

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

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

Respondent

- and -

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

Interested Parties

AFFIDAVIT #3 OF DOREEN NAVARRO

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

THAT:

1. I am employed as a legal assistant at Conway Baxter Wilson LLP/s.r.l., counsel for the complainant First Nations Child and Family Caring Society of Canada (“Caring Society”) in this matter.

2. I have reviewed the affidavit of Valerie Gideon sworn December 21, 2018. At paragraph 12 of her affidavit, Dr. Gideon states that, to her knowledge, the Caring Society has not provided the parties with a draft definition of “First Nations child” for the purposes of implementing the Tribunal’s orders regarding Jordan’s Principle.

3. In reply to paragraph 12 of Dr. Gideon’s affidavit, I attach as **Exhibit “A”** to my affidavit a true copy of an email sent August 29, 2018 from Cindy Blackstock to Dr. Gideon and others, in which the Caring Society’s position regarding the definition of “First Nations child” for the purposes of implementing the Tribunal’s orders regarding Jordan’s Principle.

AFFIRMED BEFORE ME this)
3rd day of January, 2019 in the)
City of Ottawa, in the Province)
of Ontario.)
)
)
)
)
)
)

D. Burke-Lachaine)
Commissioner for taking affidavits)

Doreen Navarro
DOREEN NAVARRO

Debra Ann Burke-Lachaine, a Commissioner, etc.,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires December 18, 2020.

This is Exhibit "A" referred to
In Affidavit #3 of Doreen Navarro
Sworn before me this 3rd day of January, 2019

D. Burke-Lachaine

Commissioner for taking Affidavits, etc.

Debra Ann Burke-Lachaine, a Commissioner, etc.,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors. Expires December 18, 2020.

From: Cindy Blackstock <cblackst@fncaringsociety.com>
Sent: Wednesday, August 29, 2018 6:27 PM
To: Gideon, Valerie (HC/SC); Isaak, Paula (AADNC/AANDC); 'Brian.Smith@chrc-ccdp.gc.ca'; 'Maggie Wente'; 'Lorna Martin'; 'akosuam@falconers.ca'; 'afiddler@nan.on.ca'; 'dgcachneepineskum@nan.on.ca'; 'Bobby Narcisse'; David Taylor; 'Jon Thompson'; 'Martin Orr'; 'Robert.Frater@justice.gc.ca'; 'swuttke@afn.ca'; 'jabram@aiai.on.ca'; 'France.Saikali@chrc-ccdp.gc.ca'; 'SDearman@oktlaw.com'
Cc: 'linda.sandy@coo.org'; Buist, Margaret (AADNC/AANDC); 'kritchie@oktlaw.com'; Nafziger, Lisa (AADNC/AANDC); 'constance.marlatt@justice.gc.ca'; Conn, Keith (HC/SC); Hove, Johanna (AADNC/AANDC); Millar, Patricia (AADNC/AANDC)
Subject: Re: Ordinary Resident on Reserve

Thank you Valerie for this note.

Has there been any response to these questions that can be shared with the CCCW?

As you know the CHRT provision for "all First Nations children" is of great interest to the Cairng Society.

Briefly, our position is that "all First Nations children" includes all First Nations children/youth on reserve and all First Nations children who are registered off reserve. In addition, we believe that "All First Nations children" includes First Nations children resident off reserve who are not registered yet self-declare as First Nations (or parents/guardians do so on their behalf) AND are recognized by their First Nation. Our position does not base First Nations identity on the colonial Indian Act and instead assumes an approach that respects the role of rights holders to determine their citizenship. We also believe this position is consistent with the numerous resolutions on citizenship passed by the AFN assembly which have been provided under separate cover.

It is also important to recognize that Canada must make arrangements with the provinces/territory for service delivery to non-First Nations children who do not identify as First Nations who are resident on reserve.

The questions below seem to survey matters already settled at the CHRT on First Nations identity (ie: First Nations with/eligible for status residing on or off reserve) but do not seem to address the outstanding issue of First Nations children/youth who are not currently registered living off reserve. We would need some assurance that the inclusion of the questions regarding registered and entitled to be registered and ordinarily resident on reserve does not suggest an interest in further narrowing the concept of "All First Nations children" per the CHRT. Also is there a process underway to discuss the matter of non-status First Nations children resident off reserve?

As an additional matter, Point 2(b) re children off-reserve accessing services should not refer to "comparable" services being available on-reserve, but rather should say something along the lines of a child being required to spend time away from the community in order to access services that address their distinct needs and circumstances.

Thanks

Cindy Blackstock, PhD
Executive Director, First Nations Child and Family Caring Society of Canada
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From: Gideon, Valerie (HC/SC) <valerie.gideon@canada.ca>

Sent: August 28, 2018 9:25 PM

To: Cindy Blackstock; Isaak, Paula (AADNC/AANDC); 'Brian.Smith@chrc-ccdp.gc.ca'; 'Maggie Wente'; 'Lorna Martin'; 'akosuam@falconers.ca'; 'afiddler@nan.on.ca'; 'dgcachneepineskum@nan.on.ca'; 'Bobby Narcisse'; 'DTaylor@conway.pro'; 'Jon Thompson'; 'Martin Orr'; 'Robert.Frater@justice.gc.ca'; 'swuttke@afn.ca'; 'jabram@aiai.on.ca'; 'France.Saikali@chrc-ccdp.gc.ca'; 'SDearman@oktlaw.com'

Cc: 'linda.sandy@coo.org'; Buist, Margaret (AADNC/AANDC); 'kritchie@oktlaw.com'; Nafziger, Lisa (AADNC/AANDC); 'constance.marlatt@justice.gc.ca'; Conn, Keith (HC/SC); Hove, Johanna (AADNC/AANDC); Millar, Patricia (AADNC/AANDC)

Subject: RE: Ordinary Resident on Reserve

Good evening to all:

I apologize for the delay in responding to your email.

When we shared information about the expansion of the Jordan's Principle Child First Initiative policy authority to include non status Indigenous children ordinarily resident on reserve, AFN indicated that they would need to discuss this with the Executive prior to the Assembly in July. As a result, I scheduled a call with Jonathan and Stuart and prior to this call, I shared the following DRAFT questions that Focal Points could use when receiving your requests. I asked AFN if they were comfortable with me sharing these in response to your email and they were fine with that.

I am happy to discuss any comments that any of the Parties would have on the questions below. In putting this together, I did refer to language that exists in other policy authorities outside FNIHB but within the Department.

We will need to provide clear guidance to all of the Focal Points on what information they need to determine these requests within the required CHRT timeframes. For the co-Chairs consideration, I would welcome the opportunity to add this as an agenda item to a CCCW meeting whenever possible.

1. Is the child registered under the Indian Act or eligible to be registered?
2. If that is not the case, is the child a non-status First Nation that lives on-reserve or would normally live on reserve? [If needed, we would explain that ordinarily living on reserve could mean:
 - a. the child had always lived on reserve;
 - b. the child would normally live on reserve but may have been required to spend time away from the community to access services such as health care or education where there are no other comparable services available in the community;
 - c. the child would have lived on reserve immediately prior to accessing these services;
 - d. the child is dependent of a family that maintains a primary residence on-reserve;
 - e. the child returns to live on reserve with parents, guardians, caregivers or maintainers during the year, even if they live elsewhere while attending school or to receive medical care or other services;
 - f. the residence of a child who comes into care of a mandated child and family services authority is determined from the residency of the child's parent or guardian at the time the child is taken into care;
 - g. the child meets student eligibility requirements in the reference province or Yukon Territory.]
3. If neither 1 or 2 apply, is the child a member of another Indigenous Nation who also lives on-reserve? That is, does the child live with a First Nation family, attend school or daycare in the community or receive other forms of services from the First Nation. If yes, the case would be escalated to the National Review Centre. [My comment: AFN could be consulted on these case reviews if there is a concern that

the scope may be expanded to non-Indigenous individuals or if it is perceived that the federal government is determining who First Nations members of a community are.]

4. If none of 1-3 apply, the request would be presented to the ADM-Regional Operations as a recommended denial.

Wela'lin,

Valerie Gideon, Ph.D.

Senior Assistant Deputy Minister/Sous-ministre adjointe principale

First Nations and Inuit Health Branch/Direction générale de la santé des Premières nations et des Inuits

Indigenous Services Canada/Services aux Autochtones du Canada

Tel: (613) 957-7701

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@valerie_gideon

From: Cindy Blackstock <cblackst@fncaringsociety.com>

Sent: 2018-08-16 8:27 PM

To: Isaak, Paula (AADNC/AANDC) <paula.isaak@canada.ca>; 'Brian.Smith@chrc-ccdp.gc.ca' <Brian.Smith@chrc-ccdp.gc.ca>; 'Maggie Wente' <MWente@oktlaw.com>; 'Lorna Martin' <lornam@afn.ca>; 'akosuam@falconers.ca' <akosuam@falconers.ca>; 'afiddler@nan.on.ca' <afiddler@nan.on.ca>; 'dgcachneepineskum@nan.on.ca' <dgcachneepineskum@nan.on.ca>; 'Bobby Narcisse' <bnarcisse@nan.on.ca>; 'DTaylor@conway.pro' <DTaylor@conway.pro>; 'Jon Thompson' <JonThompson@afn.ca>; 'Martin Orr' <MOrr@afn.ca>; 'Robert.Frater@justice.gc.ca' <Robert.Frater@justice.gc.ca>; 'swuttke@afn.ca' <swuttke@afn.ca>; Gideon, Valerie (HC/SC) <valerie.gideon@canada.ca>; 'jabram@aiai.on.ca' <jabram@aiai.on.ca>; 'France.Saikali@chrc-ccdp.gc.ca' <France.Saikali@chrc-ccdp.gc.ca>; 'SDearman@oktlaw.com' <SDearman@oktlaw.com>

Cc: 'linda.sandy@coo.org' <linda.sandy@coo.org>; Buist, Margaret (AADNC/AANDC) <margaret.buist@canada.ca>; 'kritchie@oktlaw.com' <kritchie@oktlaw.com>; Nafziger, Lisa (AADNC/AANDC) <lisa.nafziger@canada.ca>; 'constance.marlatt@justice.gc.ca' <constance.marlatt@justice.gc.ca>; Conn, Keith (HC/SC) <keith.conn@canada.ca>; Hove, Johanna (AADNC/AANDC) <johanna.hove@canada.ca>; Millar, Patricia (AADNC/AANDC) <patricia.millar@canada.ca>

Subject: Ordinary Resident on Reserve

Hello Paula and Keith

We have been made aware that Canada has developed new criteria for a child "ordinarily resident on reserve" which, of course, has clear implications for both Jordan's Principle and the CFS program.

Can you please provide the CCCW members with information and any relevant documents on: 1) what the criteria 2) how they were developed and who was consulted and 3) if Canada considers these criteria final or not.

Thank you

Cindy

Cindy Blackstock, PhD

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

