10 So we are also doing it on a case-
11 by-case basis when we are putting forward budget
12 requirements.

13 THE CHAIR: Thank you.

14 BY MR. TAYLOR:

15 Q. And just to close the loop on
16 that, on the Chair's question. And so those
17 business cases (inaudible) can go to central
18 agencies for consideration?

19 A. That's correct.

20 Q. So on housing, you may
21 remember as we were in the same building, different
22 room, you came for cross-examination on your April
23 15th, 2019 affidavit and we talked about the
24 threshold for improvements related to housing
25 improvements. Do you recall that?

1 A. The \$5,000 and \$5,000.

2 Q. Yes, \$5,000 and \$5,000.

3 A. Yes.

4 Q. So you've got the \$5,000 and
5 \$5,000 excerpt at Tab (inaudible/off mic) of your
6 exhibit brief there. And so just for your
7 reference, that's page 41 and that's a
8 (inaudible/off mic) authority. (inaudible/off mic)
9 to some degree, major capital requests that are
10 associated with specific need of a child or
11 children living in the home (inaudible/off mic).
12 And then down the page I asked, was there a
13 threshold for either? And then you say, \$5,000.
14 And I say \$5,000, (inaudible/off mic). Now, I just
15 wanted to ask you about this next document. So
16 this is under Tab (inaudible/off mic), which is the
17 last point on that Exhibit E just before the green
18 sheet. We talked about whether there was a cap,
19 that's at the bottom of 44. Sorry, I'm back under
20 Tab E again.

21 A. Oh, Tab E, yes.

22 Q. Just a point on the second
23 page there -- third page rather. So I asked you if
24 there was a cap in terms -- on the (inaudible)
25 side. You said there's not a cap, (inaudible/off

1 mic) do an allocation. And you had suggested from
2 a public service stewardship (inaudible) to look at
3 (inaudible). Do you remember that examination and
4 those answers?

5 A. I did reread it just before
6 the hearing started.

7 Q. And that refreshed your
8 memory?

9 A. It did.

10 Q. So just under Tab F now
11 there's a document, it's titled Jordan's Principle
12 and Inuit Child First Initiative Operational
13 Bulletin 004, Direction on Housing and Major
14 Renovation Requests to Jordan's Principle Guidance.
15 And is this the kind of document that you'd be
16 familiar with?

17 A. I have not seen this one
18 before, which I mean it's three days before I went
19 to another department, so that wouldn't be unusual.
20 I do know that the team has been providing some
21 operational bulletins to help clarify guidance
22 essentially to focal points.

23 Q. And this would be something
24 that would be applicable for all decision makers
25 within Jordan's Principle from focal points down

1 all the way up to the Appeals Committee?

2 A. I'm not sure if the Appeals
3 Committee would receive this. You would have to
4 ask Candice St-Aubin, she (inaudible/off mic).

5 Q. (inaudible/off mic) ask her
6 that. But based on the text under the direction
7 here, it says:

8 "When ISC perceives a
9 Jordan's Principle request
10 for the purpose of a new
11 house, a new build, and/or
12 for major renovations on or
13 off reserve it should be
14 escalated to the National
15 Review Committee."

16 The next paragraph,
17 "Requests for major
18 renovations, new builds,
19 and/or (inaudible) purchase
20 of new home are not eligible
21 (inaudible/off mic) Jordan's
22 Principle. And so in the
23 words, "they're not eligible
24 under Jordan's Principle," is
25 that an analysis that's based

1 on Jordan's Principle
2 authorities?"

3 A. Yes.

4 Q. And that would be what
5 Treasury Board sets, I guess, or Finance?

6 A. Yes. Yes. I mean, sometimes
7 it relates to a policy authority that is then
8 approved at the Treasury Board level.

9 Q. And policy authority would
10 come from...?

11 A. Cabinet.

12 Q. Cabinet. And then in the box
13 here it notes again the purchase of a house, major
14 renovations fall outside of Jordan's Principle's
15 scope. And then it say:

16 "On a case-by-case basis
17 Jordan's Principle will
18 consider and fund requests
19 for minor
20 renovations/modifications to
21 an existing home to ensure
22 the home meets the child or
23 children's specific mobility,
24 health and medical needs."

25 And there's a list of examples;

1 wheelchair ramps, stair glides, safety yard
2 enclosure, room modifications, (inaudible) space
3 for additional equipment. Do you see that?

4 A. Yes, I do.

5 Q. So is it fair to say then that
6 the Jordan's Principle policy today about housing-
7 related requests is that where they're over \$5,000
8 and where they're outside those kinds of examples,
9 there's (inaudible) list, that they'll be denied?

10 A. I can't confirm if the \$5,000
11 threshold still applies. Honestly, I cannot be 100
12 per cent because I know that there's been shifts in
13 CHRT 41 as well. So I would just defer that
14 question to Candice.

15 Q. Even if the \$5,000 was higher,
16 your understanding is that if you're in the
17 territory of, you know --

18 A. Minor versus major, there's a
19 distinction.

20 Q. Yes. And then if you're in
21 the territory of major work, you need to be in this
22 category of wheelchair ramps, stair glides, et
23 cetera to be approved? And if you're not in that
24 category, it'll be denied?

25 A. These are examples though,

1 right? It's not a closed list, right?

2 Q. But they do say purchase of a
3 house and major renovations fall outside Jordan's
4 Principle scope?

5 A. They do.

6 Q. And that's a decision, again,
7 based on authorities --

8 A. That's correct.

9 Q. -- as opposed to the
10 Tribunal's orders?

11 A. That's correct.

12 Q. Some questions now about Back-
13 to-Basics for you. And we've got Back-to-Basics
14 under Tab G to the extent you want to refer to it
15 right away. But I'd like you to go to Tab H first.
16 And so just to kind of landmark you where you are
17 in your affidavit, we're at paragraph 18 of your
18 affidavit where you talk about Jordan's -- sorry,
19 you talk about Back-to-Basics being meant to reduce
20 any administrative burden on families seeking
21 support through Jordan's Principle. And that's in
22 the first and second line of your affidavit there.
23 Do you see that?

24 A. M'hmm.

25 Q. Now, if we look at Tab H, this

1 is an excerpt from Exhibit 61 to Dr. Blackstock's
2 first affidavit, which is the Executive Summary of
3 Long-Term Reform AiP. That's a document that's
4 posted online?

5 A. Yes.

6 Q. And you're familiar with it?

7 A. Yes.

8 Q. And so looking at the fourth
9 page here of the tab, which is -- there's a kind of
10 a heading (inaudible) at the bottom of the page.

11 A. Yes.

12 Q. And then there's a series of
13 bullets further up the page? So call it the third
14 bullet on the page says:

15 "Implement Back-to-Basics
16 Approach and culture change
17 to determination of Jordan's
18 Principle requests."

19 Do you see that?

20 A. Yes, I do.

21 Q. And so do you agree that
22 culture change is also within the goals of Back-to-
23 Basics in addition to reducing administrative
24 burdens on families?

25 A. I do.

1 Q. And I think we've already
2 discussed this, but you'd agree the introduction of
3 Back-to-Basics led to a higher rate of approvals
4 with ISC?

5 A. I agree.

6 Q. Now bearing in mind our
7 discussion about, you know, authority-based
8 limitations and policy-based limitations, would you
9 agree that Back-to-Basics is only going to apply to
10 change the culture in areas where ISC has
11 authorities to make approvals?

12 A. I would say that it's also
13 about ensuring the cultural humility throughout the
14 entire interaction with a requestor or a family
15 member, whether or not a request is approved.

16 Q. But if there's no authority to
17 approve the request with the most cultural
18 humility, ISC won't be able to approve that
19 request?

20 A. That's correct.

21 Q. Now, in paragraph 18 of your
22 affidavit you also say, it's kind of a little bit
23 -- well, on the next line you say that -- we're
24 into the sentence, I don't want to add any words,
25 so maybe I'll just take it back, you say:

1 "...replaced the SOPs, was meant
2 to reduce any administrative burden on families
3 seeking support through Jordan's Principle," I
4 think we've just added as well there's a culture
5 change (inaudible), then you say, "until the
6 parties agree to a final settlement on a long-term
7 approach for Jordan's Principle." Does this mean
8 you're contemplating individual requests not
9 forming Jordan's Principle if there's a long-term
10 reform approach in place?

11 A. I've always said that I think
12 because of the off-reserve component and the rising
13 number of off-reserve requests, which isn't
14 captured in IFSD's report, but is captured in the
15 deep dive 2021-22 administrative data with 52 per
16 cent of individual requests came from off-reserve
17 individuals. Although, I fully respect and support
18 First Nations wanting to serve their members off
19 reserve, I think realistically it will be a
20 challenge to be able to make all of those service
21 delivery connections. So I believe, this is my
22 opinion, that the federal government will need to
23 continue, or someone that is designated, would need
24 to continue to be able to receive individual
25 requests, particularly because of individuals that

1 are living (inaudible/off mic).

2 Q. And for those places in
3 Jordan's Principle where individual requests are
4 made an important component, would you agree Back-
5 to-Basics is a solid foundation for how to respond
6 to those individual requests?

7 A. I do.

8 Q. I have some questions for you
9 about urgent requests, and that's the next topic
10 you deal with in your affidavit --

11 A. I do.

12 Q. -- at paragraphs 19 and 20.
13 So would you agree that before Back-to-Basics was
14 introduced there were a number of urgent cases that
15 were missed or weren't addressed as urgent?

16 A. I wouldn't agree with that. I
17 would -- you would source that information.

18 Q. Would you agree at least that
19 the Caring Society's position, discussions with
20 ISC, was of urgent cases were being missed or
21 misclassified?

22 A. There were. Whether there
23 were many, that would be the point where I would
24 need to see the source of where that (inaudible/off
25 mic).

1 Q. So there had been -- there
2 were at least -- it was at least something --

3 A. There were some examples, yes.

4 Q. Now, a question here about the
5 figures in your table here under 21, 22. So this
6 is another example of the GC Case generated table.
7 This is determined requests by urgency of an
8 individual.

9 A. So the source of our data is
10 GC Case. It doesn't mean though that the team
11 would not have reviewed the numbers.

12 Q. Right. But you didn't extract
13 these from GC Case yourself? (inaudible) in that
14 credential --

15 A. I do not have access to GC
16 Case, no.

17 Q. Do you know when they compiled
18 the urgent determined requests column, do you know
19 if they included time-sensitive requests within
20 what was urgent requests?

21 A. I don't. I don't, but I have
22 not seen that noted anywhere in the information
23 that I received in terms of that (inaudible/off
24 mic).

25 Q. And then just if we go back to

1 Back-to-Basics, it's Tab G on page 3. This one
2 hopefully has (inaudible).

3 A. Is this from Brittany's...?

4 Q. Yes, Brittany's affidavit --

5 A. (inaudible/speaking
6 simultaneously) yes.

7 Q. In the first bullet here under
8 proper and timely identification of urgent cases,
9 "Focal Points and call centre staff will ask all
10 service requestors if they feel the case is urgent
11 or time-sensitive." And so do you know if ISC's,
12 you know, method of tracking what focal points are
13 clicking distinguishes between urgency and time
14 sensitivity?

15 A. I've seen some distinctions in
16 some of the case files, but I can't confirm whether
17 or not it's done within the GC Case system.

18 Q. Now, going back to your
19 affidavit again, paragraphs 21 and 22 make some
20 assertions about relative proportions between
21 urgent and non-urgent requests. For instance in
22 22,

23 "As of the third quarter of
24 the 2023-24 fiscal year,
25 urgent requests accounted for

1 25 per cent of all requests
2 determined through the
3 initiative, up from 1 per
4 cent..."

5 A. Yes, that's the
6 proportionality of urgency versus total requests.

7 Q. And based on the text in 22
8 and the heading in the table which is Determined
9 Requests by Urgency, might be off, but I just want
10 to make sure I'm right, that the statements made
11 here are about the requests that were determined as
12 opposed to the requests that were received?

13 A. Yes.

14 Q. And so you'd agree with me
15 that cases that are, you know, in one of those
16 backlogged points that we talked about before final
17 determination would be --

18 A. (inaudible/speaking
19 simultaneously) --

20 Q. -- (inaudible/speaking
21 simultaneously) proportions. So the relative
22 proportions that we were looking at volume of
23 requests that came in could be different than
24 what's in your affidavit?

25 A. Would be, m'hmm.

1 Q. So just (inaudible/off mic)
2 that they could be?

3 A. They could be, yes. I'm
4 sorry, I said it, but I had an ice cube in...

5 Q. Just to make sure again,
6 thinking of the transcription, for the
7 transcriptionist. And do you agree with me that
8 the data in your table at paragraph 21 doesn't tell
9 us anything about how many of the cases in 2022-23
10 or in the first three quarters of 2023-24 became
11 urgent while they were waiting for determination?

12 A. No, the table does not tell
13 you that, no.

14 Q. So at paragraph 24 you
15 describe an urgent case review exercise. And you
16 say there in 24,

17 "From a sample of 31,258
18 urgent requests between
19 January 1, 2022 and December
20 31, 2023, ISC identified
21 5,800 (18.5 per cent)
22 requests which were likely
23 misclassified as "urgent"
24 following the implementation
25 of the Back-to-Basics

1 A. I think they looked at the
2 actual item itself as an example of an item that
3 would likely not be tied to an urgent need.

4 Q. Do you know that because you
5 talked about that with them?

6 A. I did exchange with the team
7 in preparation for the cross-examination.

8 Q. But that was after the
9 affidavit was prepared?

10 A. That was after the affidavit
11 was prepared, yes.

12 Q. And you didn't check any of
13 the work that was done?

14 A. I did not myself, no.

15 Q. So you've taken these results
16 at face value?

17 A. I have, but I have worked with
18 that team, right, prior on data analysis and deep
19 dives that they have done.

20 Q. And you say it's the same team
21 that did deep dives or in terms of -- tabulated
22 things, but just in terms of how the exercise was
23 done --

24 A. Correct.

25 Q. -- you (inaudible/off mic)?

1 A. That's right.

2 Q. And would you agree -- you may
3 not know, but would you agree that the sample and
4 its identification in misclassified cases isn't
5 something that has been directly raised with the
6 Caring Society before your affidavit?

7 A. Sorry, can you repeat the
8 question?

9 Q. Just that this exercise that's
10 been done here, the 31,000 requests, that's not
11 something that was addressed with the Caring
12 Society before your affidavit? That was the first
13 time --

14 A. I can't confirm that they
15 spoke to the Caring Society about that.

16 Q. There's a little discrepancy
17 I'm hoping you can help me with or at least give me
18 a reaction to. A sample, it's said to be 31,258
19 urgent requests. But when we look at Table 21, the
20 total urgent requests --

21 A. Sorry, Table 21 where?

22 Q. Oh, sorry, paragraph 21.

23 A. Paragraph 21, okay.

24 Q. Sorry, my brain was editing
25 those two things together. So the table, it says

1 that there was 7,000ish in 2022-23 and just shy of
2 21,000 in 2023-24, which is about 28,000 requests.
3 And so there's about 3,000 more requests in the
4 sample than there were from -- at least from the
5 determined requests in the table. I was wondering
6 if you know how there are 3,000 more requests than
7 the maximum in the table?

8 A. Where's your version you're
9 looking at in the table?

10 Q. Sure. So if you look at the
11 second column there, urgent determined requests,
12 and then if you look down at 2022-23 fiscal you see
13 7,026.

14 A. So the sample was not by
15 fiscal year, it started by January 1st, 2022 and it
16 went to December 31st, 2023.

17 Q. Right. But January 1st would
18 have been for 2022, right?

19 A. January 1st of 2023 --

20 Q. Sorry, January -- so there's a
21 sample January 1, 2022 to December 31, 2023?

22 A. So it's a whole calendar, plus
23 another calendar year.

24 Q. Yes, exactly. And so what I'm
25 trying to figure out is you go to your table under

1 21, which is done by fiscal as opposed to calendar,
2 so you've got -- I guess we'll go back to January
3 1st, 2022 would have been in fiscal year 2021-22,
4 is that right?

5 A. January 2022 would have been
6 in fiscal year 2022-23.

7 Q. Would be 2021, because the
8 fiscal year starts April 1st.

9 A. Yes.

10 Q. And so if it's January 1st of
11 that calendar year it's the fiscal year before?

12 A. Yes, I was just trying to
13 repeat to make sure that I understood your
14 question.

15 Q. Oh, I'll take another running
16 start.

17 A. Okay.

18 Q. So January 1st, 2022 --

19 A. Yes.

20 Q. -- would fall within fiscal
21 year 2021-22?

22 A. Correct.

23 Q. And there were 693 requests
24 total --

25 A. Determined, yes.

1 Q. -- in that fiscal year. And
2 so we added those to the 7,026 in 2022-23 fiscal,
3 which would cover April 1st to March 31st, 2023.
4 That takes us to about, give or take, you know,
5 8,000. And then if we take the first three
6 quarters of 2023-24, which takes us conveniently up
7 to December 31st --

8 A. I see what you're saying.

9 Q. -- (inaudible) sample that's,
10 you know, ish 21,000. So we're looking at 28,000
11 or 29,000 total approved determined urgent requests
12 in that time period. But then your sample has
13 31,000 in there. So just the number -- the sample
14 being bigger than the total.

15 A. It's likely because of the
16 data determination would have been different than
17 the data which would have been logged into the
18 system. But the team can clarify the methodology,
19 what...

20 Q. Okay.

21 A. There would be a difference in
22 terms of when they would have been submitted to
23 when they would have been determined in some cases.
24 But, again, I'd have to -- we'd have to ask the
25 team specifically the answer to that question.

1 Q. Is it another possibility that
2 some of these urgent requests might have been in
3 the backlog, things that hadn't been determined
4 yet?

5 A. Well, they wouldn't -- they
6 would have been done through intake. The intake
7 process would have been done, because they would be
8 in the system.

9 Q. Right. So is --

10 A. So the only place they would
11 have to be if they were in a backlog would have
12 been an escalation because the appeals process does
13 not have a backlog.

14 Q. Could have been escalation or
15 could have been focal point cue. Because there'd
16 be -- a focal point might have intake down at the
17 national call centre and then they'd be waiting for
18 --

19 A. If they're waiting for a
20 determination outside of escalation you mean?

21 Q. Yes, exactly.

22 A. I guess it's possible. But I
23 would say that that would -- I mean, I suppose
24 that's possible. I don't know. We'd have to
25 really ask the team for that clarification.

1 Q. But one possible explanation
2 for the discrepancy is that the delta, you know,
3 2,000-3,000 give or take, would be cases that were,
4 you know, in the works but not decided?

5 A. They were in the system, but
6 they were not determined.

7 Q. Right. So it could have been
8 when the data was pulled -- doesn't say when the
9 data was pulled. Do you know when the data was
10 pulled?

11 A. I don't know the exact date,
12 no.

13 Q. But prior to March 15th
14 (inaudible)? So there could have been --

15 A. M'hmm. Prior to the
16 affidavit.

17 Q. -- 2,000 or 3,000 urgent
18 requests pending at that time?

19 A. Possible. Like I say, I think
20 it would be good to ask the team for that
21 clarification.

22 Q. So paragraph 25, which is the
23 next one over the page say, in the second sentence,
24 "Miscategorized "urgent" requests pose a
25 significant challenge to the overall administration

1 of Jordan's Principle, as they may be prioritized
2 over other urgently needed requests." And so would
3 you agree that some kind of auditing and case
4 sampling of urgent requests could have assisted and
5 identifying this trend earlier so that it could
6 have been raised for discussion with the parties?

7 A. I do recall that the team were
8 speaking about maybe a rising number of urgent
9 requests and their concern that it was creating a
10 burden for focal points and not enabling them to
11 actually do the effective triaging. So I do recall
12 those conversations happening, but I can't pinpoint
13 the exact time.

14 Q. Do you recall the Caring
15 Society calling on ISC for that kind of auditing of
16 urgent cases?

17 A. Yes.

18 Q. And do you know like what --
19 and I take it from your earlier answer about the
20 discussions that you're not aware of that being
21 done other than the paragraph 24 exercise?

22 A. I'm trying to reflect on the
23 last work plan, accountability work plan update
24 that I saw. Just dates back to me -- months for me
25 to say, but I know that we were providing regular

1 updates to the Caring Society with respect to the
2 accountability work.

3 Q. At paragraph 26 of your
4 affidavit you say, "In Canada's view," just at the
5 start of the paragraph there, " In Canada's view,
6 the Caring Society's proposed additions to
7 objective criteria for "urgent" requests, set out
8 on pages 2 and 3 of their Notice of Motion, do not
9 necessarily assist in identifying objective
10 criteria for whether or not a given request is
11 urgent." And do you remember that those criteria
12 were having recently experienced the death of a
13 caregiver or biological parent or sibling, or
14 reasonably anticipated to experience such a death
15 being the first one, and the second one being
16 affected by a state of emergency?

17 A. Yes. And in the Notice of
18 Motion?

19 Q. Yes.

20 A. Yes.

21 Q. And you say in your affidavit
22 that that was Canada's view that these aren't
23 necessarily helpful. Is that your view also?

24 A. I think the Back-to-Basics
25 Approach is based on requestors identifying whether

1 or not an urgent -- a request is urgent. And we do
2 not provide them with criteria that they need to
3 abide by. So they don't have to indicate the
4 rationale as to why they feel that their request is
5 urgent.

6 Q. But my question was about the
7 Caring Society's criteria that they're proposing or
8 we're proposing in the Notice of Motion, and do you
9 agree that that'll be the death of a caregiver or
10 biological parent or sibling, or one that's
11 reasonably anticipated to occur, or being impacted
12 by a state of emergency, that those would be good
13 indicators of urgency?

14 A. I would say that these are
15 contributing factors, but they're not able to be
16 implemented within the Back-to-Basics Approach.

17 Q. And just in terms of a few
18 other indicators of urgency, do you agree a request
19 for formula for an infant would or could be urgent?

20 A. Sorry, a request for...?

21 Q. For formula for an infant
22 would or could be urgent?

23 A. I guess, if they didn't have
24 any other source of nourishment.

25 Q. And if there's a request that

1 dealt with a need for insulin pump, could that be
2 urgent?

3 A. Yes.

4 Q. And if there was a request
5 that related to loss of housing, could that be
6 urgent?

7 A. Yes, depending on the case.

8 Q. One last question on urgency
9 here. Do you know if ISC has done an exercise
10 that's similar to the -- I'll call it the paragraph
11 24 exercise in your affidavit about
12 misclassification of urgent requests? So pulling a
13 sample from, you know, the non-urgent request
14 determination group to look at those items to see
15 what they were about, to see if they were ones that
16 looked like they might have been urgent?

17 A. I don't know that. But I
18 would say that the purpose of the exercise was to
19 demonstrate the increased number of urgent requests
20 at the 900 per cent mark and the fact that this
21 causes a pressure that can then cause risk with
22 respect to urgent cases that should be triaged
23 versus cases that have been identified as urgent,
24 but there is no immediate risk to the child. There
25 was a purpose behind it.

1 Q. And that purpose identified
2 about ballpark 20 per cent of cases as kind of
3 leading to that pressure, is that right?

4 A. I hadn't looked at the 20 per
5 cent. Where did you see that?

6 Q. Sorry, I'm rounding. So just
7 in paragraph 24, we'll go back. It says, "ISC
8 identified 5,800 (18.5 per cent)..." --

9 A. Within that 31,000, yes.

10 Q. So it's 18.5 per cent, and so
11 that's 18.5 per cent of cases would be causing that
12 pressure?

13 A. Again, this was just examples,
14 they're not definitive. They would have to be
15 examined within each specific case to be sure.

16 Q. Moving onto another theme, and
17 then I'll just pause and see -- we've been going
18 for an hour and a half. You're all right?

19 MR. TAYLOR: Madam Chair?

20 THE CHAIR: We could take a break,
21 but I had a question for you. I was wondering if
22 you're going to cover the process between -- you
23 know, because if we go back to paragraphs 19 and
24 20, let me just go back there. Are you going to
25 ask further questions on paragraphs 19 and 20?

1 MR. TAYLOR: I don't have any
2 noted at this point. But if you have any
3 questions, I'm happy to pause a beat here and...

4 THE CHAIR: Yes. Well, I'll get
5 into it when we get back I guess.

6 MR. TAYLOR: Yes, okay.

7 THE CHAIR: So we'll take a 20-
8 minute break.

9 MR. TAYLOR: Just, if it's
10 helpful, I'm about two-thirds of the way through.

11 THE CHAIR: Oh, awesome.

12 MR. TAYLOR: So I'm happy to
13 continue, if you both are. (inaudible).

14 THE CHAIR: Are you okay, Dr.
15 Gideon, to continue a little bit?

16 DR. GIDEON: Oh, I'm fine. I'm
17 fine.

18 THE CHAIR: It's been a long time.
19 You're fine?

20 DR. GIDEON: No, I'm good.

21 THE CHAIR: You're doing great.
22 Okay, thank you, we'll continue.

23 BY MR. TAYLOR:

24 Q. Okay. So my question now has
25 to do about redirection from -- redirection

1 essentially of individuals from regular programs or
2 from group requests or individual requests. Which
3 is a (inaudible) thought about it in your
4 affidavit. Paragraph 27 is somewhere to start
5 under this heading. And so you say that:

6 "ISC's administration of
7 Jordan's Principle as a
8 preferred and accessible
9 option for requests for
10 services for First Nations
11 children that may otherwise
12 be available under other
13 government programs."

14 We talked a little bit about that
15 in (inaudible). Do you see that?

16 A. Yes. You're at paragraph 27?

17 Q. Yes. So this is the Back-to-
18 Basics Approach --

19 A. Yes. I just wanted to review
20 that since it's open.

21 Q. Of course, take your time. So
22 aside from procedural concerns in terms of, you
23 know, the fact that it might -- that the Back-to-
24 Basics Approach easier procedure to go through for
25 a family to make an individual request. Would you

1 agree that gaps in other programs could drive the
2 public's view that Jordan's Principle is a more
3 accessible option for requesting services?

4 A. I would agree with that. But
5 I would also say that programs generally have
6 rules, frequency limits, who you can use as a
7 provider and how much that provider would be paid.
8 They don't customize, generally speaking, the type
9 of supports or services for each individual.

10 Q. And in terms of the -- but in
11 terms of the level of service or the kind of
12 service that's received, and that's something that
13 would remain within Indigenous Services' discretion
14 to tailor. For instance, if service provider A
15 charged a rate three times higher than, you know,
16 the going rate, that's something Indigenous
17 Services would consider in dealing with that
18 request.

19 A. We attempted to make those
20 kind of threshold measures in the Standard
21 Operating Procedures and we met resistance from the
22 parties in terms of establishing those levels and
23 rules. Because the parties, and I'm generalizing
24 obviously for the sake of the discussion, but felt
25 that families should be able to choose the provider

1 that they wanted to use and that provider should
2 charge the fee that that provider should charge.
3 There was not a lot of support. There was actually
4 no support for establishing those types of
5 threshold payments.

6 Q. But in terms of the threshold
7 payments, I mean not to bring my profession into
8 it, but the for instance Legal Aid rates are a bit
9 of a famous example on lawyers where, you know,
10 those rates are set at a certain point, it didn't
11 evolve to market rates. And so would you agree, to
12 be fair, that there may be parts of government
13 authorities that may not be reflected in the market
14 to date and that could be pressure even for
15 Jordan's Principle requests as well?

16 A. I would have no evidence that
17 that's a significant contributor to what I'm
18 talking about here.

19 Q. Other kind of gaps one might
20 see though would be that the individuals who are
21 eligible for those other programs, for instance
22 based on residence or based on income level?

23 A. Absolutely.

24 Q. So going beyond essentially
25 the more personalized nature of request I guess

1 might agree that there are gaps out there where
2 there are services or products and supports that
3 kids aren't able to access?

4 A. I would agree that some of the
5 public programs would not provide the level of
6 support that Jordan's Principle provides. And I
7 would just re-emphasize that there's a significant
8 proportion of those requests that are coming from
9 individuals that are not in (inaudible) context,
10 that are not served by Indigenous programs
11 necessarily. So I'm just trying to ensure that
12 people understand that we can't make an automatic
13 assumption that those programs are all ISC
14 programs.

15 Q. Right. They'd be provincial
16 or territorial programs?

17 A. Or local, absolutely, or even
18 community programs.

19 Q. And so 52 per cent I think was
20 the off-reserve?

21 A. Well, that was 2021 and 2022,
22 but I think it would be good to continue to update
23 those numbers so we can see where the
24 proportionality (inaudible) --

25 Q. I'll certainly be asking your

1 former colleague about that.

2 A. Yes.

3 Q. Just looking back at the IFSD
4 (inaudible), that's the other book, and on page 71,
5 under Table 5, partway through the fourth line. So
6 IFSD says here:

7 "Jordan's Principle is a
8 final recourse to close gaps,
9 because other programs or
10 policy areas are
11 (inaudible/off mic) such an
12 approach should be consistent
13 with substantive equality.
14 Rather than depending on
15 Jordan's Principle to close
16 gaps to equalize (inaudible)
17 departure substantial
18 equality is built-in programs
19 that are intended to support
20 First Nations children."

21 Is that a goal statement that you
22 agree with?

23 A. I don't agree with it, because
24 I don't believe that Jordan's Principle is a final
25 recourse in all of requests that we are receiving.

1 I think there are times where Jordan's Principle is
2 becoming the first and not the final recourse.

3 Q. But in terms of the intended
4 destination of where Jordan's Principle should be
5 headed, is that where ISC thinks Jordan's Principle
6 should be as opposed -- I guess I'm asking more of
7 a future state as opposed --

8 A. Future state, yes. I wouldn't
9 say that's the current state.

10 Q. Now, in terms of the -- page
11 72, the bottom of the first paragraph, they talk
12 about the approach that identify the underlying
13 gaps in other programs to be remedied with Jordan's
14 Principle and working as intended as a recourse in
15 exceptional circumstances. So that --

16 A. I'm sorry, I'm just trying to
17 find the sentence. So you're at the last paragraph
18 at page 72?

19 Q. No, sorry, first paragraph.
20 Just under --

21 A. First paragraph. Realigning
22 Jordan's Principle to the legal rule?

23 Q. Yes. So if you go to kind of
24 the fourth-last line, it's the sentence starting,
25 "The approach..."

1 A. The approach would, okay.

2 Q. It say:

3 "The approach that identified
4 the underlying gaps and other
5 programs to be remedied with
6 Jordan's Principle then
7 working as intended as a
8 recourse in exceptional
9 circumstances."

10 So you'd agree that is a goal --

11 A. I would agree that as a -- as
12 a goal statement, yes.

13 Q. So at paragraph 28 of your
14 affidavit, this is just at the start:

15 "Since the government of
16 first contact must pay for
17 the services (without
18 engaging in administrative
19 case conferencing), ISC
20 cannot redirect requestors to
21 existing services available
22 in First Nations communities,
23 or to existing approved group
24 requests which are being
25 administered by First Nations

1 partners and community
2 organizations through a
3 contribution agreement with
4 ISC. As a result, in some
5 cases, Jordan's Principle is
6 duplicating funding which it
7 has already provided for an
8 approved group request or
9 existing service."

10 Do you see that?

11 A. Yes, I do.

12 Q. So if we just go back to the
13 exhibit brief again, and this time now to Tab I.
14 And so this is 2017 CHRT 35, not a legal
15 (inaudible), it's just a helpful place to note that
16 particular point.

17 A. Sorry, Tab...?

18 Q. Tab I.

19 A. Tab I? Yes.

20 Q. And now, if you look at
21 paragraph 3(b)(v), which is just at the top of page
22 2 there?

23 A. Yes.

24 Q. And so this paragraph, just
25 looking back near the header, it says:

1 "The Caring Society, the AFN,
2 Health Canada and INAC
3 officials reached an
4 agreement on October 2017 and
5 the agreement was based on
6 the following principles."

7 And just to kind of turn the clock
8 back to October 2017, you would have been Assistant
9 Deputy Minister for Regional Operations I guess at
10 the time?

11 A. Yes.

12 Q. And did you recall this
13 agreement?

14 A. This is the Amended Consent
15 Order?

16 Q. Correct.

17 A. Yes.

18 Q. And so at (v) it says:

19 "In cases where a service is
20 available Canada can consult
21 within a specified timeline
22 for the type of case involved
23 with a First Nations child's
24 family, the First Nations
25 community, or with service

1 providers in order to fund
2 the service."

3 Do you see that?

4 A. Yes, I do.

5 Q. And would following a
6 procedure like that address, at least in part, your
7 concern about duplication?

8 A. It wouldn't, because the
9 timeline would not allow us to have the ability to
10 really do that effectively.

11 Q. But in a case where you had a
12 48-hour timeline and a well-known program, is that
13 not something that could be sorted out?

14 A. I mean, I think that people
15 understand Jordan's Principle as you pay first, and
16 that's what people are expecting when they're
17 calling Jordan's Principle. They're not expecting
18 to be redirected.

19 Q. But if there's an effective --
20 you know, I think I've heard the term warm hand-off
21 in the call centre world, (inaudible) get that, but
22 if there's an effective hand-off like between an
23 individual request coming in and an already
24 approved request. So let's say in a community
25 there's funding for a speech therapist and in that

1 community someone calls in and requests, you know,
2 to get a level of speech therapy, there's an
3 effective way to get that child on the speech
4 therapist's roster for the next visit. That would
5 solve the duplication concern wouldn't it?

6 A. But that's a lot of ifs in a
7 48-hour turnaround.

8 Q. In terms of the bridge
9 funding, would that be another possible measure to
10 address the consent?

11 A. And we do do bridge funding.

12 Q. So it's not the case that
13 there's no ability to redirect, it's just not
14 within the 48-hour time period?

15 A. But I would say that the
16 bridge funding that we provide, for example, is
17 something that we need to specify timelines, and in
18 order to be able to do that it's not something that
19 would be ongoing.

20 Q. Correct. It would be a bridge
21 towards that already approved request. So it might
22 be the first session or whatever the frequency is,
23 this scenario would be covered by the bridge
24 funding and then at that point forward would be
25 part of the argument (inaudible), is that right?

1 A. And the requestor would have
2 to agree. Often requestors, my experience, is then
3 that requestors don't always agree to access
4 programs that are already there in existence.

5 Q. But that's not something that
6 comes from that 2017 agreement?

7 A. No, it's something that comes
8 from now years of operationalizing that Amended
9 Consent Order.

10 THE CHAIR: Excuse me, I have a
11 question. I understand that within the, for
12 example, the 48-hour window or the 12-hour window
13 there's -- your evidence is that there's not a lot
14 of time to refer to -- I can appreciate that.

15 What if the request is recurrent?
16 Is there an analysis that is done after the first
17 approval, for example, to see if there are other
18 services that are available in the community or at
19 another level where the requestor could actually
20 continue receiving services, is this analysis done?
21 I can understand a one-time request. But let's
22 look at, for example, recurrent requests. And I've
23 read this over the years, that some requests are
24 recurrent and we can understand the need for
25 recurrent requests.

1 So my question to you is after the
2 first approval is there somebody on the teams, is
3 there a team looking into, okay, we've approved
4 this request but they are likely going to come back
5 to us for further approvals, so is there anything
6 available in the community or at another level that
7 we could refer them to? Is this analysis done?

8 DR. GIDEON: So I've seen examples
9 of that. I've seen examples of First Nations also
10 coming forward with group requests to address a gap
11 that they are seeing in terms of repeated
12 individual requests. So I've seen it from the
13 department side where they have looked at, okay, we
14 are seeing a demand here, let's try to put
15 something together with a First Nation community or
16 an organization if it doesn't already exist. I've
17 seen that happen.

18 I'll just give one quick example.
19 Like, I remember the Council of Yukon First Nations
20 a few years ago actually created a hot lunch
21 program, I think it was a hot lunch program. It
22 was a lunch program for schools across, because
23 they were seeing a need. So there is some of that
24 analysis that happens.

25 Likely, however, when you look at

1 the number of volume of requests that are being
2 seen now, the capacity is not there to do that
3 every time you receive a request. But is that an
4 objective that I would say that it would be in
5 everyone's best interest to work towards? Yes.

6 THE CHAIR: Thank you.

7 BY MR. TAYLOR:

8 Q. Just looking at another tool,
9 just looking at paragraphs 39 and 40 of your
10 affidavit, so you're talking about the call centre.

11 "Since requests can involve
12 multiple components, call
13 agents often engage in
14 lengthy conversations to help
15 callers identify the child's
16 needs, including providing
17 information on the available
18 supports in their region and
19 general information about
20 Jordan's Principle. Call
21 agents also assist callers by
22 referring them to other
23 resources when the request is
24 for someone over the age of
25 majority."

1 Would you agree with me that when
2 (inaudible) timelines, and I understand your
3 evidence about the challenge of that, but referrals
4 through the call centre is another procedure that
5 could address the concern of duplication?

6 A. Not sure if it would address
7 the concern for such duplication if you're looking
8 at it as a more systemic level than individual
9 level. But absolutely, if that conversation can
10 occur and if the requestor is in favour of sharing
11 their information or with themselves to actively be
12 willing to contact these other service delivery
13 organizations, then yes, that could help to address
14 (inaudible/off mic).

15 Q. And then paragraph 78 of your
16 affidavit, this is just looking forward where
17 you're talking about service coordinators.

18 A. Sorry, 78?

19 Q. Seventy-eight, yes, on page
20 20, it's the second sentence:

21 "Generally speaking, the
22 Service Coordination function
23 supports families as they
24 navigate systems, linking
25 them to existing resources,

1 and informing regional focal
2 points of identified service
3 gaps to help facilitate
4 access to support children.”

5 And so do you agree with me that
6 this is another procedure that can address concerns
7 on duplication?

8 A. If it (inaudible) and the time
9 which, judging by the volume of requests that we
10 have been seeing, we likely (inaudible/off mic).

11 Q. Just going back to the
12 statement though that was made in your affidavit,
13 this would be paragraph 28.

14 “...ISC cannot redirect
15 requestors to existing
16 services available in First
17 Nations communities...”

18 It’s not a matter of total
19 inability. There are procedures in place that
20 requests can be redirected.

21 A. Maybe it’s the word of
22 redirect. When we say redirect, we mean we cannot
23 say we will not approve this because there is
24 funding already available that you are eligible for
25 for this service. We cannot do it. We can refer,

1 but referring does not mean that we do not then
2 have an obligation to pay for the service. The
3 requestor is not amenable to that referral.

4 Q. There'd be a requestor and
5 then there'd also be other -- the provincial,
6 territorial government, they'd have to see that
7 they were eligible child (inaudible) as well?

8 A. Correct.

9 Q. But just in terms of the, you
10 know, the not able, would you agree with me though
11 that in terms of the Tribunal timeline, that
12 agreement reached in 2017, that if the redirection
13 happens before the 48-hour timeline that's not
14 something that's prohibited for ISC?

15 A. We can't redirect, we can
16 refer. We can't say to the requestor, we will not
17 approve or consider your request because... This
18 is how we've interpreted administrative
19 (inaudible), that it would be to say to the
20 requestor we will not approve this because it's a
21 duplication of funding -- not that we would use
22 those words, but let's just say for the sake of it.
23 We would not say to a requestor, we are not going
24 to approve that because your community is already
25 funded for this.

1 Q. But just, again, going back to
2 Tab I, that roman numeral -- in cases where a
3 service is available Canada can consult within
4 (inaudible) that timeline with the type of case
5 involved with First Nations child families, that's
6 the discussion with family you're noting --

7 A. Correct.

8 Q. -- with the community or with
9 the service providers in order to find the service.
10 So those within the 48-hour time period those
11 consultations, they're not barred by this
12 agreement?

13 A. Consultation, but then it's
14 agreement, there would need to be agreement
15 reached.

16 Q. Some questions for you over at
17 paragraph 33, it's where you're talking again about
18 some instructional components of the department.
19 Heading here, Jordan's Principle Operations.

20 A. Yes.

21 Q. So in 33 you talk about ISC.
22 "...fundamental, foundational
23 change towards the ending of
24 systemic discrimination
25 against First Nations

1 children.”

2 And the next page over.

3 “...ISC has established an
4 entire operational sector
5 within ISC to administer and
6 support Jordan’s Principle
7 delivery, including an arms-
8 length appeal mechanism to
9 ensure that requests are
10 dealt with fairly and in
11 keeping with the Tribunal’s
12 Orders.”

13 So would you agree with me that
14 the new operational sector at ISC and the arms-
15 length appeal mechanism are key components of what
16 you’re calling the fundamental foundational change
17 that has been made?

18 A. It’s part of it, yes, for
19 sure.

20 Q. Is it an important part of it?

21 A. Yes.

22 Q. Is it an essential part of it?

23 A. Yes.

24 Q. Now, just -- I was going to
25 ask a few questions about appeals. But just

1 because we rereview, as I understand it, comes
2 before appeals, so just go there for a second.

3 A. I'm sorry, which paragraph?

4 Q. Oh, we're on 52 and 53.

5 A. Fifty-two and 53, yes.

6 Q. We're going to come back to
7 the (inaudible), but just to deal with rereviews
8 because those are next in time.

9 A. Yes.

10 Q. And so I was wondering if ISC
11 has any statistics that it tracks on rereviews?

12 A. Oh my goodness, I haven't seen
13 any recently. We would -- this is something that
14 we should ask either Candice or the team.

15 Q. Okay. So we'll now talk about
16 the appeal process. I said we were going back, but
17 we're actually going forward. So paragraph 54.

18 THE CHAIR: Mr. Taylor, is it okay
19 if I interject? Because I think if we're going to
20 get into the appeals process I would like to ask my
21 questions.

22 MR. TAYLOR: Yes, no problem.

23 THE CHAIR: You've testified
24 earlier that some intake officers do not have the
25 level of authority to approve some cases and that

1 it could be dangerous if they don't, because as the
2 authority and it's not escalated. I was wondering
3 if we could go back to paragraphs 19 and 20? I
4 just want some clarification here.

5 DR. GIDEON: Yes.

6 THE CHAIR: Just to make sure that
7 I understand. Are you there?

8 DR. GIDEON: Yes, I'm there.

9 THE CHAIR: Okay. So you say in
10 your affidavit the Back-to-Basics Approach changed
11 how ISC intake officers identify requests as urgent
12 or non-urgent under the SOPs, which was previous --
13 prior to Back-to-Basics. Urgency was based on the
14 initial assessment by the regional focal point and
15 urgent requests were defined as a child requires
16 urgent assistance, is in palliative care or at risk
17 of irremediable harm is reasonably foreseeable. Do
18 you see this as linked to the Tribunal's orders,
19 these types of criteria that you mention in
20 paragraph 19?

21 DR. GIDEON: Yes, we worked on
22 those criteria that were part of the standard
23 operating procedures with the parties at the time.
24 The differentiation now is just that the intake
25 officer is not making the assessment as to whether

1 or not a request is urgent or not, the requestor
2 is. And the intake officer is not questioning or
3 is not supposed to question whether or not that
4 request is actually urgent, so would not be asking
5 for the explanation as to which criteria it would
6 meet.

7 THE CHAIR: Okay. so following
8 this, paragraph 20. You say that.

9 "Pursuant to the Back-to-
10 Basics Approach, the parties
11 view the requestor as best
12 positioned to judge the
13 urgency of a request. The
14 intake officer is required to
15 accept the requestor's
16 identification of the request
17 as urgent or not, and is not
18 permitted to reassign the
19 request to a lower level of
20 urgency. However, ISC may
21 raise the level of urgency if
22 they determine a request
23 designated by the requestor
24 as non-urgent is actually
25 urgent."

1 I have questions about the first
2 part.

3 You said that no -- earlier your
4 evidence says that you are not providing any
5 criteria to the requestors and they self-identify
6 if the request is urgent. And you've also provided
7 some examples, and I appreciate that also counsel
8 for the Caring Society have said that we don't have
9 all the context for the requests that are labelled
10 as mischaracterized.

11 However, I'm wondering if -- is
12 there not a danger in treating all the requests as
13 urgent when some might not be urgent? And, in your
14 view, is this what -- well, you can't answer what
15 the Tribunal intended, but this happened after the
16 Tribunal orders for the timelines.

17 DR. GIDEON: Yes, I believe
18 there's a risk. I believe that when we developed
19 -- or I'll speak to myself. When I was part of the
20 development of Back-to-Basics I did not envision
21 that requestors, so many requestors would identify
22 their requests as urgent, and I did not envision
23 that the type of requests that we are now seeing as
24 categorized as urgent would be part of what we
25 would be dealing with.

1 So now that I see the impacts of
2 the implementation of Back-to-Basics I am concerned
3 that cases that I would identify as urgent are not
4 being treated as urgent or as timely because of the
5 level and the volume of urgent crises that people
6 are now having to deal with.

7 THE CHAIR: Yes. And just for a
8 clarification point. When the Tribunal set the
9 timelines, urgent meant urgent. I just wanted to
10 clarify this. And this might help if you have
11 other questions to ask. And just bear with me for
12 a second.

13 In your Exhibit C attached to your
14 affidavit it does mention that.

15 "Urgent requests include, but
16 are not limited to cases
17 which: involve end of
18 life/palliative care; mention
19 suicide; relate to physical
20 safety concerns; concern
21 access to basic necessities;
22 and have a risk of entering
23 the child welfare system."

24 And this is not an exhaustive
25 list, but those are examples.

1 So this would also be in the Back-
2 to-Basics Approach?

3 DR. GIDEON: That's correct.

4 THE CHAIR: Okay. I guess thank
5 you for now.

6 BY MR. TAYLOR:

7 Q. Actually the question arising
8 from your questions, if we look at Tab G at the
9 exhibit bundle. We dealt with this (inaudible),
10 which was focal points and call centre staff will
11 ask all service requestors if they feel the case is
12 urgent (inaudible) using a plain language approach
13 to ensure that the requestor understands the
14 question, and provide examples of an urgent request
15 as listed below. Then if we go down to the fourth
16 bullet, examples of urgency include all cases
17 involving end of life/palliative care, mention of
18 suicide, physical safety concerns, no access to
19 basic necessities, risk of child entering child
20 welfare system, et cetera, and the age involving
21 (inaudible) children considered in determining
22 urgency. And so would you agree that that's an
23 additional component of Back-to-Basics is that the
24 focal point it to be giving the requestors examples
25 in bullet 4?

1 A. I would say that the majority
2 of intake though is not getting through with the
3 amount of requests, right? Where like my
4 understanding is that these requests are being
5 labeled by requestors as urgent regardless of
6 whether or not that conversation has occurred with
7 a focal point or not, or there has been an email
8 exchange.

9 Q. And in terms of the work that
10 the team did on it, the 18.5 per cent of cases,
11 that they could be misclassified based on just the
12 service, do you acknowledge that there needs to be
13 more information about that kind of request and
14 what exactly it relates to? You know, whether
15 that's a true misclassification or not?

16 A. Correct.

17 Q. And would you agree as well
18 that in the backlog context where (inaudible/off
19 mic) -- my understanding is that there's certainly
20 -- could be thousands of requests that are in
21 backlog?

22 A. Yes.

23 Q. And then in that context where
24 determination takes a long time, there are things
25 that can either become urgent or things that are

1 time sensitive. For example, if there's a cultural
2 (inaudible) being held on a particular day and if
3 the approval doesn't happen and it sits in the cue
4 and the family doesn't have the means to --
5 essentially to fund that activity or support
6 themselves, that it would be a missed opportunity
7 for the child as a result?

8 A. I would say that's time-
9 sensitive, I wouldn't say it's urgent unless it
10 related to a particular other circumstance of the
11 family.

12 Q. But certain the Back-to-
13 Basics, at least the language in the first point
14 here, is that there's a particular intention
15 (inaudible) urgency and time sensitivity in terms
16 of not wanting to have -- essentially requests that
17 can't be dealt with due to processing times, is
18 that a fair statement?

19 A. If the deadline has passed for
20 that particular activity in that particular
21 circumstance, then yes.

22 Q. And would you agree that that,
23 in terms of the operation of Jordan's Principle,
24 you know, some way of ensuring that opportunities
25 aren't missed due to processing timelines

1 (inaudible/off mic)?

2 A. As part of what would be
3 assessed to triage requests, yes.

4 MR. TAYLOR: I've got about three
5 or four themes left. Would now be an opportunity
6 or time to take a break?

7 THE CHAIR: Yes, we'll take a 20-
8 minute break. Dr. Gideon, you've done this before,
9 so I would ask you that you will not discuss your
10 evidence with anyone until we're done, I guess
11 maybe later today, unless counsel raises questions
12 and asks you to confirm with your counsel or the
13 team. But unless this occurs, please do not
14 discuss your evidence.

15 So we'll take 20 minutes. So
16 we'll be back at 11:30. Thank you.

17 --- OFF THE RECORD

18 --- ON THE RECORD

19 THE CHAIR: Okay, thank you for
20 coming back. Dr. Gideon, in the section of the
21 payment process at paragraph 65 of your affidavit,
22 you mention:

23 "When a request is approved,
24 ISC has a variety of
25 mechanisms to process

1 payments. Most individual
2 requests are processed based
3 on a reimbursement model:
4 after a request is approved,
5 the requestor will submit an
6 invoice and direct deposit
7 information to receive
8 payment for the approved
9 item. ISC has also set up
10 accounts with approved
11 vendors that will bill ISC
12 directly for the services
13 provided."

14 If we deal with that -- did you
15 hear what I said?

16 DR. GIDEON: Yes, completely. I
17 was just -- I was going to put my mic on. They
18 asked (inaudible).

19 THE CHAIR: Okay. When I'm asking
20 a question, please don't talk to the witness.

21 Okay. So I was wondering where --
22 let me rephrase this. Why are the requests
23 approved? Why is this process a reimbursement
24 process? Where does that come from? Is it your
25 authorities of *Financial Administration Act*? Where

1 does that come from?

2 DR. GIDEON: So if someone says I
3 need a service for X, people say, yes, you're
4 approved for that service. If they have paid for
5 the service already, then we would reimburse them.
6 If they haven't paid for the service already and we
7 don't have an arrangement with a vendor or can't
8 put one in place between the time and they have the
9 ability to pay and be reimbursed, then that's a
10 vehicle. But we can do advanced payments or we
11 can, as we noted, create sort of a direct billing
12 arrangement with particular providers.

13 The other option that we can do,
14 but that's more one time, not recurring payments,
15 is we can use acquisition cards and there's a
16 specific threshold limit of \$10,000 for an item or
17 \$20,000 for travel that those cards can be used
18 for, and they're considered advanced payments.

19 So we try to create a variety of
20 mechanisms to try to meet, you know, the broad
21 range of requests that we receive. Those are for
22 individual requests.

23 For group requests we set-up
24 contribution agreements with generally First
25 Nations organizations, and we will negotiate the

1 payment schedule with them on the basis on what it
2 is that they need. So we can give money upfront
3 when the agreement is signed and then we can do
4 future payments. It will depend on the activity
5 that they are undertaking and what their needs are.

6 THE CHAIR: Okay, thank you.
7 Would you agree with me that if a family is poor
8 and that's been recognized earlier, and in your
9 evidence that we are -- you're dealing with
10 families that are poor, that could be extremely
11 difficult for them to even advance for three days,
12 seven days and wait for reimbursement, even if it
13 takes the 14 days that you've mentioned? Would you
14 agree that poverty can come this very difficult for
15 a family?

16 DR. GIDEON: I would agree with
17 that, that's why we've set-up some advanced payment
18 options, including gift cards in some context, but
19 there are value limits to those payments. The best
20 is for us to set-up a direct arrangement or, if
21 it's the landlord, we can issue a payment to the
22 landlord. If it's the grocery store and they will
23 take a direct billing from us. Could be Home
24 Depot, right, we set-up arrangements with Home
25 Depot. Like, that is the preferred mechanism for

1 supporting a family that is living in poverty.

2 THE CHAIR: Okay, thank you.

3 And just a moment, I'll look at my
4 notes.

5 At paragraph 28 of your affidavit
6 you mention:

7 "Since the government of
8 first contact must pay for
9 the services (without
10 engaging in administrative
11 case conferencing), ISC
12 cannot redirect requestors to
13 existing services available
14 in First Nations communities,
15 or to existing approved group
16 requests which are being
17 administered by First Nations
18 partners and community
19 organizations through a
20 contribution agreement with
21 ISC."

22 And you've just referred to this
23 earlier.

24 "As a result, in some cases,
25 Jordan's Principle is

1 duplicating funding which it
2 has already provided for an
3 approved group request or
4 existing service."

5 So the removal -- for the panel,
6 the removal of administrative conferencing was to
7 avoid the constant back and forth before a request
8 has been approved. So I'm not asking a question
9 now to you, I'm asking it to reflect maybe over the
10 lunch hour, if there is a lunch hour if we're not
11 done what would be, in your view, the ideal
12 solution here for the issues that you're raising at
13 paragraph 28, and that you've already testified to?

14 I'm just interested in your view,
15 what are some areas of solutions that could address
16 this? Because I'm just putting it out there right
17 now.

18 DR. GIDEON: Okay, we'll go back
19 to it.

20 THE CHAIR: Yes, thank you.

21 MR. TAYLOR: If it's all right,
22 Chair, I might come back to that at the end before
23 I close my --

24 THE CHAIR: Absolutely.

25 MR. TAYLOR: --

1 (inaudible/speaking simultaneously) in case there's
2 any follow-ups.

3 THE CHAIR: Yes.

4 MR. TAYLOR: Okay. I'm all right
5 to continue, Madam Chair?

6 THE CHAIR: Yes.

7 MR. TAYLOR: Thank you.

8 BY MR. TAYLOR:

9 Q. So I had just a couple of
10 (inaudible) points before getting into appeals.
11 Just briefly again on urgency. I don't think you
12 need to turn it up, but if you want to it's the Tab
13 G in the book on Back-to-Basics. We talked about
14 some of the examples of urgency in terms of end of
15 life context, physical safety concerns, mention of
16 suicide, et cetera. If a request was coming in,
17 whether it's on the phone or by email and there's
18 no mention from the requestor of urgency, the other
19 Back-to-Basics, the focal points or the intake
20 officer is still supposed to be applying
21 (inaudible) themselves to it, is that right?

22 A. Yes.

23 Q. And then just a further
24 question along the lines of 2017 CHRT 35 that we
25 were talking about and that agreement in terms of

1 how Jordan's Principle requests did play out. Are
2 you familiar that there was a provision in that
3 order where the government or department of first
4 contact can seek reimbursement from another
5 government or department?

6 A. Yes, I'm aware.

7 Q. And are you aware of any
8 efforts to seek reimbursement from provincial or
9 territorial governments for services provided
10 through Jordan's Principle that are covered by the
11 -- or that would be covered by a provincial program
12 or service?

13 A. We have no authority within
14 Indigenous Service Canada to do that because we
15 don't manage the transfers to provinces and
16 territories for health or social programs though,
17 they're done through the Department of Finance.
18 The other issue is that how can you seek a
19 reimbursement for a service from a government that
20 never approved that service?

21 Q. That would be an operational
22 problem to be solved by someone else in the
23 government is your evidence in terms of Finance
24 or...?

25 A. Well, it -- they have

1 financial administration laws as well, right? So
2 most of them would not have retroactive
3 reimbursement capacity for requests that they would
4 never have known about, never approved, and would
5 not necessarily meet their cycle of funding,
6 depending on whether or not they have a matching
7 fiscal year. So those are just examples of
8 operational issues that we would run into as well
9 as the sharing of personal information that would
10 be required in order for them to then consider that
11 request. We can't unilaterally send a list of
12 individuals, their names, their personal
13 information, what we paid for, and say to a
14 provincial government now you have to reimburse
15 this.

16 Q. But in a scenario, and this is
17 potentially a political question, so tell me if it
18 is. But in a scenario where, you know, off-reserve
19 there's support being paid for educational
20 assistance in the provincial school system, you
21 know, there could be an overturn of the federal
22 government in terms of looking at the tally. Well,
23 this is the amount of money expended under Jordan's
24 Principle for educational assistance in your school
25 system in this year, and discussions at that level

1 about sorting that out in terms of who ought to
2 have paid that.

3 A. We have approached, in certain
4 circumstances, service providers to see if there's
5 another way in which we could organize the service
6 from a group request perspective. But you wouldn't
7 be able to, as a federal department, ask a school
8 board, a provincial school board, to reimburse you
9 for services. Like, there would be no mechanism
10 for that to occur.

11 Q. So there would not be -- the
12 mechanism, wherever it's addressed, would have to
13 be addressed somewhere else in government?

14 A. Absolutely.

15 Q. Just going now onto, at least
16 for me at long last, appeals. (inaudible/off mic)
17 for the last little bit. We talked about
18 (inaudible/off mic) --

19 A. Pardon me? I'm sorry, my
20 affidavit?

21 Q. Yes, I'm back to paragraph 54
22 now in your affidavit.

23 A. Okay.

24 Q. Now, just on I guess more of a
25 structural point. In paragraph 56 of your

1 affidavit you talk about request for proposals
2 launched in February 2024 to a standing committee's
3 membership. This is after you left ISC, so I'm
4 just wondering if you're involved in this RFP
5 process?

6 A. I'm not.

7 Q. And so this is second-hand
8 information for you?

9 A. Yes.

10 Q. Do you know who told you that?

11 A. Well, I received it from the
12 team in terms of part of the measures that they're
13 taking into account in order to ensure that they
14 can address what is likely to be (inaudible) that
15 Board of Appeals requests. It's just part of the
16 background information I received to prepare for
17 this.

18 Q. And just going back to the
19 exhibit (inaudible) here, Tab A is that Jordan's
20 Principle website that we looked at at the start.

21 A. Yes.

22 Q. And over the page -- and I
23 should just maybe note for the record the very last
24 page of the printout says, "date modified March
25 6th, 2024," and maybe if you can just confirm my

1 understanding on government website that's, you
2 know, essentially the date that the page was last
3 brought up-to-date?

4 A. That's what I can understand
5 it to be, yes.

6 Q. So we can agree this to be
7 current at the start of last month?

8 A. Yes.

9 Q. So it says under the first
10 heading on page 2, Updates on Jordan's Principle,
11 Jordan's Principle External Appeals Committee, and
12 it says, and I'm partway down the line, it says:

13 "The call is now closed.
14 Thank you to all those who
15 expressed interest and
16 (inaudible) results of the
17 process, those who applied,
18 once the evaluation of the
19 proposal is finished."

20 Now, if there's an ongoing
21 process, that would be out-of-date information in
22 terms of the (inaudible)?

23 A. If it had been issued, yes, it
24 would be out of date. That would be referring to
25 the former, that's my understanding.

1 Q. And you'd agree that the
2 process is ongoing, it'd be important to publicize
3 that on the updated section of the web page?

4 A. I would agree that that would
5 be one mechanism to reach people, yes.

6 Q. And just in terms of how the
7 Appeals Committee operates, do you know if there
8 are -- we talked about this a little bit before, so
9 just let me know if I'm heading to the territory
10 where that transition could be (inaudible) as a --
11 as kind of an advance moment taken, you know,
12 throughout the department. But are there materials
13 provided to the Appeals Committee about parameters
14 for the recommendations if you looked at that
15 Operational Bulletin 4?

16 A. Are you going to housing you
17 mean specifically?

18 Q. That was on housing, but just
19 in general in terms of -- are the decision makers
20 given parameters to say how much they can decide in
21 cases?

22 A. They're given case review
23 forms. I mean, I can't speak to how they were
24 onboarded. The information, I'm sure that was
25 shared with them with respect to the Canadian Human

1 Rights Tribunal rules, which would be the
2 parameters.

3 Q. But there would be certain
4 appeals and denials that they couldn't overturn.
5 For instance, like on the housing --

6 A. Based on authorities.

7 Q. -- based on authorities?

8 A. So I can't speak to
9 specifically what they've been provided.

10 Q. And in terms of the other
11 category of -- I'm trying to find a non-advocacy
12 way of describing this, but the denials that are
13 opposed, not because of authority but because of
14 the -- do you have a policy decision, like we
15 talked about the income supports whereas, you know,
16 that the policy decision is three months to six
17 months, 12 months, and where the individual who
18 needed that resolved would be the appeal process.
19 Is that a fair characterization of that kind of
20 approach.

21 A. Well, it's possible that it
22 could also happen through the escalation process,
23 depending on what the circumstance is. If there's
24 a circumstance that shifted in the family. You
25 know, I can't say that it would be impossible for

1 the escalation team to also look at that particular
2 situation, and depending on new information being
3 submitted.

4 Q. In terms of the appeal
5 decision maker's ability to intervene in those
6 cases, they'd have to have an appeal before them to
7 do that, is that right?

8 A. (inaudible/off mic) there's
9 any exceptional measures where that has occurred.
10 I'm not aware of it.

11 Q. And just in terms of looking
12 at some of the numbers here, paragraph 63, you note
13 that in 2022-23 there were 1,258 appeals determined
14 under the new appeals process, and then 625 appeals
15 determined in the first three quarters of 2023-24.
16 Then if we turn all the way back to paragraph 6 of
17 your affidavit we've got just shy of 6,000 requests
18 denied. And then, you know, just shy of 3,700
19 requests denied for 2023-24. I should say that
20 just shy of 6,000 for 2022-23. So more appeals
21 than -- or more cases -- more denials than not --
22 don't (inaudible) appeals process at this time?

23 A. Sorry, more denials than
24 appeals...?

25 Q. Sorry, most appeals -- sorry,

1 most requests that are denied don't proceed to
2 appeal at this point in time. I'm just wondering
3 if you'd agree with --

4 A. I don't have the percentage
5 points on the requests for appeals, but I'm sure
6 that would be available.

7 Q. But we would be able to
8 compare the number of appeals determined 63 per
9 cent, and number of requests denied to determine
10 that portion.

11 A. Right, (inaudible/speaking
12 simultaneously).

13 Q. And am I right understanding
14 that requestors can't make submissions directly to
15 the Appeals Committee? That goes through the
16 Secretariat?

17 A. I can't speak to what's
18 occurred since -- in the last several months.

19 Q. And at paragraph 63 you note
20 that there's 59 per cent of the determinations were
21 overturned on recommendation of the Appeals
22 Committee in 2022-23 and 46 per cent of
23 determinations overturned in 2023-24. Do you know,
24 were the ones where there was no -- essentially no
25 overturning of the decisions, so the ones where the

1 decision was maintained, do you know if ISC tracks
2 any data on kinds of requests that are in those
3 buckets, the denials that are upheld?

4 A. Well, I can say that when I
5 was part of the appeals process that information
6 was tracked. So my assumption is that the team
7 would continue to look at the type of requests that
8 have been made and whether or not they were
9 overturned on appeal.

10 MR. TAYLOR: Ms. Anderson, I
11 wonder if we could have that data for 2022-23 and
12 2023-24, if it exists, the category breakdown of
13 the appeals cases and what happened, if they were
14 overturned or upheld?

15 MS. ANDERSON: Yes, we will
16 (inaudible).

17 MR. TAYLOR: Thanks.

18 BY MR. TAYLOR:

19 Q. So paragraph 61, just going
20 back a few paragraphs, says; "The Appeals Committee
21 provides a clear avenue for complaint resolution."
22 Do you agree though that that would only apply to
23 complaints that are arising after the request has
24 been determined?

25 A. I'm just going to go back to

1 that paragraph. So 61?

2 Q. Sure, 61, yes. The first
3 sentence there.

4 A. So your question, can you just
5 repeat the question just to make sure?

6 Q. No problem. So the Appeals
7 Committee, what you say in 61 is, "The Appeals
8 Committee provides a clear avenue for complaint
9 resolution." My question is if you agree that that
10 statement, there's a clear avenue for complaint
11 resolution only applies in the context the appeal's
12 been -- for post-determination complaints?

13 A. The Appeals Committee for
14 requests that they receive?

15 Q. Yes.

16 A. Yes.

17 Q. Which would be requests that
18 had been determined I guess?

19 A. Yes.

20 Q. And so would you agree then
21 that the Appeals Committee can't help resolve
22 complaints that happened before a determination is
23 received? Like, failure to have --

24 A. I don't see how they would
25 receive the information.

1 Q. And if there was a problem or
2 complaint with an approved request, like a failure
3 to make a timely payment to a supplier or a failure
4 to make a timely reimbursement to the recipient,
5 the Appeals Committee couldn't help with that at
6 anytime?

7 A. I don't see how they would
8 receive (inaudible).

9 Q. Now, if we can go back to the
10 brief of documents there to Tab H. Again, that's
11 the Agreement-in-Principle Summary, that was
12 Exhibit 61 in Dr. Blackstock's first affidavit.

13 A. Is it the website, the AiP?

14 Q. Yes, the Executive Summary
15 that was posted online. So if you don't mind
16 turning over the page to where it says Jordan's
17 Principle? And do you see it says:

18 "Canada will take urgent
19 steps to implement the
20 measures set out in a work
21 plan to improve outcomes
22 under Jordan's Principle..."

23 And was that the accountability
24 work plan you were referring to earlier in your
25 evidence?

1 A. That's what I was referring
2 to, yes.

3 Q. And do you see -- yes the.
4 "...work plan to improve
5 outcomes under Jordan's
6 Principle, based on ISC's
7 compliance with the
8 Tribunal's orders."

9 Is how that's described in the
10 document there. And do you see under the section
11 bullet it says:

12 "Develop and implement
13 Indigenous Services Canada
14 internal quality assurance
15 measures, including training
16 on various topics, a
17 complaint mechanism, and an
18 independent office to ensure
19 compliance;"

20 Do you see that?

21 A. I do.

22 Q. And would you agree that the
23 complaint mechanism in the independent office to
24 ensure compliance that was discussed there, would
25 be something that was separate from the Appeals

1 Committee?

2 A. Yes.

3 Q. A couple questions for you
4 about training. So we'll stay with that Tab H
5 point. And actually the point that we just noted,
6 which is, "Develop and implement Indigenous
7 Services Canada internal quality assurance
8 measures, including training on various topics..."
9 And so would you agree with me that training is an
10 important quality assurance mechanism?

11 A. Yes.

12 Q. And if we look back to
13 paragraph 34 of your affidavit, you note that
14 exactly ISC's executives have to take -- I'll just
15 try and find one. The second sentence here, I'll
16 just wait for you to...

17 A. I have it.

18 Q. Yes. So the second sentence
19 to that.

20 "To that end, all ISC
21 executives are tasked with
22 advancing anti-racism,
23 diversity, equity, inclusion
24 and accessibility in the
25 public service by meeting all

1 obligations of the Tribunal
2 orders related to First
3 Nations Child and Family
4 Services and Jordan's
5 Principle. All ISC staff are
6 expected to undertake no less
7 than 15 hours of mandatory
8 annual Indigenous cultural
9 competency training."

10 And am I right that that's
11 essentially work that came out of that tri-chaired
12 committee that you were on with Dr. Blackstock at
13 AFN?

14 A. Yes.

15 Q. And am I right, that that work
16 has now been rolled into the Expert Advisory
17 Committee that was made after the March 2022
18 Consent Order?

19 A. Yes.

20 Q. And is it fair to say that in
21 addition to training another factor that's going to
22 inform ISC's implementation of Jordan's Principle
23 is the breadth of its authorities?

24 A. Sorry, can you repeat the
25 question?

1 Q. So what's the breadth of ISC's
2 authorities? So the authorities that are set for
3 Jordan's Principle in terms of Jordan's Principle
4 can or can't fund?

5 A. That this would be part of the
6 training?

7 Q. No, that this would be part of
8 the implementation. So training is one part of how
9 the department's implementing.

10 A. Right.

11 Q. And then another part of how
12 or what the department is implementing is what's in
13 its authorities for Jordan's Principle.

14 A. Yes.

15 Q. And those are set outside of
16 this, those authorities?

17 A. Well, not entirely, no.

18 Q. But they would be authorities
19 that are received from Ministry of Finance,
20 Treasury Board?

21 A. Yes.

22 Q. Or cabinet?

23 A. Yes.

24 Q. And do you know if those
25 entities have the same training that ISC has?

1 A. They do not have the mandatory
2 15 hours, as far as I'm aware.

3 Q. And to their executives have
4 the same tasking with advancing anti-racism,
5 diversity, equity, inclusion, et cetera?

6 A. They do because of the Clerk's
7 calls to action, and so all deputy heads across the
8 federal public service have the same requirements
9 from the Clerk on a year-to-year basis. And so it
10 trickles down to all of the executives, and it is a
11 mandatory element. And then departments define it
12 in a different way depending on their mandate and
13 how they implement it.

14 Q. And there lands on that
15 mandate of the Clerk would be through the mandate
16 of their department, or their articulation, the
17 expression that that mandate defined would be
18 shaped by their department's mandate?

19 A. Yes.

20 Q. I have some questions for you
21 about operational meetings that happened over the
22 years. Do you remember participating in the
23 Consultation Committee for Child Welfare?

24 A. I do.

25 Q. And the Jordan's Principle

1 Operations Committee?

2 A. I do.

3 Q. And do you recall those
4 meetings largely starting after the Tribunal's
5 orders in November 2017 on Jordan's Principle on
6 the one hand, and then February 2018 on the FN CFS
7 program on the other hand?

8 A. (inaudible/off mic).

9 Q. And do you remember those
10 meetings continuing regularly while the parties
11 sought guidance from the Tribunal in areas where no
12 agreement could be reached? Just as an example,
13 whether Jordan's Principle applied to First Nations
14 children without *Indian Act* status, whether there's
15 an obligation to fund major capital or
16 compensation?

17 A. I would say yes, but I would
18 say that when we evolved into negotiations we put
19 the Consultation Committee on Child Welfare in
20 particular on pause.

21 Q. But in the time before the
22 committee was put on pause, even if there were
23 matters pending before the Tribunal, the parties
24 were still being (inaudible)?

25 A. Yes. Compensation, as an

1 example, of a matter that was pending decision by
2 the Tribunal that came out in September
3 (inaudible).

4 Q. And major capital was pending
5 for some time --

6 A. And major capital, yes.

7 Q. -- as a status of a -- Indian
8 status question. And the same would have been true
9 of JPOC and (inaudible/off mic)?

10 A. JPOC and (inaudible/off mic),
11 yes.

12 Q. And so if we just go to Tab J
13 in this bundle.

14 A. This is your bundle?

15 Q. Yes, sorry. Not your
16 affidavit. There's a document (inaudible/off mic).
17 So paragraph 7 at the bottom of the second page
18 here.

19 A. (inaudible).

20 Q. And it says in the second
21 sentence.

22 "When gaps are identified,
23 concerns are raised or
24 disagreements are expressed,
25 Canada would ask the parties

1 to further (inaudible) to
2 Canada through emails to
3 myself or discussions at the
4 Jordan's Principle Oversight
5 Committee, or the Protocol
6 Consultation Committee as an
7 alternative for further
8 investigation. Once again,
9 it is my sincere intent to
10 practically respond and
11 address issues with respect
12 to implementation."

13 Do you still think those
14 discussion-based values are important in
15 implementing the Tribunal's orders?

16 A. (inaudible/off mic).

17 Q. And if you like, we'll go to
18 Tab K, which is an excerpt from your April 15th,
19 2019 affidavit. Turnover to page -- paragraph 57.
20 Here the second sentence says:

21 "I have made every effort to
22 work with the parties and
23 collaborate on the policy and
24 operations of Jordan's
25 Principle and addressing gaps

1 in First Nations' children's
2 mental health. Wherever
3 possible, I have sought to
4 create and foster an open and
5 transparent dialogue to
6 respond to issues promptly
7 and effectively so that the
8 government's activities and
9 commitments on Jordan's
10 Principle are reflected, and
11 the parties understand that
12 (inaudible) our regional
13 First Nations partners."

14 Do you see that?

15 A. I do.

16 Q. And is it fair to say you
17 still think that open and transparent dialogue is
18 an important part of upholding the government's
19 implementation of Jordan's Principle?

20 A. Subject to cabinet confidence,
21 I do. And solicitor/client privilege --

22 Q. And (inaudible/speaking
23 simultaneously) solicitor/client, yes, yes.

24 A. -- I'm sorry, solicitor/client
25 privilege, I do.

1 Q. Don't worry, I wasn't going to
2 go there. Are you aware that the Jordan's
3 Principle Operations Committee hasn't met since
4 (inaudible) Non-Compliance Motion?

5 A. I am aware because I went
6 through the affidavit materials (inaudible).

7 Q. Do you find it surprising that
8 it hasn't met since the Motion was filed?

9 A. I don't have an opinion about
10 it honestly. I wouldn't say that I was surprised,
11 it's just a fact.

12 Q. And are you aware that ISC
13 filed a Cross-Motion asking to extend the timelines
14 for determining requests and to set-up criteria for
15 urgent requests, or objective criteria?

16 A. Indigenous Services Canada?

17 Q. Yes.

18 A. Yes, I am aware of the Motion.

19 Q. And are you aware that those
20 timeline extensions weren't canvassed with the
21 Caring Society before the Motion was filed?

22 A. I'm not aware.

23 Q. And were you aware that those
24 timeline extensions weren't canvassed with the
25 Jordan's Principle Operations Committee members?

1 A. I'm not aware, haven't
2 (inaudible).

3 Q. One moment.

4 MR. TAYLOR: Madam Chair, I have
5 one topic left other than asking Dr. Gideon if she
6 has an answer to your earlier question, kind of
7 about the ideal scenario. I wonder if I might have
8 -- actually, maybe it might be easier if you're
9 ready to answer the question about the ideal
10 scenario, to get your answer on that and then just
11 have a quick five minutes to confer with my
12 colleagues, and then I'll cover my last topic and
13 that'll be it for (inaudible)?

14 THE CHAIR: Yes. I don't know if
15 she's ready to answer?

16 DR. GIDEON: Sure.

17 THE CHAIR: You are? Okay.

18 DR. GIDEON: Sure. I mean, I'll
19 just go back to 2018 when we did the work with the
20 Assembly of First Nations and other parties on
21 looking at what a long-term approach to Jordan's
22 Principle could be.

23 You know, I did believe very much
24 in that work. We had undertaken work and
25 discussing with First Nations -- I mean, I wasn't

1 always directly involved in it, but certainly I
2 received regular briefings from the team about that
3 work, and it was about a year duration in time.

4 We presented the work with the
5 Assembly of First Nations at the Jordan's Principle
6 National Summit in September of 2018, and it
7 involved multiple components. Like, one of the
8 components was to fund all First Nations
9 communities to have an amount of funding where they
10 could address gaps in terms of access to services
11 that they were experiencing based on their needs.

12 That was based on what the
13 Manitoba Region had done early on in their Circle
14 of Care model, where they had provided a certain
15 amount to all communities to just essentially
16 initially look at allied health services, home
17 community care services and so forth. And then it
18 expanded from there.

19 It also involved a component of
20 establishing First Nations service provider
21 networks so that First Nations could get into the
22 provision of services in areas where they wouldn't
23 have necessarily had the opportunity to do that in
24 the past.

25 Now, some of that has just

1 naturally emerged now through group requests. So
2 an example is the Manitoba First Nations Education
3 Resource Consortium. There's a couple of appeal
4 members actually that work for them. And, you
5 know, what they have done is they have ramped up
6 their capacity to have speech therapists and
7 educational assistants and so forth, and they
8 deploy them to schools across the region.

9 So that they're trying to
10 proactively address the needs. And it supplements
11 what individual First Nations schools and
12 communities would have access to through their own
13 funding. So these are examples of those types of
14 models.

15 And of course, you know, I think
16 that if First Nations organizations or communities
17 had the ability to themselves approve Jordan's
18 Principle requests that wouldn't necessarily fit in
19 terms of a particular program or if it wasn't off
20 reserve, a First Nation member for example, that
21 they can directly serve, but would have a need for
22 services, I think the extent to which First Nations
23 could participate in the determination of requests
24 is something that would first of all alleviate
25 obviously the volume of requests that would come to

1 the federal government.

2 But it would also be more aligned
3 in the pathway to self-determination. I think you
4 will have seen in the data that we went from 46
5 FTEs to 400 and almost 500 FTEs in order to meet
6 the compliance timeframes that now are at like
7 closer to 30 per cent. We would need to double
8 that amount of FTEs if not more than that. And so
9 we are essentially creating a mini federal
10 department with a heavy heavy public service
11 capacity.

12 And I'm not sure if that's the
13 right investment to make versus making the
14 investment in First Nations' capacity that could
15 then benefit more than just Jordan's Principle, but
16 also other aspects of the community.

17 I also worry that we are going to
18 increasingly be competing with First Nations to
19 recruit not just public servants, but also
20 contractors and service providers, and you are
21 seeing it in some of the remote pockets of the
22 country where, you know, there's just a limited
23 number of people that can deliver mental health
24 services. And so there's a bidding war and people
25 are just increasing the amount of fees that they

1 Q. Would it be a fair summary to
2 say, I'm just trying to aggregate kind of some of
3 those concepts under kind of a rubric, that much
4 like, you know, the COVID response where there was
5 a robust response from government that was trying
6 to (inaudible) First Nations communities and there
7 was a corresponding -- or you didn't see a
8 corresponding increase in Jordan's Principle
9 requests, that the solution on the weight on the
10 department (inaudible/off mic) requested that you,
11 you know, triaged and communicated and dealt with
12 is, you know, effectively whatever the means of
13 providing it, whether it's partnership, you know,
14 closing gaps, whatever it is, it's essentially more
15 equitable services at the community level on
16 reserve. And then some capacity to assist off
17 reserve. Both of those backstopped by the federal
18 government to the extent that there is a measure.
19 Does that encapsulate things or, you know a summary
20 --

21 A. The only thing that's missing
22 there in that summary I believe, David, is that
23 we're not moving -- like, we have to also have a
24 mechanism where individuals and families will
25 accept a program or a service. Right now they're

1 expecting of seeking a very customized approach to
2 their own particular circumstance. And when a
3 community implements a program, it typically will
4 do it the way another government will, which
5 whereby they will set-up an approach that is
6 available to all community members in a certain
7 way. And they won't necessarily have the capacity
8 to address individual family needs in that
9 timeframe in that type of customized way. So
10 there's an evolution that would be required in
11 management of those expectations.

12 Q. And would you agree as part of
13 a, you know, for lack of better term (inaudible/off
14 mic) might be in the words of St-Aubin's affidavit,
15 but I don't want to put words in her mouth, so
16 we'll say it's not. But in light of the -- you
17 know, as part of the federal backstop if you had
18 circumstances in the community that were tied to
19 the grounds of the *Act* of, you know, a disability
20 or natural ethnic origin or those other particular
21 grounds in the *Act* where the needs might be on what
22 the community was essentially set-up to provide,
23 that there would be a role of the federal
24 government there for Jordan's Principle to meet
25 those needs?

1 A. As long as you can find a way
2 to not disincentivize people from accessing local
3 services that are available to them and that would
4 meet their -- large majority of their needs, right?
5 So I think it's more rooted into the language of
6 exceptional circumstances, but actually being true
7 to what those exceptional circumstances
8 (inaudible/off mic).

9 Q. And in terms of defining or
10 finding that path, would you agree a discussion
11 with the parties would be an important part of that
12 path?

13 A. This is why I was so strongly
14 advocating for a final settlement agreement on
15 Jordan's Principle to be done at the timeframe that
16 we initially agreed to under the Agreement-in-
17 Principle.

18 MR. TAYLOR: If I might have the
19 five minutes and then one last topic, and then I'll
20 wrap-up?

21 THE CHAIR: Yes, of course.
22 Please don't go far, five minutes goes by very
23 fast. We'll adjourn for five minutes. I'll stay
24 here if you have any questions.

25 And I'm also putting the parties

1 on notice that we've been doing this for 12 years.
2 So there must be a better way than to deal with
3 motions, have requested orders, other orders.

4 I looked at the Motion and the
5 Cross-Motion, and I can already tell that
6 regardless of what could be ordered, there will be
7 more issues. Because if we can't even agree on the
8 term "urgent" then issues are bound to happen
9 again.

10 And just an example that happened
11 in 2016, for example. The Government of Canada
12 came back after orders when we said immediately,
13 and I'm saying this for new counsel. But we had
14 said "immediately." And counsel came back and
15 said, "Well, in our dictionary immediately means in
16 this current time period."

17 So this is something that I could
18 never have even anticipated. So these things
19 happen in this case, and I think surely -- I'm just
20 -- I know this is a cross-examination, but surely
21 there's a better way moving forward. And I will
22 ask, I personally will ask every single party to
23 dream, to dream the best scenario that they've ever
24 dreamed of and to review the requested orders
25 thinking we need solutions now and we also need

1 solutions in the long-term.

2 So when I ask the question, it's
3 not only for you, it will be for everybody. And
4 this is a personal request that I'm asking. After
5 12 years, we want to protect children, we want to
6 get out of bureaucracy, and we want to make sure
7 that they have substantive equality and that we're
8 moving forward in a positive way and that
9 especially that we're respecting self-governance of
10 First Nations, and what they want.

11 So I'm just -- I know it's a lot
12 to unload here, but I think at some point after 12
13 years this needs to be said. And this is what
14 informed my question, and my question will come
15 back. You'll have an opportunity to address this
16 and you can speak to it if the best timing is at
17 the arguments or in your written submissions later
18 on. But just start dreaming and bring those dreams
19 to me please. That's what I'm asking.

20 So you can take your break now.
21 Thank you.

22 MR. TAYLOR: Thank you, Chair.

23 --- OFF THE RECORD

24 --- ON THE RECORD

25 MS. DUBOIS: We're back on the

1 record.

2 MR. TAYLOR: Thank you very much
3 for the indulgence.

4 BY MR. TAYLOR:

5 Q. One last question kind of
6 under that rubric that we were talking about in
7 terms of the gap closing and finding other pathways
8 to services. Would you agree that the Spirit Bear
9 Plan that was passed by Chiefs-in-Assembly in 2017
10 spoke to a lot of those themes and elements as
11 well?

12 A. I would agree.

13 Q. My last questions are about
14 (inaudible/off mic) standing on Jordan's Principle.
15 And so here we're ending somewhat at a similar
16 place where your last cross-examination five years
17 ago ended, which was (inaudible) about what might
18 happen if ISC's commitment to meet its obligations
19 under Jordan's Principle wasn't maintained. And
20 just to refresh your memory to the extent it's not,
21 you know, that conversation five years ago, as I
22 said, right at the forefront. If you look under
23 Tab E in the compendium of documents there, and you
24 have excerpt at that cross-examination transcript.
25 And just over the page, on 125, you're answering

1 the question of Member Lustig when you say:

2 "That's sort of the point I'm
3 making, is that the
4 obligations we have in
5 Jordan's Principle will
6 continue to meet the orders
7 to (inaudible) consult with
8 the parties are beyond the
9 Tribunal to maintain its
10 jurisdiction, it's embedded
11 (inaudible) the department,
12 it's (inaudible), it's an
13 ongoing obligation that we
14 have."

15 And Member Lustig asked you, "What
16 if that commitment is maintained, then what?" And
17 then you answer, "So I'm not a lawyer, so I can't
18 speak to if there's (inaudible) of a legal order
19 (inaudible) it's an ongoing legal obligation of
20 Canada." And do you see that?

21 A. I do. I do.

22 Q. And if you look at Exhibit --
23 I'm sorry, if we go over to Tab J, this will be a
24 more effective way to do it. Tab J, this is back
25 to your May 2018 affidavit. And if you could flip

1 through a few pages you should come to one that
2 says, this is Exhibit 8.

3 A. You want me to go to the
4 exhibit?

5 Q. Yes, if you don't mind. And
6 then just the first -- I guess it's the -- within
7 the exhibit it's the third page. Now we're going
8 to go on the kind of landscape orientation of the
9 page and it's titled Draft Record of Discussion
10 January 12, 2018. And this is a meeting of -- I
11 believe this is a meeting of JPOC just looking at
12 the --

13 A. Yes.

14 Q. -- at the --

15 A. Yes, that would be, yes.

16 Q. Yes. But I think that's how
17 it's billed in the interest -- in fairness to you,
18 that's how it's billed in the affidavit.

19 A. Yes.

20 Q. You don't need to turn to it,
21 but just to note paragraph 27 refers to it as the
22 agenda in records of discussion of January 12, 2018
23 JPOC meeting. And the first entry there says,
24 "Welcome and introduction, V. Gideon," and that
25 would be you?

1 A. M'hmm.

2 Q. And then your first -- the
3 first bullet point says, "Jordan's Principle
4 (inaudible) sunset is a legal principle," is that
5 right -- or do you see that? Sorry, just -- it's
6 just over the page, it's the first page of the
7 draft record of discussion, sorry.

8 A. Oh, the first page. Yes, I
9 see that, yes.

10 Q. And that reflects what's been
11 your view for quite some time now, that Jordan's
12 Principle --

13 A. It has been, yes.

14 Q. -- will not sunset?

15 A. And I have spoken to quite
16 publicly about that.

17 Q. If you look at Exhibit --
18 sorry, if you look at Tab C, which is the
19 departmental plan, there's a green sheet there. If
20 you just go over the green sheet. And so there's
21 an excerpt there, it's partway down the page. It
22 says, "Spending is expected to decrease by
23 (inaudible/off mic), which would be -- do you agree
24 that's \$22.5 million?

25 A. It is.

1 Q. Between \$23.4 and \$25.6 plan
2 spending. You said, "This is primarily due to, and
3 the fourth bullet, "it's a sunset (inaudible) the
4 implementation of Jordan's Principle at the end of
5 2024-25." And then over the page, at the bottom,
6 it says:

7 "Decisions on the renewal of
8 the sunset initiatives will
9 be taken in future budgets
10 and reflected in future
11 estimates."

12 And so would you agree that
13 whether the federal government's implementation of
14 Jordan's Principle, sunsets or not, remains
15 dependant on the decisions made in putting together
16 budget 2024?

17 A. The policy authority and its
18 status as a legal principle doesn't change. It's a
19 question of how much funding would be provided to
20 the department to continue to meet the obligations.
21 And there's been such a significant fluctuation
22 that we are constantly adjusting forecasts and
23 sending in off-cycle funding decisions. So that is
24 no different than non-insured health benefits,
25 which has been a program that has existed for

1 decades. Throughout my entire career I have seen
2 annual requests for additional resources for that
3 program, because it is needs-based. So it's not
4 funded through a fixed envelope funding with a
5 fixed escalator. Because we would have to
6 constantly also ask for funding to make that
7 adjustment. So receiving year funding on the basis
8 of supplementary estimates based on those funding
9 decisions.

10 Q. So it would be fair to say
11 though that there's continuous decision making
12 required on funding from the government's part in
13 order to keep Jordan's Principle (inaudible/off
14 mic)?

15 A. Based on the rising trend in
16 requests, demand, value of the funding that is
17 required to operate. So it is a more responsive
18 model.

19 MR. TAYLOR: Those are all my
20 questions, Dr. Gideon. Thanks very much.

21 I wonder if we might be able to
22 mark the tabbed book of documents as Exhibit 1 to
23 the Cross-Examination and if we could mark the IFSD
24 report as Exhibit 2?

25 THE CHAIR: Yes. Ms. Dubois?

1 MS. DUBOIS: The ISD(sic) Report
2 is entered as an exhibit in the tabbed book of
3 exhibits as well.

4 MR. TAYLOR: Thank you very much.

5 THE CHAIR: I think at this point
6 we'll break for lunch. Would an hour be sufficient
7 or you need a little bit more? Let's say if we
8 came back at 1:30?

9 Okay, have a good lunch. Thank
10 you. And thank you both for the questions and for
11 your answers. You've done a great job. Thank you.

12 --- OFF THE RECORD

13 --- ON THE RECORD

14 THE CHAIR: Good afternoon. I
15 hope that everyone had a good lunch. I just wanted
16 to clarify that my earlier comments were not in any
17 way to be construed in a way that the panel looks
18 forward to like go off jurisdiction or is tired of
19 this case. That's not at all why I said that.

20 It's more thinking forward in
21 terms of shifting the proceeding. So we'll get
22 back to it. But I just wanted to clarify that's
23 not how this should be construed.

24 So we left this morning, the
25 Caring Society had completed their questions. So

1 we will now be at the AFN's turn. And I wanted to
2 know if you're ready to proceed?

3 MR. WUTTKE: Yes, we are ready to
4 proceed.

5 THE CHAIR: Please go ahead.
6 Thank you.

7 CROSS-EXAMINATION BY MR. WUTTKE:

8 Q. Good afternoon Dr. Gideon.
9 Stuart Wuttke from the Assembly of First Nations.
10 I just have a couple of -- a number of follow-up
11 questions. I don't think it'll be too long with
12 respect to the evidence you've provided this
13 morning. I would like to start off by asking
14 questions about the AiP, the Agreement-in-
15 Principle. You're familiar with that agreement --

16 A. I am.

17 Q. -- or the document? And are
18 you aware that the agreement initially called for a
19 final settlement agreement to be negotiated on both
20 CFS and Jordan's Principle by December 31st, 2022?

21 A. I am.

22 Q. And are you aware that the
23 deadline to reach the final settlement agreement
24 was extended by the consent of all the parties to
25 March 31st, 2023?

1 A. I am.

2 Q. Are you also aware that some
3 of the parties felt that, as we got closer to the
4 revised deadline, that it may not be achievable?

5 A. Yes, I'm aware.

6 Q. And are you aware that the
7 Assembly of First Nations and the Caring Society
8 proposed a joint path forward in March 2023?

9 A. I am.

10 Q. And did the joint path forward
11 call for the bifurcation of both Child and Family
12 Services reforms and Jordan's Principle?

13 A. It did.

14 Q. And did the joint path forward
15 build in a timeframe for concluding an agreement on
16 Child and Family Services for March 31st, 2024?

17 A. I'd have to relook at it, but
18 it does sound like that's the correct timeline from
19 my memory. I just don't have it in front of me.

20 Q. Thank you. And with respect
21 to a final settlement agreement on Jordan's
22 Principle, the joint path forward called for an
23 agreement by March 31st, 2025?

24 A. 2025, yes.

25 Q. I was wondering, can you let

1 us know, was it Canada's understanding that under
2 the joint path forward that issues surrounding
3 Jordan's Principle will be discussed at a later
4 date?

5 A. Yes.

6 Q. And what is the current status
7 of the joint path forward?

8 A. I'm sorry, I've not been in
9 the negotiations now for several months, so I can't
10 speak to the current status.

11 Q. Okay. Turning to Back-to-
12 Basics. This was a type of policy that was jointly
13 developed by the Caring Society and Canada with
14 some feedback from the parties, is that correct?

15 A. That's a good -- fair way of
16 characterizing it, yes.

17 Q. So in your view, is Back-to-
18 Basics an negotiated document resulting from back
19 and forth compromises?

20 A. Yes.

21 Q. And is it your view that more
22 services are now being provided under Back-to-
23 Basics than what the Tribunal initially ordered?

24 A. I just -- it's difficult to be
25 definitive on that question. Because I think that

1 Back-to-Basics has supported a greater number of
2 requests coming forward. So on that basis, I would
3 say yes. But I just don't want to construe it in
4 the fact that we were -- like, I think the basis
5 for decision making has remained the same. It's
6 more the processing of those requests which has
7 then generated a greater number of requests.

8 Q. Okay. Turning to paragraph 24
9 of your affidavit. You provide a list of services
10 that Back-to-Basics does cover.

11 A. Paragraph 21?

12 Q. Twenty-four.

13 A. Oh, I'm sorry.

14 Q. So in this paragraph you're
15 really talking about misclassification of urgent,
16 but you list a number of services like modeling
17 headshots. Is that something that came up during
18 Tribunal order?

19 A. I don't think that when the
20 Tribunal issued the order we had a full
21 understanding of the scope of requests that we
22 would be receiving.

23 Q. Toys?

24 A. Again, I would say though in
25 my experience we received requests for toys for

1 children, for example, that had autistic disorders
2 and things for calming purposes. Like, I do recall
3 toys emerging sooner than headshots in terms of the
4 spectrum of requests being received.

5 Q. And what about gaming
6 consoles?

7 A. I would say that that's
8 something that would have been more generally
9 received in later years than in the earlier years.

10 Q. So would it be fair to
11 characterize that many of the services being
12 provided today, especially with respect to social-
13 type services, but even in respect to cultural
14 services are things that resulted from Back-to-
15 Basics?

16 A. I would say that to the extent
17 that we are requesting less documentation and that
18 we are making an assumption at the outset that
19 substantive equality applies, with those two
20 factors being considered my answer would be yes.

21 Q. Thank you. Now, is it also
22 your understanding that Back-to-Basics intended to
23 adopt a timeframe set out in the Tribunal orders as
24 far as approvals?

25 A. Back-to-Basics intended to...?

1 Q. To adopt the timeframe set out
2 in the Tribunal --

3 A. It was about being in
4 compliance with the timeframes, yes.

5 Q. Okay, perfect. Moving to
6 paragraph 13 of your affidavit. Here, you talk
7 about some of the social type of requests,
8 socioeconomic supports, groceries, rent, mortgage
9 payments, requests for new homes, renovations.
10 Again, with respect to some of these requests,
11 would you agree that the Tribunal did not make any
12 definitive orders on a number of these types of
13 services?

14 A. The Tribunal's orders would
15 have been silent on the nature of these types of
16 requests.

17 Q. But these are covered under
18 Back-to-Basics?

19 A. They would be eligible, again,
20 depending on whether or not they address
21 substantive equality, which we're making an
22 assumption that all requests are based on
23 substantive equality. So then it would be best
24 interests of the child, cultural appropriateness.
25 And they would need to have a letter of support

1 from either a professional or community worker,
2 knowledge keeper, or elder.

3 Q. Okay, thank you. You also
4 mentioned that when -- you once explored with AFN
5 innovative ways where First Nations may be involved
6 in the delivery of Jordan's Principle. Can you
7 provide more context to that?

8 A. Sure. I mean, I think soon
9 after the Merit Decision of 2016 the department, at
10 the time it was through Health Canada, but began
11 working with the Assembly of First Nations to look
12 at a longer-term approach for the implementation of
13 Jordan's Principle. A Jordan's Principle action
14 table was struck as a result of that exercise.
15 There were a number of regional engagement sessions
16 that unfolded and even community visits that
17 unfolded in order to be able to map out what that
18 longer-term approach would be. It generated a
19 policy document which was completed by the AFN in
20 2018. It was developed or presented to the
21 Consultation Committee later on also on Child
22 Welfare. And, as I noted, it was presented at the
23 first National Summit of Jordan's Principle which
24 took place in Winnipeg in September 2018. And I do
25 believe that there are Chiefs Assembly resolutions

1 or at least one that would speak to this, but I
2 don't have the timeline or the content in front of
3 me.

4 Q. Thank you. And in that
5 situation say for, this is an example, say there
6 was a billion dollars that ISC has identified for a
7 fiscal year for Jordan's Principle, and under that
8 proposal could potentially -- \$800 million could be
9 paid out upfront to First Nations to administer
10 Jordan's Principle and approve applications through
11 a process that would be later agreed to with
12 Canada. Was that your understanding of one of the
13 scenarios?

14 A. That would be my understanding
15 of one of the scenarios.

16 Q. Thank you. And under that
17 process, First Nations would be able to easily or
18 more readily be able to interface with the
19 community members on Jordan's Principle requests,
20 that was the idea.

21 A. That was the idea.

22 Q. Thank you. And not getting
23 into any settlement privilege, but would it be safe
24 to say that not everybody agreed to this concept?

25 A. Yes.

1 MR. WUTTKE: Just checking my
2 notes, give me a couple seconds. The AFN has no
3 further questions.

4 THE CHAIR: Thank you. I was
5 advised that the Commission didn't have any
6 questions. Is that still the case?

7 MS. WALSH: Yes. Thank you Member
8 Marchildon, it's still the case.

9 THE CHAIR: Okay, thank you. And
10 for Chiefs of Ontario?

11 MR. BASKATAWANG: There are no
12 questions. Thank you.

13 THE CHAIR: Thank you, just
14 reconfirming. And the same was said for NAN, is
15 that still the case?

16 MR. HYER: Apologies to the panel.
17 Can you hear me?

18 THE CHAIR: Yes.

19 MR. HYER: Yes, so no questions
20 from Nishnawbe Aski Nation. Thank you.

21 THE CHAIR: Thank you. For
22 Canada, would you need a break before you ask your
23 questions?

24 MS. ANDESON: We don't have any
25 redirect, thank you.

1 THE CHAIR: No redirect, okay.

2 Thank you very much.

3 Thank you very much. You may step
4 away. It's earlier than I anticipated, so would
5 you be ready with the second affiant or is --

6 MS. CLARKE: She is actually
7 prepared to set tomorrow at 9:00 a.m. if that's --
8 she's out in Tunny's Pasture at the moment.

9 THE CHAIR: Okay, there's no
10 problem.

11 MS. CLARKE: Okay.

12 THE CHAIR: We can adjourn until
13 tomorrow, 9:00 a.m.

14 MS. CLARKE: Perfect, thank you.

15 THE CHAIR: Thank you. Thank you
16 everyone.

17 --- Whereupon the proceeding adjourned.