Court File No. A-158-13

FEDERAL COURT OF APPEAL

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

- and -

PICTOU LANDING BAND COUNCIL and MAURINA BEADLE

Respondents

MOTION RECORD OF THE PROPOSED INTERVENER FIRST NATIONS CHILD AND FAMILY CARING SOCIETY (VOLUME I of II)

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Court File No. A-158-13

001

FEDERAL COURT OF APPEAL

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

- and -

PICTOU LANDING BAND COUNCIL and MAURINA BEADLE

Respondents

NOTICE OF MOTION
(MOTION FOR LEAVE TO INTERVENE)

TAKE NOTICE THAT the First Nations Child and Family Caring Society (the "Caring Society") will make a motion to the Court in writing under Rules 109 and 369 of the *Federal Courts Rules*.

THE MOTION IS FOR an Order granting the following:

1. Leave for the Caring Society to intervene pursuant to Rule 109 of the *Federal Court Rules*, and allowing the Caring Society to file a Memorandum of Fact and Law and to present oral arguments at the hearing of the appeal with respect to whether the Application Judge erred in his determination that the decision of Aboriginal Affairs and Northern Development Canada ("AANDC") with respect to its interpretation of Jordan's Principle was unreasonable.

2. That the Caring Society be consulted on hearing dates for the hearing of the appeal.

3. That the Caring Society be served with documents by the parties.

4. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

002

(i) Relevant Expertise of the Caring Society

5. The Caring Society is the only non-profit national organization committed to research, training, public education, networking and policy expertise in First Nations child welfare and children's rights;

6. The Caring Society has experience as an intervener and was granted intervener status at the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SCC 61;

7. The Caring Society was directly involved in the development and drafting of Jordan's Principle. The Caring Society worked closely with Jordan's family, the Assembly of Manitoba Chiefs ("AMC") and Norway House Cree Nation ("Norway House") to honour Jordan's memory and develop a "child-first" principle to protect First Nations children living primarily on reserve from jurisdictional disputes. In fact, Dr. Cindy Blackstock, Executive Director of the Caring Society, drafted the language now known as Jordan's Principle;

8. Jordan's Principle is a child-first principle ensuring that First Nations children can access public services on the same terms as all other Canadian children. It states that where a government service is available to all other Canadian children and a jurisdictional dispute arises between Canada and the province/territory, or between departments in the same government, regarding payment for services to a First Nations child, the government of first contact pays for the service and can seek reimbursement from the other level of government/department after the child has received the service;

9. In addition to developing and drafting Jordan's Principle, the Caring Society was directly involved in bringing Motion 296 to the floor of the House of Commons. Dr. Blackstock worked closely with MP Jean Crowder, who prepared Private Members Motion 296;

10. The Caring Society hosts the Jordan's Principle website (www.jordansprinciple.ca) and is actively involved in promoting Jordan's Principle domestically and internationally. In fact, the Caring Society has made submissions regarding Jordan's Principle to the Standing Committee on Aboriginal Affairs and Northern Development Canada, and has reported on

Canada's progress on fulfilling its obligations pursuant to the United Nations Convention on the Rights of the Child (the "CRC") in relation to Jordan's Principle;

11. The Caring Society has the expertise and relevant experience to assist this Honourable Court in the determination of the interpretation and application of Jordan's Principle, at issue in this appeal;

(ii) The Caring Society's Direct Interest in the Appeal

12. First Nations children and families living on reserve receive a variety of services, including child welfare and certain health care services, from the federal government through agencies funded and controlled by Aboriginal Affairs and Northern Development Canada ("AANDC"). For other Canadians, such services are generally provided and/or funded by the governments of the provinces or territories;

13. In February, 2007, the Caring Society, together with the Assembly of First Nations ("AFN") filed a complaint with the Canadian Human Rights Commission (the "Commission"), alleging that the Government of Canada discriminates in providing child welfare services to First Nations children who are primarily resident on reserve by providing inequitable funding to on-reserve child welfare agencies, contrary to the *Canadian Human Rights Act* (the "Complaint");

14. The Complaint also alleges that Jordan's Principle ought to be implemented and that the jurisdictional disputes between and within governments regarding First Nations children in need of government services adversely impacts those children and are discriminatory, contrary to the Act;

15. The merits of the Complaint are currently being heard by the Canadian Human Rights Tribunal. Closing arguments are expected to be made in the spring of 2014;

16. This Honourable Court's determination of the interpretation and application of Jordan's Principle could have a decisive impact on the Caring Society, and the communities it serves, both in the context of the Complaint itself and more broadly. If leave to intervene is not granted, the Caring Society and its members would have an important issue affecting their

rights decided without the opportunity to make representations to this Honourable Court regarding the potential impact of the issue on First Nations children living primarily on reserve;

(iii) The Participation of the Caring Society will Assist the Court

17. The Caring Society is uniquely positioned to offer a useful and different perspective regarding the interpretation and application of Jordan's Principle. The Caring Society's perspective is distinct from that bring advanced by the parties as it focuses on the interpretation of a child-first principle, the impact of narrowing Jordan's Principle, and Canada's obligations under the CRC;

18. The Caring Society takes the position that Jordan's Principle ought to be interpreted and applied pursuant to a child-first principle and as it was drafted and intended: to provide First Nations children living primarily on reserve with a procedural mechanism to ensure that all public services available to children off reserve are available to First Nations children. A narrow interpretation could bar First Nations children from a procedural recourse mechanism that was created in order to protect First Nations children and ensure that they have access to services and benefits extended to all other Canadian children;

19. It would be helpful to this Honourable Court on the hearing of this appeal to have submissions regarding the potential impact of narrowly construing Jordan's Principle on First Nations children living primarily on reserve. This perspective will assist in assessing and resolving issues in this appeal;

20. The Caring Society also takes the position that as a signatory of the CRC, Canada has an obligation to take all appropriate measures to ensure the protection of all Canadian children, including ensuring that First Nations children have full access to all public services and receive resources without discrimination;

21. It will be of some assistance to this Honourable Court to have submissions on the impact of narrowly construing Jordan's Principle on Canada's obligations under the CRC. The Caring Society takes the position that by failing to adequately implement Jordan's Principle, the federal government is failing to uphold its obligations to First Nations children under the CRC;

22. If granted leave to intervene in this appeal, the Caring Society would not present arguments with respect to the findings of fact in this case nor seek to make arguments in respect of the characterization of the evidence in the case. Nor would the Caring Society repeat the arguments already made by the Respondents. Rather, if granted leave to intervene, the Caring Society would make useful and different submissions regarding the interpretation and application of Jordan's Principle. These would include:

(a) The interpretation and application of a "child-first" principle in the context of Jordan's Principle;

(b) The inappropriateness of narrowly construing Jordan's Principle, and the potential impact of such an approach on First Nations children living primarily on reserve; and

(c) The impact of narrowly construing Jordan's Principle on Canada's obligations under the CRC.

23. This Court has the inherent authority to allow intervention where it is just on terms and conditions that are appropriate;

24. The Caring Society has brought this appeal now and not earlier so as to review the written submissions made by the Appellant and the Respondents before this Court. The Caring Society has moved expeditiously to serve and file these motion materials and will not delay the progress of the proceeding;

25. If granted leave to intervene, the Caring Society will seek no costs and would ask that no costs be awarded against it;

26. The Respondents have consented to the Caring Society's motion for intervention. The Appellant has advised that it will oppose the Caring Society's motion;

27. Rules 109 and 369 of the *Federal Court Rules*;

28. The further and other grounds set out in the Affidavit of Dr. Cindy Blackstock, Executive Director of the Caring Society, and the Memorandum of the proposed intervener, filed in support of the within motion; and

29. Such further and other grounds as counsel may advise and this Honourable Court may permit.

AND TAKE FURTHER NOTICE that in support of this motion the Caring Society will rely upon:

1. the Affidavit of Dr. Cindy Blackstock, sworn November 22, 2013;

2. the Affidavit of Spenser Chalmers, sworn December 3, 2013; and

3. such further material as Counsel may submit and this Honourable Court may allow.

December 3, 2013

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Counsel for the Respondents

007

Court File No. A-158-13 008

FEDERAL COURT OF APPEAL

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

PICTOU LANDING BAND COUNCIL and MAURINA BEADLE

Respondents

AFFIDAVIT OF DR. CINDY BLACKSTOCK
(sworn November 22, 2013)
(FIRST NATIONS CHILD AND FAMILY CARING SOCIETY, PROPOSED INTERVENER)

I, **DR. CINDY BLACKSTOCK**, of the City of Ottawa, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a member of the Gitksan Nation, an Associate Professor at the University of Alberta, and the Executive Director of the proposed intervener, the First Nations Child and Family Caring Society of Canada (the "**Caring Society**"). As such, I have personal knowledge of the matters hereinafter deposed to, save and except for those matters stated to be on information and belief and where so stated, I believe them to be true.

2. I have been the Executive Director of the Caring Society since 2002 and have worked in the field of child and family services for over 20 years. I obtained a PhD in social work from the University of Toronto in 2009. I am currently studying at Loyola University Chicago to obtain a Master of Jurisprudence in children's law and policy.

3. Prior to working at the Caring Society, I was the Executive Director of Caring for First Nations Children Society in British Columbia (1999-2002), Assistant to the Social Development Director for the Squamish First Nation (1995-1999), and a senior social worker with the Province of British Columbia (1987-1995).

4. Through my various positions I have become knowledgeable of the causes of disadvantages for First Nations children and families, the rights of Indigenous children and peoples, and the development of equality and human rights in Canada, particularly as they affect First Nations children and their families.

(A) The Mandate of the Caring Society

5. The Caring Society is a national non-profit organization committed to research, training, networking, policy, and public education and engagement, on behalf of First Nation's agencies that serve the well-being of First Nations children, youth and families, including those living on reserve. The Caring Society believes First Nations communities are in the best position to design and implement their own child safety solutions. As a national organization it is our role to provide quality resources for communities to draw upon and to assist them in developing community-focused solutions.

6. The Caring Society does not receive any funding from the federal government and is completely supported by a diversified funding plan and the support of First Nations child and family service agencies, our members and donors.

(B) The Caring Society's National and International Work

7. As part of its research mandate, our First Nations Child Welfare Research and Knowledge Mobilization initiative assists in analyzing and reporting on Canadian child welfare data, specifically data within the First Nations child welfare context; shares and disseminates research related to innovations and issues in practice, policy, knowledge research, skill development, and administration in First Nations child welfare; and stimulates discussion among local, regional, provincial and national child welfare agencies on current research, policies and/or practices that affect or benefit First Nations children, youth, families and/or communities. The key purpose of the First Nations Child Welfare Research and Knowledge Mobilization initiative is to encourage and demonstrate (i) effective methodologies for carrying out First Nations research in building capacity, and (ii) a research culture within First Nations child welfare agencies and communities that is culturally relevant and respectful. As part of this initiative, the Caring Society has published, edited

and promoted various works, including statistical and academic works related to First Nations child welfare. 010

8. The Caring Society also edits and publishes the First Peoples Child and Family Review online journal. The First Peoples journal is a free online resource used by many students and instructors, as well as people working in child welfare, including front line practitioners and policy makers.

9. The Caring Society has also developed, in partnership with a team of young leaders across Canada, Guidelines for the Engagement of Young People, which is a tool to assist organizations that are currently engaging with young people.

10. As part of our training mandate, the Caring Society is involved in the Touchstones of Hope program, which promotes grass roots involvement in the process of reconciliation to benefit children. Based on a four stage process of reconciliation, the Touchstone of Hope movement engages Aboriginal communities, mainstream child welfare and allied professionals and leaders in a process of redefining child welfare and agreeing on pragmatic plans to put community visions into action. We train Touchstone of Hope facilitators, who play a vital role in working with First Nations communities to define and implement their culturally specific visions of healthy children, youth and family.

11. With respect to our public engagement and policy activities, the Caring Society works closely with First Nations child welfare agencies, assisting them in working with local and national governments to address the needs of the community. For example, the Caring Society worked closely with the Attawapiskat First Nation and the family of Shannen Koostachin to promote Shannen's Dream.

12. Shannen's Dream is an initiative to promote and secure access to equitable and culturally based education for First Nations children and youth. As a young leader, Shannen Koostachin of Attawapiskat First Nation dreamt of safe and proper schools and culturally based education for First Nations children and youth. She worked tirelessly to try to convince the federal government to give First Nations children a proper education before her tragic death in 2010 at the age of 15 years old. The Caring Society promotes Shannen's

Dream by calling on the federal government to implement the Shannen's Dream Motion 571, which was unanimously adopted by Parliament in 2012. U11

13. In addition to the foregoing, a key goal of the Caring Society is to ensure that First Nations child and family service agencies are aware of and included in international discussions relevant to First Nations children, youth and family. Over the past 10 years, I have prepared and presented submissions to the United Nations, including for the United Nations Committee on the Rights of the Child (the "**UNCRC**"), the United Nations Permanent Forum on Indigenous Issues, the Committee on Economic, Social and Cultural Rights and the Sub Group on Indigenous Child Rights. I have made presentations in South Africa, New Zealand, Norway, Ireland, Taiwan, Australia and the United States, making important connections with Indigenous peoples and international child rights organizations. The Caring Society is also working with the Child Welfare League of America and the National Indian Child Welfare Association in the United States to support the implementation of the Touchstone of Hope child welfare model in several States.

14. The Caring Society was also granted intervener status at the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SCC 61. The Caring Society made submissions regarding the remedial role of human rights legislation in relation to historically disadvantaged groups, such as First Nations peoples; the inappropriateness of strictly requiring a formal comparator group analysis and the potential impact of such an analysis on the *sui generis* situation of First Nations peoples in the context of a human rights complaint; and the need for and appropriateness of a cross-jurisdictional analysis in assessing certain claims of discrimination. A copy of the decision is attached hereto as **Exhibit "A"**.

(C) Jordan's Principle

15. In my role as the Executive Director of the Caring Society, I was involved in developing and drafting Jordan's Principle.

16. Jordan's Principle is named after Jordan River Anderson, a five-year-old child from Norway House Cree Nation in Manitoba who died in a Winnipeg hospital in 2005. Although cleared by doctors to return home, Jordan's illness meant he was unable to live at home

without in-home care. The governments of Canada and Manitoba disagreed as to which of them should pay for Jordan's in-home care, given his on-reserve First Nations status. As a result of this disagreement, Jordan remained in a hospital room until he died at the age of five, never having the opportunity to live at home with his family.

17. In memory of Jordan, and in keeping with the non-discrimination provisions of the *Charter of Rights and Freedoms*, as well as the United Nations Convention on the Rights of the Child (the "**CRC**"), I worked with Jordan's family, Norway House Cree Nation ("**Norway House**") the Assembly of Manitoba Chiefs ("**AMC**") and the Assembly of First Nations ("**AFN**"), to develop and promote Jordan's Principle.

18. Indeed, Jordan's Principle was inspired by Jordan and his fight against his illness, as well as by the significant advocacy undertaken by Jordan's family, Norway House and AMC during Jordan's life and after he passed away. Recognizing the significant work done by Jordan's family, community and others to advocate for a child first policy to resolve these disputes, I drafted the language now known as "Jordan's Principle" and the Caring Society hosts the Jordan's Principle website (www.jordansprinciple.ca).

19. Jordan's Principle is a child first principle ensuring First Nations children can access public services on the same terms as all other Canadian children. It states that where a government service is available to all other children and a jurisdictional dispute arises between Canada and the province/territory, or between departments in the same government, regarding payment for services to a First Nations child, the government of first contact pays for the services and can seek reimbursement from the other level of government/department after the child has received the service.

20. Throughout the winter of 2006 and the spring of 2007, I met with Jean Crowder, Member of Parliament for Nanaimo-Cowichan, who prepared Private Members Motion 296 and introduced it to the House of Commons. The motion states as follows:

> In the opinion of the House, the government should immediately adopt a child-first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children.

21. On December 12, 2007, I attended at the House of Commons with Jordan's family to witness the vote on Motion 296 by Members of Parliament. The motion passed unanimously and was followed by all Members of Parliament giving a standing ovation to the Anderson family and other families from Norway House who were similarly disadvantaged by government jurisdictional disputes regarding services for their children.

22. It is the Caring Society's position that the federal government has not implemented Jordan's Principle pursuant to Parliament's intentions and the language of Motion 296. As a result, First Nations children living on reserve continue to be unjustly denied public services available to all other Canadian children or, at the very least, are required to meet additional eligibility criteria prior to receiving the service. In particular, Canada has tried to narrow Jordan's Principle by applying it only to children with complex medical needs with multiple service providers. The Caring Society raised its concerns at the Standing Committee on Aboriginal Affairs and Northern Development on December 8, 2010. A copy of these submissions is attached hereto as **Exhibit "B"**.

23. More recently, the Canadian Pediatric Society ("**CPS**") urged all levels of government to implement Jordan's Principle, without delay, to work in partnership with First Nations communities on its implementation, and to provide First Nations children and youth with the care they are entitled. A copy of the CPS 2012 Status Report on Canadian Public Policy and Child and Youth Health is attached hereto as **Exhibit "C"**.

(i) Jordan's Principle and the United Nations Convention on the Right of the Child

24. Canada has signed and ratified the CRC. Canada is therefore obligated to take all appropriate measures to ensure the protection of children, including ensuring that children be free from discrimination and that indigenous children be free to live, grow and learn in their own communities. A copy of the CRC is attached hereto as **Exhibit "D"**.

25. The Caring Society works actively to promote the CRC, particularly as it applies to First Nations children in Canada. The Caring Society follows and comments on Canada's implementation of its obligations pursuant to the CRC through its publications and ongoing research. On January 28, 2011, the Caring Society presented the Shadow Report: Canada 3rd

and 4th Periodic Report to the UNCRC, which addresses Canada's failure to implement Jordan's Principle pursuant to its obligations under the CRC. A copy of the report is attached hereto as **Exhibit "E"**.

26. More recently, on October 5, 2012, the UNCRC provided Canada with its concluding observations regarding Canada's compliance with the CRC. Among the various concerns raised by the UNCRC, the Committee noted that Aboriginal children are significantly overrepresented in out-of-home care and that Canada must take immediate steps to ensure that "Aboriginal children have full access to all government services and receive resources without discrimination." A copy of the UNCRC report is attached hereto as **Exhibit "F"**.

(D) The Caring Society's Human Rights Complaint

27. The Caring Society and the AFN filed a joint complaint (the "**Complaint**") with the Canadian Human Rights Commission (the "**Commission**") on February 23, 2007. The Complaint alleges that the Government of Canada's provision of First Nations child and family services on reserve is discriminatory on the basis of race and national ethnic origin contrary to the *Canadian Human Rights Act* (the "**Act**"). Specifically, the Complaint asserts that the child and family service program funded and controlled by what was formerly named Indian and Northern Affairs Canada ("**INAC**", now called Aboriginal Affairs and Northern Development Canada ("**AANDC**")) uses flawed and inequitable funding policies, practices and services resulting in inequitable child welfare services and benefits for on-reserve First Nations children compared to those services received by children living off reserve, contrary to the Act.

28. The Complaint also alleges that the federal government's failure to fully and properly implement Jordan's Principle results in First Nations children being denied or delayed receipt of public services available to other children. This adverse treatment of First Nations is discriminatory, contrary to Section 5 the Act. A true copy of the Complaint is attached as **Exhibit "G"**.

29. On March 14, 2011, the Chairperson of the Canadian Human Rights Tribunal (the "**Tribunal**") dismissed the Complaint on the basis that on-reserve First Nations children who receive child welfare services from the federal government cannot be compared to off-

reserve children receiving the same services from provincial and territorial governments. The Chairperson concluded that since there was no "comparator group" of other individuals receiving the same services from the federal government, there could not possibly be discrimination. A copy of the Tribunal's decision, 2011 CHRT 4, is attached as **Exhibit "H"**.

30. The Caring Society, along with the AFN and the Commission, sought judicial review of the Chairperson's decision. On April 18, 2012, the Federal Court granted all three judicial review applications and remitted the Complaint to a differently constituted panel of the Tribunal. A copy of the Federal Court's decision, 2012 FC 445, is attached hereto as **Exhibit "I"**.

31. The Attorney General of Canada, in turn, appealed the Federal Court's decision. The Federal Court of Appeal dismissed the appeal on March 11, 2013. A copy of the Federal Court of Appeal's decision, 2013 FCA 75, is attached hereto as **Exhibit "J"**.

32. The Tribunal began the hearing on the merits of the Complaint on February 25, 2013. While there have been significant delays in proceeding with the hearing as a result of the Attorney General of Canada's failure to disclose relevant documents, the parties are now proceeding with the hearing and have been advised by the Tribunal that it expects to hear closing arguments in the spring of 2014.

(E) Implications of the Present Case for First Nations Children and Families

33. The Caring Society has decided to seek leave to intervene in this case because the ruling may have a significant impact on the Caring Society, and the work it does on behalf of First Nations children and families and First Nations child welfare agencies, including its continued efforts to promote the full and proper implementation of Jordan's Principle.

34. I have read the decision of the Federal Court in the present case and believe that I am informed with respect to the issues involved in this appeal. In particular, I understand that one of the important issues that this Honourable Court may address is the application and interpretation of Jordan's Principle. The Appellant, the Attorney General of Canada, takes the position that Jordan's Principle is engaged only when the following four criteria are met: (i) the First Nation's child is living on a reserve (or ordinarily resident on a reserve); (ii) the

First Nation's child has been assessed by health and social service professionals and has been found to have multiple disabilities requiring services from multiple service providers; (iii) the case involves a jurisdictional dispute between a provincial government and the federal government as to who should pay for a service; and (iv) the case involves services to a child that are comparable to the standard of care set by the province in a similar geographic area (known as "the normative standard of care.") Moreover, the Appellant argues in paragraph 55 of its factum that Jordan's Principle only comes into play when "there is a dispute about who should fund the requested service."

35. Alternatively, the Respondents submit that Jordan's Principle should not be narrowly interpreted and that its overriding purpose is to ensure that First Nations children living on reserve are not denied services available to all other Canadian children.

36. The Caring Society shares the views of Mr. Justice Mandamin of the Federal Court, that Jordan's Principle is not to be narrowly construed and that the absence of a monetary dispute cannot be determinative of whether Jordan's Principle is engaged.

37. Because of our unique status under s. 91(24) of the *Constitution Act, 1867*, First Nations people receive numerous services from the federal government through agencies funded and controlled by the federal AANDC, rather than from the provinces or territories who provide and/or fund such services for other Canadians. Child welfare and some health care services to on-reserve First Nations children and youth are two such examples. Where it is alleged, for example, that a service is being denied to First Nations children by the federal government and yet is provided to other Canadian children by the provinces or territories, Jordan's Principle is the only procedural mechanism available to redress this inequity.

38. It is the Caring Society's position that it could not have been Parliament's intention to exclude First Nations children from human rights protections, including protections under the *Charter of Rights and Freedoms*, when it unanimously passed Motion 296. However, this legal quandary leaves First Nations children vulnerable to a narrow interpretation of Jordan's Principle, which could bar First Nations children from a procedural recourse mechanism to access services and benefits extended to all other Canadian children.

39. First Nations peoples living on reserve are in a *sui generis* relationship with the federal government: a unique relationship shared by no other group of Canadians. Given this unique legal position, it is the Caring Society's position that it is essential that Jordan's Principle be interpreted as it was intended: to ensure that on-reserve First Nations children have access to the same public services available to all other Canadian children.

40. Should this Honourable Court make a determination regarding the interpretation and application of Jordan's Principle, such a decision will have a significant impact on First Nations peoples, including First Nations children and families.

(F) Submissions to be Advanced by the Caring Society

41. The Caring Society is uniquely positioned to offer a useful and different perspective on the interpretation and application of Jordan's Principle. Indeed, through the support and advocacy of Jordan's family, Norway House and AMC, I drafted Jordan's Principle and consulted with the Honorable Member of Parliament Jean Crowder as she introduced Motion 296 to the House of Commons. Moreover, the Caring Society has an established involvement with the historical and social disadvantages experienced by First Nations peoples, and in particular First Nations children. The unique circumstances of First Nations peoples living on reserve, in a *sui generis* fiduciary relationship with the federal government, requires a flexible approach to discrimination, rooted in the recognition that an overly formalistic analysis should not act as an obstacle to claimants.

42. If granted leave to intervene in this appeal, the Caring Society would not present arguments with respect to the findings of fact in this case nor seek to make arguments in respect of the characterization of the evidence in the case. Nor would the Caring Society repeat the arguments already made by the Respondents. Rather, if granted leave to intervene, the Caring Society would make useful and different submissions regarding the interpretation and application of Jordan's Principle. These would include:

(a) the interpretation and application of a "child-first" principle;

(b) the inappropriateness of narrowly construing Jordan's Principle, and the potential impact of such an approach on First Nations children living on reserve; and

(c) the impact of narrowly construing Jordan's Principle on Canada's obligations under the CRC.

43. As the only national organization serving First Nations children and families, the Caring Society is uniquely positioned to advance the forgoing arguments. The Caring Society's perspective on these issues is distinct from the other parties and I am not aware of any proposed intervener planning to make similar submissions. While the Caring Society agrees with the Respondents regarding its position that Jordan's Principle ought to be broadly interpreted, the rationale underlying its arguments are different from those advanced by the Caring Society.

44. In my view, no party before the Court is suitable to raise the arguments that would be made by the Caring Society. The Caring Society, with its expertise and experience representing a unique historically disadvantaged group, is in the position to provide this Honourable Court with valuable assistance with respect to the important issues raised in the current appeal.

(G) Prejudice if Leave to Intervene is Not Granted

45. This Court's determination on the interpretation and application of Jordan's Principle could have a decisive impact on the Caring Society, and the children, families and communities it serves across Canada, both in the context of the Complaint itself, and more broadly. I believe that if leave to intervene is not granted, the Caring Society, its members and service recipients would have an important issue affecting their rights decided without the opportunity to make representations to this Honourable Court about the potential impact on the First Nations community, and particularly on First Nations children.

46. The Caring Society is therefore seeking leave to intervene in this appeal with a right to file a Memorandum of Fact and Law and to make oral submissions at the hearing of the appeal. The Caring Society will not seek costs against any party and it would ask not to be liable to any party for costs.

SWORN BEFORE ME at the City of Ottawa, in the Province of Ontario, on November 22, 2013.

Commissioner for Taking Affidavits

Dr. Cindy Blackstock

Shannon Marie Kack, a Commissioner, etc., Province of Ontario, while a student-at-law. Expires September 13, 2016

This is Exhibit "A" to the affidavit of
Cindy Blackstock, sworn before me this
22nd day of November, 2013

A Commissioner for taking Affidavits etc.
Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016

SUPREME COURT OF CANADA

CITATION: Moore *v.* British Columbia (Education), 2012 SCC 61, [2012] 3 S.C.R. 360

DATE: 20121109
DOCKETS: 34040, 34041

BETWEEN:

Frederick Moore on behalf of Jeffrey P. Moore
Appellant
and
Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Ministry of Education, and Board of Education of School District No. 44 (North Vancouver), formerly known as The Board of School Trustees of School District No. 44 (North Vancouver)
Respondents
- and -
Attorney General of Ontario, Justice for Children and Youth, British Columbia Teachers' Federation, Council of Canadians with Disabilities, Ontario Human Rights Commission, Saskatchewan Human Rights Commission, Alberta Human Rights Commission, International Dyslexia Association, Ontario Branch, Canadian Human Rights Commission, Learning Disabilities Association of Canada, Canadian Constitution Foundation, Manitoba Human Rights Commission, West Coast Women's Legal Education and Action Fund, Canadian Association for Community Living, Commission des droits de la personne et des droits de la jeunesse, British Columbia Human Rights Tribunal, First Nations Child and Family Caring Society of Canada
Interveners

CORAM: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

REASONS FOR JUDGMENT: (paras. 1 to 71)

Abella J. (McLachlin C.J. and LeBel, Deschamps, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ. concurring)

Frederick Moore on behalf of Jeffrey P. Moore *Appellant*

v.

Her Majesty The Queen in Right of the Province of British Columbia, as represented by the Ministry of Education, and Board of Education of School District No. 44 (North Vancouver), formerly known as The Board of School Trustees of School District No. 44 (North Vancouver) *Respondents*

and

Attorney General of Ontario, Justice for Children and Youth, British Columbia Teachers' Federation, Council of Canadians with Disabilities, Ontario Human Rights Commission, Saskatchewan Human Rights Commission, Alberta Human Rights Commission, International Dyslexia Association, Ontario Branch, Canadian Human Rights Commission, Learning Disabilities Association of Canada, Canadian Constitution Foundation, Manitoba Human Rights Commission, West Coast Women's Legal Education and Action Fund, Canadian Association for Community Living, Commission des droits de la personne et des droits de la jeunesse, British Columbia Human Rights Tribunal and First Nations Child and Family Caring Society of Canada *Interveners*

Indexed as: Moore *v.* British Columbia (Education)

2012 SCC 61

File Nos.: 34040, 34041.

2012: March 22; 2012: November 9.

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Human rights — Discrimination — Prohibited grounds — Mental or physical disability — Education — Student with dyslexia attending public school — School district cancelling special education program requiring student to enrol in specialized private school — Whether school district discriminating against student by failing to provide necessary remediation — Human Rights Code, R.S.B.C. 1996, c. 210, s. 8.

Education law — School regulation and administration — Curriculum and education programs — Obligations of school authorities — What constitutes meaningful access to education for students with learning disabilities — School Act, S.B.C. 1989, c. 61.

J suffered from severe dyslexia for which he received special education at his public school. In Grade 2, a psychologist employed by the school district recommended that since he could not get the remedial help he needed at his school,

he should attend the local Diagnostic Centre to receive the necessary remediation. When the Diagnostic Centre was closed by the school district, J transferred to a private school to get the instruction he needed. His father filed a complaint with the B.C. Human Rights Tribunal on J's behalf against the school district and the Province on the grounds that J had been denied a "service . . . customarily available to the public" under s. 8 of the B.C. *Human Rights Code*. The Tribunal concluded that there was discrimination against J by the District and the Province and ordered a wide range of sweeping systemic remedies against both. It also ordered that the family be reimbursed for the tuition costs of J's private school. The reviewing judge set aside the Tribunal's decision, finding that there was no discrimination. A majority of the Court of Appeal dismissed the appeal.

Held: The appeal is substantially allowed.

The purpose of the *School Act* in British Columbia is to ensure that "all learners . . . develop their individual potential and . . . acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy". This is an acknowledgment by the government that the reason children are entitled to an education is that a healthy democracy and economy require their educated contribution. Adequate special education, therefore, is not a dispensable luxury. For those with severe learning disabilities, it is the ramp that provides access to the statutory commitment to education made to *all* children in British Columbia.

The "service" to which J is entitled under s. 8 of the B.C. *Human Rights Code* is education generally. To define special education as the service at issue risks descending into a kind of "separate but equal" approach. Comparing J only with other special needs students would mean that the District could cut *all* special needs programs and yet be immune from a claim of discrimination. If J is compared only to other special needs students, full consideration cannot be given to whether he had meaningful access to the education to which *all* students in British Columbia are entitled. This risks perpetuating the very disadvantage and exclusion the *Code* is intended to remedy.

To demonstrate *prima facie* discrimination under s. 8, complainants must show that they have a characteristic protected from discrimination; that they have experienced an adverse impact with respect to a service customarily available to the public; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice. If it cannot be justified, discrimination will be found to occur.

There is no dispute that J's dyslexia is a disability. There is equally no question that any adverse impact he suffered is related to his disability. The question then is whether J has, without reasonable justification, been denied meaningful access to the general education available to all children in British Columbia based on his disability.

Prima facie discrimination was made out based on the insufficiently intensive remediation provided by the District for J's learning disability in order for him to get access to the education he was entitled to. J received some special education assistance until Grade 3, but the Tribunal's conclusion that the remediation was far from adequate to give J the education to which he was entitled, was fully supported by the evidence. The Tribunal found that the family was told by District employees that J required intensive remediation. As a result of the closing of the Diagnostic Centre, a private school was the only alternative that would provide the intense remediation that J required.

The Tribunal found that when the decision to close the Diagnostic Centre was made, the District did so without knowing how the needs of students like J would be addressed, and without undertaking a needs-based analysis to consider what might replace the Diagnostic Centre, or assessing the effect of the closure on Severe Learning Disabilities students. It was the combination of the clear recognition by the District, its employees and the experts that J required intensive remediation in order to have meaningful access to education, the closing of the Diagnostic Centre, and the fact that the family was told that these services could not otherwise be provided by the District, that justified the Tribunal's conclusion that the failure of the District to meet J's educational needs constituted *prima facie* discrimination.

The next question is whether the District's conduct was justified. The District's justification centred on the budgetary crisis it faced during the relevant

period, which led to the closure of the Diagnostic Centre and other related cuts. The Tribunal's findings that the District had other options available for addressing its budgetary crisis should not be disturbed. The Tribunal accepted that the District faced financial difficulties during the relevant period. Yet it also found that cuts were disproportionably made to special needs programs. Despite their similar cost, the District retained some discretionary programs, such as the Outdoor School — an outdoor campus where students learned about community and the environment — while eliminating the Diagnostic Centre.

More significantly, the Tribunal found that the District undertook *no* assessment, financial or otherwise, of what alternatives were or could be reasonably available to accommodate special needs students if the Diagnostic Centre were closed. The failure to consider financial alternatives completely undermined the District's argument that it was justified in providing *no* meaningful access to an education for J because it had no choice. In order to decide that it had no other choice, it had at least to consider what those other choices were.

The finding of discrimination against the District is therefore restored.

Cases Cited

Referred to: *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396;

Brooks v. Canada Safeway Ltd., [1989] 1 S.C.R. 1219; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, [2000] 1 S.C.R. 665; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3; *Ontario Human Rights Commission v. Borough of Etobicoke*, [1982] 1 S.C.R. 202; *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489; *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868.

Statutes and Regulations Cited

Administrative Tribunals Act, S.B.C. 2004, c. 45, s. 59.

Human Rights Code, R.S.B.C. 1996, c. 210, s. 8.

School Act, S.B.C. 1989, c. 61, preamble.

School Amendment Act, S.B.C. 1993, c. 6.

Authors Cited

British Columbia. Ministry of Education. *Mandate for the School System*. Vancouver: The Ministry, 1989.

British Columbia. Ministry of Education. *Special Programs: A Manual of Policies, Procedures and Guidelines*. Vancouver: The Ministry, 1985.

Brodsky, Gwen, Shelagh Day and Yvonne Peters. *Accommodation in the 21st Century*. Canadian Human Rights Commission, 2012 (online: http://www.chrc-ccdp.ca/pdf/accommodation_eng.pdf).

MacKay, A. Wayne. "Connecting Care and Challenge: Tapping Our Human Potential" (2008), 17 *E.L.J.* 37.

APPEAL from a judgment of the British Columbia Court of Appeal (Rowles, Saunders and Low JJ.A.), 2010 BCCA 478, 12 B.C.L.R. (5th) 246, 326 D.L.R. (4th) 77, 294 B.C.A.C. 185, 498 W.A.C. 185, 71 C.H.R.R. D/238, [2011] 3 W.W.R. 383, [2010] B.C.J. No. 2097 (QL), 2010 CarswellBC 3446, affirming a decision of Dillon J., 2008 BCSC 264, 81 B.C.L.R. (4th) 107, 62 C.H.R.R. D/289, [2008] 10 W.W.R. 518, [2008] B.C.J. No. 348 (QL), 2008 CarswellBC 388, reversing a decision of the British Columbia Human Rights Tribunal, 2005 BCHRT 580, 54 C.H.R.R. D/245, [2005] B.C.H.R.T.D. No. 580 (QL), 2005 CarswellBC 3573. Appeal substantially allowed.

Frances M. Kelly and *Devyn Cousineau*, for the appellant.

Leah Greathead and *E. W. (Heidi) Hughes*, for the respondent Her Majesty The Queen in Right of the Province of British Columbia, as represented by the Ministry of Education.

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Robert E. Charney and *Sarah Kraicer*, for the intervener the Attorney General of Ontario.

Andrea Luey, for the intervener Justice for Children and Youth.

Diane MacDonald and *Robyn Trask*, for the intervener the British Columbia Teachers' Federation.

Written submissions only by *Gwen Brodsky*, *Yvonne Peters* and *Melina Buckley*, for the intervener the Council of Canadians with Disabilities.

Anthony D. Griffin, for the interveners the Ontario Human Rights Commission, the Saskatchewan Human Rights Commission and the Alberta Human Rights Commission.

Rahool P. Agarwal, *Christopher W. Cummins* and *Rowan E. Weaver*, for the intervener the International Dyslexia Association, Ontario Branch.

Brian Smith and *Philippe Dufresne*, for the intervener the Canadian Human Rights Commission.

Yude M. Henteleff, Q.C., and *Darla L. Rettie*, for the intervener the Learning Disabilities Association of Canada.

Ranjan K. Agarwal and *Daniel Holden*, for the intervener the Canadian Constitution Foundation.

Written submissions only by *Isha Khan*, for the intervener the Manitoba Human Rights Commission.

Alison Dewar, for the intervener the West Coast Women's Legal Education and Action Fund.

Roberto Lattanzio and *Laurie Letheren*, for the intervener the Canadian Association for Community Living.

Athanassia Bitzakidis, for the intervener Commission des droits de la personne et des droits de la jeunesse.

Denise E. Paluck, for the intervener the British Columbia Human Rights Tribunal.

Nicholas McHaffie and *Sarah Clarke*, for the intervener the First Nations Child and Family Caring Society of Canada.

The judgment of the Court was delivered by

[1] ABELLA J. — This case is about the education of Jeffrey Moore, a child with a severe learning disability who claims that he was discriminated against because the intense remedial instruction he needed in his early school years for his dyslexia was not available in the public school system. Based on the recommendation of a school psychologist, Jeffrey's parents enrolled him in specialized private schools in Grade 4 and paid the necessary tuition. The remedial instruction he received was successful and his reading ability improved significantly.

[2] Jeffrey's father, Frederick Moore, filed a human rights complaint against the School District and the British Columbia Ministry of Education alleging that Jeffrey had been discriminated against because of his disability and had been denied a "service . . . customarily available to the public", contrary to s. 8 of the *Human Rights Code*, R.S.B.C. 1996, c. 210 ("*Code*").

[3] The Human Rights Tribunal held 43 days of hearings, receiving evidence about the funding and administration of special education in the District and Province, the District's budgetary constraints at the relevant time, dyslexia generally, and Jeffrey's circumstances in particular.

[4] The Tribunal concluded that the failure of the public school system to give Jeffrey the support he needed to have meaningful access to the educational opportunities offered by the Board, amounted to discrimination under the *Code*. I agree.

[5] The preamble to the *School Act*,[1] the operative legislation when Jeffrey was in school, stated that "the purpose of the British Columbia school system is to enable all learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy". This declaration of purpose is an acknowledgment by the government that the reason all children are entitled to an education, is because a healthy democracy and economy require their educated contribution. Adequate special education, therefore, is not a dispensable luxury. For those with severe learning disabilities, it is the ramp that provides access to the statutory commitment to education made to *all* children in British Columbia.

Background

[1] S.B.C. 1989, c. 61, as amended in 1993 (*School Amendment Act*, S.B.C. 1993, c. 6).

[6] At the relevant time, public school funding in British Columbia was approved annually by the Province but administered by districts under the *School Act*. As of the 1990/91 school year, the Province instituted a block funding system, whereby an overall amount of money was made available for education and then allocated among the various districts by the Minister. The block amount, as determined in the base year, was adjusted annually to allow for changes in enrolment, mandated services, and economic indicators such as changes in the cost of resources. For a short period, the Province provided equalization grants to ease the transition for districts which had historically earned significant supplementary funds through local taxation.

[7] For the purposes of funding special education, the Province classified students into various groups, including what it referred to as "high incidence/low cost" and "low incidence/high cost" programs. Severe learning disabilities like dyslexia were always treated as a high incidence/low cost disability. From 1987/88, the Province capped the specific funding that was available for high incidence/low cost students to a percentage of a district's student population in order to control the increasing number of students qualifying for this supplementary funding. Notably, as of 1991, the *School Act* set out minimum spending levels for high incidence/low cost and low incidence/high cost students. That meant that once a child was identified as having a severe learning disability, additional support was mandatory. As a result, districts were required to draw on the general provincial allocation to fund any high incidence/low cost students above the high incidence/low cost cap.

[8] When Jeffrey entered kindergarten in 1991, students with special needs in the District were supported in several ways: they received assistance in and out of the classroom from special education Aides; they were referred to the school-based Learning Assistance Centre where they would work with learning assistance teachers or tutors; and a small number of them were placed in the Diagnostic Centre for more intensive assistance.

[9] Following the implementation of the block funding model, there were significant financial pressures on Jeffrey's home district, School District No. 44. From 1991/92 to 1994/95, the District consistently faced budgetary shortfalls. It had relied on supplementary funds in the past and received declining equalization grants until 1992/93. Despite requests, it did not get additional funding from the Province but got permission to run temporary deficits. Consistent deficits during this period led to wide-scale budget cuts in the District between 1991/92 and 1994/95, including a reduction of almost $1.5 million in spending for high incidence/low cost students with learning disabilities.

[10] In the 1994/95 budgetary process, possible solutions to the financial difficulties included restricting the availability of Aides or closing the District Diagnostic Centre, a program which provided intensive services and individualized assistance to students with severe learning disabilities. The District limited its cuts to Aide allocation because of the terms of its Collective Agreement with the teachers' association, which required a minimum of two hours a week of Aide time once a

student was designated as being in a high incidence/low cost category. Other proposed cuts were implemented, including the closing of the Diagnostic Centre in 1994. In February 1996, the Province fired the Board of the District and replaced it with an Official Trustee.

[11] Jeffrey Moore started kindergarten in September 1991 at Braemar Elementary School, his North Vancouver neighbourhood school in the District. While he was happy and energetic in nursery school, it quickly became apparent in kindergarten that Jeffrey needed extra support to learn to read. After scoring low on a screening test, Jeffrey was referred to the Elementary Learning Resource Team, a group of specialists who provided support and assistance to students in the District who had severe learning disabilities, including dyslexia.

[12] After his first assessment in kindergarten, Jeffrey was observed in the classroom and given 15 minutes of individual help from an Aide three times a week. He was assessed twice by the Elementary Learning Resource Team in Grade 1 because he continued to fall behind in literacy skills. He started attending the Learning Assistance Centre three times a week, for half-hour individual sessions with Barbara Waigh, a learning assistance teacher. He also had two 40-minute sessions in the Learning Assistance Centre with a volunteer tutor. Because he still made poor progress, Jeffrey's parents, at the school's recommendation, hired a private tutor to work with Jeffrey.

[13] In January 1994, while Jeffrey was in Grade 2, his parents, concerned about his worsening headaches, took him to a neurologist. They were told that Jeffrey was under significant stress which could be improved by addressing his learning difficulties. The next month, Jeffrey was again referred to the Elementary Learning Resource Team, with his teachers reporting slow academic progress and immature behaviour. He received a full psycho-educational assessment on April 1, 1994, a prerequisite to his designation as a Severe Learning Disabilities student. Following the assessment, Mary Tennant, a psychologist employed by the District, concluded that Jeffrey needed more intensive remediation than he had been receiving and suggested that he attend the Diagnostic Centre.

[14] Ms. Tennant, Ms. Waigh, and Bryn Roberts, Braemar's principal, met with the Moores soon after this assessment. Ms. Tennant and Ms. Waigh told the Moores that because the Diagnostic Centre was being closed, Jeffrey could not obtain the intensive remediation he needed in the District's public schools. The necessary instruction was available only at Kenneth Gordon School, a private school specializing in teaching children who had learning disabilities.

[15] Jeffrey could not enrol in Kenneth Gordon School until Grade 4. His pre-referral form to that school confirmed a serious lack of progress in reading and spelling as well as his poor self-esteem. Every week during Grade 3 at Braemar, he received two 30-minute sessions of individual assistance in the Learning Assistance Centre, two 40-minute periods of individual assistance with a tutor in the Learning

Assistance Centre, and four 40-minute sessions with an Aide, primarily in the classroom.

[16] Jeffrey attended Kenneth Gordon School from Grade 4 to Grade 7. When he left, he was reading at a Grade 5 level and was at Grade 7 level in math. He began Grade 8 in September 1999 at Fraser Academy, another private school specializing in children with learning disabilities. He remained there until the time of the hearing and eventually completed high school there.

Prior Proceedings

[17] The Tribunal chair, Heather MacNaughton, found that there was general agreement among the experts about the significant, negative long-term consequences for students with unremediated learning disabilities. The experts also agreed that children with reading disabilities should be identified early and provided with intensive supports.

[18] Based on this evidence, the Tribunal concluded that a range of services was necessary for these students, from a modified program within the classroom to full-time placement in a special program for Severe Learning Disabilities students.

[19] The Tribunal accepted the evidence of experts and of District employees like Ms. Tennant that Jeffrey could not get sufficient services within the District after

the closure of the Diagnostic Centre in 1994. Only one expert, who was called by the District, said that Jeffrey had received the services he needed at his public school and that the interventions had been of appropriate intensity.

[20] The Tribunal concluded that there was both individual discrimination against Jeffrey and systemic discrimination against Severe Learning Disabilities students in general. It grounded its finding of discrimination against Jeffrey in the District's failure to assess Jeffrey's learning disability early, and to provide appropriately intensive instruction following the closing of the Diagnostic Centre. It ordered that the Moores be reimbursed for the costs related to Jeffrey's attendance at private schools, as well as $10,000 in damages for pain and suffering.

[21] The finding of systemic discrimination against the District was based on the underfunding of Severe Learning Disabilities programs and the closing of the Diagnostic Centre. While accepting that the District's financial circumstances were compelling, the Tribunal found that there was no evidence that the District had considered any reasonable alternatives for meeting the needs of Severe Learning Disabilities students before cutting available services such as the Diagnostic Centre.

[22] The Tribunal's finding of systemic discrimination against the Province was based on what it identified as four problems in the provincial administration of special education: the high incidence/low cost cap; the underfunding of the District; the failure to ensure that necessary services, including early intervention, were

mandatory; and the failure to monitor the activities of the districts. It ordered a wide range of sweeping systemic remedies against both the District and the Province.

[23] In the Supreme Court of British Columbia, Dillon J. allowed the application for judicial review ([2008] 10 W.W.R. 518). She found that Jeffrey's situation should be compared to other special needs students, not to the general student population as the Tribunal had done. There was no evidence about this comparison, nor was there evidence about how students with special needs were affected by funding mechanisms such as the high incidence/low cost cap or the closing of the Diagnostic Centre. The failure to identify and compare Jeffrey with the appropriate comparator group tainted the entire discrimination analysis. As a result, she set aside the Tribunal's decision.

[24] A majority in the Court of Appeal dismissed the appeal, agreeing that Jeffrey ought to be compared to other special needs students ([2011] 3 W.W.R. 383). To compare him with the general student population was to invite an inquiry into general education policy and its application, which it concluded could not be the purpose of a human rights complaint.

[25] In dissent, Rowles J.A. would have allowed the appeal. In her view, special education was the means by which "meaningful access" to educational services was achievable by students with learning disabilities. She found that a comparator analysis was both unnecessary and inappropriate. The Tribunal's detailed

evidentiary analysis showing that Jeffrey had not received sufficiently intensive remediation after the closing of the Diagnostic Centre, justified the findings of discrimination.

Analysis

[26] Section 8 of British Columbia's *Human Rights Code* states that it is discriminatory if "[a] person . . . without a bona fide and reasonable justification, . . . den[ies] to a person or class of persons any accommodation, service or facility customarily available to the public" on the basis of a prohibited ground. That means that if a service is ordinarily provided to the public, it must be available in a way that does not arbitrarily — or unjustifiably — exclude individuals by virtue of their membership in a protected group.

[27] A central issue throughout these proceedings was what the relevant "service . . . customarily available to the public" was. While the Tribunal and the dissenting judge in the Court of Appeal defined it as "general" education, the reviewing judge and the majority defined it as "special" education.

[28] I agree with Rowles J.A. that for students with learning disabilities like Jeffrey's, special education is not the service, it is the *means* by which those students get meaningful access to the general education services available to all of British Columbia's students:

> It is accepted that students with disabilities require accommodation of their differences in order to benefit from educational services. Jeffrey is seeking accommodation, in the form of special education through intensive remediation, to enable him equal access to the "mainstream" benefit of education available to all. . . . *In Jeffrey's case, the specific accommodation sought is analogous to the interpreters in* Eldridge: *it is not an extra "ancillary" service, but rather the manner by which meaningful access to the provided benefit can be achieved.* Without such special education, the disabled simply cannot receive equal benefit from the underlying service of public education. [Emphasis added; para. 103.]

[29] The answer, to me, is that the 'service' is education generally. Defining the service only as 'special education' would relieve the Province and District of their duty to ensure that no student is excluded from the benefit of the education system by virtue of their disability.

[30] To define 'special education' as the service at issue also risks descending into the kind of "separate but equal" approach which was majestically discarded in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Comparing Jeffrey only with other special needs students would mean that the District could cut *all* special needs programs and yet be immune from a claim of discrimination. It is not a question of who else is or is not experiencing similar barriers. This formalism was one of the potential dangers of comparator gr ups identified in *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396.

[31] If Jeffrey is compared only to other special needs students, full consideration cannot be given to whether he had *genuine* access to the education that all students in British Columbia are entitled to. This, as Rowles J.A. noted, "risks

perpetuating the very disadvantage and exclusion from mainstream society the *Code* is intended to remedy" (see *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219, at p. 1237; Gwen Brodsky, Shelagh Day and Yvonne Peters, *Accommodation in the 21st Century* (2012) (online), at p. 41).

[32] A majority of students do not require intensive remediation in order to learn to read. Jeffrey does. He was unable to get it in the public school. Was that an unjustified denial of meaningful access to the general education to which students in British Columbia are entitled and, as a result, discrimination?

[33] As the Tribunal properly recognized, to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the *Code*; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.

[34] There is no dispute that Jeffrey's dyslexia is a disability. There is equally no question that any adverse impact he suffered is related to his membership in this group. The question then is whether Jeffrey has, without reasonable justification, been denied access to the general education available to the public in British

Columbia based on his disability, access that must be "meaningful": *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para. 71; *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, at pp. 381-82. (See also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, [2000] 1 S.C.R. 665, at para. 80; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, at paras. 121 and 162; A. Wayne MacKay, "Connecting Care and Challenge: Tapping Our Human Potential" (2008), 17 *E.L.J.* 37, at pp. 38 and 47.)

[35] The answer is informed by the mandate and objectives of public education in British Columbia during the relevant period. As with many public services, educational policies often contemplate that students will achieve certain results. But the fact that a particular student has not achieved a given result does not end the inquiry. In some cases, the government may well have done what was necessary to give the student access to the service, yet the hoped-for results did not follow. Moreover, policy documents tend to be aspirational in nature, and may not reflect realistic objectives. A margin of deference is, as a result, owed to governments and administrators in implementing these broad, aspirational policies.

[36] But if the evidence demonstrates that the government failed to deliver the mandate and objectives of public education such that a given student was denied *meaningful* access to the service based on a protected ground, this will justify a finding of *prima facie* discrimination.

[37] As previously noted, the mandate and objectives for public education during the relevant period were set out in the *School Act*, which stated in its preamble that "the purpose of the British Columbia school system is to enable all learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy". A related policy document, the 1989 *Mandate for the School System*, O.I.C. 1280/89, said that the government was "responsible for ensuring that all of our youth have the opportunity to obtain high quality schooling that will assist in the development of an educated society" (p. D-96). The *Mandate* said that schools should develop students who are, among other things, "thoughtful, able to learn and to think critically . . . can communicate information from a broad knowledge base . . . [are] creative, flexible, self-motivated . . . have a positive self image . . . [are] capable of making independent decisions . . . [are] skilled and . . . can contribute to society generally, including the world of work" (p. D-96).

[38] There were divergent views when Jeffrey was in school about how "special needs" students could best be educated. The Province's "*Special Programs: A Manual of Policies, Procedures and Guidelines*" ("1985 Manual") contemplated a "cascade" model of service delivery, where a "range" of placements would be available, including a "very highly specialized" education environment for a small number of students (ss. 4.1 and 4.2). The predominant policy in the 1985 Manual, however, was the integration of special needs students into the general classroom whenever possible.

[39] Notably, however, the 1985 Manual said that "[s]pecial education *shares the basic purpose of all education*: the optimal development of individuals as skillful, free, and purposeful persons, able to plan and manage life and to realize highest potential as individuals and as members of society" (s. 3.1 (emphasis added)). It added that "*[a]ll* children should be afforded opportunities to develop their full potential" (s. 3.1 (emphasis in original)).

[40] These education goals in British Columbia informed the Tribunal's conclusion that the District did not take the necessary steps to give Jeffrey the education to which he was entitled. *Prima facie* discrimination was made out based, in essence, on two factors: the failure by the District to assess Jeffrey at an earlier stage; and the insufficiently intensive remediation provided by the District for Jeffrey's learning disability in order for him to get access to the education he was entitled to. Only the second is in issue before us, since the conclusions about early assessment which were quashed by the reviewing court, were not appealed to this Court. That leaves only the issue of the sufficiency of the services given to Jeffrey by the District.

[41] There is no doubt that Jeffrey received some special education assistance until Grade 3, but in my view the Tribunal's conclusion that the remediation was far from adequate to give Jeffrey the education to which he was entitled, was fully supported by the evidence. To start, the Tribunal found that the Moores were told by District employees that Jeffrey required intensive remediation which, as a result of

the closing of the Diagnostic Centre, would only be available outside of the public school system. After Jeffrey's psycho-educational assessment in April 1994, Ms. Tennant concluded that he "needed more intensive remediation than he had been receiving", and recommended that he be considered for the Diagnostic Centre program. The Tribunal accepted the Moores' evidence that at a meeting with Ms. Tennant after this assessment, they were advised that since the Diagnostic Centre was not an option as a result of its pending closing, Kenneth Gordon School "was the only alternative that would provide the intense remediation that Jeffrey required".

[42] The Tribunal also put great reliance on the views of Ms. Tennant and Ms. Waigh, who had "worked most closely with" Jeffrey at Braemar, and whose "professional judgment" it accepted. It found that Ms. Tennant had "recognized that Jeffrey needed intensive remediation in an alternate setting", and recommended that he look at the Diagnostic Centre. This recommendation was made "in addition to the Aide time to which Jeffrey was entitled under the provisions of the Collective Agreement". The Tribunal found that "Ms. Waigh agreed that [Diagnostic Centre] would have been beneficial to Jeffrey", and noted that

> Ms. Tennant described Jeffrey's case as one of the worst she had ever seen in her many years of experience. According to her, Jeffrey needed a high degree of intensive one-on-one instruction in a setting designed to minimize distractions. Her opinion was that Jeffrey needed intensive remediation which, in the District, was only offered by the [Diagnostic Centre].

On the basis of this evidence, the Tribunal concluded that "[w]hile it is clear that the one-on-one attention he received was unusual, and that Ms. Waigh was a well-

qualified specialist, the services were not intensive enough to meet his disability-related needs."

[43] The Tribunal found that when the decision to close the Diagnostic Centre was made, the District did so without knowing how the needs of students like Jeffrey would be addressed, and without "undertak[ing] a needs-based analysis, consider[ing] what might replace [Diagnostic Centre], or assess[ing] the effect of the closure on [Severe Learning Disabilities] students". The Tribunal noted that at the Board meeting on April 26, 1994, when the budget closing the Diagnostic Centre was approved, the Minutes stated that "[a]ll Trustees indicated in this discussion that they were adopting the bylaw as it was required by legislation and not because they believed it met the needs of the students." It concluded that Dr. Robin Brayne, the District's Superintendent of Schools, and the District in general "did not know how many students would be affected" by the closure. In fact, on the day of the Board vote, the District's Assistant Superintendent and the Coordinator of Student Services informed Dr. Brayne that it was "too early to know precisely how the needs of high incidence students will be addressed in the absence of the Diagnostic Centre".

[44] Nor did the District consult Ms. Waigh or Ms. Tennant, despite their role in providing services to Severe Learning Disabilities students and their opposition to the closure. It was only at the end of June 1994, more than two months after the decision to close the Diagnostic Centre, that Dr. Brayne requested the development of a policy document to set out the District's plan for addressing the needs of Severe

Learning Disabilities students in the absence of the Diagnostic Centre. The policy document was to be discussed in August, with training planned for the fall and winter of 1994/95. As a result, the Tribunal concluded that "nothing was in place in September when schools opened, other than what the schools already provided".

[45] Moreover, the Tribunal rejected the District's argument that the educational philosophy of integration was "a consideration" in the closure of the Diagnostic Centre, since "[i]t was clear from the evidence of all of the District's witnesses that they thought the [Diagnostic Centre] provided a useful service." It noted that Dr. Brayne admitted in cross-examination that the closure was not motivated by educational policy, and acknowledged that "without [the Diagnostic Centre], the range of options available to [Severe Learning Disabilities] students was reduced [and] according to the 1985 Manual, [the remaining resources] were not intended for [Severe Learning Disabilities] students". As a result, based on "the evidence, the concurrent memoranda, and the speed at which the decision was made", the Tribunal concluded that "the *sole* reason for the closure was financial" (emphasis added).

[46] The Tribunal was cognizant of the deference it owed to the District in delivering educational services, and the fact that Jeffrey's needs could have been met by means other than the Diagnostic Centre. In brief, the Tribunal found that when the decision to close the Diagnostic Centre was made, the District's motivations were

exclusively financial, and it had failed to consider the consequences or plan for alternate accommodations.

[47] This failure was crucial in light of the expert evidence that intensive supports were needed generally to remedy Jeffrey's learning disability, and that he had not received the support he needed in the public school system. The Tribunal acknowledged that it was impossible to compare Jeffrey's current abilities to what he might have achieved if he had received earlier and more intensive services. But while the failure to obtain a given result did not in itself constitute adverse treatment, the Tribunal accepted the evidence of two experts who, after examining Jeffrey, found that he "would have benefited from more intensive remediation earlier and from attending at the [Diagnostic Centre]".

[48] It was therefore the combination of the clear recognition by the District, its employees and the experts that Jeffrey required intensive remediation in order to have meaningful access to education, the closing of the Diagnostic Centre, and the fact that the Moores were told that these services could not otherwise be provided by the District, that justified the Tribunal's conclusion that the failure of the District to meet Jeffrey's educational needs constituted *prima facie* discrimination. In my view, this conclusion is amply supported by the record.

[49] The next question is whether the District's conduct was justified. At this stage in the analysis, it must be shown that alternative approaches were investigated

(*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 ("*Meiorin*"), at para. 65). The *prima facie* discriminatory conduct must also be "reasonably necessary" in order to accomplish a broader goal (*Ontario Human Rights Commission v. Borough of Etobicoke*, [1982] 1 S.C.R. 202, at p. 208; *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, at p. 984). In other words, an employer or service provider must show "that it could not have done anything else reasonable or practical to avoid the negative impact on the individual" (*Meiorin*, at para. 38; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, at pp. 518-19; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, at para. 130).

[50] The District's justification centred on the budgetary crisis it faced during the relevant period, which led to the closure of the Diagnostic Centre and other related cuts. There is no doubt that the District was facing serious financial constraints. Nor is there any doubt that this is a relevant consideration. It is undoubtedly difficult for administrators to implement education policy in the face of severe fiscal limitations, but accommodation is not a question of "mere efficiency", since "[i]t will always seem demonstrably cheaper to maintain the status quo and not eliminate a discriminatory barrier" (*VIA Rail*, at para. 225).

[51] In Jeffrey's case, the Tribunal accepted that the District faced financial difficulties during the relevant period. Yet it also found that cuts were disproportionably made to special needs programs. Despite their similar cost, the

District retained some discretionary programs, such as the Outdoor School — an outdoor campus where students learned about community and the environment — while eliminating the Diagnostic Centre. As Rowles J.A. noted, "without undermining the educational value of the Outdoor School, such specialized and discretionary initiatives cannot be compared with the accommodations necessary in order to make the core curriculum accessible to severely learning disabled students" (para. 154).

[52] More significantly, the Tribunal found, as previously noted, that the District undertook *no* assessment, financial or otherwise, of what alternatives were or could be reasonably available to accommodate special needs students if the Diagnostic Centre were closed. This was cogently summarized by Rowles J.A. as follows:

> The Tribunal found that prior to making the decision to close [the Diagnostic Centre], the District did not undertake a needs-based analysis, consider what might replace [the Diagnostic Centre], or assess the effect of the closure on severely learning disabled students. The District had no specific plan in place to replace the services, and the eventual plan became learning assistance, which, by definition and purpose, was ill-suited for the task. The philosophy for the restructuring was not prepared until two months after the decision had been made (paras. 380-382, 387-401, 895-899). *These findings of fact of the Tribunal are entitled to deference, and undermine the District's submission that it discharged its obligations to investigate and consider alternative means of accommodating severely learning disabled students before cutting services for them.* Further, there is no evidence that the District considered cost-reducing alternatives for the continued operation of [the Diagnostic Centre]. [Emphasis added; para. 143.]

The failure to consider financial alternatives completely undermines what is, in essence, the District's argument, namely that it was justified in providing no meaningful access to an education for Jeffrey because it had no economic choice. In order to decide that it had *no* other choice, it had at least to consider what those other choices were.

[53] Given the Tribunal's findings that the District had other options for addressing its budgetary crisis, its conclusion that the District's conduct was not justified should not be disturbed. The finding of discrimination is thereby confirmed.

[54] This brings us to the Province's role. The District's budgetary crisis was created, at least in part, by the Province's funding shortfalls. But in light of the Tribunal's finding that it was the District which failed to properly consider the consequences of closing the Diagnostic Centre or how to accommodate the affected students, it seems to me that the conclusion that the Province was liable for the District's discriminatory conduct towards Jeffrey cannot be sustained.

[55] This leads to considering the remedies imposed by the Tribunal which have been appealed to this Court. A remedial decision by the Tribunal is subject to a standard of patent unreasonableness according to s. 59 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45.

[56] The Tribunal awarded the Moores the amount of tuition paid for Jeffrey to attend Kenneth Gordon School and Fraser Academy, up to and including Grade 12, half of the costs incurred for his transportation to and from those schools, and $10,000 for "the injury to [Jeffrey's] dignity, feelings and self-respect". This order, it seems to me, is sustainable given the actual scope of the complaint.

[57] But the Tribunal's systemic remedies are so remote from the scope of the complaint, that in my view they reach the threshold set out in s. 59 of the *Administrative Tribunals Act*. Those problematic remedies are:

- That the Province allocate funding on the basis of actual incidence levels, establish mechanisms ensuring that accommodations for Severe Learning Disabilities students are appropriate and meet the stated goals in legislation and policies, and ensure that districts have a range of services to meet the needs of Severe Learning Disabilities students.

- That the District establish mechanisms to ensure that its delivery of services to Severe Learning Disabilities students meet the stated goals in legislation and policies, and ensure that it had a range of services to meet the needs of Severe Learning Disabilities students.

- The Tribunal remained seized of the matter to oversee the implementation of its remedial orders.

[58] Having first found that Jeffrey had suffered discrimination at the hands of the District, the Tribunal then considered whether the broader policies of the District and the Province constituted systemic discrimination. I think this flows from the fact that it approached discrimination in a binary way: individual and systemic. It was, however, neither necessary nor conceptually helpful to divide discrimination into these two discrete categories. A practice is discriminatory whether it has an unjustifiably adverse impact on a single individual or systemically on several: *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The only difference is quantitative, that is, the number of people disadvantaged by the practice.

[59] In *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114, this Court first identified 'systemic discrimination' by name. It defined it as "practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics" (p. 1138). Notably, however, the designation did not change the analysis. The considerations and evidence at play in a group complaint may undoubtedly differ from those in an individual complaint, but the focus is always on whether the complainant has suffered arbitrary adverse effects based on a prohibited ground.

[60] The inquiry is into whether there is discrimination, period. The question in every case is the same: does the practice result in the claimant suffering arbitrary

— or unjustified — barriers on the basis of his or her membership in a protected group. Where it does, discrimination will be established.

[61] It is true that before *Meiorin* and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ("*Grismer*"), different remedial approaches had been applied for direct versus adverse impact discrimination. But in *Meiorin*, McLachlin J. observed that since few rules are framed in directly discriminatory terms, the human rights issue will generally be whether the claimant has suffered adverse effects. Insightfully, she commented that upholding a remedial distinction between direct and adverse effect discrimination "may, in practice, serve to legitimize systemic discrimination" (para: 39). The *Meiorin/Grismer* approach imposed a unified remedial theory with two aspects: the removal of arbitrary barriers to participation by a group, and the requirement to take positive steps to remedy the adverse impact of neutral practices.

[62] *Meiorin* and *Grismer* also directed that practices that are neutral on their face but have an unjustifiable adverse impact based on prohibited grounds will be subject to a requirement to "accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them" (*Grismer*, at para. 19).

[63] In that sense, it is certainly true that a remedy for an individual claimant can have a 'systemic' impact. In *Grismer*, for example, the issue was a rule that

excluded individuals with a medical condition affecting peripheral vision — homonymous hemianopia — from obtaining a drivers' licence. The Court concluded that this rule had a discriminatory impact on Mr. Grismer and upheld the Tribunal's order that the Superintendent test Mr. Grismer individually. Although the remedy was individual to Mr. Grismer, it clearly had remedial consequences for others in his circumstances. Similarly, a finding that Jeffrey suffered discrimination and was entitled to a consequential personal remedy, has clear broad remedial repercussions for how other students with severe learning disabilities are educated.

[64] But the remedy must flow from the claim. In this case, the claim was made on behalf of Jeffrey, and the evidence giving concrete support to the claim all centred on him. While the Tribunal was certainly entitled to consider systemic evidence in order to determine whether Jeffrey had suffered discrimination, it was unnecessary for it to hold an extensive inquiry into the precise format of the provincial funding mechanism or the entire provincial administration of special education in order to determine whether *Jeffrey* was discriminated against. The Tribunal, with great respect, is an adjudicator of the particular claim that is before it, not a Royal Commission.

[65] The connection between the high incidence/low cost cap and the closure of the Diagnostic Centre is remote, given the range of factors that led to the District's budgetary crisis. There is no particular reason to think that these funding mechanisms could not be retained in some form while still ensuring that Severe Learning

Disabilities students receive adequate support. It is entirely legitimate for the Province to choose a block funding mechanism in order to ensure that districts do not have an incentive to over-report Severe Learning Disabilities students, so long as it *also* complies with its human rights obligations. In other words, while systemic evidence can be instrumental in establishing a human rights complaint, the evidence about the provincial funding regime, and the high incidence/low cost cap in particular, was too remote to demonstrate discrimination against *Jeffrey*. And the Tribunal's orders that the District establish mechanisms to ensure that accommodations for Severe Learning Disabilities students meet the stated goals in legislation and policies, and provide a range of services to meet their needs, in any event, essentially direct the District to comply with the *Human Rights Code*. They are, to that extent, redundant.

[66] Moreover, the Tribunal's order that it remain seized of the matter to oversee implementation is hardly suited to a claim brought on behalf of an individual student who has finished his high school education and will not re-enter the public school system. It goes without saying that if the District is to avoid similar claims such as those Jeffrey brought, it will have to ensure that it provides a range of services for special needs students in accordance with the *School Act* and its related policies. There is no remaining need for the Tribunal to remain seized of the matter in order to satisfy *Jeffrey*'s claim.

[67] In fairness to the Tribunal, I think the fact that the scope of the inquiry and the resulting remedial orders were expanded beyond Jeffrey's actual complaints can be traced to the unusual procedural history of this case. Frederick Moore's initial complaints under s. 8 alleged that the District and the Province had failed to identify Jeffrey's disability early enough and failed to provide him with sufficient support to enable him to access public education. He also complained that the District and the Province had failed to properly fund, support and monitor special education throughout the Province.

[68] In a preliminary decision on the scope of the complaint and the required disclosure, a Tribunal member allowed the Moores to lead systemic evidence establishing the complaint. However, she properly noted that "[a]lthough systemic discrimination does not have to be specifically pleaded, it must relate to the complaint *as framed by the Complainant*" (emphasis added). This, I think, was a clear direction to the Tribunal hearing the merits of the case that while systemic *evidence* could be helpful, the *claim* should remain centred on Jeffrey.

[69] But the issue was complicated on judicial review where, in upholding this preliminary decision, Shaw J. said that the complaint "*includes* allegations of province-wide systemic discrimination by the Ministry against dyslexic students" ((2001), 88 B.C.L.R. (3d) 343 (emphasis added)). This does not appear to have been challenged before the Tribunal, and I think it was on this basis that the Tribunal

appears to have departed from the actual focus of the complaint — Jeffrey — and imposed systemic remedies based on its systemic conclusions.

[70] This does not in any way detract, however, from the cogency of the Tribunal's core analysis. Its finding of discrimination against Jeffrey Moore by the District should be upheld, as should the individual orders, which reimburse the Moores for the cost of private schooling and award them damages. These orders properly seek to compensate them for the harm that Jeffrey suffered and were well within the Tribunal's broad remedial authority. Given my earlier comments on the liability of the Province, however, the order for reimbursement and damages should apply only against the District. I would, however, set aside the remaining orders.

[71] The appeal is therefore substantially allowed as discussed, with costs to the Moores throughout since they were successful in upholding the central finding that there was discrimination.

Appeal substantially allowed with costs throughout.

Solicitor for the appellant: Community Legal Assistance Society, Vancouver.

Solicitor for the respondent Her Majesty The Queen in Right of the Province of British Columbia, as represented by the Ministry of Education: Attorney General of British Columbia, Victoria.

Solicitors for the respondent the Board of Education of School District No. 44 (North Vancouver), formerly known as The Board of School Trustees of School District No. 44 (North Vancouver): Guild Yule, Vancouver.

Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.

Solicitor for the intervener Justice for Children and Youth: Canadian Foundation for Children, Youth & the Law, Toronto.

Solicitor for the intervener the British Columbia Teachers' Federation: British Columbia Teachers' Federation, Vancouver.

Solicitors for the intervener the Council of Canadians with Disabilities: Camp Fiorante Matthews, Vancouver.

Solicitor for the interveners the Ontario Human Rights Commission, the Saskatchewan Human Rights Commission and the Alberta Human Rights Commission: Ontario Human Rights Commission, Toronto.

Solicitors for the intervener the International Dyslexia Association, Ontario Branch: Norton Rose Canada, Toronto.

Solicitor for the intervener the Canadian Human Rights Commission: Canadian Human Rights Commission, Ottawa.

Solicitors for the intervener the Learning Disabilities Association of Canada: Pitblado, Winnipeg.

Solicitors for the intervener the Canadian Constitution Foundation: Bennett Jones, Ottawa.

Solicitor for the intervener the Manitoba Human Rights Commission: Manitoba Human Rights Commission, Winnipeg.

Solicitor for the intervener the West Coast Women's Legal Education and Action Fund: West Coast Women's Legal Education and Action Fund, Vancouver.

Solicitor for the intervener the Canadian Association for Community Living: ARCH Disability Law Centre, Toronto.

Solicitor for the intervener Commission des droits de la personne et des droits de la jeunesse: Commission des droits de la personne et des droits de la jeunesse, Montréal.

Solicitor for the intervener the British Columbia Human Rights Tribunal: British Columbia Human Rights Tribunal, Vancouver.

Solicitors for the intervener the First Nations Child and Family Caring Society of Canada: Stikeman Elliott, Ottawa.

This is Exhibit "B" to the affidavit of Cindy Blackstock, sworn before me this 22nd day of November, 2013

A Commissioner for taking Affidavits etc.
Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016

Indian and Northern Affairs Canada(INAC): Delivering inequity to First Nations children and families receiving child welfare services

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Submission to:

Standing Committee on Aboriginal Affairs and Northern Development

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Testimony date: December 8, 2010

INTRODUCTION

"Circumstances are dire. Inadequate resources may force individual agencies to close down if their mandates are withdrawn, or not extended, by the provinces. This would result in the provinces taking over responsibility for child welfare, likely at a higher cost to Indian and Northern Affairs Canada (INAC)"

INAC internal document obtained under Access to Information (document number 2365)

For decades, the Department of Indian and Northern Affairs (INAC) has known that its systematic failure to properly resource and structure its First Nations child and family services program has contributed to growing numbers of First Nations children being removed from their families and First Nations agencies being unable to meet the statutory requirements to keep First Nations children and families safe (McDonald & Ladd, 2000; Department of Indian Affairs and Northern Development, n.d.; Auditor General of Canada, 2008; Standing Committee on Public Accounts, 2009). INAC's failure to provide equity in First Nations child and family services has persisted despite there being overwhelming evidence of the inequity, the availability of solutions to address the problem, and the growing number of Parliamentary, Senate and expert reports linking the inequity to harm to vulnerable children and their families. INAC has consistently failed to treat First Nations children and families equitably regardless of whether the country was running a surplus budget or spending billions to stimulate the economy.

The Minister of Indian and Northern Affairs' program for First Nations child and family services includes three key policy structures: 1) Directive 20-1 which his own documents say creates a "dire situation" 2) the flawed and inequitable enhanced approach and 3) the 45 year old Indian Welfare Agreement in Ontario that the Auditor General has also termed inequitable. Additionally, INAC is before the Canadian Human Rights Tribunal facing allegations that it racially discriminates against First Nations children and families receiving child welfare services by providing inequitable benefit. Instead of addressing the complaint with evidence on the merits, Canada has tried to derail a full and public hearing on this matter using legal loopholes and countless delay tactics. This very low standard of government accountability and public policy for children runs counter to Canadian values and Canada's obligation to ensure the safety and wellbeing and equitable treatment of children pursuant to the United Nations Convention on the Rights of the Child and the Charter of Rights and Freedoms and should not be tolerated for First Nations children.

This submission briefly outlines INAC's three principle policies in First Nations child and family services and their impacts before providing recommendations to ensure the equitable treatment of First Nations children and families.

DIRECTIVE 20-1

"Lack of in-home family support for children at risk and inequitable access to services have been identified by First Nations Child and Family Services Agencies, and INAC, as important contributing factors to the over representation of Aboriginal children in the Canadian child welfare system... provincial governments have written to Ministers of INAC and intergovernmental affairs indicating that INAC is not providing sufficient funding to permit First Nations child and family services agencies to meet their statutory obligations under provincial legislation."

INAC internal document dated 2004 obtained under access to information (Document number 2372)

This "dire" and flawed INAC program policy for child and family services continues to impact the lives of First Nations children and families in British Columbia and New Brunswick. Repeated reports commissioned by the Department of Indian and Northern Affairs Canada have found that the Directive is flawed in structure and inequitable in the amount of funding provided (MacDonald & Ladd, 2000; Loxley, DeRiviere, Prakash, Blackstock, Wien, & Thomas Prokop, 2005). Directive 20-1 was also reviewed by the Auditor General of Canada (2008) and the Standing Committee on Public Accounts (2009) and both found that Directive 20-1 was inequitable and not based on the needs of First Nations children and families. INAC's own internal documents confirm that the impacts of the inequities in the Directive are "dire" for First Nations child and family service agencies and are linked to growing numbers of First Nations children going into care because their families are not receiving the family support and prevention services they need. INAC's fact sheet dated 2007 links the Directive to growing numbers of First Nations children in care and the inability of First Nations child and family service agencies to meet mandated responsibilities.

INAC had the solutions to address the problems with Directive 20-1 for at least 11 years but has consistently failed to ensure equity for First Nations children regardless of the financial situation of the country. The inequity for First Nations children has persisted across two different governing parties both of which had billions of surplus budgets and now the current government is spending billions on projects such as G-8 meetings, fighter jets, and signs pointing out where stimulus tax dollars are being spent but the damaging Directive continues to contribute to First Nations children in these two provinces going needlessly into child welfare care.

First Nations child and family service agencies in British Columbia have been advised that INAC plans on eliminating the current approach for funding maintenance in that province as of April of 2111 and

replacing it with reimbursement at actuals. This change, in the absence of any significant adjustments to the Directive or enhanced funding models, to support the operations of agencies serving less than 1000 Status Indian children on reserves will result in even more hardship for First Nations child and family service agencies in BC and may result in the closure of some.

It seems that INAC prioritizes implementing actions related to reducing federal costs, and thus the wellbeing of children, even when multiple expert reports, and its departmental records, indicate that MORE investment is needed to ensure child safety and wellbeing in these regions.

ENHANCED FUNDING APPROACH (AKA TRIPARTITE FUNDING)

"4.64 However, we also found that the new formula does not address the inequities we have noted under the current formula. It still assumes that a fixed percentage of First Nations children and families in all the First Nations served by an agency need child welfare services. Consequently, in our view, the new formula will not address differing needs among First Nations. Pressures on INAC to fund exceptions will likely continue to exist under the new formula."

Auditor General of Canada (May, 2008)

The Enhanced Prevention Focused Approach is currently applied by INAC in Alberta, Saskatchewan, Manitoba and Quebec. INAC unilaterally developed the enhanced funding approach also known as the tripartite funding arrangement and then imposed it on First Nations as the EXCLUSIVE option to Directive 20-1. It is important to note that INAC continually implies First Nations have choice as part of the design of the tripartite approach, INAC's own records indicate they have an inflexible national template to guide implementation in the regions and their documents emphasize that INAC is only mandated to DISCUSS the enhanced approach with provinces and First Nations not NEGOTIATE. Although the Auditor General of Canada found enhanced funding to be an improvement over Directive 20-1 it continued to be inequitable and incorporated some of the flaws of Directive 20-1 such as not basing funding on the actual needs of First Nations children and families.

INAC undertook an internal evaluation of the implementation of the Enhanced Funding Formula in Alberta and summarizes the findings in a presentation deck entitled *"Implementation Evaluation of the Enhanced Prevention Focused Approach (EPFA) in Alberta: preliminary findings, May 14, 2010."* The findings are summarized on presentation slides 18 and 19 respectively and read as follows:

- *Overall the EPFA model is seen to be a move in the right direction with potential for positive outcomes.*
- *Considerable variability of results across agencies, some clearly making progress and others struggling.*
- *HR [human resource] shortages affect DFNA's [Delegated First Nations Agencies] ability to fully implement*

- *Some DFNA's report wanting more support from INAC in IT [information technology] capacity and planning/implementation*
- *75% of DFNA interviewees reported not enough funds for full implementation (emphasis added)*
- *Scarcity of supportive programming for referrals affects ability to fully implement in some DFNA's*
- *Funding formula still variable in application and some issues need resolution*
- *Recognize this is a long term approach that takes time to implement, and needing time in initial stages to change community attitudes to child welfare program*
- *Attribution of results to EPFA challenging because of reporting and data gaps and confounding factors (e.g.: strong leadership/skills in director position; community capacity)*
- *INAC needs more information (business plans with baselines; reporting outcomes; provincial data) in order to fully assess results."*

Clearly, this evaluation demonstrates some significant shortcomings in the enhanced prevention based approach. INAC, however, continues to offer the enhanced approach with all of its flaws as the exclusive funding alternative. It does not appear that INAC has taken any meaningful steps to redress the flaws of the enhanced approach identified by the Auditor General in 2008.

The need for equity in child welfare services was echoed in a report by the Honourable Yvonne Fritz, Minister of Children and Youth Services in Alberta (2010) on Aboriginal child welfare which includes this statement:

"Repeated a number of times by different participants were the need for the following: (a) equity in funding; (b) same access to services; (c) cultural training and sensitivity to Aboriginal issues and concerns; and greater communication, collaboration and cooperation among all those who provide services to Aboriginal children in care."

There is a critical need to remedy the shortcomings of the enhanced approach in provinces where it is being implemented and for INAC to be open to alternatives to the enhanced approach in regions where enhanced is currently being provided and in regions where enhanced is being considered. Viable alternatives to enhanced include the Wen:de approach which was jointly developed by First Nations and the Department in 2005.

1965 Indian Child Welfare Agreement

This bilateral agreement between INAC and the Province of Ontario drives First Nations child and family service delivery on reserves in Ontario. It is now over 45 years old and has not kept pace with advances in First Nations child and family services nor has it invited First Nations to participate fully in the development of the policy. In 2000, a report commissioned by INAC on First Nations child and family services funding included a recommendation that INAC partner with First Nations child and family service agencies in Ontario to conduct a special review of the 1965 Indian Welfare Agreement in Ontario. Close to 11 years later, INAC has not implemented this recommendation. The Auditor General of Canada reviewed the 1965 Indian Child Welfare Agreement in Ontario as part of her omnibus review

of INAC's First Nations child and family services program in 2008 and she found it to be inequitable. There has been no apparent movement by INAC to conduct the review or redress the inequities identified by the Auditor General of Canada.

First Nations Child and Family Services in the Territories

There are currently no First Nations child and family service agencies in the Yukon or Northwest Territories. The Minister of Indian Affairs transfers funds for child welfare to territorial authorities to deliver the services. First Nations have expressed a desire to enter into negotiations with Canada and the Territories to reassert authority for child welfare and to ensure adequate resourcing for the services. For example, the Carcross Tagish First Nation has created its own family act and as recently as November of 2010, but is reporting that INAC nor the Territory are prepared to negotiate proper funding for community controlled child welfare in the region.

INAC appears to have no plan to address the lack of First Nations child and family service agencies in the Territories despite the fact that First Nations children are dramatically over-represented in the Yukon Territory and the Northwest Territory.

Jordan's Principle

Jordan's Principle says that where a government service is available to all other children and a jurisdictional dispute between Canada (including INAC) and the province/territory occurs regarding payment for services to a First Nations child, the government of first contact pays for the services and can later seek reimbursement from the other level of government. In this way, First Nations children can access public services on the same terms as other children while payment issues between levels of government get resolved. Parliament unanimously passed Motion 296 put forward by Member of Parliament, Jean Crowder, on December 12, 2007. Tragically, Canada (including INAC) has tried to narrow Jordan's Principle suggesting it need only be applied on an inefficient "case by case" basis for children with complex medical needs with multiple service providers. This narrowing is completely distasteful as Jordan's Principle is named after Jordan River Anderson who languished in hospital unnecessarily for over two years while INAC, Health Canada and the Province of Manitoba argued over payment for at home care services that would otherwise be provided to non-Aboriginal children. Jordan died in the hospital never having spent a day in a family home while government officials continued to argue over who should pay. The case by case resolution approach was in place for Jordan and resulted in devastating consequences for Jordan and his family.

INAC must fully implement Jordan's Principle across all government services immediately ensuring that First Nations children are in no way fettered or delayed access to services available to all other children. The narrowing of Jordan's Principle has the effect of perpetuating discrimination against First Nations children and families in other Government of Canada children's services.

The Canadian Human Rights Tribunal on First Nations Child and Family Services

After INAC failed to implement the recommendations of two expert reports commissioned by INAC and conducted jointly with First Nations to redress the inequities in First Nations child and family services,

the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada filed a historic complaint with the Canadian Human Rights Commission alleging that Canada is racially discriminating against First Nations children by providing less child welfare benefit on reserves than other children enjoy.

This is the first time in history that Canada has been held to account before a judicial body with the power to make orders for its current and systemic treatment of First Nations children. Canada has been trying to derail this important public hearing on the merits by raising legal loopholes. The most consistent legal loophole advanced by Canada is their idea that "funding is not a service. In this argument, Canada wrongly suggests that it only funds First Nations child and family services and First Nations child and family service agencies provide the service to the public so if there are any claims of discrimination by children they should be absorbed by the service provider not by Canada. This is splitting hairs as it is not possible for First Nations child and family service agencies to provide a service they are not funded for and the whole strategy smacks of government downloading of its responsibility for ensuring the non-discrimination of children. It is important to note that INAC has an entire program manual for First Nations child and family services that outlines a net of control over First Nations child and family services that includes INAC holding the right to read child in care files – far beyond what a solely funder-recipient relationship should entail.

Canada brought two motions before the Federal Court to try to derail a hearing on the merits and was unsuccessful on both occasions. Curiously, instead of appealing the Federal Court motion to the Federal Court of Appeal, Canada decided to bring a motion to dismiss on the same substantive grounds to the Canadian Human Rights Tribunal which is a lower level judicial body.

Important to this Committee, in May of 2010 Odette Johnston, INAC's senior official on First Nations child and family services testified under oath before the Tribunal in support of Canada's motion to dismiss the tribunal on the funding is not a service issue. Transcripts of her testimony are available in the public domain. Ms. Johnston offers the following comments in response to questions posed by Paul Champ, legal counsel, for the First Nations Child and Family Caring Society of Canada regarding the report by the Auditor General of Canada on First Nations child and family services completed in May of 2008:

Q (Paul Champ - Caring Society legal Counsel). Okay. And you're aware that the Auditor General of Canada had reviewed both of these funding models, Directive 21 and the Enhanced Funding Model, in her review of your programme in 2008?

A.(Ms. Johnston) Yes.

Q (Mr. Champ). And the Auditor General had concerns with respect to both models, correct? If you're not sure, that's fine?

A. (Ms. Johnston) Yes, I am not sure.

Q. (Mr. Champ) Okay. Do you know what types of recommendations the Auditor General made with respect to 3 those models and the delivery of child prevention 4 services on reserves generally?

A. (Ms. Johnston) I can't recall off the top what exactly those recommendations were.

Q. (Mr. Champ) And I appreciate that report was released in '08, so you'd only been a year in at that point at the department. But are you aware of any steps that INAC or your programme is taking to address any of the concerns raised by the Auditor General's report? Like does it ever come up with new policies or recommendations, or, I don't know, things that you are working on or planning where the driver is, you know, people refer to the Auditor General's report?

A. (Ms. Johnston) Specifically, no. I mean any direction we're taking will take that into consideration, but it's not necessarily the driver for change.

Q. (Mr. Champ) So there is some things that you're doing where that is taken into consideration?

A. (Ms. Johnston) Yes

Q. (Mr. Champ) Can you give me examples?

A. (Ms. Johnston) I'm trying to remember. I think she asked that we have a better grasp of the results that are being achieved as a result of the funding that is being provided. And we're working on developing an information management system to assist in that regard."

(Johnston, 2010)

It is curious that the senior official at INAC on First Nations child and family services claims to b unaware if the Auditor General of Canada (2008) had concerns about INAC's funding for First Nations child and family services particularly as she headed the division in charge of preparing the responses to the Auditor General of Canada's report. Nonetheless, the lack of knowledge about the report and its associated recommendations does not bode well for First Nations children.

It is also concerning that of all the recommendations in the report, particularly the ones related to the inequities embodied in Directive 20-1, the enhanced approach and the 1965 Indian Welfare Agreement that INAC appears to have prioritized developing a management information system.

It is essential that INAC staff are fluent in the recommendations of expert and independent reports related to the First Nations child and family services program offered by the Department and are able to prioritize the recommendations likely to have the most significant benefit for First Nations children and families in order to ensure that current, and future, INAC program policies and directives avoid past mistakes and build on solid evidence.

Moreover, Parliamentarians should note that Canada is prioritizing a legal loophole over the substantive equity, safety and wellbeing of thousands of very vulnerable First Nations children and families. The question should be asked of INAC "why would INAC not want to answer an allegation of racial discrimination against First Nations children on the merits?" The fact that Canada is trying to escape a hearing on the merits using legal loopholes raises important moral

and public accountability concerns. Surely, if INAC was confident that it is providing equity for First Nations children and families served by its First Nations child and family services program then it should have no problem marshaling enough evidence to support its position.

The Canadian Human Rights Tribunal is now being followed by close to 6700 individuals and organizations registered with the I am a witness campaign (www.fnwitness.ca) making it the most formally watched legal case in Canadian history.

RECOMMENDATIONS:

1) INAC must take immediate steps to fully redress the inequities and structural problems with the Directive 20-1, enhanced funding approach and the 1965 Indian Welfare Agreement that have been identified in expert reports and by the Auditor General of Canada in full partnership with First Nations. There is no acceptable rationalization for ongoing inequities affecting First Nations children given the range of solutions available to the Department to redress the problems and the wealth of the country.
2) INAC must support other funding and policy options proposed by First Nations for First Nations child and family services other than the enhanced approach, Directive 20-1 and the 1965 Indian Welfare Agreement which the Auditor General has found to be inequitable.
3) INAC must immediately resource a comprehensive review of the 1965 Indian Welfare Agreement in full partnership with First Nations and First Nations child and family service agencies in Ontario to determine whether the formula achieves culturally based equity for First Nations children and families in Ontario.
4) INAC must fully and immediately implement Jordan's Principle across all government services to ensure that no First Nations child is denied or fettered access to government services available to all other children. It must by systemically implemented avoiding the inefficient and ineffective case by case approach currently being advanced by INAC and other Federal Government departments.
5) INAC must develop in partnership with First Nations in the Northwest Territory and Yukon Territory strategic measures to support the full and proper operation of First Nations child and family service agencies in the territories including, but not limited to, supporting culturally based and community based child welfare and the provision of adequate and flexible financial resources.
6) INAC must not implement the plan to place BC First Nations child and family service agencies or agencies in New Brunswick on actual reimbursement for maintenance costs until a viable plan has been developed in partnership with First Nations that ensures the full and proper operation of agencies serving less than 1000 First Nations children on reserve also known as "small agencies". This plan should be reviewed by independent expert(s) selected in partnership with First Nations before implementation and should be evaluated over time to inform possible adjustments.

7) INAC must immediately provide training to INAC staff, particularly at the senior levels, so they are fully briefed on all reports, including the reports by the Auditor General of Canada, on INAC's First Nations child and family services program so they are in a better position to implement outstanding recommendations.
8) INAC must direct its legal counsel to allow the Canadian Human Rights Tribunal to decide the case on First Nations child and family services on the merits -- not on legal loopholes.
9) In light of the particular vulnerability of First Nations children and families served by child welfare on reserves and the ongoing concerns regarding INAC's management of the First Nations child and family services program, INAC should be required to report regularly to The Standing Committee on Aboriginal Affairs and Northern Development on its implementation of the recommendations of the Auditor General of Canada's report on First Nations child and family services.

REFERENCES

Auditor General of Canada (2008). *First Nations child and family services program-Indian and Northern Affairs Canada. 2008 May: Report of the Auditor General of Canada*. Retrieved October 4, 2009 from http://www.oag-bvg.gc.ca/Internet/English/aud_ch_oag_200805_04_e_30700.html#hd3a

Department of Indian Affairs and Northern Development (n.d.) First Nations Child and Family Services (FNCFS) Q's and A's. Retrieved on July 10, 2010 from http://www.fnwitness.ca/docs/INAC-Access-to-Info-Q&A.pdf

Department of Indian and Northern Affairs Canada (2005). *First Nations child and family services national program manual.* Ottawa: Indian and Northern Affairs Canada.

Department of Indian and Northern Affairs Canada (2010). Implementation evaluation of the enhanced prevention approach (EPFA) in Alberta: Preliminary findings. Presented to the Evaluation, Performance Measurement and Review Committee.

Fritz, Y (2010). *Gathering today for our Aboriginal children's future: Inaugural meeting report.* Edmonton: Ministry for Children and Youth Services, Government of Alberta.

Johnston, O (February 26, 2010). Odette Johnston, Sworn: cross examination by Mr. Champ. Retrieved November 29, 2010 at http://www.fncfcs.com/sites/default/files/fnwitness/Cross-exam-Johnston_Feb26-2010.pdf

Loxley, J, De Riviere, L, Prakash, T, Blackstock, C, Wien, F, & Thomas Prokop, S (2005). *Wen:de: The journey continues.* Ottawa: First Nations Child and Family Caring Society of Canada.

McDonald, R & Ladd, P (2000). *Joint national policy review of First Nations child and family services joint national policy review.* Ottawa, ON: Assembly of First Nations.

Standing Committee on Public Accounts (2009). *Chapter 4: First Nations child and family services program – Indian and Northern Affairs Canada of the May 2008 report of the Auditor General: Report of the Standing Committee on Public Accounts.* Retrieved March 24, 2009 from http://www.fncaringsociety.com/docs/402_PACP_Rpt07-e.pdf

This is Exhibit "C" to the affidavit of Cindy Blackstock, sworn before me this 22nd day of November, 2013

A Commissioner for taking Affidavits etc.

Shannon Marie Kack, a Commissioner, etc., Province of Ontario, while a student-at-law. Expires September 13, 2016

2012 Edition

Are We Doing Enough?

A status report on Canadian public policy and child and youth health

Canadian Paediatric Society

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Background

Canada's children and youth are inheriting many of the challenges that face our world, and it is our collective responsibility to prepare them for a complex future. As families, communities and decision-makers there is much we can do to ease their way. This report highlights what governments need to do to support the health, safety and well-being of children and youth, to better protect them today and to prepare for tomorrow.

Legislative and regulatory actions can strengthen parents and families in their efforts to raise healthy, safe and competent children. There are many examples of how legislation and public policy have improved conditions for children and youth, such as seat belt and helmet laws. This report reviews current policy on several fronts, suggests improvements and brings critical issues to the forefront of the public policy agenda.

In this fourth edition of *Are We Doing Enough?*, the Canadian Paediatric Society (CPS) continues to assess key indicators of child and youth health at the provincial/territorial and federal levels. In addition to rating progress on these indicators, we outline specific actions to improve the legislative and public policy environments. These actions are based on clear need and on evidence that government intervention is effective. We hope this approach will provide direction to help policy-makers act in the best interests of children and youth.

The two-year interval between reports allows time for policy changes to take place, and in some areas improvements have been made. For example, provinces and territories continue to strengthen anti-smoking laws that protect kids. Legislation or policies have been introduced to improve the mental health status of children and youth, and to pull them out of poverty. But there is still much more to be done. Among the new key issues evaluated in this year's report are newborn hearing screening and an enhanced 18-month well-baby visit.

Are We Doing Enough? assesses public policy in four major areas:

- Disease prevention
- Health promotion
- Injury prevention
- Best interests of children and youth

Information in this report is current as of January 3, 2012 and was obtained from government documents, websites and personal correspondence.

Summary

The impact of the early years on a child's chances of success later in life is indisputable. Thanks to advances in our understanding of the relationship between early experience, brain development and outcomes, we now know that the first years of life offer unique opportunities for individual children, their families, and for society as a whole.[1] We have long known that protecting children's health and wellness improves their ability to contribute as adults. Now, mounting evidence from economists makes a forceful argument for investing early in child health and development as an important driver of economic growth.

The Canadian Paediatric Society works with many agencies and organizations to support the health and well-being of children and youth. Governments are key players: their legislative powers can help to safeguard many key aspects of child health and well-being, and to create a public environment that nurtures growth and development. Government-led health promotion strategies have substantial protective and preventive powers—to save lives, and to prevent injury, disability and disease.

The CPS is concerned that too few improvements have been made since the third edition of this report was published in 2009. In fact, Canada's children and youth may be losing ground on the public policy front. While the recent recession has, justifiably, focused government attention on the economy, we contend that children and youth remain our most powerful assets. More than that, they offer the best possible return on public investment toward ensuring a strong economy and a healthy nation.

Childhood vulnerability

Children's opportunities for health, emotional well-being and life success are determined in large part by their early development.[2] A deprived environment can leave a child with life-long deficits, while high-quality early learning and care help to stimulate cognitive and social development.

Research suggests that more than one-quarter of Canadian children may not be fully prepared to learn when they begin kindergarten. Over 27% fall short on at least one measure of physical, social, emotional or cognitive development.[3] Intervening in high school may come too late: some children will never catch up.[4] While disadvantaged children are more vulnerable, middle-class children are also at risk, making early vulnerability a widespread problem.[5] In addition to the effects on individuals, such as poorer health and lower levels of school achievement, early vulnerability can also lead to societal issues like greater dependence on welfare and a higher likelihood of criminal behaviour.[6,7] The quality of the labour market also suffers, with grave economic consequences. Clear links have been shown between average test scores in school and economic growth rates.[8]

Development before the age of six is a critical issue for everyone, including business and government leaders.[9] Some economists are raising the alarm that our current rate of vulnerability will "dramatically deplete our future stock of human capital."[10] Our standing among the world's richest countries lays bare these failures. Canada lags far behind most wealthy Western nations, ranked last in terms of support for family policy and early child development by both the Organization for Economic Co-operation

and Development (OECD) and the United Nations Children's Fund (UNICEF).[11] In a recent UNICEF report, Canada met only one of 10 benchmarks for protecting children in their most vulnerable and formative years.[12]

Compelling economic arguments

Economists agree that the most cost-effective human capital interventions occur among young children.[13] Beyond the long-term benefit of children's future participation in the workforce, data is mounting on the value of early investments in children and youth.

Child poverty: Aside from its social implications, child poverty leads to higher health care costs and exacts an enormous toll on human potential and economic productivity. Not only does child poverty affect future prosperity, it costs taxpayers today as well. Estimates for British Columbia show that poverty costs that province between $8 billion and $9 billion annually, while a comprehensive program to reduce poverty would cost between $3 billion and $4 billion per year.[14]

Early learning and child care: Estimates of the return to society on dollars spent in the early childhood years vary, but they are significant—from $4 to $8 for every $1 spent.[15] One recent study showed that a provincially-funded early learning and child care program more than pays for itself by increasing tax revenues from working parents.[16] Early childhood education and care enhances parental employability, helps to generate millions in tax revenues and reduces the need for expensive remedial programs later on.[17]

Mental illness: Mental illness is the second leading cause of disability and premature death in Canada. While its human costs may be nearly incalculable, estimates of the economic cost of mental illness range from $14 billion to $51 billion a year when lost productivity is included.[18] Prevention and early intervention are known to be less expensive and more effective than later treatment.[19] Early action provides better health outcomes, increased contributions to society and the workforce, and cost-savings to the health care, justice and social service systems.[20]

Further examples of the cost savings and effectiveness of government action are provided throughout this report. Of course, to understand the impact of specific policies and interventions, Canada needs a robust monitoring system with an ongoing flow of quality information on current early child development, key determinants of health and long-term developmental outcomes.[21] The CPS calls on the federal and provincial/territorial governments to work together to develop a coordinated monitoring system that would fill in the gaps in data collection as well as helping to integrate research, best practice and knowledge exchange. Such a system is crucial to informing policies that affect the health and well-being of young children and youth, and is a key activity in a fully developed society.

The CPS also urges governments to invest in effective early child development and in interventions that optimize the health, well-being and educational achievement of all Canadian children, regardless of geography, socioeconomic status or culture.

Recent neuroscience has shown that children's early experiences are critical to future health, learning and behaviour. This connection is important not only for those of us who care about children and youth but for our nation's future. We don't promote prosperity and health if we don't nurture and support child development.

We strongly encourage all levels of government to consider the recommendations in this report, and to take an active role in reviewing legislation with an eye to keeping young citizens, and the economy they live in, healthy. We owe it to our children and youth to get this right.

Disease Prevention

Publicly funded immunization programs

Infectious diseases were once the leading cause of death in Canada. They now account for less than 5% of deaths, making immunization the most cost-effective and one of the most successful public health efforts of the last century. Universal coverage of paediatric vaccines offers all children and youth protection against many potentially life-threatening diseases.

In addition to a slate of vaccines that have been part of the routine immunization schedule for a number of years, the CPS and the National Advisory Committee on Immunization (NACI) recommend that children and youth receive immunizations against rotavirus, varicella (chickenpox), adolescent pertussis (whooping cough), influenza, and certain forms of meningitis (meningococcal and pneumococcal infections). We also recommend that the human papillomavirus (HPV) vaccine be provided at no charge.

Coverage of these vaccines is not yet universal across the country. While most provinces/territories offer them, not all are administering these vaccines according to the schedule recommended by the CPS and NACI, and the harmonization of immunization schedules across the country has not been achieved.

Publicly funded immunization program measures			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Good	Excellent	Meets all CPS recommendations.
Alberta	Excellent	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Saskatchewan	Good	Good	Initiate a rotavirus immunization program.
Manitoba	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Ontario	Good	Excellent	Meets all CPS recommendations.
Quebec	Good	Good	Add a second dose of varicella vaccine.
New Brunswick	Good	Good	Implement a rotavirus immunization program.
Nova Scotia	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Prince Edward Island	Good	Excellent	Meets all CPS recommendations.
Newfoundland and Labrador	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Yukon	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Northwest Territories	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.
Nunavut	Good	Fair	Initiate a rotavirus immunization program and add a second dose of varicella vaccine.

Excellent: Province/territory provides meningococcal, adolescent pertussis, pneumococcal, varicella, rotavirus, influenza, and HPV vaccines according to the schedule recommended by the Canadian Paediatric Society and the National Advisory Committee on Immunization, at no cost to individuals.
Good: Province/territory provides all but one of the recommended vaccines.
Fair: Province/territory offers all but two of the recommended vaccines.
Poor: Province/territory only offers three or fewer of the recommended vaccines.

Disease Prevention

Measures to prevent child and youth exposure to smoking

Legislation to protect children and youth from the effects of smoking continues to be strengthened. All provinces and territories enforce smoking bans in public places. While some legislation still allows for designated smoking areas, the trend is to reduce places where people can smoke. Alberta, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, and the Yukon Territory now ban smoking on public patios and in other outdoor hospitality venues. Yukon Territory stands out in also banning smoking from all postsecondary institutions.[22]

All provinces and territories continue to protect children and youth in cars, with Saskatchewan and Manitoba joining others to ban smoking in cars where children are present. Only Alberta, Quebec, the Northwest Territory, Nunavut and the Yukon Territory lack legislation prohibiting smoking in cars in the presence of young passengers.[23]

The smoking rate among teens aged 15 to 19 years dropped to about 13% in 2009, down from 15% between 2006 and 2008. Since statistics were first recorded in 1999, the number of young smokers in Canada has dropped by over half (53%). Ontario experienced the most significant annual reduction and has the lowest percentage of youth smoking in Canada, dropping from 13% in 2008 to 9% in 2009. Youth in Quebec, Manitoba and Saskatchewan continue to smoke more than the rest of the country, at 18%.[24] Smoking rates among youth in the Northwest Territories are unavailable.

Among Aboriginal youth in grades 9 through 12 living off-reserve, 25% reported smoking in 2008, versus 10% of non-Aboriginal youth.[25] This group was also more likely to be exposed to second-hand smoke at home and in cars (37% and 51%) than non-Aboriginal youth (20% and 30%).

The price of cigarettes is a deterrent to adolescent smoking.[26] Provincial/territorial taxes affect the price of cigarettes and are one indication of how aggressively governments are trying to discourage smoking. In 2011, the Northwest Territories levied the highest price on cigarettes, while Quebec remains the province where cigarettes are least expensive.[27] Nova Scotia increased prices more than any other jurisdiction, raising the cost of cigarettes to the second-highest in Canada. However, Quebec and Ontario lead the way in enforcing laws against contraband cigarettes, being the only provinces where individuals have been charged with possessing illegal cigarettes as well as for selling them.[28,29]

Children and youth living in poverty continue to be at greater risk for smoking. They also have a lower success rate when trying to quit, with cessation rates less than half of those achieved in the highest income groups.[30]

There is also compelling evidence that nicotine is neurotoxic to the fetal brain, which may have negative lifelong developmental consequences.[31]

Measures to prevent child and youth exposure to smoking			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Excellent	Excellent	Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Alberta	Good	Good	Enact legislation to ban smoking in cars with occupants under the age of 16. Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Saskatchewan	Good	Excellent	Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Manitoba	Good	Excellent	Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Ontario	Good	Excellent	Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Quebec	Good	Good	Enact legislation to ban smoking in cars with occupants under the age of 16. Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
New Brunswick	Excellent	Excellent	Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Nova Scotia	Excellent	Excellent	Nova Scotia is a leader in Canada, with a province-wide ban on smoking in outdoor public spaces.
Prince Edward Island	Good	Excellent	Prince Edward Island is a leader in Canada, with a province-wide ban on smoking in outdoor public spaces.
Newfoundland and Labrador	Good	Excellent	Newfoundland and Labrador is a leader in Canada, with a province-wide ban on smoking in outdoor public spaces.
Yukon	Excellent	Excellent	Yukon Territory is a leader in Canada, with a province-wide ban on smoking in outdoor public spaces.
Northwest Territories	Good	Good	Enact legislation to ban smoking in cars with occupants under the age of 16. Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.
Nunavut	Good	Good	Enact legislation to ban smoking in cars with occupants under the age of 16. Implement a province-wide ban on smoking in outdoor public places to complement existing municipal bans.

Excellent: Province/territory has a ban on smoking in all public places. Legislation has been introduced to protect children and youth from tobacco in automobiles. The province/territory has prevention programs specific to youth.
Good: Province/territory has passed legislation for a province- or territorial-wide smoking ban.
Fair: Province/territory has legislation banning smoking in some, but not all, public places.
Poor: Province/territory has no smoking ban.

Health Promotion

Newborn hearing screening

Permanent hearing loss is one of the most common congenital disorders, with an estimated incidence of one to three per thousand live births. Universal newborn hearing screening (UNHS) results in early diagnosis of hearing impairment and interventions that allow for improved outcomes in hearing-impaired children.[32]

Without screening, children with hearing loss are typically not diagnosed until they reach two years of age, with mild and moderate hearing losses often going undetected until children are in school. Universal screening would detect most infants experiencing hearing loss by the age of three months with intervention in place by the time they reach six months of age.

Children with hearing loss who are not supported by early intervention show irreversible shortfalls in communication and psychosocial skills, cognition and literacy. The impacts of deafness can include lower academic achievement, underemployment, poor social adaptation and psychological distress, and are directly proportional to the severity of hearing loss and the time lag between diagnosis and intervention. Evidence shows that infants who are diagnosed and receive intervention before six months of age score 20 to 40 percentile points higher on school-related measures (language, social adjustment and behaviour) compared with hearing-impaired children who receive intervention later.

The two-step screening procedure implemented in most UNHS programs is highly effective and cost-effective, particularly considering the lifetime costs of deafness. One Quebec study found that implementing a province-wide UNHS program would cost approximately $5.3 million (in 2001), but would ultimately result in a net benefit of $1.7 million per year to taxpayers.[33]

While some jurisdictions are moving in this direction, the Canadian Paediatric Society recommends that provinces and territories provide universal hearing screening for all newborns via a comprehensive, linked system of screening, diagnosis and intervention. Canadian infants deserve the advantages of early hearing loss detection and timely intervention.

Newborn hearing screening			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	NOT ASSESSED	Excellent	Meets all CPS recommendations.
Alberta		Fair	Implement a universal newborn hearing screening and intervention program. Screening is only available in selected hospitals.
Saskatchewan		Fair	Implement a universal newborn hearing screening and intervention program. Screening is only available in selected hospitals.
Manitoba		Poor	Implement a universal newborn hearing screening and intervention program.
Ontario		Excellent	Meets all CPS recommendations.
Quebec		Good	Universal program has been announced but is not yet implemented.
New Brunswick		Excellent	Meets all CPS recommendations.
Nova Scotia		Excellent	Meets all CPS recommendations.
Prince Edward Island		Excellent	Meets all CPS recommendations.
Newfoundland and Labrador		Fair	Implement a universal newborn hearing screening and intervention program. Screening is only available in selected hospitals.
Yukon		Good	Meets all CPS recommendations. However, the program is only offered in Whitehorse due to staffing shortages.
Northwest Territories		Good	Meets all CPS recommendations. However, the program is only offered in Yellowknife due to staffing shortages.
Nunavut		Poor	Implement a universal newborn hearing screening and intervention program. Nunavut faces particular challenges in attracting the trained audiologists needed for a program.

Excellent: Province/territory has a fully funded, integrated screening program which is enforced through legislation, with screening by one month of age, confirmation of the diagnosis by three months, and intervention by six months.

Good: Province/territory has a fully funded, integrated screening program, with screening by one month of age, confirmation of the diagnosis by three months, and intervention by six months.

Fair: Province/territory has a partial program, with testing provided for children at risk of hearing loss (e.g., infants in neonatal intensive care units).

Poor: Province/territory does not offer newborn hearing screening.

Health Promotion

An enhanced 18-month well-baby visit

With our better understanding of the link between early child development and health and well-being later in life, well-baby visits are emerging as key opportunities to assess and positively affect life outcomes. For some families, the 18-month visit might be the last regularly scheduled visit with a primary care provider before a child enters school. As such, this visit provides a critical opportunity to examine and evaluate a child's progress, to help parents nurture their child's development, and to identify areas where a child or family is having difficulty. It also offers an opening for introducing parents to community resources and supports.

Well-baby visits currently focus on immunization and identifying abnormalities, but the 18-month check-up can be a pivotal assessment of developmental health. Not only does it happen at an important point in a child's development, it comes at a stage when families are dealing with formative issues such as child care, behaviour management, nutrition/eating patterns, and sleep. The 18-month assessment is an excellent opportunity to counsel and reinforce healthy behaviors, and to promote positive parenting, injury prevention and literacy. Screening for parental health issues, including mental health, domestic abuse and substance misuse can also take place at this visit.

The Canadian Paediatric Society supports a stronger system of early childhood development and care across Canada and recommends that all provinces and territories establish an enhanced well-baby visit. A standardized developmental screening tool and a clinician-prompt health guide with evidence-based suggestions for healthier development should be used.[34]

This systematic assessment must be supported by a special fee code that reflects the length of time required to conduct a detailed assessment.

An enhanced 18-month well-baby visit			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	NOT ASSESSED	Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Alberta		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Saskatchewan		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Manitoba		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Ontario		Excellent	Meets all CPS recommendations.
Quebec		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
New Brunswick		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Nova Scotia		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Prince Edward Island		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Newfoundland and Labrador		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Yukon		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Northwest Territories		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Nunavut		Poor	Initiate an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.

Excellent: Province/territory has initiated an enhanced well-baby visit at 18 months, with standard guidelines and a special fee code.
Poor: Province/territory has not initiated an enhanced well-baby visit at 18 months.

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Health Promotion

Child and youth mental health plans

When it comes to mental health, there is good reason to focus on children and youth. An estimated 70% of adults living with mental health problems had their symptoms develop during childhood or adolescence.[35] Suicide attempts are at their peak among 15- to 19-year-olds.[36] Mental health problems tend to be chronic, with substantial negative outcomes[37] including higher school drop-out rates, unemployment, poverty and homelessness, and increased risk of criminal behaviour.[38] Prevention and early intervention have been shown to be less expensive and more effective than treatment.[39] Pre-emptive measures result in better health outcomes, improved school attendance and achievement, positive contributions to society and the workforce, and cost-savings on health care, justice and social services.[40]

About 14% of children and youth under 20 years old—1.1 million young Canadians—suffer from mental health conditions that affect their daily lives.[41] Children and youth of low-income families are especially at risk.[42] What is worse, three out of every four children and youth who need specialized treatment services do not receive them.[43]

While access to mental health services continues to be inadequate, some jurisdictions are increasing their investments in mental health. Since 2009, a number of governments have introduced mental health plans, including British Columbia, Alberta, Manitoba, Ontario, New Brunswick, Nunavut and Northwest Territories.

Other provinces have now joined Quebec in changing their physician billing codes to recognize the time needed to provide care to children and youth with mental health issues.

The CPS is encouraged by the work of a number of provinces and territories to develop mental health strategies. Efforts must now be directed toward implementing strategies to address specific, critical child and youth mental health needs.

Child and youth mental health care plans			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Good	Excellent	Meets all CPS recommendations.
Alberta	Good	Excellent	Meets all CPS recommendations.
Saskatchewan	Good	Good	Strengthen engagement of paediatricians in the mental health plan and set benchmarks for service delivery.
Manitoba	Good	Good	Strengthen engagement of paediatricians in the mental health plan and set benchmarks for service delivery.
Ontario	Fair	Excellent	Meets all CPS recommendations.
Quebec	Good	Good	Set benchmarks for service delivery.
New Brunswick	Fair	Excellent	Meets all CPS recommendations.
Nova Scotia	Fair	Fair	Develop a specific mental health strategy for children and youth with benchmarks for service delivery. Ensure that process and consultations informing this plan are ongoing.
Prince Edward Island	Fair	Fair	Develop a specific mental health strategy for children and youth with benchmarks for service delivery above and beyond the current plan for an addictions program.
Newfoundland and Labrador	Fair	Fair	Develop a specific mental health strategy for children and youth with benchmarks for service delivery.
Yukon	Poor	Poor	Develop a specific mental health strategy for children and youth with benchmarks for service delivery.
Northwest Territories	Fair	Good	Set benchmarks for service delivery.
Nunavut	Fair	Good	Set benchmarks for service delivery.

Excellent: Province/territory has a comprehensive mental health plan for children and youth with timely access to appropriate mental health professionals, including a wait time strategy with specific benchmarks. The plan has targeted goals for service improvement, including access to non-medical mental health services at no cost to families and a mental health promotion component. The development of the plan involves input from community paediatricians and recognizes their role in evaluating and meeting the mental health needs of children and youth.

Good: Province/territory has a mental health plan for children and youth with specific goals for service improvement, including access to non-medical mental health services at no cost to families, and a mental health promotion component. The development of the plan involves input from community paediatricians and recognizes their role in evaluating and meeting the mental health needs of children and youth.

Fair: Province/territory has a mental health plan for children and youth but does not recognize the role of paediatricians in delivering mental health care.

Poor: Province/territory has no mental health plan for children and youth.

Health Promotion

Paediatric health human resource strategy

Canada's public health system is designed to provide access to all medically necessary services on a universal basis. For children and youth this sometimes means the specialist services of a paediatrician. Unfortunately, specialist health care for children and youth is threatened by a significant shortage of paediatricians and long wait lists. Ensuring that our health care system better meets the needs of children and youth is not only a moral obligation but a wise economic investment.

While universal coverage for physician services supports equal access to health care, people from higher socio-economic groups are more likely to receive optimal care, thereby widening health disparities.[44] Canadians families earning lower incomes tend to use more expensive emergency and hospital services more often than families with higher incomes, who also have better access to specialists.[45]

Surveys by the Canadian Paediatric Society reveal that the paediatric work force is aging, and there are not enough trainees to offset anticipated retirements. In 2005, about 11% of those surveyed said they would retire by 2010, while another 36% planned to reduce their work hours.[46] Smaller communities are particularly vulnerable as over 80% of Canadian paediatricians work in towns or cities with populations of over 100,000.[47]

Federal, provincial and territorial paediatric human resources strategies that can respond to the health needs of children and youth must be developed in collaboration with provincial paediatric leaders. They will need to address issues such as recruitment and retention, human resource planning, medical training and professional development.

Paediatric health human resource strategy			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Poor	Poor	Develop a paediatric-specific human resource plan.
Alberta	Poor	Poor	Develop a paediatric-specific human resource plan.
Saskatchewan	Poor	Poor	Develop a paediatric-specific human resource plan.
Manitoba	Poor	Poor	Develop a paediatric-specific human resource plan.
Ontario	Poor	Poor	Develop a paediatric-specific human resource plan.
Quebec	Poor	Poor	Develop a paediatric-specific human resource plan.
New Brunswick	Poor	Poor	Develop a paediatric-specific human resource plan.
Nova Scotia	Poor	Poor	Develop a paediatric-specific human resource plan.
Prince Edward Island	Poor	Poor	Develop a paediatric-specific human resource plan.
Newfoundland and Labrador	Poor	Poor	Develop a paediatric-specific human resource plan.
Yukon	Poor	Poor	Develop a paediatric-specific human resource plan.
Northwest Territories	Poor	Poor	Develop a paediatric-specific human resource plan.
Nunavut	Poor	Poor	Develop a paediatric-specific human resource plan.

Excellent: Province/territory has a paediatric human resources plan that is less than three years old, addresses both generalist and subspecialist supply and demand issues, was developed in consultation with paediatricians, and is endorsed by the provincial/territorial paediatric association or by the paediatric section of the provincial/territorial medical association.
Good: Province/territory has a paediatric human resources plan that takes general and subspecialist paediatricians into account and was developed within the last six years.
Fair: Province/territory has a paediatric human resources plan that was not developed with paediatricians and has not been endorsed by the provincial/territorial paediatric association.
Poor: Province/territory has no paediatric human resources plan.

Injury Prevention

Bicycle helmet legislation

Most injuries sustained by children and youth are both predictable and preventable, so there is every reason for governments to legislate proactively. Serious unintended injuries (including those caused by motor vehicle collisions) remain the leading cause of death in children 1 to 14 years of age in Canada. When bicycles are involved, the statistics are especially grim. Every year, about 20 young people aged 19 and under die due to bicycle-related injuries, and another 50 or so experience permanent disability.[48]

In 2009-2010, 1364 children or youth were hospitalized for serious bicycle injuries.[49] A properly fitted bike helmet decreases the risk of serious head injury by as much as 85% and brain injury by 88%.[50] Yet among youth 12 to 19 years of age, only 31.8% said they always wore a bicycle helmet when riding.[51] Boys aged 10 to 14 sustain over one-third of all cycling-related injuries, while up to 70% of deaths occur in boys aged 10 to 19.[52]

With legislation and subsequent increased helmet use, head injuries have dropped by more than half in the past decade.[53] Research shows that more people wear helmets in jurisdictions with mandatory bike helmet laws and injury rates are, on average, 25% lower than in areas without helmet legislation.[54] If every cyclist wore a helmet, it is estimated that most (4 out of every 5) head injuries could be prevented.[55]

The direct and indirect costs of cycling injuries on roadways were $443 million in 2004, with children and youth accounting for over half that cost.[56] Aside from the pain and anguish that could be averted, it is estimated that $1 invested in bicycle helmets saves $29 in injury costs.[57] Despite this, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, and all three territories, do not have bicycle helmet legislation.[58]

The Canadian Paediatric Society recommends that everyone riding a bicycle be required to wear a CSA-approved helmet. Laws should be accompanied by enforcement and public education, which have been shown to increase helmet use.[59]

Bicycle helmet legislation			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Excellent	Excellent	Meets all CPS recommendations.
Alberta	Good	Good	Amend current legislation to include all age groups.
Saskatchewan	Poor	Poor	Enact legislation that requires all age groups to wear helmets. Some education programs are available.
Manitoba	Poor	Poor	Enact legislation that requires all age groups to wear helmets. Low-cost helmets and education programs are available.
Ontario	Good	Good	Amend current legislation to include all age groups.
Quebec	Poor	Poor	Enact legislation that requires all age groups to wear helmets. Some education programs are available.
New Brunswick	Excellent	Excellent	Meets all CPS recommendations.
Nova Scotia	Excellent	Excellent	Meets all CPS recommendations.
Prince Edward Island	Excellent	Excellent	Meets all CPS recommendations.
Newfoundland and Labrador	Poor	Poor	Enact legislation that requires all age groups to wear helmets.
Yukon	Poor	Poor	Enact legislation that requires all age groups to wear helmets.
Northwest Territories	Poor	Poor	Enact legislation that requires all age groups to wear helmets.
Nunavut	Poor	Poor	Enact legislation that requires all age groups to wear helmets.

Excellent: Province/territory has legislation requiring all cyclists to wear helmets, with financial penalties for non-compliance. Parents are responsible for ensuring their child wears a helmet.
Good: Province/territory has legislation requiring all cyclists under 18 years of age to wear a helmet.
Poor: Province/territory has no legislation on bike helmets.

Injury Prevention

All-terrain vehicle (ATV) safety legislation

ATVs are used widely in rural Canada for recreation, work and transportation. These vehicles are dangerous when used by children and young adolescents, who tend to take more risks and lack the experience, physical size and strength, and cognitive and motor skills to operate an ATV safely.

There was a 31% increase in hospitalizations for ATV injuries across Canada between the years 2001-2002 and 2009-2010.[60] The number of serious injuries involving ATVs is growing faster than for any other major wheel- or water-based activity,[61] with almost 20% of injuries involving trauma to the head.[62] A recent study in Alberta showed that serious ATV injuries contributed to health care costs in excess of $6.5 million.[63]

Surveys in the U.S. and Canada show that youth rarely follow best practices for ATV use, with less than 50% and as few as 24% of those surveyed wearing helmets consistently, and less than one-quarter taking safety training courses.[64] There is little evidence that youth-sized vehicles with limited speed capacity are safer. The risk to a child or youth operating a youth model ATV is still almost twice as high as that of an adult on a larger machine.

One year after Nova Scotia restricted children under the age of 14 years from operating ATVs, there was a 50% reduction in ATV-related injuries for that age group.[65]

The CPS is disappointed by the lack of comparable legislation in most jurisdictions to date, and urges provincial and territorial governments to introduce and enforce off-road vehicle legislation that—at minimum—requires:

- an operator to be at least 16 years of age,
- restricting the number passengers to the maximum for which the vehicle was designed,
- the compulsory use of helmets and other protective clothing,
- no operation while under the influence of alcohol or other substances, and
- mandatory approved training and vehicle registration.

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All-terrain vehicle (ATV) safety legislation			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Poor	Fair	Prohibit ATV use for children and youth under age 16 on both private and public lands. Helmet use and vehicle training are already mandatory.
Alberta	Poor	Poor	Prohibit ATV use for children and youth under age 16. Make helmet use and vehicle training mandatory.
Saskatchewan	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both private and public lands. Make helmet use mandatory on private land as well as public land, and institute mandatory safety training.
Manitoba	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both private and public lands. Make helmet use and vehicle training mandatory.
Ontario	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both private and public lands. Make helmet use mandatory on private land as well as public land, and institute mandatory safety training.
Quebec	Good	Good	Prohibit ATV use, regardless of the size of the machine, for children and youth under age 16. Helmet use and vehicle training are already mandatory.
New Brunswick	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both public and private lands. Helmet use and vehicle training are already mandatory.
Nova Scotia	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both public and private lands. Helmet use and vehicle training are already mandatory.
Prince Edward Island	Fair	Fair	Prohibit ATV use for children and youth under age 16 on both private and public lands. Helmet use and vehicle training are already mandatory.
Newfoundland and Labrador	Good	Good	Prohibit ATV use for children and youth under age 16 rather than 14 years. Helmet use is already mandatory. Institute mandatory safety training.
Yukon	Poor	Poor	Prohibit ATV use for children and youth under age 16. Make helmet use and vehicle training mandatory.
Northwest Territories	Fair	Fair	Prohibit ATV use for children and youth under age 16. Helmet use is already mandatory. Institute mandatory safety training.
Nunavut	Fair	Fair	Prohibit ATV use for children and youth under age 16. Helmets are already mandatory. Institute mandatory safety training.

Excellent: Province/territory has banned ATV operation for children under 16 years old and made driver education and helmet use mandatory.
Good: Province/territory has banned ATV operation for children under 14 years old and made driver education and helmet use mandatory.
Fair: Province/territory requires some adult supervision of children under 15 years old and restricts where youth under 16 years can operate an ATV.
Poor: Province/territory has no ATV legislation, or the minimum operating age is low.

Injury Prevention

Booster seat legislation

Motor vehicle collisions are the leading cause of death among Canadian children over one year of age.[66,67] Child passenger restraints reduce the risk of serious injury by between 40% and 60%.[68,69] In fact, improved car seat design and the increased use of child restraints resulted in a 50% drop in the number of child passengers who died in motor-vehicle accidents between 1993 and 2006.[70]

Although all provinces and territories require by law the use of restraint systems for children up to about 4 years old, children aged 4 to 8 years often graduate prematurely to seat belt use, increasing their risk of injury, disability and death. In a collision, children using seat belts instead of booster seats are 3.5 times more likely to suffer a serious injury and 4 times more likely to suffer a head injury.[71] Yet while 78% of parents support the use of booster seats,[72] only 30% are using them.[73]

The CPS recommends that provinces and territories require children weighing between 18 kg and 36 kg and travelling in a vehicle to be properly secured in a booster seat in the back seat. Legislative changes should be complemented by appropriate enforcement measures and public education programs to ensure that parents adopt and use booster seats properly. Legislation should be uniform across Canada to make it easier for families to comply with regulations.

Booster seat legislation			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Excellent	Excellent	Meets all CPS recommendations.
Alberta	Poor	Poor	Enact booster seat legislation.
Saskatchewan	Poor	Poor	Enact booster seat legislation.
Manitoba	Poor	Fair	Enact booster seat legislation for children weighing 22 kg to 36 kg.
Ontario	Excellent	Excellent	Meets all CPS recommendations.
Quebec	Good	Good	Revise legislation to provide for a child's height (a minimum 145 cm) as well as weight.
New Brunswick	Excellent	Excellent	Meets all CPS recommendations.
Nova Scotia	Excellent	Excellent	Meets all CPS recommendations.
Prince Edward Island	Excellent	Excellent	Meets all CPS recommendations.
Newfoundland and Labrador	Excellent	Excellent	Meets all CPS recommendations.
Yukon	Fair	Fair	Enact booster seat legislation for children weighing 22 kg to 36 kg.
Northwest Territories	Poor	Poor	Enact booster seat legislation.
Nunavut	Poor	Poor	Enact booster seat legislation.

Excellent: Province/territory has legislation in place requiring children to be in an approved booster seat until they reach the height of 145 cm or 9 years of age, *and* a weight minimum of 18 kg to 36 kg. Public education programs are in place.

Good: Province/territory has legislation in place requiring children to be in an approved booster seat until they reach the height of 145 cm or an age specified as less than 9 years, and a weight minimum of 18 kg to 22 kg. Public education programs are in place.

Fair: Province/territory requires the use of a booster seat after children have outgrown their front-facing safety seat, but legislation is based on age and/or weight criteria without mentioning height. Public education programs are in place.

Poor: Province/territory has no booster seat legislation for children weighing over 18 kg.

Injury Prevention

Snowmobile safety legislation

In Canada, snowmobiling has the highest rate of serious injury of any popular winter sport, with younger people the most likely victims of such injuries. Head injuries are the leading cause of mortality and serious morbidity associated with snowmobiling. Such injuries usually happen when snowmobiles collide or overturn during operation. Children have also been injured while being towed by snowmobiles in a variety of devices.

No uniform code of provincial or territorial law governs the use of snowmobiles by children and youth, making it confusing for parents, who may cross provincial/territorial boundaries while snowmobiling.

There is little evidence to support the effectiveness of operator safety certification, and no research on its influence on snowmobile-related injuries to people younger than 16 years old. Also, many children and adolescents do not have the required strength and skills to operate a snowmobile safely.

The Canadian Paediatric Society recommends that children and youth under 16 years of age not be permitted to operate snowmobiles.[74] Snowmobiles should not be used to tow anyone on a tube, tire, sled or saucer. The CPS also recommends a graduated licensing program for snowmobilers 16 years of age and older.

Snowmobile safety legislation			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Poor	Poor	Enact snowmobile safety legislation.
Alberta	Poor	Poor	Prohibit youth under age 16 from operating a snowmobile. Mandate helmet use and safety courses.
Saskatchewan	Good	Good	Prohibit youth 12 to 16 years of age from operating a snowmobile and make helmet use mandatory in all situations.
Manitoba	Fair	Fair	Prohibit youth under age 16 from operating a snowmobile. Make helmet use and safety training mandatory in all situations.
Ontario	Fair	Fair	Prohibit youth under 16 from operating snowmobiles and make helmets and safety training mandatory in all situations.
Quebec	Excellent	Excellent	Meets all CPS recommendations.
New Brunswick	Good	Good	Prohibit youth under age 16 from operating a snowmobile. Helmet use and safety training are mandatory.
Nova Scotia	Good	Good	Prohibit youth under age 16 from operating a snowmobile. Helmet use and safety training are mandatory.
Prince Edward Island	Fair	Good	Prohibit youth 14 to 16 years of age from operating a snowmobile and mandate safety training. Helmet use is mandatory.
Newfoundland and Labrador	Poor	Fair	Prohibit youth 12 to 16 years of age from operating a snowmobile and mandate safety training. Helmet use is mandatory.
Yukon	Fair	Good	Prohibit youth under age 16 from operating a snowmobile and mandate safety training. Helmet use is mandatory.
Northwest Territories	Fair	Fair	Prohibit youth under age 16 from operating a snowmobile. Make helmet use and safety training mandatory in all situations.
Nunavut	Fair	Fair	Prohibit youth under age 16 from operating a snowmobile. Make helmet use and safety training mandatory in all situations.

Excellent: Province/territory has snowmobile safety legislation prohibiting children under 6 years old as passengers, and youth under 16 years old from operating snowmobiles for recreational purposes. Youth 16 years and over with a graduated driver's licence may operate snowmobiles after completing an approved training program. Helmets are mandatory.

Good: Province/territory has snowmobile safety legislation with a minimum driver age of 14 years, requires drivers to complete an approved training program, and places restrictions on snowmobile use. Helmets are mandatory.

Fair: Province/territory has some requirement for adult supervision of children and youth under 15 years old, and restricts where youth under 16 years can operate a snowmobile. Helmets are mandatory.

Poor: Province/territory has no legislation covering the use of snowmobiles by children and youth, or the minimum age for operating a snowmobile is less than 14 years.

Best Interests of Children and Youth

Child poverty reduction

There is ample evidence that child poverty can lead to poor health outcomes during adulthood, including cardiovascular disease and stroke, type II diabetes and mental health issues.[75] Family socioeconomic status is the primary marker for health disparities among Canadian children and youth.[76,77] Poor children are at greater risk of low birthweight (<2500 grams) and typically have higher rates of death and illness, lower rates of growth, and more behavioural and developmental problems.[78,79] They may also achieve lower levels of education, thus increasing the likelihood of lifelong poverty.[80]

Despite a unanimous resolution in the House of Commons in 1989 to end child poverty by the year 2000, the gap between rich and poor has widened over the past 20 years.[81] The percentage of Canadian children living in poverty in 2009 (9.5%) was only slightly lower than in 1989 (11.8%) (after-tax figures).[82] In 2009, the first full year following the recession of 2008, 639,000 children still lived in poverty.[83]

Poverty is not a given. It can be eliminated, or at least drastically reduced. Government legislation plays a large role, as shown by the fact that Quebec and Newfoundland and Labrador, which have had poverty reduction strategies in place for a number of years, show reduced poverty rates.[84]

Certain groups continue to be over-represented, including Aboriginal children (1 in 4 lived in poverty in 2008) and single-parent families (more than half of single moms with children under 6 live in poverty). Children with disabilities and children whose families have emigrated recently are also at higher risk of growing up poor.[85]

Internationally, Canada ranked 20th out of 30 wealthy developed nations in child poverty rates as recently as 2007,[86] and has the regrettable distinction of being one of the few nations where child poverty rates were higher than overall poverty rates over the past two decades.[87]

The Canadian Paediatric Society is pleased to see some alleviation of child poverty in a number of provinces and territories. Manitoba and New Brunswick have passed legislation to reduce poverty levels. Prince Edward Island and all three territories are in the process of developing anti-poverty strategies.

The CPS calls upon the remaining provincial governments to set targets and timetables, and for the federal government to show leadership with a national strategy. A number of evidence-based solutions are available, including income support measures, education and job training, and quality child care programs.[88,89] The CPS believes that ending child and youth poverty should receive the same focus as stimulating economic growth. Public accountability is imperative for tracking progress on this critical health issue.

Child poverty reduction			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Poor	Poor	Develop both legislation and a strategy to reduce poverty.
Alberta	Poor	Poor	Develop both legislation and a strategy to reduce poverty.
Saskatchewan	Poor	Poor	Develop both legislation and a strategy to reduce poverty.
Manitoba	Fair	Good	Launched a strategy in 2009 and passed poverty reduction legislation in 2010. Develop specific targets for reducing child poverty.
Ontario	Good	Excellent	Meets all CPS recommendations.
Quebec	Excellent	Excellent	Meets all CPS recommendations.
New Brunswick	Poor	Excellent	Meets all CPS recommendations. Launched a strategy in 2009 and passed poverty reduction legislation in 2010, with specific targets.
Nova Scotia	Fair	Fair	Add specific targets to its strategy for poverty reduction and develop legislation to meet them.
Prince Edward Island	Poor	Poor	Develop both legislation and a strategy to reduce poverty. The province has begun public consultations on poverty reduction.
Newfoundland and Labrador	Excellent	Excellent	Meets all CPS recommendations.
Yukon	Fair	Fair	Finalize strategy and develop poverty reduction legislation with specific targets. A framework for poverty reduction was developed in 2011.
Northwest Territories	Poor	Fair	Develop specific targets for reducing child poverty. Passed poverty reduction legislation in 2010 calling for a strategy.
Nunavut	Poor	Poor	Develop both legislation and a strategy to reduce poverty. Public consultations on poverty reduction are underway.

Excellent: Province/territory has had anti-poverty legislation promoting long-term action and government accountability for at least three years, and has a poverty reduction strategy with specific targets.
Good: Province/territory has a comprehensive poverty reduction strategy with specific targets.
Fair: Province/territory has a poverty reduction strategy or legislation but without specific targets.
Poor: The province territory has no anti-poverty legislation or poverty reduction strategy.

Best Interests of Children and Youth

Jordan's Principle

Jordan's Principle is a child-first policy principle intended to resolve jurisdictional disputes within and between federal and provincial/territorial governments. It applies to all government services for children, youth and families, including health. When a jurisdictional dispute arises around providing any service to a Status Indian or Inuit child, Jordan's Principle requires that the government department of first contact pay for the service without delay or disruption. The paying government can then refer the matter to intergovernmental authorities to pursue repayment of the expense.

Jurisdictional disputes involving the costs of caring for First Nations children are common, with nearly 400 occurring in 12 First Nations child and family service agencies sampled in one year alone.[90] Recently, a Nova Scotia mother and her Band Council filed a court proceeding against the federal government to enforce the rights of her son to equal care and services.[91]

Jordan's Principle honours a young First Nations child from Norway House, Manitoba, who was born with complex medical needs and languished in hospital for two years while the federal and provincial governments argued over who would pay for his at-home care. Jordan died in hospital, having never spent a day in a family home.[92]

While almost all provinces and territories have adopted Jordan's Principle, First Nations children continue to be the victims of administrative impasses. The Canadian Paediatric Society urges governments to implement Jordan's Principle without delay, to work in partnership with First Nations communities on its implementation, and to provide First Nations children and youth with the care they are entitled to.

Jordan's Principle

Province/Territory	2009 Status	2011 Status	Recommended actions
British Columbia	Fair	Fair	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth has been introduced and discussions with the federal government are underway. An implementation plan is needed.
Alberta	Poor	Poor	Discussions with the federal government are underway but a child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Saskatchewan	Fair	Fair	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth has been introduced and interim implementation received unanimous support from First Nations leaders. An implementation plan is needed.
Manitoba	Fair	Fair	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth has been introduced and discussions with the federal government are underway. An implementation plan is needed.
Ontario	Fair	Fair	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth has been introduced and discussions with the federal government are underway. An implementation plan is needed.
Quebec	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
New Brunswick	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Nova Scotia	Good	Good	Tripartite agreement between the federal government, province and Mi'kmaq Family and Children's Services provides a mechanism for dispute-resolution to address children's needs, including special medical requirements.
Prince Edward Island	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Newfoundland and Labrador	Poor	Poor	Discussions with the federal government are underway but a child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Yukon	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Northwest Territories	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.
Nunavut	Poor	Poor	A child-first policy to resolve jurisdictional disputes involving the care of First Nations children and youth needs to be introduced.

Excellent: Province/territory has adopted and implemented a child-first principle to resolve jurisdictional disputes involving services provided to First Nations children and youth.
Good: Province/territory has a dispute resolution process with a child-first principle for resolving jurisdictional disputes involving the care of First Nations children and youth.
Fair: Province/territory has adopted a child-first principle to resolve jurisdictional disputes involving services for First Nations children and youth, but has not yet developed or implemented specific strategy.
Poor: Province/territory has not adopted a child-first principle.

Best Interests of Children and Youth

Child and youth advocate

Canada signed the United Nations Convention on the Rights of the Child over 20 years ago (in May 1990), agreeing to protect and ensure children's rights. That commitment also acknowledges our obligation to ensure that all children are provided with the opportunities they need to develop cognitively, physically, socio-emotionally and spiritually.[93] After all this time, there is still no federal child and youth advocate in Canada to hold the government accountable for this commitment, nor any system of monitoring that includes early childhood outcomes.

With the exceptions of the Northwest Territories, Nunavut and Prince Edward Island, all provinces and territories now have child and youth advocates who focus mainly on children and youth in care. UNICEF notes that "The main task for such institutions is ... ensuring that rights are translated into law, policy and practice."[94]

International literature on child advocacy has determined that the most effective advocates are independent from government and act as stand-alone agencies. A recent review of child advocacy offices found that British Columbia, New Brunswick, Newfoundland and Labrador, Ontario and Saskatchewan had the most successful child advocacy offices, judging by their powers and level of activity.[95] The advocates in Manitoba, Ontario and Saskatchewan have had the most successes in terms of influencing systemic reforms, legislation and policy.

Nevertheless, these offices focus on children and youth in care, while the Canadian Paediatric Society contends that to be truly effective, the mandate of each child advocate must include all children and youth.

At the federal level, a 2007 Senate committee on human rights recommended that Canada establish an independent Children's Commissioner to monitor the protection of children's rights and to ensure that the federal government is held publicly accountable for fulfilling its responsibilities with respect to child and youth protection.[96] This recommendation remains unaddressed.

Child and youth advocate			
Province/Territory	**2009 Status**	**2011 Status**	**Recommended actions**
British Columbia	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations.
Alberta	Fair	Fair	Ensure advocate is able to represent all children and youth who receive government services and reports directly to legislature. Pass proposed legislation to grant power to initiate systematic reviews and monitoring of child welfare system.
Saskatchewan	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations. Proposed new legislation will strengthen office.
Manitoba	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations and to represent all children and youth who receive government services.
Ontario	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations and to represent all children and youth who receive government services.
Quebec	Fair	Fair	Establish a child and youth advocate in addition to the Commission des droits de la personne et des droits des jeunes, with the power to ensure compliance with findings/recommendations.
New Brunswick	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations.
Nova Scotia	Fair	Fair	Establish a child and youth advocate in addition to the Youth Service Division of the Ombudsman's Office, with the power to ensure compliance with findings/recommendations.
Prince Edward Island	Poor	Poor	Establish an independent child and youth advocate.
Newfoundland and Labrador	Good	Good	Grant the advocate the power to ensure compliance with findings/recommendations.
Yukon	Fair	Fair	Implement the Child and Youth Act (2009).
Northwest Territories	Poor	Poor	Establish an independent child and youth advocate.
Nunavut	Poor	Poor	Establish an independent child and youth advocate.

Excellent: Province/territory has a child and youth advocate who is independent, reports to the legislature, and has broad-based powers to monitor, investigate and ensure compliance with findings/recommendations at both the individual and systemic levels.

Good: Province/territory has a child and youth advocate who reports to a government minister and has limited powers to monitor, investigate and implement recommendations concerning child/youth welfare at both the individual and systemic levels.

Fair: Province/territory has a child and youth advocate who reports to a government minister and has limited powers to investigate the welfare of individual children and youth in care, but cannot address systemic issues.

Poor: Province/territory has no child and youth advocate.

Federal Government Policies and Programs

Federal leadership has the potential to make major, long-term improvements in the health and well-being of Canada's youngest citizens.[97]

In the areas of early child development and injury prevention, the federal government could strengthen the efforts of provinces/territories if it provided national research and surveillance, a national strategy that would be implemented at the provincial/territorial level, and public education programs to raise awareness of such initiatives.

To address child and youth poverty, the federal government has a pivotal role to play through its fiscal and social policies, including income security, social programs and incentives for action. It can also support parental and community capacity, generate and transfer knowledge, build societal support for action on the determinants of health, and foster action among different sectors. The federal government has direct fiscal obligations to two groups with especially pressing needs: First Nations and Inuit children and youth.

Having access to quality early learning and child care is too important for families to be subject to the vagaries of competing government positions. In a country of nearly 5 million children aged 0 to 12, there are at present fewer than 90,000 regulated child care spaces. The vast majority of families find child care expensive and hard to access. Among 37 OECD nations, Canada places second-to-last in spending on child care and pre-primary education.[98]

Yet one recent Quebec study showed that their provincially funded early learning and child care (ELCC) program more than pays for itself in increased tax revenue.[99] By 2008, the number of working women in Quebec had grown by almost 4%, increasing provincial GDP by $5.2 billion (1.7%). For every dollar spent on ELCC, the provincial government recouped $1.05, and the federal government received $0.44 in tax revenue without contributing to the provincial program.

The Canadian Paediatric Society continues to call on the federal government to implement a national child care strategy, with an integrated system of services that are universal and publicly funded.

A Canadian Commissioner for Children and Youth would consider the needs of children and youth in all federal government initiatives and policies affecting them. The Canadian Paediatric Society continues to recommend the immediate establishment of this position.

Federal government policies and programs			
	2009 Status	**2011 Status**	**Comments**
National Immunization Strategy	Good	Good	Ensure sustainable funding for full implementation of the National Immunization Strategy, including a national registry and a harmonized immunization schedule.
Measures to prevent and reduce adolescent smoking	Good	Good	Renew the Federal Tobacco Control Strategy. Work with youth, provincial/territorial governments and non-governmental organizations to develop programs and approaches that will decrease youth smoking rates further and reduce the availability of contraband tobacco.
Child and youth mental health	Fair	Fair	Work with provincial/territorial governments, the Mental Health Commission of Canada and non-governmental organizations to develop a strategy based on the Evergreen Framework (see endnote 37).
Injury prevention	Poor	Poor	Work with provincial/territorial governments and non-governmental organizations to develop a national strategy.
Child and youth poverty	Fair	Fair	Develop a national poverty reduction strategy that goes beyond the current Universal Child Care Benefit and other income assistance for families with young children.
Early childhood development	Poor	Poor	Work with provinces/territories and non-governmental organizations to develop a national early years strategy, with a monitoring component and an enhanced 18-month visit for all Canadian children.
Jordan's Principle	Fair	Fair	Finalize arrangements with all provinces and territories to adopt a child-first approach for resolving jurisdictional disputes when the care of First Nations children and youth is at issue.
Commissioner for Children and Youth	Poor	Poor	Legislate the establishment of this office.
Early learning and child care	Poor	Poor	Develop a national early childhood education and child care strategy. Ensure that provincial/territorial services are integrated, regulated, publicly funded and universally accessible.

Endnotes

1 McCain MN and Mustard, JF, 1999. The Early Years Study. Toronto: Ontario Children's Secretariat: http://www.founders.net/ (accessed November 24, 2011).

2 McCain MN, Mustard JF, McCuaig K, November 2011. Early Years Study 3: Making Decisions, Taking Action. Toronto: Margaret & Wallace McCain Family Foundation: http://earlyyearsstudy.ca (accessed November 24, 2011).

3 Janus M, Offord DR. The economic costs of early vulnerability in Canada. Can *J Public Health* 2010;101(Suppl. 3):S8-S12.

4 Kershaw P, Anderson L, Warburton B, Hertzman C. 15 by 15 – A Comprehensive Policy Framework for Early Human Capital Investment in BC. University of British Columbia, Human Early Learning Partnership, August 2009: http://earlylearning.ubc.ca/media/uploads/publications/15by15-full-report.pdf

5 Ibid.

6 Adamson, P. The child care transition: A league table of early childhood education and care in economically advanced countries, UNICEF, Innocenti Research Centre Report Card 8, 2008: www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=507 (accessed November 24, 2011).

7 Mustard JF. Experience-based brain development. Slide presentation, Centre of Excellence for Early Childhood Development, Quebec City, May 25, 2004.

8 Hanushek E, Woessmann L. The role of cognitive skills in economic development. *J Econ Lit* 2008;46(3):607-68. http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/cognitive_skills.pdf (accessed November 24, 2011).

9 Kershaw P, Anderson L, Warburton B, Hertzman C. 15 by 15 – A Comprehensive Policy Framework for Early Human Capital Investment in BC. University of British Columbia, Human Early Learning Partnership, August 2009: http://earlylearning.ubc.ca/media/uploads/publications/15by15-full-report.pdf (accessed November 24, 2011).

10 Janus M, Offord DR. The economic costs of early vulnerability in Canada. Can *J Public Health* 2010;101(Suppl. 3):S8-S12.

11 Ibid.

12 Adamson, P. The child care transition: A league table of early childhood education and care in economically advanced countries, UNICEF, Innocenti Research Centre Report Card 8, 2008: www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=507 (accessed November 24, 2011).

13 Heckman JJ, 2008. Schools, skills, and synapses. Institute for the Study of Labour (IZA) Discussion Paper Series: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2812935/ (accessed November 24, 2011).

14 Ivanova I, July 2011. The Cost of Poverty in BC. Canadian Centre for Policy Alternatives – BC Office, the Public Health Association of BC, and the Social Planning and Research Council of BC: http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2011/07/CCPA_BC_cost_of_poverty_full_report.pdf (accessed November 24, 2011).

15 Hertzman C. The state of child development in Canada: Are we moving toward or away from equity from the start? *Paediatr Child Health* 2009;14(10):673-76.

16 Fortin P, Godbout L, St-Cerny S, June 22, 2011. Economic Consequences of Quebec's Educational Childcare Policy. Early Years Economics Forum, Toronto: http://www.oise.utoronto.ca/atkinson/UserFiles/File/EarlyLearningEconomicForum_Fortin.pdf (accessed November 24, 2011).

17 Treiber D. Quality is free: A cost-benefit analysis of early child development initiatives. *Paediatr Child Health* 2009;14(10): 681-84.

18 Public Health Agency of Canada. A Report on Mental Illnesses in Canada, 2002: http://www.phac-aspc.gc.ca/publicat/miic-mmac/index-eng.php (accessed November 24, 2011).

19 Centre for Community Child Health, 2008. Early Childhood and the Life Course. Policy brief no. 1. Melbourne and Victoria, Australia: Centre for Community Child Health: www.rch.org.au/emplibrary/ccch/PB5_Childhood_mental_health.pdf (accessed November 24, 2011).

20 Government of Ontario. Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy, June 2011: http://www.health.gov.on.ca/english/public/pub/mental/pdf/open_minds_healthy_minds_en.pdf (accessed November 24, 2011).

21 Canadian Paediatric Society, Early Years Task Force (Principal authors: C Hertzman, J Clinton, A Lynk). Measurement in support of early childhood development. *Paediatr Child Health* 2011;16(10): 655-57.

22 Non-Smokers' Rights Association, Provincial and Territorial Legislation, March 2011: http://www.nsra-adnf.ca/cms/page1461.cfm (accessed November 24, 2011).

23 Ibid.

24 Statistics Canada. Canadian Tobacco Use Monitoring Survey, Smoking Prevalence 1999-2008: http://www.ho-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/_ctums-esutc_prevalence/prevalence-eng.php#annual_09 (accessed November 24, 2011).

25 Elton-Marshall T, Leatherdale ST, Burkhalter R. Tobacco, alcohol and illicit drug use among Aboriginal youth living off-reserve: Results from the Youth Smoking Survey, *CMAJ* 2011. DOI:10.1503/cmaj.101913: http://www.cmaj.ca/content/early/2011/05/09/cmaj.101913.full.pdf+html (accessed November 24, 2011).

26 Canadian Paediatric Society, Drug Therapy and Hazardous Substances Committee. Effect of changes in the price of cigarettes on the rate of adolescent smoking. *Paediatr Child Health* 1998;3(2):97-98.

27 Smoking and Health Action Foundation. Cigarette prices in Canada: http://www.nsra-adnf.ca/cms/file/cigarette_prices_Canada_1_January_2011%281%29.pdf (accessed November 24, 2011).

28 Revenue Quebec. New measures to fight tobacco smuggling, April 20, 2010: http://www.revenuquebec.ca/en/centre-information/nf/2010/2010-04-20.aspx (accessed November 24, 2011).

29 Ontario Ministry of Revenue. Making Progress on a smoke-free Ontario, April 21, 2011: http://www.news.ontario.ca/rev/en/2011/04/making-progress-on-a-smoke-free-ontario.html (accessed November 24, 2011).

30 Physicians for a Smoke-Free Canada. Tobacco use in Canada: Findings from the CCHS; Smoking and household income, Canada 2007-2008, December 2010: http://www.smoke-free.ca/factsheets/pdf/ccha/Canada-2007-2008-householdincome1.pdf (accessed November 24, 2011).

31 Slotkin TA. Fetal nicotine or cocaine exposure: Which is worse? *J Pharmacol Exp Ther* 1998; 285(3):931-45.

32 Canadian Paediatric Society, Community Paediatrics Committee (Principal authors H Patel, M Feldman). Universal newborn hearing screening, *Paediatr Child Health* 2011;16(5):301-05.

33 Le dépistage de la surdité chez le nouveau-né: évaluation des avantages, des inconvénients et des coûts de son implantation au Québec. Rapport produit par un comité d'experts à la demande de l'Institut national de santé publique du Québec. Février 2008: www.inspq.qc.ca/publications/notice.asp?E=p&NumPublication=722 (accessed December 2011).

34 Canadian Paediatric Society, Early Years Task Force (Principal authors: Jean Clinton and Robin Williams). Getting it right at 18 months: in support of an enhanced well-baby visit. *Paediatr Child Health* 2011;16(10):647-50.

35 Government of Ontario. Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy, June 2011: http://www.health.gov.on.ca/english/public/pub/mental/pdf/open_minds_healthy_minds_en.pdf (accessed November 24, 2011).

36 Statistics Canada. 2004 Annual Report. Health Reports—How Healthy Are Canadians? (Ottawa: Statistics Canada and the Canadian Institute for Health Information, Supplement to volume 15): http://www.statcan.gc.ca/pub/82-003-x/4060595-eng.htm (accessed November 24, 2011).

37 Kutcher S and McLuckie A, 2010. For the Child and Youth Advisory Committee, Mental Health Commission of Canada. *Evergreen: A child and youth mental health framework for Canada*. Calgary, AB: Mental Health Commission of Canada: http://www.mentalhealthcommission.ca/SiteCollectionDocuments/family/Evergreen_Framework_English_July2010_final.pdf (accessed November 24, 2011).

38 Government of Ontario. Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy, June 2011. http://www.health.gov.on.ca/english/public/pub/mental/pdf/open_minds_healthy_minds_en.pdf (accessed November 24, 2011).

39 Centre for Community Child Health, 2006. Early Childhood and the Life Course. Policy brief no. 1. Melbourne and Victoria, Australia: Centre for Community Child Health: www.rch.org.au/emplibrary/ccch/PB6_Childhood_mental_health.pdf (accessed November 24, 2011).

40 Government of Ontario. Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy, June 2011: http://www.health.gov.on.ca/english/public/pub/mental/pdf/open_minds_healthy_minds_en.pdf (accessed November 24, 2011).

41 Waddell C, Offord DR, Shepherd CA, Hua JM, McEwan K. Child psychiatric epidemiology and Canadian public policy-making: The state of science and the art of the possible. *Can J Psychiatr* 2002;47:825-32.

42 Lemstra M, Neudorf C, D'Arcy C, Kunst A, Warren L, Bennett N. A systematic review of depressed mood and anxiety by socioeconomic status in adolescents aged 10-15 years. *Can J Public Health* 2008;99(2):125-29.

43 Mental Health Commission of Canada, January 2008. Towards recovery and well-being: A framework for a mental health strategy for Canada: www.mentalhealthcommission.ca/SiteCollectionDocuments/Key_Documents/en/2009/Mental_Health_ENG.pdf (accessed November 24, 2011).

44 Lasser KE, Himmelstein DU, Woolhandler S. Access to care, health status and health disparities in the United States and Canada: Results from a cross-national population-based survey. *Am J Public Health* 2004;98(7):1300-07.

45 Health Disparity Task Groups, Federal/Provincial/Territorial Advisory Committee on Population Health and Health Security. Reducing health disparities – Role of the health sector: Discussion paper. Ottawa, 2004: http://www.phac-aspc.gc.ca/ph-sp/disparities/pdf06/disparities_discussion_paper_e.pdf.

46 Canadian Paediatric Society, 2005. Paediatric Human Resource Survey. Unpublished data.

47 Canadian Paediatric Society, 2001. Planning a healthy future for Canada's children and youth: Report on the 1999-2000 Paediatrician Planning Survey.

48 SMARTRISK, 2008. The economic burden of injury in Canada: http://www.smartrisk.ca/downloads/burden/Canada2009/EBI-Eng-Final.pdf (additional table provided by SMARTRISK: Injury - Electronic Tool - Cost Summary - 2004 Incidence Costing - Canada - ACCS).

49 Canadian Institute for Health Information. Number of cycling injuries and cycling-related head injuries by fiscal year: Cases aged 19 and under, Canada 2001-02 to 2009-10. Personal communication, August 11, 2011.

50 Safe Kids Canada. Facts and myths about helmet legislation: http://www.safekidscanada.ca/Professionals/Advocacy/Documents/26810-HelmetLegislationFactsMyths.pdf (accessed November 24, 2011).

51 Statistics Canada. Canadian Community Health Survey. Helmet use while riding a bicycle: http://www40.statcan.gc.ca/l01/cst01/health93b-eng.htm (accessed November 24, 2011).

52 SMARTRISK, 2009. The economic burden of injury in Canada: http://www.smartrisk.ca/downloads/burden/Canada2009/EBI-Eng-Final.pdf (additional table provided by SMARTRISK: Injury - Electronic Tool - Cost Summary - 2004 Incidence Costing - Canada - ACCS).

53 Canadian Institute for Health Information. Number of cycling injuries and cycling-related head injuries by fiscal year: Cases aged 19 and under, Canada 2001-02 to 2009-10. Personal communication, August 11, 2011.

54 Macpherson A, Spinks A. Bicycle helmet legislation for the uptake of helmet use and prevention of head injuries. Cochrane Database of Systematic Reviews 2007, Issue 2. DOI: 0.1002/14651858.CD005401.pub2.

55 Safe Kids Canada. Child and youth unintentional injury, 1994-2003: 10 years in review, July 2007: http://www.safekidscanada.ca/enStore/tabid/59/CategoryID/1/List/1/Level/a/ProductID/80/language/en-CA/Default.aspx (accessed November 24, 2011).

56 SMARTRISK, 2009. The economic burden of injury in Canada: http://www.smartrisk.ca/downloads/burden/Canada2009/EBI-Eng-Final.pdf (additional table provided by SMARTRISK: Injury - Electronic Tool - Cost Summary - 2004 Incidence Costing - Canada - ACCS).

57 Ibid.

58 Safe Kids Canada. Bike helmet legislation chart, February 2010: http://www.safekidscanada.ca/Professionals/Advocacy/Documents/26783-BikeHelmetLegislationChart.pdf (accessed November 24, 2011).

59 Royal ST, Kendrick D, Coleman T. Non-legislative interventions for the promotion of cycle helmet wearing by children. Cochrane Database of Systematic Reviews, DOI: 10. 1002/14651858.CD003985.pub2.

60 Canadian Institute for Health Information, July 28, 2011. National Trauma Registry Analysis in Brief: Summer is peak season for wheel- and water-related injuries: http://www.cihi.ca/CIHI-ext-portal/internet/en/Document/spending+and+health+workforce/spending/RELEASE_21JULY11?WT.ac=homepage_banner_20110728_e (cited July 29, 2011).

61 Ibid.

62 Canadian Institute of Health Information, Spring 2008. CIHI Update: National Rehabilitation Reporting System: http://www.cihi.ca/CIHI-ext-portal/pdf/internet/NRS_SPRING_2008_EN (accessed November 24, 2011).

63 Krauss E, Dyer D, Laupland K, Buckley R. Ten years of all-terrain vehicle injury, mortality and healthcare costs. *J Trauma* 2010;69(6):1338-43.

64 Canadian Paediatric Society, Injury Prevention Committee. Prevention of injuries from all-terrain vehicles (in press, 2012).

65 Safe Kids Canada. All-terrain vehicle safety: http://www.safekidscanada.ca/professionals/advocacy/atv-safety/index.aspx (accessed November 24, 2011).

66 Statistics Canada. Leading causes of death of children and youth, by age group, 2003-2006: http://www41.statcan.gc.ca/2009/20000/tbl/cybac20000_2009_000_t07-eng.htm (accessed November 24, 2011).

67 Public Health Agency of Canada. Child and youth injury in review, 2009 edition: Spotlight on consumer product safety: www.phac-aspc.gc.ca/publicat/cyi-bej/2009/index-eng.php (accessed November 24, 2011).

68 Dalmatas D, Kryzewski J. Restraints system effectiveness as a function of seating position. Society of Automotive Engineering. Pub #807 371. 1980.

69 Ramsay A, Simpson E, Rovers FP. Booster seat use and reasons for non-use. *Pediatrics* 2000;106(2):e20.

70 Transport Canada, as cited by Safe Kids Canada. Transport Canada unveils new safety regulations for car seats: http://www.safekidscanada.ca/Professionals/Safety-Information/Child-Passenger-Safety/New-Regulations/New-regulations.aspx (accessed November 24, 2011).

71 Winston FK, Durbin DR, Kallan MJ, Moll EK. The danger of premature graduation to seat belts for children in crashes. *Pediatrics* 2000;105(6):1179-83.

72 Safe Kids Canada. Four out of five parents support a booster seat law but only 30 per cent use booster seats, says Safe Kids Canada: https://www.safekidscanada.ca/professionals/newsroom/media-releases/2011/skw2011-news-release.aspx (accessed November 24, 2011).

73 Auto 21. Technical Report: Canadian National Survey on Child Restraint Use 2010: http://www.tc.gc.ca/media/documents/roadsafety/Child_Restraint_Survey_2010.pdf (accessed November 24, 2011).

74 Canadian Paediatric Society, Injury Prevention Committee (Principal author R Stanwick). Recommendations for snowmobile safety. *Paediatr Child Health* 2004;9(9):639-42.

75 Raphael D. Review: Poverty in childhood and adverse health outcomes in adulthood. *Maturitas* 2011;69(1):22-26.

76 Lemstra M, Neudorf C, 2008. Health Disparity in Saskatoon: Analysis to intervention. http://www.saskatoonhealthregion.ca/your_health/documents/PHO/HealthDisparityExecSummary.pdf (accessed December 6, 2011)

77 Health Officers Council of BC, November 2008. Health inequities in British Columbia: Discussion paper: http://www.phabc.org/files/HOC_Inequities_Report.pdf (accessed November 24, 2011).

78 Paul-Sen Gupta R, de Wit ML, McKeown D. The impact of poverty on the current and future health status of children. *Paediatr Child Health*, 2007;12(8)667-72.

79 Irwin LG, Siddiqi A, Hertzman C, 2007. *Early Child Development: A Powerful Equalizer*, Final Report for the World Health Organization's Commission on the Social Determinants of Health: http://www.who.int/social_determinants/resources/ecd_kn_report_07_2007.pdf (accessed November 24, 2011).

80 Conference Board of Canada, 2009. Child Poverty: http://conferenceboard.ca/HCP/Details/society/child-poverty.aspx (cited August 24, 2011).

81 Conference Board of Canada, July 2011. Hot Topic: Canadian income inequality – is Canada becoming more unequal?: http://conferenceboard.ca/hcp/hot-topics/caninequality.aspx (accessed November 24, 2011).

82 Statistics Canada. Income in Canada 2009: http://www.statcan.gc.ca/pub/75-202-x/75-202-x2009000-eng.htm (accessed November 24, 2011).

83 Campaign 2000. 2011 Report Card on Child and Family Poverty in Canada: http://www.campaign2000.ca/reportCards/national/2011EnglishRreportCard.pdf (accessed November 24, 2011).

84 Statistics Canada. Income in Canada: http://www.statcan.gc.ca/t/802.ivt (cited September 16, 2011).

85 Campaign 2000. 2011 Report Card on Child and Family Poverty in Canada: http://www.campaign2000.ca/reportCards/national/2011EnglishRreportCard.pdf (accessed November 24, 2011).

86 OECD Family Database, CO2.2 Child Poverty: http://www.oecd.org/dataoecd/52/43/41929552.pdf (accessed November 24, 2011) .

87 Smeeding T, as cited in Bryant T, et al. Canada: A land of missed opportunity for addressing the social determinants of health. Health Policy (2010), doi:10.1016/j.healthpol.2010.08.022.

88 Lemstra M, Neudorf C, 2008. Health Disparity in Saskatoon: Analysis to Intervention. Saskatoon Health Region: http://www.saskatoonhealthregion.ca/your_health/documents/PHO/HealthDisparityRept-complete.pdf (accessed November 24, 2011).

89 Health Officers Council of BC, November 2008. Health Inequities in British Columbia: Discussion paper: http://www.phabc.org/files/HOC_Inequities_Report.pdf (accessed November 24, 2011).

90 First Nations Child and Family Caring Society of Canada, 2005. WenDe: We are coming to the light of day. www.fncfcs.com/docs/WendeReport.pdf (accessed November 24, 2011).

91 First Nations Child and Family Caring Society of Canada, Pictou Landing First Nation and Maurina Beadle take federal government to court to enforce Jordan's Principle, June 24, 2011: http://www.fncfcs.com/jordans-principle (accessed November 24, 2011).

92 Lavallee, T. Honouring Jordan: Putting First Nations children first and funding fights second. *Paediatr Child Health* 2005;10(9):527-29.

93 Marmot M. Fair Society, Healthy Lives: Strategic Review of Health Inequalities in English post-2010. *The Marmot Review*, February 2010: http://www.marmotreview.org/ (accessed November 24, 2011).

94 UNICEF. Independent Institutions Protecting Children's Rights. Innocenti Digest No. 8, June 2001: http://www.aeforum.org/aeforum.nsf/8f28d4e3625611a780256c5100355eb9/2dc4fd2721951a1f802577e5005b4b65/$FILE/_bei720gr8d5m68sj5dojn6826eln68b90a1p6ut35cdq6tj7411mgqbcchp8erg15hplOkj9ctk78so_.pdf (accessed November 24, 2011).

95 MacLean R, Howe RB. Brief report on Canadian provincial children and youth advocacy offices: Highlights of functions and recent activities. Cape Breton University, Children's Rights Centre, August 2009: http://www.cbucommons.ca/science/psychology/images/uploads/Brief_report_on_Canadian_provincial_children_and_youth_advocacy_offices.pdf (accessed December 6, 2011).

96 Standing Senate Committee on Human Rights, April 2007. Children: The silenced citizens; Effective implementation of Canada's international obligations with respect to the rights of children.

97 Leitch K. Reaching for the Top: A Report by the Advisor on Healthy Children & Youth. Ottawa: Health Canada, 2007: http://www.ho-sc.gc.ca/hl-va/pubs/child-enfant/advisor-conseillere/index-eng.php (accessed November 24, 2011).

98 Friendly M, as cited in Bryant T, et al, 2010. Canada: A land of missed opportunity for addressing the social determinants of health. *Health Policy*. doi:10.1016/j.healthpol.2010.08.022.

99 Fortin P, Godbout L, St-Cerny S, June 22, 2011. Economic Consequences of Quebec's Educational Childcare Policy. Early Years Economics Forum, Toronto: http://www.oise.utoronto.ca/atkinson/UserFiles/File/EarlyLearningEconomicForum_Fortin.pdf (accessed November 24, 2011).

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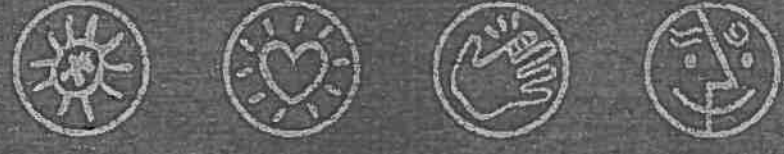
The Canadian Paediatric Society is the national association of paediatricians, committed to working together to advance the health of children and youth by nurturing excellence in health care, advocacy, education, research, and support of its membership.



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This is Exhibit "D" to the affidavit of
Cindy Blackstock, sworn before me this
22nd day of November, 2013

A Commissioner for taking Affidavits etc.
Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

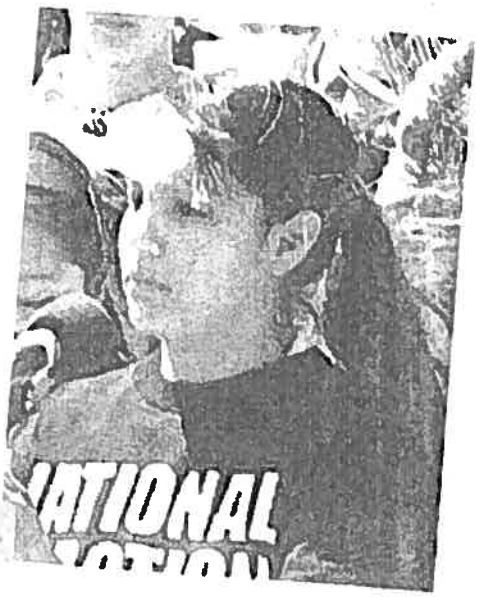
The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

This is Exhibit "E" to the affidavit of
Cindy Blackstock, sworn before me this
22nd day of November, 2013

A Commissioner for taking Affidavits etc.
Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016



Jordan & Shannen:

First Nations children demand that the Canadian Government stop racially discriminating against them

SHADOW REPORT: Canada 3rd and 4th Periodic Report to the UNCRC

January 28, 2011

Submitted by: Cindy Blackstock, PhD
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251 Bank Street, Suite 302 , Ottawa ON K2P 1X3
613 230 5885 | URL: www.fncaringsociety.com | cblackst@fncaringsociety.com

DEDICATED TO JORDAN RIVER ANDERSON (AGE 5)
AND SHANNEN KOOSTACHIN (AGE 15)
We will never give up until your legacies
of culturally based equity are realized for
every First Nations child in Canada.

CONTENTS

WATCHEY... **My name is Shannen Koostachin. I am an Mushkegowuk Innanu from an isolated community called Attawapiskat First Nation. I have three brothers and three sisters. I am fourteen years old. I've graduated and finished elementary school called JR Nakogee Elementary School and going to go to school somewhere in down south just to have a proper education. I want to have a better education because I want to follow my dreams and grow up and study to be a lawyer. For the last eight years, I have never been in a real school since I've started my education. For what inspired me was when I realized in grade eight that I've been going to school in these portables for eight long struggling years. We put on our coats outside and battle through the seasons just to go to computers, gym and library. I was always taught by my parents to stand up and speak out for myself. My message is never give up. You get up, pick up your books and keep walking in your moccasins."**

Shannen Koostachin lead a campaign inviting thousands of Non-Aboriginal children to write to the Canadian Government to ensure safe and comfy schools and culturally based education for First Nations children. It was the largest child lead campaign to realize child rights in Canada. Shannen wrote to the UN Committee on the Rights of the Child in 2008 saying she would submit a shadow report when Canada came up for review. Sadly, Shannen died in a car accident in the spring of 2010 at the age of 15 while attending school far away from her home because the high school in her home community sat on a contaminated brown field and was so dramatically under-funded by the Canadian Government that she could not get the education she needed to become a lawyer.

INTRODUCTION: CANADA FIGHTING TO DISCRIMINATE AGAINST VULNERABLE CHILDREN

Canada's lawyer has to come up with a good reason as to why the Tribunal should be dismissed and really there is no reason except for the fact that the government is scared, and does not want justice to be done. It's no wonder the government doesn't want this to be public. It is quite embarrassing and sad to think that our government is trying to get out of its responsibility to provide the same quality of services to First Nations children in the child welfare system as they do to non-Native children. I am a student and I am aware and I am going to make sure other youth are aware. Cindy is speaking for others who cannot speak and that is amazing. So I am going to speak for others who cannot be here today and make sure they're aware.

—Summer Bisson, student, Elizabeth Wyn Wood Secondary who came to watch the Canadian Human Rights Tribunal where First Nations allege Canada is racially discriminating against First Nations children by providing less child welfare benefit on reserves.

Canada's conduct toward First Nations children creates so many violations of children's rights pursuant to the United Nations Convention on the Rights of the Child that it is often difficult to keep track. The most pronounced violation challenges one of the pillars of the Convention—the obligation of State Parties to not engage in government driven racial discrimination against children.

This submission begins by describing Canada's conduct at the Canadian Human Rights Tribunal on First Nations child and family services where First Nations allege that Canada is racially discriminating against First Nations children on reserve by providing lesser child welfare benefit than other children receive. Canada has spent hundreds of thousands of dollars to derail a full hearing on the facts at the Tribunal by relying on a series of legal technicalities instead of dealing with the problem. The submission then shows how inequities in elementary and secondary education on reserve undermine the potential of thousands of First Nations children trying to learn and grow up proud of their cultures and languages. Conditions of some First Nations schools rival those in the most desperate of third world countries with children having to attend school on grounds contaminated by thousands of gallons of diesel fuel, infested with snakes or in the case of one school, in tents. We share the story of Shannen Koostachin, a First Nations child from Attawapiskat First Nation, who led a campaign for "safe and comfy schools and culturally based equity in education" before tragically dying at the age of 15 years in a car crash while she attended school hundreds of kilometres away from her family because the school in her own community was so under-funded and sat next to a contaminated brown field. Finally, the submission demonstrates how First Nations children are often denied, or delayed receipt of government services available to all other children because the Federal and Provincial/territorial governments cannot agree on who should pay for First Nations children. These disputes

have devastating impacts as the story of Jordan River Anderson, a five year old from Norway House Cree Nation, who spent his whole life in hospital because Canada and Manitoba could not agree on who should pay for his at home care. Jordan tragically died at the age of five never having spent a day in a family home. The submission will rely heavily on the Government of Canada's own documents to demonstrate that it clearly knows about the discrimination and its impacts and then set out how Canada is actively working to undermine the right of First Nations children to non-discrimination. We also rely on the voices of many non-Aboriginal and First Nations children and youth who are standing with First Nations children, young people and leaders to ensure their rights under the UNCRC are fully realized.

It is important to note that the form of government based discrimination outlined in this document is not experienced by other children in Canada. Shannen, and thousands of children like her, would be entitled to a proper school and a good education if she was not First Nations living on reserve. Jordan, and the thousands of children he represents, would have gotten the services he needed to go home if he was not First Nations living on reserve. Thousands of other children would be growing up safely with their families instead of in foster care if they were not First Nations living on reserve.

Given Canadian Prime Minister Harper's commitment to child and maternal health in the international stage, it is extraordinary that his government has done very little to address the dramatic inequities affecting First Nations children in Canada choosing to spend Canada's significant financial wealth on other projects such as the 1.2 billion to host the G-8, billions for fighter jets, 150 million on signs advertising how tax dollars are spent and most recently $650,000 to buy a vase.

WHY FIRST NATIONS CHILDREN ON RESERVES GET INEQUITABLE GOVERNMENT SERVICES

Evidence of the unequal provision of government services to First Nations children on reserve by Canada is overwhelming (Assembly of First Nations, 2007; Auditor General of Canada, 2008; Canadian Welfare Council, 2009; Standing Committee on Public Accounts, 2009.) There are two criteria that drive the inequality—the child must be First Nations and the other is the child must live on reserve. For thousands of First Nations (Indigenous) children in Canada who meet these criteria, the reality is they get less funding, and thus benefit, for essential government services such as education, health and child welfare care than other children receive even though the needs of First Nations children are higher.

The reason for this inequality is that although provincial/territorial child welfare, health and education laws apply on reserves, the federal government funds these services. When the federal government does so at a lesser level, or not at all, the provinces/territories typically do not top up the funding levels resulting in a two tiered system where First Nations children on reserves get less funding, and thus less services and benefit, than other children enjoy.

THE CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD AND FAMILY SERVICES (CHILD WELFARE) www.fnwitness.ca

I am a witness
fnwitness

First Nations children are tragically over-represented among children in child welfare care. The Auditor General of Canada (2008) notes that First Nations children are 6-8 times more likely to be placed into foster care because of cases of neglect fuelled by factors that are often outside of parental control such as poverty, poor housing and substance misuse. The good news is that Canada holds the levers to improve all of these factors on reserves via its various housing, economic development, substance misuse and First Nations child and family services programs. First Nations child and family service agencies operate on reserves and are funded by the federal government and the federal government insists that First Nations agencies use provincial/territorial child welfare laws. The Concluding Remarks of the UNCRC cited First Nations child and family service agencies as a positive practice in Canada's second periodic review in 2003. There have been longstanding concerns about the under-funding of these agencies especially the lack of services to help families safely care for their children at home. First Nations child and family service agencies and leadership worked with the Federal Government for over ten years on two reports documenting the inequalities in First Nations

I went to the Tribunal Hearing because I realized that what is happening isn't right and it's just more assimilation. By being there, it shows that I care and that young people care and take an interest. The government lawyer just talked around the issue. He just said so much stuff that was useless and not worth being said. I felt he was trying to somehow trick people into thinking the issue is just not theirs to worry about. Basically, I felt he was trying to get Canada out of something and that's just not right.

—From: Jon Dundas, Elizabeth Wyn Wood student, June 2, 2010, Ottawa. John was one of several non-Aboriginal youth who have pledged to come to the tribunal hearings and report their views.

child and family service funding and proposing solutions to deal with the problem but the Canadian government failed to fully implement either option. In 2007, the Assembly of First Nations (the political organization representing all First Nations in Canada) and the First Nations Child and Family Caring Society (a national NGO for Aboriginal children) filed a human rights complaint against the Government of Canada alleging that the Federal Government's failure to provide equitable and culturally based services to First Nations children on reserve amounted to discrimination on the basis of race and national ethnic origin. This historic case marks the first time in history that Canada will be held to account for its current treatment of First Nations children before a body with the power to make enforceable orders. Thousands are following the case, particularly children and youth, in the "I am a witness" campaign that invites caring individuals and organization to follow the case (see www.fnwitness.ca). Thanks to many caring Canadians, the Canadian Human Rights Tribunal on First Nations Child Welfare is now the most formally watched legal case in Canadian history.

Canada is not fighting the case on the merits, it is trying to escape a full hearing on the merits by arguing that it does not directly deliver child and family services (First Nations child welfare agencies do) and thus the Federal Government should not be held accountable for its role in First Nations child and family services, including inequitable funding levels. This is splitting hairs as it is obviously impossible for First Nations child and family service agencies to deliver a service if there is no money to do so or if the money is structured in ways that are not responsive to community needs. If successful with this argument, Canada effectively off loads its responsibility for discrimination against children arising from its policies and practices onto First Nations agencies that have no power to remedy the discrimination. Canada has tried to get the case dismissed at Federal Court on two occasions and was unsuccessful. It then brought a motion to the Canadian Human Rights Tribunal itself to get dismissed on these same grounds and we are currently awaiting the decision. Canada has also opposed measures to broadcast tribunal hearings so that First Nations children can watch the tribunal from their homes across Canada (in keeping with Article 12 of the Convention). All other parties to the Tribunal case are in support of ensuring full public, and particularly child participation, in the tribunal including the broadcasting of the proceedings. Canada's substantial efforts to avoid a full and public hearing on the facts should raise significant concerns among all Canadians and the international community. What are they hiding?

Canada currently uses three main funding policies for First Nations child and family services. Directive 20-1 (used in BC and New Brunswick) and generally thought to be the most inequitable, the 1965 Indian Welfare Agreement applied in Ontario which has not been updated or reviewed in 46 years and the enhanced funding arrangement applied in Alberta, Saskatchewan, Manitoba, Nova Scotia and Quebec. The latter arrangement is one that the Government of Canada showcases as its primary response to the longstanding inequities affecting First Nations children in foster care. All have been found by independent reports to be flawed and inequitable.

Canada's own documents demonstrate that it not only knows about the inequality but it is also aware that the inequality is driving First Nations children into foster care because family support services available to other families are not available. Quoting the Canadian Government (as represented by the Department of Indian and Northern Affairs Canada) directly:

"Lack of in-home family support for children at risk and inequitable access to services have been identified by First Nations Child and Family Services Agencies, and INAC, as important contributing factors to the over representation of Aboriginal children in the Canadian child welfare system... provincial governments have written to Ministers of INAC and intergovernmental affairs indicating that INAC is not providing sufficient funding to permit First Nations child and family services agencies to meet their statutory obligations under provincial legislation."

—INAC internal document dated 2004 obtained under access to information (Document number 2372)

Another INAC document described the impacts of the Directive 20-1 which is currently applied to thousands of children in BC and New Brunswick in this way:

"Circumstances are dire. Inadequate resources may force individual agencies to close down if their mandates are withdrawn, or not extended, by the provinces. This would result in the provinces taking over responsibility for child welfare, likely at a higher cost to Indian and Northern Affairs Canada (INAC)"

This view was shared by the Auditor General of Canada in her thorough review of Canada's First Nations child and family services program. The Auditor General (2008) found that all funding formulas, including the enhanced approach that Canada continues to advance as the exclusive option to deal with the inequities, are flawed and inequitable. Quoting the Auditor General of Canada directly:

"4.64 However, we also found that the new formula does not address the inequities we have noted under the current formula. It still assumes that a fixed percentage of First Nations children and families in all the First Nations served by an agency need child welfare services. Consequently, in our view, the new formula will not address differing needs among First Nations. Pressures on INAC to fund exceptions will likely continue to exist under the new formula."

—Auditor General of Canada (May, 2008)

A year later, the Standing Committee on Public Accounts (2009) found that despite the Auditor General citing significant flaws in the enhanced approach being cited by the Government as the solution to the problem, there was no evidence that Canada had addressed the problem.

INAC also undertook an internal evaluation of the implementation of the Enhanced Funding Formula in Alberta and summarizes the findings in a presentation deck entitled *Implementation Evaluation of the Enhanced Prevention Focused Approach (EPFA) in Alberta: preliminary findings, May 14, 2010.* The findings of this INAC commissioned study are summarized on presentation slides 18 and 19 include the following passages:

"75% of DFNA [First Nations child and family service agencies in Alberta] interviewees reported not enough funds for full implementation"

—INAC internal document obtained under Access to Information (document number 2365)

Clearly, this evaluation demonstrates some significant shortcomings in the enhanced prevention based approach. INAC, however, continues to offer the enhanced approach with all of its flaws as the exclusive funding alternative to the Directive 20-1.

It does not appear that INAC has taken any meaningful steps to redress the flaws of the enhanced approach identified by the Auditor General in 2008. It continues to fight against having a full and public hearing on the merits at the Tribunal.

We requested in writing, that the Government of Canada respond to these issues in their country report submitted to the UN Committee on the Rights of the Child on the occasion of their third and fourth periodic reports but Canada substantively failed to do so. Canada's country report does mention its First Nations child and family services program and its efforts to roll out the enhanced approach. However, the report fails to mention that the enhanced approach has been ruled inequitable and that Canada is subject to a Canadian Human Rights complaint brought by First Nations alleging that Canada is discriminating against First Nations children by providing inequitable child welfare services on reserves. Canada's failure to mention the human rights tribunal on First Nations child and family services raises concerns about how complete and accurate Canada's country report is.

First Nations agencies were recognized as in the United Nations Committee on the Rights of the Child as being a marker of best practice by Canada. They received numerous awards of excellence for their culturally base services despite the dramatic under-funding. First Nations want to do better for First Nations children. The outstanding question is whether the Canadian Government is prepared to do its part and immediately ensure full and proper culturally based equity in children's services on reserve. While Canada tries to derail a hearing on the merits at the tribunal and rationalizes ongoing inequities to children, the number of First Nations children being removed from their families, often being placed outside of their culture and away from their community, continues to climb at record levels.

SHANNEN'S DREAM AND CANADA'S SYSTEMIC UNDER-FUNDING OF ELEMENTARY AND SECONDARY EDUCATION ON RESERVES www.shannensdream.ca

It is unacceptable in Canada that First Nations children cannot attend a safe and healthy school. It is unacceptable in Canada for First Nations education to languish with outdated laws, policies and funding practices that do not support basic standards. It is time for fairness and equity. Shannen Koostachin stood up for justice so the young people coming behind her might have an equal opportunity for a quality education in her community, just like young people have in communities throughout Canada. Now is the time for fairness, justice, and equity. Now is the time to realize Shannen's Dream.

—Shawn A-in-chut Atleo National Chief, Assembly of First Nations

The Auditor General of Canada has repeatedly found that the Federal Government (as represented by the Department of Indian Affairs and Northern Development [INAC]) provides insufficient and inequitable funding for proper schools and culturally based education on reserves. Quoting the Auditor General of Canada (2004) directly:

"5.2 We remain concerned that a significant education gap exists between First Nations people living on reserves and the Canadian population as a whole and that the time estimated to close this gap has increased slightly, from about 27 to 28 years [given the Government of Canada's current approach to addressing the inequities]."

There is little evidence to suggest that Canada is making any significant progress in addressing the gap. Current estimates are that First Nations children on reserves receive $2000–$3000 less per student per year for elementary and secondary education even though First Nations children are far less likely to graduate from high school. This shortfall means less funding for teachers, special education, teaching resources such as books, science and music equipment and other essentials that other children in Canada receive. There is no funding provided by INAC for basics such as libraries, computer software and teacher training, the preservation of endangered First Nations languages, culturally appropriate curriculum or school principals.

The problem is compounded by significant shortfalls in the schools themselves (termed capital expenditures). INAC is the exclusive funder of First Nations schools on reserve and the condition of many schools is extremely poor. For example, in 2009, the Parliamentary Budget Officer (PBO) conducted a review of INAC's funding and policies for First Nations schools across Canada. Specifically, the PBO found that INAC reports that only 49 percent of schools on reserves are in good condition, 76 percent of all First Nations schools in BC and Alberta were in poor condition and 21 percent had not been inspected for condition at all. Overall, the PBO found that all 803 First Nations schools will need replacement by 2030 but INAC does not appear to be on track to make that happen as it appears to be significantly under-estimating what it needs to provide to maintain and build proper schools. Quoting the PBO directly:

"Thus according to the PBO projections, for FY2009-10, INAC's plans for capital expenditure are under-funded to the tune of between $169 million in the best case, and $189 million in the worst-case scenario annually, as depicted in the chart above. Thus, the annual INAC Planned Capital Expenditures according to its CFMP LTCP underestimates the likely expenditures compared to the PBO Best-Case and Worst-Case Projections (by more than 58%)."

These figures fail to capture the full impacts of the poor schools and inequitable education on children. For example, a school in Manitoba had to be closed and replaced with portable trailers because it became infested with snakes. The snakes had infested the water system so that when children turned on the taps, baby snakes would come out. Another group of children in Manitoba had to start school in 2009 in tents as there was no school building available in their community. Some First Nations children go to school in shifts because the school buildings are so over-crowded that there is not enough room for all students to attend at the same time. It is routine, for many First Nations children to have to be sent away from their families and communities to go to school as there is no school in their communities.

Shannen Koostachin (1995–2010) was from Attawapiskat First Nation. Her school was contaminated by approximately 30,000 gallons of diesel fuel that leaked into the ground. The Government of Canada finally closed the school in 2000 after repeated complaints from students and staff that they were getting sick. The Government brought up portable trailers

as a temporary measure. Ten years later the portables were extremely run down, often losing heat in the minus 40 degree temperatures, and three Ministers of INAC failed to deliver on their promises to the children of Attawapiskat to provide a new school. Shannen Koostachin, was in grade 8 at the JR Nakogee School, which was actually a series of trailers, in 2008 and had never attended a proper school. She, and other youth, organized the younger children in the community to write to the Prime Minister to demand a new school. As Shannen said "school is a time for dreams and every kid deserves this." The Government of Canada wrote back to say they could not afford a new school for the children of Attawapiskat. Upon receiving the letter saying they would not get a new school, the grade 8 class decided to cancel their graduation trip and use the money to go and see the Minister of INAC instead to ask for a new school. Shannen Koostachin and two other youth, went to see Minister Strahl in Ottawa but he said he could not afford a new school. Shannen told him she did not believe him and that she would continue to fight until every child in Canada got "safe and comfy schools" and equitable education. She engaged non-Aboriginal children to write letters to the Government of Canada demanding a proper education for First Nations children and hundreds responded. In 2008, the Government of Canada said Attawapiskat would get a new school after all but three years later, construction has not begun and many other First Nations children across Canada continue to be denied equitable education and proper schools. Shannen was nominated for the International Children's Peace Prize given out by Kids Rights Foundation in the Netherlands in 2008. She and her family made the difficult decision to send her hundreds of miles away from her family to get a proper education off reserve. Shannen Koostachin, died in a car accident while she was away attending school. She wanted to be a lawyer to fight for the education rights of First Nations children.

Thousands of First Nations and non-Aboriginal children, youth and supporting adults are now working with Shannen's family to carry her dream of "safe and comfy schools" and culturally based and equitable education forward in a campaign called "Shannen's Dream."

The Government of Canada recently announced yet another study on First Nations education. Meanwhile, the children wait to be treated equitably and as Shannen noted "they are losing hope by grade 5 and dropping out."

JORDAN'S PRINCIPLE: WHEN GOVERNMENTS FIGHT OVER WHO SHOULD PAY FOR SERVICES FOR FIRST NATIONS CHILDREN—THE CHILDREN LOSE OUT

www.jordansprinciple.ca

Canada and the Provinces/territories do not always agree on which level of government is responsible for paying for services to First Nations children when that same service is available to all other children. A 2005 report identified 393 disputes between the Federal and Provincial/territorial governments impacting First Nations children in just 12 of the 108 First Nations child and family service agencies in one year alone.

Just as with the problems with short-funding child welfare and education, the impacts of government red tape are devastating for children. Jordan River Anderson of Norway House Cree Nation was born with complex medical needs and remained in hospital for the first two years of his life. When doctors said he could go to a family home, all the services he needed were available but Canada and Manitoba could not agree on which government should pay for the services since Jordan was a First Nations child whose parents lived on reserve. If Jordan was non-Aboriginal he would have been able to home and the Manitoba government would have picked up the bill. As Jordan was First Nations, Manitoba nor the Federal Government wanted to pay so government officials left Jordan in a hospital while they argued over who should pay for each item related to Jordan's care. Over two years passed, and despite numerous pleadings from Jordan's family, First Nation and medical staff at the hospital, the governments continued to put their concerns about payment before Jordan's welfare. Sadly, just before Jordan's fifth birthday he died in hospital never having spent a day in a family home. While the Anderson family buried their child, the Governments of Canada and

> At 5:30 p.m. on December 12, 2007, members of Parliament stood in unanimous support of Private Members' Motion-296 supporting Jordan's Principle and followed with a standing ovation for the Anderson family and all those who supported Jordan's message. It was, by all accounts, a wonderful day, but, as Ernest Anderson warned, the good that was accomplished in Jordan's name that day would be little more than a victory in name only if Canada and the provinces/territories did not immediately move to implement Jordan's Principle.
>
> *—UNICEF Canada, "Leave no child behind." p. 49*

Manitoba continued to argue over his care, and who should pay for the care of other children.

In memory of Jordan, and in keeping with the non-discrimination provisions of the UNCRC, Jordan's Principle was created. It is a child first principle to resolving government jurisdictional disputes about payment for services to First Nations children when that same government service is customarily available to all other children. It says that where a government service is available to all other children and a jurisdictional dispute arises over which government should pay for services to a First Nations child, the government of first contact pays for the service and then resolves the dispute with the other government as a secondary matter.

A Private Members Motion tabled by Member of Parliament, Jean Crowder, unanimously passed in the House of Commons in 2007 stating that **"In the opinion of the House the government should immediately adopt a child-first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children."**

Incredibly, instead of taking immediate action to fully and properly implement Jordan's Principle across all Government services, the Canadian Government began trying to narrow Jordan's Principle to only apply to children with complex medical needs with multiple service providers. It did so without consulting Jordan's family or First Nations.

To be fully implemented, each province and territory must also fully adopt and implement Jordan's Principle but as the Canadian Paediatric Society reported in 2009, only one province, Nova Scotia, received a good rating for implementing this fundamental principle of non-discrimination.

Reports of children on reserves being denied equitable access to services of equitable quality to those provided off reserve continue to mount. Only months after Jordan's Principle passed through the House of Commons, Canada and Manitoba argued over who should pay for feeding tubes for two chronically ill children living with their loving family on reserve. Meanwhile the family was making a heart wrenching choice—do they rewash the feeding tubes and risk infection to their children or not feed them at all? Canada has hired a person to coordinate Jordan's Principle cases and while this is encouraging—Canada continues to rely on a case by case approach which failed Jordan and is not meaningfully engaging with First Nations on the identification and response to children caught in situations that could be remedied by the full and proper implementation of Jordan's Principle.

CONCLUSION

Canada is party to numerous international human rights conventions and takes its obligations under these and other international instruments seriously. The treaties binding on Canada as a State party include: the International Covenant on Civil and Political Rights, the International Covenant on the Elimination of Racial Discrimination and the Convention on the Rights of the Child. However, these treaties are not directly enforceable in Canadian law.

—Submissions by Canada to the Canadian Human Rights Tribunal (May 21, 2010)

Canada's position that the UNCRC is not directly enforceable under Canadian law raises questions as to why Canada would not want the UNCRC to directly guide its duties to children. The UNCRC and UNCRC General Comment 11 make it clear that State Parties have a duty to *ensure* the non-discrimination of children particularly within government laws, policies and practices. Non-discrimination is a fundamental principle woven through all sections of the UNCRC and yet, as demonstrated in this report, Canada is taking aggressive steps to ensure it can continue to treat First Nations children inequitably.

Further, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples on November 12, 2010 and one month later filed this submission with the Canadian Human Rights Tribunal in the child and family services case detailing its views on the Declaration:

"The Declaration is not a legally binding instrument. It was adopted by a non-legally binding resolution of the United Nations General Assembly. As a result of this status, it does not impose any international or domestic legal obligations upon Canada. As Canada noted in its public statement of support, the Declaration does not change Canadian laws. It represents an expression of political, not legal, commitment. Canadian laws define the bounds of Canada's engagement with the Declaration."

—Attorney General of Canada, December 17, 2010

Clearly, Canada's acceptance of the United Nations Declaration of Indigenous Peoples is bracketed by Canada's political and legal views of the document which fail to respect the spirit and intent of the United Nations Declaration on the Rights of Indigenous Peoples.

Canada is one of the richest countries in the world with every capability of fully implementing the United Nations Convention on the Rights of the Child and as such should be held to the highest standard by the United Nations Committee on the Rights of the Child. In the Concluding Remarks of the second periodic review of Canada, The United Nations Committee on the Rights of the Child repeatedly directed Canada to close the gap in life chances between Aboriginal and non-Aboriginal children and yet little progress has been made. Canada knows it is providing inequitable children's services to First Nations children on reserves, it has solutions to address the problem and resources to do it and yet Canada is choosing to resist efforts to fully address the problem. Canada will often cite how much it spends on First Nations children without drawing attention to the fact that this amount falls far short of what is required. Canada's attempts to avoid a hearing on the facts to determine whether it's service delivery is racially discriminatory or not and its failure to disclose the Canadian Human Rights Tribunal to the United Nations Committee on the Rights of the Child in its country report raise concerns about its accountability.

It is time for the international community to join with First Nations children, families and leaders and with our many non-Aboriginal allies (particularly children) in Canada to demand that Canada ensure FULL EQUITY AND CULTURALLY BASED SERVICES for First Nations children on reserves immediately. Consistent with Canada's Obligations pursuant to the United Nations Convention on the Rights of the Child and UNCRC General Comment 11, the following recommendations are respectfully made to the UNCRC in consideration of Canada's periodic review:

1. Canada immediately take measures to fully report on the CRC's concluding observations for Canada arising from the Committee's review of Canada's 1st and 2nd periodic reports with specific and detailed responses to concluding observations specifically referencing, or particularly relevant to, Aboriginal children numbered: 5, 13,15,18,19, 20, 21, 22, 23, 24, 25, 26, 34, 35, 36,37,38,41 42, 43, 44, 45, 52, 53, 58, and 59. Such responses should refer to the Charter of Rights and Freedoms and other domestic protections for child rights as well as relevant international treaty body instruments and standards with specific attention to UNCRC General Comment 11, The Declaration on the Rights of Indigenous Peoples, the Covenant on Economic, Social and Cultural Rights, and the Universal Declaration on Human Rights. Responses should be specific and measurable and include information on: 1) the involvement of affected Aboriginal peoples and their representative organizations in the design, implementation and evaluation of government actions to address the concluding remarks, impacts of these efforts and any future plans to build on previous progress or address shortcomings.
2. Given the gravity of the rights violations experienced by First Nations children in Canada and the fact that no barriers exist to Canada fully implementing the UNCRC, it is recommended that the Committee on the Rights of the Child engage a special study on Canada's implementation of the UNCRC with respect to the rights of First Nations children pursuant to section 45 (c). Such a study could be done in partnership with the United Nations Permanent Forum on Indigenous Peoples as the International Expert Group Meeting (EGM) on Indigenous Children and Youth in Detention, Custody, Foster-Care and Adoption called for in its 2010 report submitted to the Permanent Forum on Indigenous Peoples. The study would independently document cases of government sourced discrimination against First Nations children and young people and serve to encourage States in similar positions to take progressive action to ensure the full enjoyment of rights under the Convention for all children.
3. Consistent with the UNCRC paying particular attention to Articles 2, 17, 18,19,21,26 and 30 as interpreted in UNCRC General Comment 11, Canada, with the full involvement of First Nations peoples, take immediate and effective measures to allocate and structure sufficient financial, material and human resources to ensure the safety, best interests and cultural linguistic rights of First Nations children giving them every opportunity to grow up safely in their families and communities.
4. Consistent with Articles 2 and 12, Canada immediately stop all actions designed that aim to avoid or delay a full and public hearing on the facts to determine whether or not its policies and practices in First Nations child and family services amount to racial discrimination against children. Canada must also ensure the hearings are broadcast in full so that First Nations children and their families can watch the tribunal given that the proceedings directly affect them.
5. Consistent with the UNCRC paying particular attention to Articles 2, 28, 29, 30 as interpreted in UNCRC General Comment 11, Canada, in full partnership with First Nations Peoples organizations and experts, take immediate and effective measures to allocate, and structure, sufficient financial, material and human resources to ensure the full enjoyment of education, cultural and linguistic right for indigenous children.

6. Consistent with the UNCRC paying particular attention to Articles 2, 4, 6, Canada, in full partnership with Indigenous Peoples, take immediate and effective measures, such as the full and proper adoption of Jordan's Principle, to ensure that government jurisdictional disputes in no way impede or delay First Nations children receiving government services available to all other children.

7. Consistent with Article 12, that Canada take immediate and effective measures to establish a national and independent mechanism with the power to implement reforms is available to receive, investigate and respond to reports of individual and systemic child rights violations.

8. Consistent with the UNCRC, that Canada ensures its domestic laws, government policies and practices are fully consistent with the United Nations Convention on the Rights of the Child and implements immediate and effective measures to ensure First Nations children, young people and families are aware of their rights under the Convention.

This is Exhibit "F" to the affidavit of
Cindy Blackstock, sworn before me this
22nd day of November, 2013

A Commissioner for taking Affidavits etc.
Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016

United Nations CRC/C/CAN/CO/3-4

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Committee on the Rights of the Child
Sixty first session
17 September - 5 October

Consideration of reports submitted by States parties under article 44 of the Convention

Concluding observations: Canada

1. The Committee considered the consolidated third and fourth periodic report of Canada (CRC/C/CAN/3-4) at its 1742nd and 1743rd meetings held on 26 and 27 September 2012, and adopted, at its 1754th meeting, held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the consolidated third and fourth periodic report of the State party (CRC/C/CAN/3-4) and the written reply to its list of issues (CRC/C/XCAN/Q/3-4/Add.1), which allowed for a better understanding of the situation in the State party. The Committee expresses appreciation for the constructive dialogue held with the multi-sectorial delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations adopted on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CAN/CO/1, 2006) and under the Optional Protocol on sale of children, child prostitution and child pornography (CRC/CO/OPSC/CAN/CO/1, 2012). The Committee regrets that the reporting guidelines were not followed in the preparation of the State party's report.

II. Follow-up measures undertaken and progress achieved by the State party

4. The Committee welcomes the adoption of the following legislative, measures:

(a) The law amending the Citizenship Act which came into effect on 17 April 2009; and

(b) Bill C-49 in 2005, an Act to amend the Criminal Code (trafficking in persons) (25 November 2005), which creates indictable offences which specifically address trafficking in persons.

5. The Committee also welcomes the ratification of the Convention on the Rights of Persons with Disabilities, in March 2010.

6. The Committee notes as positive the following institutional and policy measures:

(a) National Action Plan to Combat Human Trafficking in June 2012;

(b) Homelessness Partnering Strategy (HPS) in April 2007;

(c) National Plan of Action for children, A Canada Fit for Children, launched in April 2004; and

(d) National Strategy to Protect Children from Sexual Exploitation on the Internet, launched in May 2004.

III. Main areas of concerns and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6 of the Convention)

The Committee's previous recommendations

7. While welcoming the State party's efforts to implement the Committee's concluding observations of 2003 on the State party's initial report (CRC/C/15/Add.215, 2003), the Committee notes with regret that some of the recommendations contained therein have not been fully addressed.

8. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the second periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to reservations, legislation, coordination, data collection, independent monitoring, non-discrimination, corporal punishment, family environment, adoption, economic exploitation, and administration of juvenile justice.

Reservations

9. While the Committee positively acknowledges the State party's efforts towards removing its reservations to article 37(c) of the Convention, the Committee strongly reiterates its previous recommendation (CRC/C/15/Add.215, para.7, 2003), for the prompt withdrawal of its reservation to article 37(c).

Legislation

10. While welcoming numerous legislative actions related to the implementation of the Convention, the Committee remains concerned at the absence of legislation that comprehensively covers the full scope of the Convention in national law. In this context, the Committee further notes that given the State party's federal system and dualist legal system, the absence of such overall national legislation has resulted in fragmentation and inconsistencies in the implementation of child rights across the State party, with children in similar situations being subject to disparities in the fulfilment of their rights depending on the province or territory which they reside in.

11. The Committee recommends that the State Party finds the appropriate constitutional path that will allow it to have in the whole territory of the State Party, including its provinces and territories, a comprehensive legal framework which fully incorporates the provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent application.

Comprehensive policy and strategies

12. The Committee notes the adoption of the National Plan of Action for Children, A Canada Fit for Children, in 2004, but is concerned that beyond its broad objectives the Plan lacks clear division of responsibilities, clear priorities, targets and timetables, resource allocation and systematic monitoring as recommended in the Committee's previous concluding observations (CRC/C/15/Add.215, par. 13, 2003) and that it has not been evaluated in order to assess its impact and to guide the next steps.

13. The Committee strongly recommends that the State party adopt a national strategy that provides a comprehensive implementation framework for the federal, provincial and territorial levels of government spelling out as is appropriate the priorities, targets and respective responsibilities for the overall realization of the Convention and that will enable the provinces and territories to adopt accordingly their own specific plans and strategies. The Committee further recommends that the State party allocate adequate human, technical and financial resources for the implementation, monitoring and evaluation of this comprehensive strategy and related provincial and territorial plans. In this context, the Committee encourages the State party to establish a coordinated monitoring mechanism that would enable the submission and review of progress reports by all provinces and territories. It also recommends that children and civil society are consulted.

Coordination

14. While noting as positive the work of the Council of Ministers of Education and the Joint Consortium for School Health, both with representation from all levels of government, as well as other sectorial coordination bodies, the Committee remains concerned that overall coordination of the implementation of the Convention assigned to the Interdepartmental Working Group on Children's Rights (2007) has not been effective in practice. Furthermore, the Committee notes the challenges presented by the federal system of the State party and is concerned that the absence of overall coordination results in significant disparities in the implementation of the Convention across the State party's provinces and territories.

15. The Committee strongly reiterates its recommendation for the State party to establish a coordinating body for the implementation of the Convention and the national strategy (recommended in paragraph 13 above) with the stature and authority as well as the human, technical and financial resources to effectively coordinate actions for children's rights across sectors and among all provinces and territories. Furthermore, the Committee encourages the State party to consider strengthening the Interdepartmental Working Group on Children's Rights accordingly thus ensuring coordination, consistency and equitability in overall implementation of the Convention. The Committee also recommends that civil society, including all minority groups, and children be invited to form part of the coordination body.

Allocation of resources

16. Bearing in mind that the State party is one of the most affluent economies of the world and that it invests sizeable amounts of resources in child-related programmes, the

Committee notes that the State party does not use a child-specific approach for budget planning and allocation in the national and provinces/territories level budgets, thus making it practically impossible to identify, monitor, report and evaluate the impact of investments in children and the overall application of the Convention in budgetary terms. Furthermore, the Committee also notes that while the State party report contained information about various programs and their overall budget the Committee regrets that the report lacked information on the impact of such investments.

17. In light of the Committee's Day of General Discussion in 2007 on "Resources for the Rights of the Child - Responsibility of States" and with emphasis on articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee recommends that the State party establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention. Furthermore, the Committee recommends that the State party define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, children of Aboriginal, African Canadian, or other minorities and children with disabilities) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

International Cooperation

18. The Committee welcomes the international cooperation carried out through the Canada International Development Assistance (CIDA) program and particularly appreciates that approximately 30% of the State party's aid goes to health, education, and population. However, the Committee notes with concern that ODA for 2010-2011 is 0.33% of GNI and is projected to decline, which would bring it even further below the OECD/DAC average and below the percentage recommended in the Monterrey Consensus.

19. The Committee encourages the State Party to focus on children in its assistance programs and to increase its level of funding in order to meet the recommended aid target of 0.7% of GNI.

Data collection

20. The Committee notes with concern the limited progress made to establish a national, comprehensive data collection system covering all areas of the Convention. The Committee notes that the complex data collection systems utilize different definitions, concepts, approaches, and structures across provinces and territories which therefore makes it difficult to assess progress to strengthen the implementation of the Convention. In particular, the Committee notes that the State party report lacked data on the number of children aged 14 to 18 years old placed into alternative care facilities.

21. The Committee reiterates its recommendation for the State party to set up a national and comprehensive data collection system and to analyse the data collected as a basis for consistently assessing progress achieved in the realization of child rights and to help design policies and programmes to strengthen the implementation of the Convention. Data should be disaggregated by age, sex, geographic location, ethnicity and socio-economic background to facilitate analysis on the situation of all children. More specifically, the Committee recommends that appropriate data on children in special situations of vulnerability be collected and analysed to inform policy decisions and programs at different levels.

Independent monitoring

22. While noting that most Canadian provinces have an Ombudsman for Children, the Committee reiterates its concern (CRC/C/15/Add.215, para. 14, 2003) about the absence of an independent Ombudsman for Children at the federal level. Furthermore, the Committee is concerned that their mandates are limited and that not all children may be aware of the complaints procedure. While noting that the Canadian Human Rights Commission operates at the federal level and has the mandate to receive complaints, the Committee regrets that the Commission only hears complaints based on discrimination and therefore does not afford all children the possibility to pursue meaningful remedies for breaches of all rights under the Convention.

23. The Committee recommends that the State party take the necessary measures to establish a federal Children's Ombudsman in full accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), to ensure comprehensive and systematic monitoring of all children's rights at the federal level. Furthermore, the Committee encourages the State party to raise awareness among children concerning the existing children's Ombudsman in their respective provinces and territories. Drawing attention to its General Comment No. 2 (CRC/GC/2, 2002), the Committee also calls upon the State party to ensure that this national mechanism be provided with the necessary human, technical and financial resources in order to secure its independence and efficacy.

Dissemination and awareness-raising

24. The Committee appreciates the State party's efforts to promote awareness and understanding of the Convention, particularly by supporting non-governmental organizations' efforts. Nevertheless, the Committee is concerned that awareness and knowledge of the Convention remains limited amongst children, professionals working with children, parents, and the general public. The Committee is especially concerned that there has been little effort to systematically disseminate information on the Convention and integrate child rights education into the school system.

25. The Committee urges the State party to take more active measures to systematically disseminate and promote the Convention, raising awareness in the public at large, among professionals working with or for children, and among children. In particular, the Committee urges the State party to expand the development and use of curriculum resources on children's rights, especially through the State party's extensive availability of free Internet and web access providers, as well as education initiatives that integrate knowledge and exercise of children's rights into curricula, policies, and practices in schools.

Training

26. Despite information on some training provided for professionals, such as immigration officers and government lawyers on the Convention, the Committee is concerned that there is no systematic training on children's rights and the Convention for all professional groups working for or with children. In particular, the Committee is concerned that personnel involved in juvenile justice, such as law enforcement officers, prosecutors, judges, and lawyers, lack understanding and training on the Convention.

27. The Committee urges the State party to develop an integrated strategy for training on children's rights for all professionals, including, government officials, judicial authorities, and professionals who work with children in health and social services. In developing such training programs, the Committee urges the State party

to focus the training on the use of the Convention in legislation and public policy, program development, advocacy, and decision making processes and accountability.

Child rights and the business sector

28. The Committee joins the concern expressed by the Committee on the Elimination of Racial Discrimination that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples in territories outside Canada, (CERD/C/CAN/CO/19-20, para. 14, 2012), in particular gas, oil, and mining companies. The Committee is particularly concerned that the State party lacks a regulatory framework to hold all companies and corporations from the State party accountable for human rights and environmental abuses committed abroad.

29. The Committee recommends that the State Party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to child rights, and in light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4(d)) and resolution 17/4 of 16 June 2011 (para. 6(f)). In particular, it recommends that the State party ensure the:

(a) Establishment of a clear regulatory framework for, among others, the gas, mining, and oil companies operating in territories outside Canada ensure that their activities do not impact on human rights or endanger environment and other standards, especially those related to children's rights;

(b) The monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur with a particular focus on the impact on children;

(c) Assessments, consultations with and disclosure to the public by companies on plans to address environmental and health pollution and the human rights impact of their activities; and

(d) In doing so, take into account the UN Business and Human Rights Framework adopted unanimously in 2008 by the Human Rights Council.

B. Definition of the child (art. 1 of the Convention)

30. The Committee is concerned that not all children under the age of 18 are benefiting from the full protection under the Convention, in particular children who in some provinces and territories, can be tried as adults and children between the ages of 16 and 18 who are not appropriately protected against sexual exploitation in some provinces and territories.

31. The Committee urges the state party to ensure the full compliance of all national provisions on the definition of the child with article 1 of the Convention, in particular to ensure that all children under18 cannot be tried as adults and all children under 18 who are victims of sexual exploitation receive appropriate protection.

C. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

32. While welcoming the State party's efforts to address discrimination and promote intercultural understanding, such as the Stop Racism national video contest, the Committee is nevertheless concerned at the continued prevalence of discrimination on the basis of ethnicity, gender, socio-economic background, national origin and other grounds. In particular, the Committee is concerned at:

(a) The significant overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care;

(b) The serious and widespread discrimination in terms of access to basic services faced by children in vulnerable situations, including minority children, immigrants, and children with disabilities;

(c) The lack of a gender perspective in the development and implementation of programs aimed at improving the situation for marginalized and disadvantaged communities, such as programs to combat poverty or the incidence of violence, especially in light of the fact that girls in vulnerable situations are disproportionately affected;

(d) The lack of action following the Auditor General's finding that less financial resources are provided for child welfare services to Aboriginal children than to non-Aboriginal children; and

(e) Economic discrimination directly or indirectly resulting from social transfer schemes and other social/tax benefits, such as the authorization given to provinces and territories to deduct the amount of the child benefit under the National Child Benefit Scheme from the amount of social assistance received by parents on welfare.

33. The Committee recommends that the State party include information in its next periodic report on measures and programs relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference. The Committee also recommends that the State party:

(a) Take urgent measures to address the overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care;

(b) Address disparities in access to services by all children facing situations of vulnerability, including ethnic minorities, children with disabilities, immigrants and others;

(c) Ensure the incorporation of a gender perspective in the development and implementation of any programme or stimulus package, especially programs related to combatting violence,poverty, and redressing other vulnerabilities;

(d) Take immediate steps to ensure that in law and practice, Aboriginal children have full access to all government services and receive resources without discrimination; and

(e) Undertake a detailed assessment of the direct or indirect impact of the reduction of social transfer schemes and other social/tax benefit schemes on the standard of living of people depending on social welfare, including the reduction of social welfare benefits linked to the National Child Benefit Scheme, with particular

attention to women, children, older persons, persons with disabilities, Aboriginal people, African Canadians and members of other minorities.

Best interests of the child

34. The Committee is concerned that the principle of the best interests of the child is not widely known, appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and in policies, programs and projects relevant to and with an impact on children. In particular, the Committee is concerned that the best interest of the child is not appropriately applied in asylum-seeking, refugee and/or immigration detention situations.

35. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programs and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to the public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgements and decisions should also be based on this principle, specifying the criteria used in the individual assessment of the best interests of the child.

Respect for the views of the child

36. The Committee welcomes the State Party's Yukon Supreme Court decision in 2010 which ruled that all children have the right to be heard in custody cases. Nevertheless, the Committee is concerned that there are inadequate mechanisms for facilitating meaningful and empowered child participation in legal, policy, environmental issues, and administrative processes that impact children.

37. The Committee draws the State party's attention to its general comment No. 12 General Comment No. 12 (CRC/C/GC/12, 2009), and recommends that it continue to ensure the implementation of the right of the child to be heard in accordance with article 12 of the Convention. In doing so, it recommends that the State party promote the meaningful and empowered participation of all children, within the family, community, and schools, and develop and share good practices. Specifically, the Committee recommends that the views of the child be a requirement for all official decision-making processes that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment. The Committee also urges the State party to ensure that children have the possibility to voice their complaints if the their right to be heard is violated with regard to judicial and administrative proceedings and that children have access to an appeals procedures.

D. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention) Birth registration

38. While the Committee notes as positive that birth registration is almost universal in the State party, it is seriously concerned that some children have been deprived of their identity due to the illegal removal of the father's name on original birth certificates by governmental authorities, especially in cases of unwed parents.

39. The Committee recommends that the State party review legislation and practices in the provinces and territories where birth registrations have been illegally

altered or the names of parents have been removed. The Committee urges the State party to ensure that the names on such birth certificates are restored and change legislation if necessary to achieve this.

Nationality and Citizenship

40. While welcoming the positive aspects of the April 2009 amendment to the Citizenship Act, the Committee is nevertheless concerned about some provisions of the amendment which place significant limitations on acquiring Canadian citizenship for children born to Canadian parents abroad. The Committee is concerned that such restrictions, can in some circumstances, lead to statelessness. Furthermore, the Committee is concerned that children born abroad to government officials or military personnel are exempted from such limitations on acquiring Canadian citizenship.

41. The Committee recommends the State party to review the provisions of the amendment to the Citizenship Act that are not in line with the Convention with a view to removing restrictions on acquiring Canadian citizenship for children born abroad to Canadian parents. The Committee also urges the State party to consider ratifying the 1954 Convention relating to the Status of Stateless Persons.

Preservation of identity

42. The Committee is concerned that vulnerable children, including Aboriginal and African Canadian children, who are greatly over-represented in the child welfare system often lose their connections to their families, community, and culture due to lack of education on their culture and heritage. The Committee is also concerned that under federal legislation, Aboriginal men are legally entitled to pass their Aboriginal status to two generations while Aboriginal women do not have the right to pass their Aboriginal status to their grandchildren.

43. The Committee urges the State party to ensure full respect for the preservation of identity for all children, and to take effective measures so as to ensure that Aboriginal children in the child welfare system are able to preserve their identity. To this end, the Committee urges the State party to adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity. The Committee also recommends that the State party revise its legislation to ensure that women and men are equally legally entitled to pass their Aboriginal status to their grandchildren.

E. Violence against children ((arts 19, 37 (a), 34 and 39 of the Convention)

Corporal punishment

44. The Committee is gravely concerned that corporal punishment is condoned by law in the State party under Section 43 of the Criminal Code. Furthermore, the Committee notes with regret that the 2004 Supreme Court decision Canadian Foundation for Children, Youth and the Law v. Canada, while stipulating that corporal punishment is only justified in cases of "minor corrective force of a transitory and trifling nature,,, upheld the law. Furthermore, the Committee is concerned that the legalization of corporal punishment can lead to other forms of violence.

45. The Committee urges the State party to repeal Section 43 of the Criminal Code to remove existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against all age groups of children,

however light, within the family, in schools and in other institutions where children may be placed. Additionally, the Committee recommends that the State party:

(a) Strengthen and expand awareness-raising for parents, the public, children, and professionals on alternative forms of discipline and to promote respect for children's rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment; and

(b) Ensure the training of all professionals working with children, including judges, law enforcement, health, social and child welfare, and education professionals to promptly identity, address and report all cases of violence against children.

Abuse and neglect

46. While the Committee notes initiatives such as *the Family Violence Prevention Program,* the Committee is concerned about the high levels of violence and maltreatment against children evidenced by the *Canadian Incidence Study of Reported Child Abuse and Neglect 2008.* The Committee is especially concerned about:

(a) The lack of a national comprehensive strategy to prevent violence against all children;

(b) That women and girls in vulnerable situations are particularly affected, including Aboriginal, African Canadian, and those with disabilities;

(c) The low number of interventions in cases of family violence, including restraining orders; and

(d) The lack of counselling for child victims and perpetrators and inadequate programs for the reintegration of child victims of domestic violence.

47. The Committee recommends that the State party take into account the Committee's General Comment No. 13 (CRC/C/GC/13, 2011) and urges the State party to:

(a) Develop and implement a national strategy for the prevention of all forms of violence against all children, and allocate the necessary resources to this strategy and ensure that there is a monitoring mechanism;

(b) Ensure that the factors contributing to the high levels of violence among Aboriginal women and girls are well understood and addressed in national and province/territory plans;

(c) Ensure that all child victims of violence have immediate means of redress and protection, including protection or restraining orders; and

(d) Establish mechanisms for ensuring effective follow-up support for all child victims of domestic violence upon their family reintegration.

Sexual exploitation and abuse

48. The Committee notes with appreciation the launching of the National Strategy for the Protection of Children from Sexual Exploitation on the Internet in 2004 and the significant amount of resources allocated to the implementation of this program by the State party. The Committee further notes as positive that the State party has demonstrated considerable political will to coordinate law enforcement agencies to combat sexual exploitation of children on the internet. Nevertheless, the Committee is concerned that the State party has not taken sufficient action to address other forms of sexual exploitation, such as child prostitution and child sexual abuse. The Committee is also concerned about the lack of attention to prevention of child sexual exploitation and the low number of

investigations and prosecutions for sexual exploitation of children as well as inadequate sentencing for those convicted. In particular, the Committee is gravely concerned about cases of Aboriginal girls who were victims of child prostitution and have gone missing or were murdered and have not been fully investigated with the perpetrators going unpunished.

49. The Committee urges the State party to:

(a) Expand existing government strategies and programs to include all forms of sexual exploitation;

(b) Establish a plan of action to coordinate and strengthen law enforcement investigation practices on cases of child prostitution and to vigorously ensure that all cases of missing girls are investigated and prosecuted to the full extent of the law;

(c) Impose sentencing requirements for those convicted of crimes under the Optional Protocol to ensure that the punishment is commensurate with the crime; and

(d) Establish programs for those convicted of sexual exploitation abuse, including rehabilitation programs and federal monitoring systems to track former perpetrators.

Harmful Practices

50. The Committee is concerned that there is inadequate protection against forced child marriages, especially among immigrant communities and certain religious communities such as the polygamous communities in Bountiful, British Columbia.

51. The Committee recommends that the State party take all necessary measures, including legislative measures and targeted improvement of investigations and law enforcement, to protect all children from underage forced marriages and to enforce the legal prohibition against polygamy.

Freedom of the child from all forms of violence

52. Recalling the recommendations of the United Nations Study on violence against children (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State Party take into account General Comment No 13 on 'The right of the child to freedom from all forms of violence" (CRC/C/GC/13, 2011), and in particular:

(a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;

(b) Adopt a national coordinating framework to address all forms of violence against children;

(c) Pay particular attention to the gender dimension of violence; and

(d) Cooperate with the Special Representative of the Secretary-General on violence against children and relevant United Nations institutions.

F. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Family environment

53. The Committee welcomes the State party's efforts to better support families through, inter alia, legislative and institutional changes. However, the Committee is concerned that families in some disadvantaged communities lack adequate assistance in the performance of their child-rearing responsibilities, notably those families in a crisis situation due to poverty. In particular, the Committee is concerned about the number of pregnant girls and teenage mothers who drop out of school, which leads to poorer outcomes for their children.

54. The Committee recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, and, in the case of Aboriginal and African Canadian populations, culturally appropriate services to enable them to fulfil their parental role. The Committee further encourages the State party to provide education opportunities for pregnant girls and teenage mothers so that they can complete their education.

Children deprived of a family environment

55. The Committee is deeply concerned at the high number of children in alternative care and at the frequent removal of children from their families as a first resort in cases of neglect or financial hardship or disability. The Committee is also seriously concerned about inadequacies and abuses committed within the alternative care system of the State party, including:

(a) Inappropriate placements of children because of poorly researched and ill-defined reasons for placement;

(b) Poorer outcomes for young people in care than for the general population in terms of health, education, well-being and development;

(c) Abuse and neglect of children in care;

(d) Inadequate preparation provided to children leaving care when they turn 18;

(e) Inadequate screening, training, support and assessment of care givers; and

(f) Aboriginal and African Canadian children often placed outside their communities.

56. The Committee urges the State party to take immediate preventive measures to avoid the separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in performance of child-rearing responsibilities, including through education, counselling and community-based programmes for parents, and reduce the number of children living in institutions. Furthermore, the Committee calls upon the State party to:

(a) Ensure that the need for placement of each child in institutional care is always assessed by competent, multidisciplinary teams of professionals and that the initial decision of placement is done for the shortest period of time and subject to judicial review by a civil court, and is further reviewed in accordance with the Convention;

(b) Develop criteria for the selection, training and support of childcare workers and out-of-home carers and ensure their regular evaluation;

(c) Ensure equal access to health care and education for children in care;

(d) Establish accessible and effective child-friendly mechanisms for reporting cases of neglect and abuse and commensurate sanctions for perpetrators;

(e) Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure; and

(f) Intensify cooperation with all minority community leaders and communities to find suitable solutions for children from these communities in need of alternative care, such as for example, kinship care.

Adoption

57. The Committee notes as positive the recent court decision in Ontario v. Marchland which ruled that children have the right to know the identity of both biological parents. However, the Committee is concerned that domestic adoption legislation, policy, and practice are set by each of the provinces and territories and vary considerably from jurisdiction to jurisdiction and as a result, Canada has no national adoption legislation, national standards, national database on children in care or adoption, and little known research on adoption outcomes. The Committee is also concerned that adoption disclosure legislation has not been amended to ensure that birth information is made available to adoptees as recommended in previous concluding observations (CRC/C/25/Add.215, para. 31, 2003). The Committee also regrets the lack of information provided in the State party on inter-country adoption.

58. The Committee recommends that the State party:

(a) Adopt legislation, including at the federal, provincial and territorial levels, where necessary, to ensure compliance with the Convention and the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption;

(b) Amend its legislation without delay to ensure that information about the date and place of birth of adopted children and their biological parents are preserved; and

(c) Provide detailed information and disaggregated data on domestic and international adoptions in its next periodic report.

G. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

59. The Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. While recognizing that progress has been made on the inclusion of children with disabilities within the State party, the Committee is deeply concerned that:

(a) The *PALS (Participation and Activity Limitation Survey)* was last conducted by the State party in 2006 without it having been substituted to date by any other data collection effort on children with disabilities. As a result, there are no global or

disaggregated data since 2006 on which to base a policy on inclusion and equal access for children with disabilities.

(b) There is great disparity among the different provinces and territories of the State Party in access to inclusive education, with education in several provinces and territories being mostly in segregated schools;

(c) The cost of caring for children with disabilities often has a negative economic impact on household incomes and parental employment and some children do not have access to the necessary support and services; and

(d) Children with disabilities are more than twice as vulnerable to violence and abuse as other children and despite an overall drop in homicide rates among the general population, there appears to be an increase in homicide and filicide rates against people with disabilities.

60. The Committee recommends that the State party implement the provisions of the Convention on the Rights of Persons with Disabilities (CRPD) and in light of its General Comment No. 9 (CRC/C/GC/9, 2006), the Committee urges the State party to:

(a) Establish as soon as possible a system of global and disaggregated data collection on children with disabilities, which will enable the State party and all its provinces and territories to establish inclusive policies and equal opportunities for all children with disabilities;

(b) Ensure that all children with disabilities have access, in all provinces and territories, to inclusive education and are not forced to attend segregated schools only designed for children with disabilities;

(c) Ensure that children with disabilities, and their families, are provided with all necessary support and services in order to ensure that financial constraints are not an obstacle in accessing services and that household incomes and parental employment are not negatively affected; and

(d) Take all the necessary measures to protect children with disabilities from all forms of violence.

Breastfeeding

61. While welcoming programs such as *Canada's Prenatal Nutrition Program (CPNP)*, the Committee is nevertheless concerned at the low rates of breastfeeding in the State party, especially among women in disadvantaged situations and the lack of corresponding programs to help encourage breastfeeding among all mothers in the State party. The Committee also regrets that despite adopting the International Code of Marketing of Breastmilk Substitutes, the State party has not integrated the various articles of the International Code into its regulatory framework and as a result, formula companies have routinely violated the Code and related World Health Assembly resolutions with impunity.

62. The Committee recommends that the State party:

(a) Establish a program to promote and enable all mothers to successfully breastfeed exclusively for the first six months of the infant's life and sustain breastfeeding for two years or more as recommended by the Global strategy for Infant and Young Child Feeding; and

(b) Strengthen the promotion of breast-feeding and enforce the International Code of Marketing of Breast-milk Substitutes, and undertake appropriate action to investigate and sanction violations.

Health

63. The Committee notes as positive the free and widespread access to high-quality healthcare within the State party. However, the Committee notes with concern the high incidence of obesity among children in the State party and is concerned by the lack of regulations on the production and marketing of fast foods and other unhealthy foods, especially as targeted at children.

64. The Committee recommends that the State party address the incidence of obesity in children, by inter alia promoting a healthy lifestyle among children, including physical activity and ensuring greater regulatory controls over the production and advertisement of fast food and unhealthy foods, especially those targeted at children.

Mental health

65. The Committee notes with appreciation that the State party provided significant resources to implement the National Aboriginal Youth Sulcide Prevention Strategy over a five year period. Despite such programs, the Committee is concerned about:

(a) The continued high rate of suicidal deaths among young people throughout the State party, particularly among youth belonging to the Aboriginal community;

(b) The increasingly high rates of children diagnosed with behavioural problems and the over-medication of children without expressly examining root causes or providing parents and children with alternative support and therapy. In this context, it is of concern to the Committee that educational resources and funding systems for practitioners are geared toward a "quick fix;,, and

(c) The violation of both children's and parents' informed consent based on adequate information provided by health practitioners.

66. The Committee recommends that the State party:

(a) Strengthen and expand the quality of interventions to prevent suicide among children with particular attention to early detection, and expand access to confidential psychological and counselling services in all schools, including social work support in the home;

(b) Establish a system of expert monitoring of the excessive use of psycho stimulants to children, and take action to understand the root causes and improve the accuracy of diagnoses while improving access to behavioural and psychological interventions; and

(c) Consider the establishment of a monitoring mechanism in each province and territory, under the ministries of health, to monitor and audit the practice of informed consent by health professionals in relation to the use of psycho-tropic drugs on children.

Standard of living

67. While the Committee appreciates that the basic needs of the majority of children in the State party are met, the Committee is concerned that income inequality is widespread and growing and that no national strategy has been developed to comprehensively address child poverty despite a commitment by Parliament to end child poverty by 2000. The Committee is especially concerned about the inequitable distribution of tax benefits and social transfers for children. Furthermore, the Committee is concerned that the provision of welfare services to Aboriginal children, African Canadian and children of other minorities

is not comparable in quality and accessibility to services provided to other children in the State party and is not adequate to meet their needs.

68. The Committee recommends that the State party:

(a) Develop and implement a national, coordinated strategy to eliminate child poverty as part of the broader national poverty reduction strategy, which should include annual targets to reduce child poverty;

(b) Assess the impact of tax benefits and social transfers for and ensure that they give priority to children in the most vulnerable and disadvantaged situations; and

(c) Ensure that funding and other support, including welfare services, provided to Aboriginal, African-Canadian, and other minority children, including welfare services, is comparable in quality and accessibility to services provided to other children in the State party and is adequate to meet their needs.

H. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

Education, including vocational training and guidance

69. While welcoming the State party's various initiatives to improve educational outcomes for children in vulnerable situations, the Committee is concerned about the following:

(a) The need for user fees at the compulsory education level for required materials and activities that are part of the basic public school service for children;

(b) The high dropout rate of Aboriginal and African-Canadian children;

(c) The inappropriate and excessive use of disciplinary measures applied to Aboriginal and African Canadian children in school, such as resorting to suspension and referring children to the police, as well as the overrepresentation of these groups in alternative schools;

(d) The high number of segregated schools primarily for minority and disabled children, which leads to discrimination; and

(e) The widespread incidence of bullying in schools.

70. The Committee recommends that the State party:

(a) Take measures to abolish the need for user fees at the level of compulsory education;

(b) Develop a national strategy, in partnership with Aboriginal and African Canadian communities, to address the high dropout rate of Aboriginal and African Canadian children;

(c) Take measures to prevent and avoid suspension and the referral of children to police as a disciplinary measure for Aboriginal and African Canadian children and prevent their reassignment to alternative schools while at the same time ensuring that professionals are provided with the necessary skills and knowledge to tackle the problems;

(d) Ensure integration of minority and disabled children in educational settings in order to prevent segregation and discrimination; and

(e) Enhance the measures undertaken to combat all forms of bullying and harassment, such as improving the capacity of teachers and all those working at schools and of students to accept diversity at school and in care institutions, and improve conflict resolution skills of children, parents, and professionals.

Early childhood education and care

71. The Committee is concerned that despite the State party's significant resources, there has been a lack of funding directed towards the improvement of early childhood development and affordable and accessible early childhood care and services. The Committee is also concerned by the high cost of child-care, the lack of available places for children, the absence of uniform training requirements for all child-care staff and of standards of quality care. The Committee notes that early childhood care and education continues to be inadequate for children under four years of age. Furthermore, the Committee is concerned that the majority of early childhood care and education services in the State party are provided by private, profit-driven institutions, resulting in such services being unaffordable for most families.

72. Referring to General Comment No. 7 (CRC/C/GC/7/Rev.1, 2005), the Committee recommends that the State party further improve the quality and coverage of its early childhood care and education, including by:

(a) Prioritizing the provision of such care to children between the age of 0 and 3 years, with a view to ensuring that it is provided in a holistic manner that includes overall child development and the strengthening of parental capacity;

(b) Increasing the availability of early childhood care and education for all children, by considering providing free or affordable early childhood care whether through State-run or private facilities;

(c) Establishing minimum requirements for training of child care workers and for improvement of their working conditions; and

(d) Conducting a study to provide an equity impact analysis of current expenditures on early childhood policies and programs, including all child benefits and transfers, with a focus on children with higher vulnerability in the early years.

I. Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Asylum-seeking and refugee children

73. The Committee welcomes the State party's progressive policy on economic migration. Nevertheless, the Committee is gravely concerned at the recent passage of the law entitled, Protecting Canada's Immigration System Act, in June 2012 authorizing the detention of children from ages 16 to 18 for up to one year due to their irregular migrant status. Furthermore, the Committee regrets that notwithstanding its previous recommendation (CRC/C/15/Add.215, para. 47, 2003), the State party has not adopted a national policy on unaccompanied and asylum-seeking children and is concerned that the Immigration and Refugee Protection Act makes no distinction between accompanied and unaccompanied children and does not take into account the best interests of the child. The Committee is also deeply concerned about the frequent detention of asylum-seeking children it being done without consideration for the best interests of the child. Furthermore, while acknowledging that a representative is appointed for unaccompanied children, the Committee notes with concern that they are not provided with a guardian on a regular basis. Additionally, the Committee is concerned about the deportation of Roma and other migrant

children who previous to that decision often await, in a certain status, for prolonged periods of time, even years, such decision.

74. The Committee urges the State party to bring its immigration and asylum laws into full conformity with the Convention and other relevant international standards and reiterates its previous recommendations (CRC/C/15/Add.215, para 47, 2003). In doing so, the State party is urged to take into account the Committee's General Comment No. 6 on the "Treatment of unaccompanied and separated children outside their country of origin" (CRC/GC/2005/6, 2005). In addition, the Committee urges the State party to:

(a) Reconsider its policy of detaining children who are asylum-seeking, refugees and/or irregular migrants; and ensure that detention is only used in exceptional circumstances, in keeping with the best interests of the child, and subject to judicial review;

(b) Ensure that legislation and procedures use the best interests of the child as the primary consideration in all immigration and asylum processes, that determination of the best interests is consistently conducted by professionals who have been adequately such procedures;

(c) Expeditiously establish the institution of independent guardianships for unaccompanied migrant children;

(d) Ensure that cases of asylum-seeking children progress quickly so as to prevent children from waiting long periods of time for the decisions; and

(d) Consider implementing the United Nations High Commission for Refugees Guidelines on International Protection No.8: Child Asylum Claims under articles 1(A)2 and 1(F) of the 1951 Convention. In implementing this recommendation, the Committee stresses the need for the State party to pay particular attention to ensuring that its policies and procedures for children in asylum seeking, refugee and/or immigration detention give dne primacy to the principle of the best interests of the child and that immigration authorities be trained on the principle and procedures of the best interest of the child.

Children in armed conflict

75. While noting with appreciation oral responses provided by the delegation during the dialogue, the Committee seriously regrets the absence of information to the follow up on implementation of the OPAC pursuant to Article 8(2). The Committee expresses deep concern that despite the recommendation provided in its concluding observations (CRC/OPAC/CAN/C0/1, para. 9, 2006) to give priority, in the process of voluntary recruitment, to those who are oldest and to consider increasing the age of voluntary recruitment, the State party has not considered measures to this effect. The Committee additionally expresses concern that recruitment strategies may in fact actively target Aboriginal youth and are conducted at high school premises.

76. The Committee reiterates its previous recommendations provided in CRC/OPAC/CAN/C0/1 and recommends to the State party to include their implementation and follow up to OPAC in its next periodic report to the CRC. The Committee further recommends the State Party to consider raising the age of voluntary recruitment to 18, and in the meantime give priority to those who are oldest in the process of voluntary recruitment. The Committee further recommends that Aboriginal, or any other children in vulnerable situations are not actively targeted for recruitment and to reconsider conducting these programs at high school premises.

77. The Committee welcomes the recent return of Omar Kadr to the custody of the State party. However, the Committee is concerned that as a former child soldier, Omar Kadr has not been accorded the rights and appropriate treatment under the Convention. In particular, the Committee is concerned that he experienced grave violations of his human rights, which the Canadian Supreme Court recognized, including his maltreatment during his years of detention in Guantanamo, and that he has not been afforded appropriate redress and remedies for such violations.

78. The Committee urges the State party to promptly provide a rehabilitation program for Omar Kadr that is consistent with the Paris Principles for the rehabilitation of former child soldiers and ensure that Omar Khadr is provided with an adequate remedy for the human rights violations that the Supreme Court of Canada ruled he experienced.

Economic exploitation, including child labour

79. The Committee regrets the lack of information provided in the State party report regarding of child labour and exploitation, and notes with concern that data on child labour is not systematically collected in all provinces and territories.. The Committee is also concerned that the State party lacks federal legislation establishing the minimum age of employment within the provinces and territories. The Committee also expresses concern that in some provinces and territories, children of 16 years of age are permitted to perform certain types of hazardous and dangerous work.

80. The Committee recommends that the State party:

(a) Establish a national minimum age of 16 for employment, which is consistent with the age of compulsory education;

(b) Harmonize province and territory legislation to ensure adequate protection for all children under the age of 18 from hazardous and unsafe working environments;

(c) Take steps to establish a unified mechanism for systematic data collection on incidences of hazardous child labour and working conditions, disaggregated by age, sex, geographical location and socio-economic background as a form of public accountability for protection of the rights of children; and

(d) Consider ratifying the ILO Convention No. 138 on the minimum age for admission to employment.

Sale, trafficking and abduction

81. The Committee welcomes the passage of Bill C-268 in 2010, which requires minimum mandatory sentences for persons convicted of child trafficking. However, the Committee is concerned about the weak capacity of law enforcement organizations to identify and subsequently protect child victims of trafficking and the low number of investigations and prosecutions in this respect. The Committee is also concerned that due to the complexity of most child trafficking cases, law enforcement officials and prosecutors do not have clear guidelines for investigation and are not always aware of how to best lay charges.

82. The Committee urges the State party to provide systematic and adequate training to law enforcement officials and prosecutors with the view of protecting all child victims of trafficking and improving enforcement of existing legislation. The Committee recommends that such training include awareness-raising on the applicable sections of the Criminal Code criminalizing child trafficking, best practices for investigation procedures, and specific instructions on how to protect child victims.

Help lines

83. The Committee notes as positive the existence of a toll-free helpline for children, which seems to be used by a significant number of children within the State party who have sought psycho-social support for cases of depression, sexual exploitation, and school bullying. The Committee is however concerned that the State party has provided limited resources for the effective functioning of such a helpline.

84. The Committee urges the State party to provide financial and technical support to this helpline in order to maintain it and ensure that it provides 24 hour services throughout the State party. The Committee also urges the State party to promote awareness on how children can access the helpline.

Administration of juvenile justice

85. The Committee notes as positive that Bill C-10 (Safe Streets and Communities Act of 2012) prohibits the imprisonment of children in adult correctional facilities. Nevertheless, the Committee is deeply concerned at the fact that the 2003 Youth Criminal Justice Act, which was generally in conformity with the Convention, was in effect amended by the adoption of Bill C-10 and that the latter is excessively punitive for children and not sufficiently restorative in nature. The Committee also regrets there was no child rights assessment or mechanism to ensure that Bill C-10 complied with the provisions of the Convention. In particular, the Committee expresses concern that:

(a) No action has been undertaken by the State party to increase the minimum age of criminal responsibility (CRC/C/15/Add.215, 2003, para. 57);

(b) Children under 18 are tried as adults, in relation to the circumstances or the gravity of their offence;

(c) The increased use of detention reduced protection of privacy, and reduction in the use of extrajudicial measures, such as diversion;

(d) The excessive use of force, including the use of tasers, by law enforcement officers and personnel in detention centers against children during the arrest stage and in detention;

(e) Aboriginal and African Canadian children and youth are overrepresented in detention with statistics showing for example, that Aboriginal youth are more likely to be involved in the criminal justice system than to graduate from high school;

(f) Teenage girls are placed in mixed-gender youth prisons with cross-gender monitoring by guards, increasing the risk of exposing girls to incidents of sexual harassment and sexual assault.

86. The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, including Bill C-10 (2012 Safe Streets and Communities Act) in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's General Comment No. 10 (2007) (CRC/C/GC/10). In particular, the Committee urges the State party to:

(a) Increase the minimum age of criminal responsibility;

(b) Ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence;

(c) Develop alternatives to detention by increasing the use of extrajudicial measures, such as diversion and ensure the protection of privacy of children within the juvenile justice system;

(d) Develop guidelines for restraint and use of force against children in arrest and detention for use by all law enforcement officers and personnel in detention facilities, including the abolishment of use of tasers;

(e) Conduct an extensive study of systemic overrepresentation of Aboriginal and African Canadian children and youth in the criminal justice system and develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of Aboriginal and African Canadian children and youth, including activities such as training of all legal, penitentiary and law enforcement professionals on the Convention;

(f) Ensure that girls are held separately from boys and that girls are monitored by female prison guards so as to better protect girls from the risk of sexual exploitation; and

(g) Ensure that girls are held separately from boys and that girls are monitored by female prison guards so as to better protect girls from the risk of sexual harassment and assault.

J. Ratification of international human rights instruments

87. The Committee encourages the State party, in order to further strengthen the fulfilment of children's rights, to ratify the CRC Optional Protocol on Individual Communication. The Committee further urges the State party to ratify ILO Convention No. 138 concerning the minimum age for admission to employment and ILO Convention No. 189 on decent work for domestic workers.

K. Cooperation with regional and international bodies

88. The Committee recommends that the State party cooperate with the Organization of American States (OAS) towards the implementation of the Convention and other human rights instruments, both in the State party and in other OAS member States.

L. Follow-up and dissemination

89. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to heads of provincial and territorial authorities for appropriate consideration and further action.

90. The Committee further recommends that the third and fourth periodic report and written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

M. Next report

91. The Committee invites the State party to submit its next combined fifth and sixth periodic report by 11 July 2018 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. In the event that a report exceeding the page limitations is submitted, the State party will be asked to review and eventually resubmit the report in accordance with the above mentioned guidelines. The Committee reminds the State party that, if it is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.

92. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at by the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

This is Exhibit "G" to the affidavit of
Cindy Blackstock, sworn before me this
22nd day of November, 2013

A Commissioner for taking Affidavits etc.

**Shannon Marie Kack, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires September 13, 2016**

Human Rights Commission Complaint Form

Your Name(s):
Regional Chief Lawrence Joseph, Assembly of First Nations
Cindy Blackstock, Executive Director, First Nations Child & Family Caring Society of Canada

Name of Organization that your Complaint is Against:
Indian and Northern Affairs Canada

Summary of Complaint:
On behalf of the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada, we are writing to file a complaint pursuant to the Human Rights Act regarding the inequitable levels of child welfare funding provided to First Nations children and families on reserve pursuant to the Indian and Northern Affairs Canada (INAC) funding formula for First Nations child and family services known as Directive 20-1, Chapter 5 (hereinafter called the Directive). This formula provides funds in two primary envelopes: 1) Maintenance (costs of children in care) and 2) Operations (personnel, office space, prevention services etc.). Maintenance is paid every time a child comes into care whereas operations funding is paid on the basis of exceeding certain population thresholds of status Indian children on reserve. There is also an adjustment in the formula for remoteness. There is substantial evidence spanning over ten years that inequitable levels of funding are contributing to the over representation of Status First Nations children in child welfare care. Moreover, we invite your office to review the Wen:de series of reports which identify the scope and nature of the over representation of First Nations children in care, documents the inequality in funding, and provides a detailed evidence-based solution to redress the inequity which is within the sole jurisdiction of the federal government to implement. Ensuring a basic level of equitable child welfare service for First Nations children on reserve and thus the observance of their human rights pursuant to the Human Rights Act, the Convention on the Rights of the Child, The Covenant on Economic, Social and Cultural Rights and the Charter of Rights and Freedoms would represent an investment of 109 million dollars in year one of the proposed multi-year funding formula. This cost represents less than one percent of the current federal surplus budget estimated at over $13 billion. As the following summary notes, the moral, economic, and social benefits of full and proper implementation of the Wen:de report recommendations are significant.

Status Indian children are drastically over represented in child welfare care. A recent report found that the 0.67% of all non Aboriginal children were in child welfare care as of May of 2005 in three sample provinces as compared to 0.31% of Métis children and 10.23% of Status Indian children. Year End Data collected by INAC (2003) indicates that 9031 status Indian children on reserve[1] were in child welfare care at the close of that year representing a 70% increase since 1995. Unfortunately, there is poor data on the numbers of status First Nations children in care off reserve as provinces/territories collect child welfare data differently but best estimates are that 30-40% of all children in care in Canada are Aboriginal. This represents approximately 23,000- 28,000 Aboriginal children and means that there are three times as many Aboriginal children in state care today than there was at the height of the residential school operations in the late 1940's.

First Nations child and family service agencies (FNCFSAs) have developed over the past 30 years to provide child welfare services to First Nations children on reserve in an effort to stem the mass removals of First Nations children from their communities by provincial child welfare authorities. These agencies, which have been recognized by the United Nations Committee on the Rights of the Child, operate pursuant to provincial child welfare statutes and are funded by INAC using the Directive 20-1[2]. FNCFSAs have long reported concerns about drastic under funding of child welfare services by the federal government particularly with regards to the statutory range of services intended to keep maltreated children safely at home known as least disruptive measures. As Directive 20-1 included an unlimited amount of funds to place children in foster care, many First

[1] Typically this data does not include children in care of First Nations operating under self government agreements
[2] With the exception of First Nations child and family FNCFSAs in Ontario which are funded under a separate funding agreement

Nations felt the lack of investment in least disruptive measures contributed to the over representation of First Nations children in care. Directive 20-1 was studied in a joint review conducted by Indian and Northern Affairs Canada (INAC) and the Assembly of First Nations in 2000. This review, known as the *Joint National Policy Review on First Nations Child and Family Services* (NPR, MacDonald \$ Ladd) provides some insight into the reasons why there has been such an increase in the numbers of Registered Indian children entering into care . The review found that INAC provides funding for child welfare services only to Registered Indian children who are deemed to be "eligible children" pursuant to the Directive. An eligible child is normally characterized as a child of parents who are normally resident on reserve. Importantly, the preamble to the Directive indicates that the formula is intended to ensure that First Nations children receive a "comparable level" of service to other children in similar circumstances. Moreover, there was no evidence that the provinces step in to top up federal child welfare funding levels if the federal funding level is insufficient to meet statutory requirements of provincial child welfare legislation or to ensure an equitable level of service. There were, however, occasions where provinces provided management information or training support but there were no cases identified where the province systematically topped up inequitable funding levels created by Directive 20-1. Overall the Directive was found to provide 22% less funding per child to FNCFSAs than the average province. A key area of inadequate funding is a statutory range of services, known as least disruptive measures, that are provided to children and youth at significant risk of child maltreatment so that they can remain safely in their homes. First Nations agencies report that the numbers of children in care could be reduced if adequate and sustained funding for least disruptive measures was provided by INAC (Shangreaux, 2004). The NPR also indicates that although child welfare costs are increasing at over 6% per year there has not been a cost of living increase in the funding formula for FNCFSAs since 1995. Economic analysis conducted last year indicates that the compounded inflation losses to FNCFSAs from 1999-2005 amount to \$112 million nationally.

In total, the *Joint National Policy Review on First Nations Child and Family Services* included seventeen recommendations to improve the funding formula. It has been over six years since the completion of NPR and the federal government has failed to implement any of the recommendations which would have directly benefited First Nations children on reserve. As INAC documents obtained through access to information in 2002 demonstrate, the lack of action by the federal government was not due to lack of awareness of the problem or of the solution. Documents sent between senior INAC officials confirm the level of funding in the Directive is insufficient for FNCFSAs to meet their statutory obligations under provincial child welfare laws – particularly with regard to least disruptive measures resulting in higher numbers of First Nations children entering child welfare care (INAC, 2002.)

Despite having apparently been convinced of the merits of the problem and the need for least disruptive measures, INAC maintained that additional evidence was needed to rectify the inequitable levels of funding documented in the NPR. Therefore, the First Nations Child and Family Services National Advisory Committee, co-chaired by the Assembly of First Nations and INAC, commissioned a second research project on the Directive in September of 2004. This three part research project which was completed by the First Nations Child and Family Caring Society of Canada in 2005 involved over 20 researchers representing some of the most respected experts from a variety of disciplines including: economics, law, First Nations child welfare, management information systems, community development, management and sociology. This review is documented in three volumes: 1) *Bridging Econometrics with First Nations Child and Family Service Agency Funding* 2) *Wen:de: We are Coming to the Light of Day* 3) *Wen:de: the Journey Continues*, which are all publicly available on line at www.fncfcs.com.

Findings of the Wen:de series of reports include:

- The primary reason why First Nations children come to the attention of the child welfare system is neglect. When researchers unpack the definition of "neglect", poverty, substance misuse and poor housing are the key factors contributing to the over representation of First Nations children in substantiated child welfare cases.
- The formula drastically under funds primary, secondary and tertiary child maltreatment intervention services, including least disruptive measures. These

services are vital to ensuring First Nations children have the same chance to stay safely at home with support services as other children in Canada.

- Additional funding is needed at all levels of FNCFSAs including governance, administration, policy and practice in order to provide a basic level of child welfare services equitable to those provided off reserve by the provinces.
- Overall an additional $109 million is needed in year one to redress existing funding shortfalls – representing approximately a 33% increase in the operations funding (funding not directly related to children in care) currently provided pursuant to the Directive. This represents a minimum investment to provide a basic level of equitable services comparable to those available to other Canadians, meaning that to provide anything short of this funding level is to perpetuate the inequity.
- Jurisdictional disputes between and amongst federal and provincial governments are a substantial problem with 12 FNCFSAs experiencing 393 jurisdictional disputes this past year alone. These disputes result in First Nations children on reserve being denied or delayed receipt of services that are otherwise available to Canadian children. Additionally, these disputes draw from already taxed FNCFSAs human resources as FNCFSAs staff spend an average of 54 hours per incident resolving these disputes. Jordan's Principle, a child-first solution to resolving these disputes, has been developed and endorsed by over 230 individuals and organizations. This solution is cost neutral and would ensure that children's needs are met whilst still allowing for the resolution of the dispute.
- Agencies serving less than 1000 children (and thus receive only a portion of the operations budget depending on populations levels) and agencies in remote communities require upwards adjustments in the funding formula.

INAC recently announced it will provide $25 million per year in additional First Nations child and family service funding for each of five years, which held some promise of relieving some of the cost pressures for FNCFSAs. Unfortunately, instead of targeting those dollars to benefit children, INAC allocated over $15 million per year to fund its own costs arising from increased billings for children in care (due largely to lack of investments in least disruptive measures) and to hire staff. It did allocate an additional $8.6 million per year for inflation relief for FNCFSAs, but this represents only a small portion of what is required to offset inflation losses. INAC has also stated that until it completes an evaluation of maintenance funding (funds to keep children in care) to satisfy a treasury board requirement it will not release the inflation funds for agencies. Upon questioning, INAC audit and evaluation unit was not able to identify a standard upon which it would evaluate the maintenance budget and was clearly not aware that measuring outcomes in child welfare is in the very early stages of development – even in non Aboriginal child welfare in Canada. The idea that child welfare funding to address a glaring inequality should be held back to satisfy such a poorly supported administrative requirement raises significant concerns.

The cost of perpetuating the inequities in child welfare funding are substantial – INAC maintenance costs for children in care continue to climb at over 11% per annum as there are no other options provided to agencies to keep children safely at home. Additionally, as Canada redresses the impacts of residential schools it must take steps to ensure that old funding policies which only supported children being removed from their homes are addressed.

We allege that Directive 20-1 is in contravention of Article 3 of the *Human Rights Act* in that Registered First Nations children and families resident on reserve are provided with inequitable levels of child welfare services because of their race and national ethnic origin as compared to non Aboriginal children. The discrimination is systemic and ongoing. INAC has been aware of this problem for a number of years and was presented with an evidence base of this discrimination in June of 2000 with the two *Wen:de* reports being delivered in August and October of 2005 respectively. These reports were followed by the Canadian Incidence Study Report (Mesnmimk Wasatek) in June of 2006.

Regional Chief Lawrence Joseph
Assembly of First Nations
Guy Lonechild, Vice-Chief

Cindy Blackstock, Executive Director
First Nations Child & Family Caring
Society of Canada