Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

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

Respondent

- and -

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL and
NISHNAWBE ASKI NATION

AFFIDAVIT OF CINDY BLACKSTOCK

I, Cindy Blackstock, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM THAT:**

1. I am a member of the Gitxsan First Nation, a professor at McGill University's School of Social Work, and the Executive Director of the complainant, 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 thirty years. I hold a doctorate in social work from the University of Toronto (2009), a Master of Management from McGill University (2003), and a Master of Jurisprudence in Children's Law and Policy from Loyola University Chicago (2016). I have received honorary doctorates from Blue Quills First Nations University, the University of Western Ontario, the University of Saskatchewan, Waterloo University, Thompson Rivers University, the University of Northern British Columbia, Mount St. Vincent University, the University of Winnipeg, the University of Manitoba, Ryerson University, Osgoode Hall Law School, St. John's College, Memorial University, Dalhousie University, the University of Ottawa, the University of Toronto, McMaster University and the University of Victoria.

Canada's application for judicial review of the Tribunal's May 26, 2017 Order

3. Canada filed an application for judicial review of the Tribunal's May 26, 2017 order on June 23, 2017. I attach to my affidavit as **Exhibit "A"** a true copy of this application for judicial review. This application for judicial review was discontinued on November 30, 2017, after the Tribunal amended its May 26, 2017 order following an agreement reached by the parties to satisfy Canada's operational concerns with certain procedural aspects of the order.

The Caring Society's involvement in the implementation of Jordan's Principle since the Canadian Human Rights Tribunal's May 26, 2017 Order (as amended on November 3, 2017)

4. I have been aware of and promoting Jordan's Principle since it was formulated in 2005 and published in the Wen:de reports compiled and published by the First Nations Child and Family Caring Society of Canada. I have had the honour of knowing Jordan's family and was present in the House of Commons on 296 was unanimously adopted on December 12, 2007.

5. Since the Canadian Human Rights Tribunal's ("Tribunal") May 26, 2017 order finding Canada's implementation of Jordan's Principle had not fully addressed the findings in its January 26, 2016 decision and was not sufficiently responsive to the Tribunal's previous orders, the Caring Society's staff and I have continued our promotion of Jordan's Principle and the First Nations children whose interests it is meant to protect.

6. Specifically, either a member of my staff or myself has attended meetings of Indigenous Services Canada's ("ISC") Jordan's Principle Operations Committee (also known as the Jordan's Principle Oversight Committee in the past) and my counsel and I have attended meetings of the Consultation Committee on Child Welfare, formed under the Consultation Protocol ordered by this Tribunal on February 1, 2018. The Caring Society regularly raises issues related to the implementation of the Tribunal's orders regarding Jordan's Principle in both of these fora. I also personally contact ISC's senior officials on a regular basis to raise issues of concern.

7. The Caring Society is regularly contacted by First Nations community members who are experiencing difficulties in their interactions with Canada regarding Jordan's Principle service requests. These difficulties include, but are not limited to, failures to comply with the Tribunal's timelines for responding to Jordan's Principle requests, failures to make timely reimbursement to parents and families or to make timely payment to service providers or suppliers, and failure to recognize cases as urgent.

8. When such individuals contact the Caring Society with problems like these, members of the Caring Society's staff immediately contact ISC officials to attempt to resolve the issue.

The Caring Society's attempts to raise the exclusion of First Nations children without Indian Act status with Canada

9. By early 2018, the Caring Society had begun to receive complaints from First Nations community members that requests for services under Jordan's Principle relating to children without *Indian Act* status were being denied or referred to ISC headquarters in Ottawa without a timely response. This was puzzling to me, as I had attended the cross-examination of Robin Buckland, Executive Director at the Office of Primary Health Care within what was then Health Canada's First Nations and Inuit health Branch, in these proceedings on February 6, 2017. At that time, Ms. Buckland's evidence was that while the question of whether a First Nations child was a "registered First Nations individual" was "an important piece of the puzzle", it was "a piece of information versus eligible or not eligible. I attach to my affidavit as **Exhibit "B"** a true copy of Ms. Buckland's response to questions 139 to 142 during her February 6, 2017 cross-examination.

10. On April 17, 2018, my counsel wrote to Canada's counsel to raise, among other issues, the Caring Society's concern regarding the exclusion of First Nations children without *Indian Act* status from Canada's application of Jordan's Principle. A true copy of this correspondence is attached to my affidavit as **Exhibit "C"**.

11. On April 24, 2018, ISC's Senior Assistant Deputy Minister for the First Nations and Inuit Health Branch convened a meeting at ISC headquarters to discuss the matters raised in

12. On May 9, 2018, I attended the cross-examination of Sony Perron on his November 15, 2017 and December 15, 2017 affidavits. A transcript has not yet been produced of Mr. Perron's remarks; however, I have listened to the audio file and reproduce an exchange between Member Lustig and Mr. Perron regarding Canada's response to urgent service needs from First Nations children without *Indian Act* status, which exchange begins at or about 30 minutes and 18 second of Part 5 of the audio of the May 9, 2018 proceedings:

> **MEMBER LUSTIG:** I just have a couple of questions. The fifty-three or so cases that are deferred while you're looking at the non-status situation. Can I assume that any urgent cases are being attended to in some fashion?
>
> **MR. PERRON:** Yes. So, if there is something that is urgent, even, you know, our commitment is to make sure that we are helping the families and the kids – the children. So, if something is very urgent we would have acted upon this, we would have tried to find a solution to assist. There is a number of cases where we have worked and tried to help the families even if they were not eligible. But, it might be requests for speech therapy, it might be requests for these kinds of services which are legitimate needs from a family, but they are not life-threatening situations.

13. At the June 22, 2018 meeting of the Consultation Committee on Child Welfare, the Caring Society asked Canada for an update on its reconsideration of its position that its definition of "First Nations child" for the purposes of implementing Jordan's Principle was limited to children with *Indian Act* status. Keith Conn, Assistant Deputy Minister – Regional Operations, advised at that time that a response would be forthcoming.

14. On July 5, 2018, Canada advised the parties that its definition of "First Nations child" for the purposes of applying Jordan's Principle would encompass First Nations children without *Indian Act* status who are ordinarily resident on reserve. I attach to my affidavit as **Exhibit "D"** a true copy of a July 5, 2018 email from Dr. Gideon advising the parties of this change.

15. At the July 9, 2018 meeting of the Consultation Committee on Child Welfare, I advised Canada that the Caring Society's position was that Canada's definition of "First Nations child" for the purpose of implementing Jordan's Principle needed to be broadened further, to encompass at least First Nations children without *Indian Act* status who live off-reserve but are recognized as members by their Nation. I emphasized the numerous resolutions passed by the Assembly of First Nations regarding First Nations determining their own membership. I attach to my affidavit as **Exhibit "E"** a bundle of ten resolutions passed by the Chiefs in Assembly in the last ten years regarding First Nations' control over their membership. The resolutions are:

a. 01/2009: First Nations Citizenship (2009 Annual General Assembly);

b. 20/2010: Support for Recognition of Nationhood of Iroquois Hotinonsionne Confederacy and the Validity of Indigenous Passports;

c. 25/2012: First Nations Right to Determine Citizenship;

d. 09/2013: Federal Response to implications of registration of new registrants under Bill C-3 amendments to the Indian Act;

e. 53/2015: The Right of First Nations to Determine their Individual and Collective Identities;

f. 59/2016: First Nations Citizenship;

g. 118/2016: Call on the Crown to Renounce its Purported Authority to Declare First Nations "Extinct";

h. 71/2016: Descheneaux Decision: First Nations Jurisdiction on Citizenship and Identity; and

i. 30/2017: Inherent Authority to Define Citizenship.

16. At the September 5, 2018 meeting of the Consultation Committee on Child Welfare, I reiterated the Caring Society's position that Canada's definition of "First Nations child" for the purpose of implementing Jordan's Principle could not ignore First Nations children without

Indian Act status who live off-reserve. I reiterated this position once more at the October 23, 2018 meeting of the Consultation Committee on Child Welfare.

The Caring Society's involvement in the case of S.J., a very young First Nations child without Indian Act status who had an urgent service need and who lives off-reserve

17. On November 22, 2018, the Caring Society was contacted by Miryan Castro, the Southern Ontario NIHB Navigator for the Chiefs of Ontario. Ms. Castro was raising the case of S.J., a First Nations child who was 20 months old, residing in Toronto, with congenital hyperinsulism. Ms. Castro advised, and I believe, that while S.J.'s mother (F.J.) and maternal grandmother both had *Indian Act* status, S.J. did not. I attach as **Exhibit "F"** to my affidavit a true copy of Ms. Castro's November 22, 2018 email to the Caring Society.

18. Ms. Castro advised, and I believe, that S.J.'s congenital hyperinsulism causes her pancreas to create too much insulin, creating a risk of seizures and possibly death due to her blood sugar being too low. Ms. Castro advised, and I believe, that S.J. required a scan to determine whether her condition affects one area of her pancreas or the entire pancreas, which would determine her course of surgical treatment at Sick Kids Hospital, in Toronto. Ms. Castro also advised, and I believe, that both of S.J.'s parents were required to travel to Edmonton with S.J. as S.J.'s mother cannot carry her for longer than 20 minutes due to complications from a serious motor vehicle accident that occurred a few years ago.

19. Ms. Castro advised, and I believe, that the test could only be obtained at three facilities in the world, one of which was in the United Kingdom, one of which was in the United States, and the other of which was at the Stollery Children's Hospital's Nuclear Medicine Department in Edmonton, Alberta. Ms. Castro advised, and I believe, that S.J.'s test was scheduled for the week of November 26, 2018 in Edmonton. I attach as **Exhibit "G"** to my affidavit a true copy of a letter from Jennifer Harrington, a staff physician in the Endocrine Division at The Hospital for Sick Children

20. Ms. Castro advises, and I believe, that she first spoke to S.J.'s mother on November 9, 2018. Ms. Castro was assisting S.J.'s mother in requesting medical transportation assistance through both the Non-Insured Health Benefits Program and under Jordan's Principle.

21. Ms. Castro advises, and I believe, that on November 9, 2018, she contacted the Non-Insured Health Benefits Program's medical transportation department and spoke to the Southern Ontario Program Officer for Medical Transportation, who advised that the case would be submitted as a Jordan's Principle case. Ms. Castro advises, and I believe, that she had further contact with Canada regarding S.J.'s case on November 13, 15, and 19 2018, and that she was advised on November 20, 2018 that S.J.'s request for services under Jordan's Principle had been denied as S.J. did not have (and was not eligible for) *Indian Act* status. As noted above, Ms. Castro contacted the Caring Society on November 22, 2018 providing the details of the scan recommended by S.J.'s medical treatment team at Sick Kids Hospital and the contact information for S.J.'s physician at the Sick Kids Hospital.

22. The Caring Society's staff raised the denial of S.J.'s case on the basis of her lack of *Indian Act* status with ISC headquarters. At approximately noon on November 23, 2018 I was advised that the case was denied and the only prospect for approval would be if the child lived on reserve, which she did not.

23. As a result of the denial, and in light of the urgent nature of the request and in the best interests of the child, the Caring Society agreed to fund expenses for air travel, taxi transportation to and from airports and while in Edmonton, hotel accommodations, and meals while in Edmonton and travelling. Jacquie Surges, the Caring Society staff member who assisted S.J.'s family with accommodation booking, advises me and I believe that due to the Grey Cup having been hosted in Edmonton on Sunday, November 25, 2018, she had to call four hotels before being able to find accommodation for S.J.'s family.

24. I have no reason to believe that all of the costs required for S.J. and her family's travel and for S.J.'s necessary care while in Edmonton would have been funded had the Caring Society not intervened.

25. On November 29, 2018, my counsel sent a letter to Canada's counsel raising S.J.'s case, as this case raises concerns that Canada is not living up to Mr. Perron's commitment to meet the needs of First Nations children without *Indian Act* status while the matter of the definition of "First Nations child" for the purpose of the implementation of Jordan's Principle was pending. As a result, I am seriously concerned that there are First Nations children with urgent service

needs whose needs are being left unaddressed and may imperil their safety and wellbeing. It is particularly worrisome as Canada has not organized a safeguard for these children meaning families have to be lucky enough to have sufficient means of their own to provide these services or to have their costs covered by third-party benefactors like the Caring Society. This is clearly a precarious and unacceptable position.

26. I attach as **Exhibit "H"** to my affidavit a true copy of my counsel's letter to Canada's counsel. My counsel requested a response by December 4, 2018. The Caring Society has yet to receive a response.

AFFIRMED BEFORE ME this 5th day of December, 2018 in the City of Ottawa, in the Province of Ontario.

Commissioner for taking affidavits

David P. Taylor
LSO# 63508Q

CINDY BLACKSTOCK

This is **Exhibit "A"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

Court File No. T-918-17

FEDERAL COURT

ATTORNEY GENERAL OF CANADA

APPLICANT

-and-

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL and NISHNAWBE ASKI NATION

RESPONDENTS

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 23, 2017 Issued by: _____

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Counsel for Assembly of First Nations

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date / Date de dépôt: JUIN JUN 23 2017

Dated / Fait le: JUIN JUN 23 2017

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Counsel for Nishnawbe Aski Nation

APPLICATION

This is an application for judicial review in respect of the Canadian Human Rights Tribunal's ("Tribunal") Ruling in file no. T1340/7008 dated May 26, 2017 and cited as 2017 CHRT 14 (the "Ruling").

The Applicant makes application for:

1. An Order quashing and setting aside certain paragraphs of the Tribunal's Orders for relief, namely:
   a) paragraphs 135(1)(B)(iii)-(iv) and paragraphs 135(2)(A)(iii)-(iv) of the Ruling, which mandate service provision without allowing for any case conferring, policy review, service navigation or any other similar administrative procedure before funding is provided;
   b) paragraph 135(2)(A)(ii) of the Ruling, which mandates that the initial evaluation and determination of a request shall be made within 12-48 hours of its receipt;
2. Such further and other relief as this Honourable Court may deem appropriate and just in the circumstances.

The grounds for the application are:

1. The Tribunal exceeded its jurisdiction under subsection 53(2) of the *Canadian Human Rights Act* and erred in law by:
   a) unreasonably defining a statement of principle passed by resolution of the House of Commons in a manner inconsistent with the text, purpose and legal effect of that statement of principle, and in a manner inconsistent with the Tribunal's previous rulings;
   b) ordering remedies that are inconsistent with the Tribunal's own findings on discrimination as set out in its previous rulings;
   c) ordering remedies in respect of service provision in a manner inconsistent with the evidence before the Tribunal and in a manner that may harm the interests of Indigenous children;
   d) ordering remedies that go beyond the proper remedial and statutory authority of the Tribunal;

2. Sections 18 and 18.1 of the *Federal Courts Act*, sections 7(1) and 26 of the *Financial Administration Act*, sections 53 and 106 of the *Constitution Act, 1867* and subsection 30(1) of the *Crown Liability and Proceedings Act*.

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

This application will be supported by the following material:

1. The Affidavit of Sony Perron; and

2. Such further and other materials as counsel may advise and this Honourable Court should permit.

DATED at Ottawa, Ontario this 23rd day of June, 2017.

for **ATTORNEY GENERAL OF CANADA**

Department of Justice Canada
National Litigation Sector
50 O'Connor Street, 5th floor
Ottawa, Ontario, K1A 0H8
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Counsel for the Applicant, Attorney General of Canada

This is **Exhibit "B"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

Examination No. 17-0109.1A Court File No. T1340/7008

VOLUME I

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

CHIEFS OF ONTARIO and AMNESTY INTERNATIONAL CANADA

Interested Parties

****

CROSS-EXAMINATION OF ROBIN BUCKLAND, ON AN AFFIDAVIT sworn January 25, 2017, pursuant to an appointment made on consent of the parties, to be reported by Gillespie Reporting Services, on February 6, 2017, commencing at the hour of 10:10 in the forenoon.

****

APPEARANCES:

David P. Taylor,	for the Complainant, Caring Society
Anne Levesque,	for the Complainant, Caring Society
Stuart Wuttke,	for the Complainant, AFN
Violet Ford,	for the Complainant, AFN
Daniel Poulin,	for the Commission
Samar Musallam,	for the Commission
Jonathan D. N. Tarlton,	for the Respondent
Melissa Chan,	for the Respondent
Maggie Wente,	for the Interested Party, COO
Julian N. Falconer,	for the Interested Party, NAN
Akosua Matthews,	for the Interested Party, NAN

This Cross-Examination was reported by Gillespie Reporting Services at Ottawa, Ontario, having been duly appointed for the purpose.

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ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

REQUESTS FOR INFORMATION

EXHIBITS

DATE TRANSCRIPT ORDERED: February 8, 2017

DATE TRANSCRIPT COMPLETED: February 13, 2017

ROBIN BUCKLAND, SWORN:

CROSS-EXAMINATION BY MR. TAYLOR:

1. Q. Good morning, Ms. Buckland.

A. Good morning.

2. Q. My name is David Taylor, I'm counsel for the Caring Society. I'm going to ask you some questions today about your affidavit that you swore on January 25th, 2017, as well as related to the child-first initiative and Jordan's Principle. Please confirm that you are under oath today?

A. I am.

3. Q. Thank you. And you recognize -- do you have a copy of your affidavit with you?

A. I do.

4. Q. Right on, and that's the affidavit you swore on the 25th?

A. It is.

5. Q. If you can turn to page 8, that's your signature?

A. It is.

6. Q. So, thank you. So you're currently executive director at the Office of Primary Health Care within Health Canada's First Nations Inuit Health Branch?

A. I am.

7. Q. And for how long have you held that position?

normative standard of care is, is an exceptional case.

136. Q. I should've been --

A. But I would need to say more in terms of that because that --

137. Q. I should have been more specific with my choice of words. I meant as opposed to exceptional in the nature of its case, an exception to the general rule that cases outside the normative standard are not funded?

A. Cases outside the normative standard will be funded if required.

138. Q. And what is the threshold for requirement or the criteria of requirement?

A. And I guess what I would say to that, Mr. Taylor, is we're working on a case by case basis. We're looking at, at each child that comes in and trying to assess the, the need and respond accordingly and in some cases, the request or -- the request is beyond normative standard of care and we will work to make sure that that, that child's care if appropriate is received.

139. Q. So if I'm understanding your answer correctly, a "no" tick box on any of these eight criteria is not necessarily determinative of a funding request?

A. Meaning whether we'll fund it or not?

140. Q. Yes.

A. So let's go through them.

141. Q. Yes, I think that would be helpful. So the child is defined by provincial law, that seems to be straightforward?

A. So in that case, yes. We want the child to be a child according to provincial law. In some provinces, the age is, is older than other provinces. So that one, I would say that's yes or no.

142. Q. Now, number two, is the child a registered First Nations individual?

A. So this is important information for us to collect because again, and I think something we haven't had an opportunity to talk about yet, this approach is an interim approach where we are trying to figure where we should be going in, in partnership with our partners in the long-term. So establishing whether the individual is registered or not, that's, that's important. That's going to be an important part of the puzzle. How do I say this? No, that doesn't -- the case will still be considered. It's, it's a piece of information versus eligible or not eligible.

143. Q. And that would the same for number three, I would gather, based on your affidavit?

A. That's correct.

144. Q. And number four:

"Does the child have a disability that impacts

WE HEREBY CERTIFY THAT the foregoing was transcribed to the best of our skill and ability.

.....

G R S / R. Eliot, A.C.T.

This is **Exhibit "C"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

CONWAY

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April 17, 2018

VIA EMAIL

Robert Frater, Q.C.
Chief General Counsel
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Sir:

RE: ***FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL. V. ATTORNEY GENERAL OF CANADA (CHRT T1340/7008)***
OUR MATTER ID: 5204-006

I write further to our telephone conversation and email exchange of the week of April 2, 2018 regarding the Caring Society's outstanding concerns with Canada's implementation of Jordan's Principle.

To begin, the Caring Society wishes to acknowledge the great strides that Canada has made in implementing Jordan's Principle. As the information provided in Mr. Perron's affidavits demonstrates, and as the information the Caring Society has received through Dr. Blackstock's participation in the Jordan's Principle Oversight Committee process confirms, tens of thousands of services have been provided to children over the past year. The Caring Society has enjoyed a productive relationship with Dr. Gideon and her team, and is committed to continuing to work with them to ensure positive results for all Indigenous children.

The work being led by Dr. Gideon and her team must be properly resourced, and must be supported by structures that will ensure that Indigenous children in need receive the protection that Jordan's Principle provides. To that end, Dr. Blackstock has repeatedly advised DISC of her

concerns as those concerns have arisen over the last six or more months. The goal of this letter is to summarize these concerns and, where possible, to propose solutions.

These concerns fall into the following categories, which will be addressed below:

(1) The exclusion of Inuit children and First Nations children who do not have, or are not eligible for, status under the *Indian Act*;

(2) The lack of an independent, fair, accessible and timely appeal process for rejected claims;

(3) Concerns regarding procedural mechanisms fettering timely processing of Jordan's Principle claims;

(4) Timelines and criteria for obtaining further information where Focal Points are of the view that a Jordan's Principle request is incomplete;

(5) Mechanisms to ensure compliance of enhanced service coordinators and other community organizations;

(6) The lack of interim measures to ensure that vulnerable families are not burdened with the cost of closing service gaps or achieving substantive equality; and

(7) Questions regarding Canada's review of Jordan's Principle cases referred prior to May 2017 (Shiner and long delay resolving Buffalo, unclear if they reviewed cases referred to NHIB).

(1) Exclusion of Inuit children and First Nations children who are not eligible for status under the *Indian Act*

Canada's current criteria for the application of Jordan's Principle are limited to either children with status under the *Indian Act*, or who are eligible for such status.

The Caring Society has heard from multiple Inuit families who have been denied access to Jordan's Principle funding. In fact, according to an Access to Information request dated March 14, 2018 that the Caring Society has received from an organization that works with Inuit children, Canada received 27 Jordan's Principle requests dealing with Inuit children/youth between July 2016 and February 2018. Of the 27, only five were approved. Sixteen requests were denied, one child received some services and five others were referred to an existing program. It is unclear from the documents the Caring Society has seen whether the program to which these children were referred provided adequate or timely services. It is also unclear from the documentation whether there are more Inuit families or service provider who were in contact with the federal government, but were advised that Inuit children were ineligible and, as such, did not apply.

We have also received first hand reports of First Nations families with children who are not eligible for status under the *Indian Act* being advised that they were ineligible for Jordan's Principle funding. This exclusion is contrary to the spirit of Jordan's Principle. It also raises concerns regarding Canada's compliance with the Tribunal's May 26, 2017 Order.

The Caring Society understands that Canada's policy regarding the application of Jordan's Principle to First Nations children who are not eligible for *Indian Act* status and to Inuit children is currently under review by DISC following the receipt of a legal opinion on the subject.

The Caring Society's position is that by excluding First Nations children who are not eligible for *Indian Act* status, Canada has violated the terms of the Tribunal's May 26, 2017 Order (2017 CHRT 14). With regard to Inuit children, Canada is in violation of the spirit of this Order and very likely the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

2017 CHRT 14 (as amended by 2017 CHRT 35) ordered Canada to apply a definition of Jordan's Principle that was based on the following key principles (see para 135(1)(B)(i)-(v)):

i. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.

ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.

iii. When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child's case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nations community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government.

iv. When a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. Where such

services are to be provided, the government department of first contact will pay for the provision of the services to the First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii). Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is provided, the government department of first contact can seek reimbursement from another government/department.

v. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e. between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle.

Importantly, the Tribunal also ordered that "Canada shall not use or distribute a definition of Jordan's Principle that in any way restricts or narrows the principles enunciated in order 1(b)" (see para. 135(1)(C) of 2017 CHRT 14).

The Caring Society's view is that Canada has 'restricted or narrowed' the principles enunciated in order 135(1)(B) of 2017 CHRT 14 (as amended by 2017 CHRT 35) by imposing the limitation that the child in question must be eligible for *Indian Act* status, contrary to order 135(1)(C).

There is nothing in the principles enunciated in the Tribunal's order that suggests that the *Indian Act* has anything to do with its orders regarding Jordan's Principle. In its May 26, 2017 reasons, the Tribunal refers to <u>First Nations</u> children, and not children with *Indian Act* status.

Indeed, at the time of the March 2017 non-compliance motions, the Caring Society understood that a child's having *Indian Act* status was not an eligibility requirement for access to Jordan's Principle funding, but rather was a piece of information being collected as Canada entered into its interim approach to Jordan's Principle. Specifically, Ms. Buckland gave the following answer during her cross-examination:

Q142: Now, number two, is the child a registered First Nations individual?

A: So this is important information for us to collect because again, and I think something we haven't had an opportunity to talk about yet, this approach is an interim approach where we are trying to figure where we should be going in, in partnership with our partners in the long-term. So establishing whether the individual is registered or not, that's important. That's going to be an important part of the puzzle. How do I say this? No that doesn't -- the case will still be considered. It's a piece of information versus eligible or not eligible.

However, the Caring Society has now heard from multiple families who have either been discouraged by federal officials from making an application for Jordan's Principle funding on the

basis that they or their child were not eligible for *Indian Act* status, or whose applications were denied on that basis. The Caring Society has also heard from multiple Inuit families who have been turned away for the same reason.

The Caring Society is unable to understand the exclusion of Inuit children from Canada's implementation of Jordan's Principle, particularly as the initiative is being managed by DISC's First Nations and Inuit Health Branch. Indeed, federal jurisdiction over matters related to Inuit persons concerns was confirmed long ago by the Supreme Court of Canada in *Reference as to whether "Indians" in s. 91(24) of the B.N.A. Act includes Eskimo inhabitants of the Province of Quebec*, [1939] S.C.R. 104.

The total irrelevance of *Indian Act* status to federal jurisdiction over matters related to First Nations persons was confirmed by the Supreme Court of Canada in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12.

In *Daniels*, a unanimous Court emphasized that First Nations individuals without *Indian Act* status and Inuit individuals are "Indians" within the meaning of subsection 91(24) of the *Constitution Act, 1867*. The Court noted that despite that constitutional standing, First Nations individuals without *Indian Act* status "have, until now, found themselves having to rely more on noblesse oblige than on what is obliged by the Constitution" (at para. 12).

The federal government's failure to recognize its obligations to Inuit children and to First Nations children who are not eligible for *Indian Act* status leaves these individuals in what the Supreme Court of Canada characterized in *Daniels* as being a "jurisdictional wasteland" (at para. 14). It is exactly such 'jurisdictional wastelands' as these that Jordan's Principle is intended to redress.

If Canada maintains its position that Inuit children and First Nations children who are not eligible for *Indian Act* status are excluded from Canada's implementation of Jordan's Principle, the Caring Society is prepared to argue before the Tribunal that this is not only in breach of the Tribunal's May 26, 2017 Order (as amended), but also that it constitutes further discrimination contrary to section 5 of the *Canadian Human Rights Act*.

Specifically, the exclusion of these children from the scope of Canada's implementation of Jordan's Principle constitutes *prima facie* discrimination as it adversely differentiates against them on the basis of their race and/or their national or ethnic origin. Quite apart from *Indian Act* status' relationship to an individuals race and/or national or ethnic origin, the conferral, or not, of *Indian Act* status on a child is often determined by discriminatory distinctions on the basis of age, family status, and (until sections 2.1, 3.1, 3.2, and 10.1 of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)* come into force) on the basis of gender.

The Caring Society urges Canada to drop these discriminatory distinctions and to deem First Nations children who are not eligible for *Indian Act* status and Inuit children eligible to receive the full benefit of Canada's implementation of Jordan's Principle. This is consistent with the Supreme Court of Canada's interpretation in *Daniels*:

> [46] A broad understanding of "Indians" under s. 91(24) as meaning 'Aboriginal peoples', resolves the definitional concerns raised by the parties in this case. Since s. 91(24) includes all Aboriginal peoples, including Métis and non-status Indians, there is no

need to delineate which mixed ancestry communities are Métis and which are non-status Indians. They are all "Indian" under s. 91(24) by virtue of the fact that they are all Aboriginal peoples.

[47] Determining whether particular individuals or communities are non-status Indians or Métis and therefore "Indians" under s. 91(24), is a fact-driven question to be decided on a case-by-case basis in the future, but it brings us to whether, for purposes of s. 91(24), Métis should be restricted to the definitional criteria set out in *Powley* in accordance with the decision of the Federal Court of Appeal, or whether, as the appellants and some of the interveners argued, the membership base should be broader.

[48] The issue in *Powley* was who is Métis under s. 35 of the *Constitution Act, 1982*. The case involved two Métis hunters who were charged with violating the *Game and Fish Act*, R.S.O. 1990, c. G.1. They claimed that the Métis had an Aboriginal right to hunt for food under s. 35(1). The Court agreed and suggested three criteria for defining who qualifies as Métis for purposes of s. 35(1):

1. Self-identification as Métis;

2. An ancestral connection to an historic Métis community; and

3. Acceptance by the modern Métis community.

[49] The third criterion – community acceptance – raises particular concerns in the context of this case. The criteria in *Powley* were developed specifically for purposes of applying s. 35, which is about protecting historic community-held rights: para. 13. That is why acceptance by the community was found to be, for purposes of who is included as Métis under s. 35, a prerequisite to holding these rights. Section 91(24) serves a very different constitutional purpose. It is about the federal government's relationship with Canada's Aboriginal peoples. This includes people who may no longer be accepted by their communities because they were separated from them as a result, for example, of government policies such as Indian Residential Schools. There is no principled reason for presumptively and arbitrarily excluding them from Parliament's protective authority on the basis of a "community acceptance" test.

In the section 35 context, the Courts have also looked to the *Powley* test when dealing with claims made by First Nations groups not recognized by the *Indian Act*. See, for instance, *Campbell v. British Columbia (Forest and Range)*, 2011 BCSC 448, affirmed in 2012 BCCA 274; *R. v. Hopper*, 2008 NBCA 42; *Arbour v. Director of Public Prosecution*, 2014 QCCS 666.

An approach similar to the one contemplated by the Supreme Court of Canada in *Daniels* should apply to considering whether First Nations children who are not eligible for *Indian Act* status are eligible for Jordan's Principle funding, i.e.: the application of the first two criteria of the *Powley* test: (a) self-identification; and (b) ancestral connection.

While the Caring Society agrees with the Supreme Court of Canada's observation that the third criteria, community acceptance, is less relevant to the purpose of subsection 91(24) of the *Constitution Act, 1867* (i.e. reconciliation with Aboriginal peoples), in the Caring Society's view evidence of community acceptance (for instance support from enhanced service coordinators)

should allow Focal Points to presume that self-identification and ancestral connection are present.

It is important to note that other jurisdictions have sought to implement an expansive definition of Jordan's Principle, in keeping with the Tribunal's May 26, 2017 Order (as amended). Indeed, under Ontario's new *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, which comes into force on April 30, 2018, Jordan's Principle applies to all First Nations, Inuit and Métis children, whether such children have status or not. The preamble clearly states this principle as follows: "Where a First Nations, Inuk or Metis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan's Principle." Moreover, Ontario purposefully expanded the scope of its child welfare legislation, replacing the terms "Indian" and "native person" throughout the Act with "First Nations, Inuk or Metis child" to ensure that all Indigenous children, regardless of their *Indian Act* status, receive equitable child welfare services.

We urge Canada to review any cases where any Inuit child or First Nations child who is ineligible for *Indian Act* status was rejected because of their Indigenous identity. Canada must apply a full and proper definition of Jordan's Principle, without reference to discriminatory distinctions. This change must be communicated to the public via national and Indigenous media, and to all federal government staff in writing and at training sessions.

(2) The lack of an independent, fair, accessible, and timely appeal process for claims that are rejected

In its submissions regarding the March 2017 motions for immediate relief, the Caring Society argued that the *ad hoc* appeal process that Canada had created for Jordan's Principle denials (the matter being referred to the Assistant Deputy Minister for review) was insufficient, and that "[m]ore concrete measures are required to ensure fair process for families of children whose requests for services under Jordan's Principle are refused" (Caring Society submissions at para. 133).

In its May 26, 2017 reasons, the Tribunal found that:

> [100] For appeals, there is no formal process. In her affidavit, Ms. Buckland indicated that "Canada is implementing an approval and appeal process to review all requests in a timely manner" (*Affidavit of Robin Buckland*, January 25, 2017, at para. 11). Under cross-examination, she indicated that the appeals process is still being refined but currently consists of a family notifying the local Jordan's Principle focal point of the desire to appeal and that, thereafter, the case is referred to her for review at the Assistant Deputy Minister level (see *Transcript of Cross-Examination of* Ms. Buckland at p. 117, line 3, to p. 119, lines 3-19).
>
> [101] In another draft flow chart entitled "Jordan's Principle Appeal Process", again in draft format and subject to further refinement, dated February 20, 2017 and provided following Ms. Buckland's cross-examination, a few additional details regarding the appeals process are elaborated upon (see *Answers to requests of Robin Buckland*, March 7, 2017, at tab 11; and *Transcript of Cross-Examination of Ms. Buckland* at p. 117, line 3,

> to p. 119, line 19). Under "Guiding Principles" it mentions, among other things, that "[d]ecisions are consistently applied, and based on impartial judgment", that the "[p]rocess is open, available to the public, and easily understandable", and that "[d]ecisions are made within a reasonable time period, without delay, and in keeping with established service standards of Jordan's Principle."
>
> [102] However, it is unclear how these principles are incorporated into the actual appeals process. All that is described in the flow chart is that the regional Jordan's Principle focal point receives the request to appeal; the focal point then sends the request with any new or additional information for review to Health Canada's Senior Assistant Deputy Minister, First Nations and Inuit Health Branch and/or INAC's Assistant Deputy Minister, Education and Social Development Programs and Partnership. If the appeal is denied, the client is provided a rationale. No timelines are mentioned in the chart and no other information on the appeals process is found in the documentary record.

The Tribunal ordered, at para. 135(2)(A)(v), that Canada develop or modify its Jordan's Principle processes to implement the standard that:

> v. If the request is denied, the government department of first contact shall inform the applicant, in writing, of his or her right to appeal the decision, the process for doing so, the information to be provided by the applicant, the timeline within which Canada will determine the appeal, and that a rationale will be provided in writing if the appeal is denied.

Canada was also instructed to "turn its mind to the establishment of an independent appeals process with decision-makers who are Indigenous health professionals and social workers" (at para. 103).

Based on DISC's draft "A Guide for First Nations Children and Families/Guardians to Access Jordan's Principle" (the "draft Guide") (a version of which was attached as Exhibit "E" to Mr. Perron's second affidavit), the appeal process remains as embryonic in April 2018 as it was in March 2017. While this guide shows that DISC has specified the timeline in which it will determine the appeal (30 days) and confirms that "[t]he appeal decision will be provided in writing within 30 days of the request for appeal", the details regarding the information to be provided and the basis on which the appeal will be considered are lacking. There is also no information regarding the identity of the individuals on the "appeals committee", or their expertise.

The Caring Society agrees that the Jordan's Principle appeal process should be impartial, consistent, publicly accessible, understandable, and provide decisions in a reasonable period of time. The Caring Society is also of the view that the appeals process should also be transparent, fair and should involve a measure of independence.

Transparency

The information that is provided regarding the appeals process, both in the draft Guide and in refusal letters, is insufficient.

The draft guide simply states:

- At a minimum, your request should contain:
    - the name and date of birth of your child;
    - the product/service requested; and
    - the date of denial.

  It is optional to include additional documents as part of your appeal.

For its part, a February 2018 refusal letter that was forwarded to the Caring Society contains the following basic statement:

> If you wish to appeal this decision, please send a letter with any additional information to the following email address: Jordan-DGSPNI-FNIHB-Quebec@hc-sc.gc.ca

Publicly available documentation and DISC's refusal letters must state the case that children and their families have to meet when appealing a Jordan's Principle refusal. The sums of money involved in many Jordan's Principle cases will not be sufficient to justify the expense of legal representation on an appeal from a refusal. However, the stakes for families are high, as the interests of their children are at stake. As such, Jordan's Principle decision letters should state, in plain language, the reasons relied upon to deny the request ***and*** should advise families not only of the appeal steps, but also of the kind of information that the family would need to bring forward to be successful on appeal. Needless to say, such information must also be presented in an accessible manner that accommodates persons who are not fluent in English or French and persons with disabilities.

The Caring Society is aware of at least one situation in which an appeal was denied on the basis that "[n]o compelling information was provided to warrant reversing the denial on the basis of substantive equality." However, the requestor was not advised that information regarding substantive equality was missing from their request, or of the kind of information the appeals committee was looking for.

The Caring Society has also seen rejection letters that fail to advise service providers or families that the rejection is subject to an internal appeals process, such as letters advising of ineligibility on the basis of Inuit status, or on the basis of a lack of *Indian Act* status for a First Nations child. All rejection letters should refer to the availability of, and timelines for, DISC's appeal process. Appeal decisions should also advise that those decisions are subject to judicial review by the Federal Court, and provide basic information regarding the Federal Court's process.

Fairness

As the Caring Society understands it, only the Assistant Deputy Minister of Regional Operations ("ADM-RO") may deny a request, including a partial denial of a request. However, it is unclear whether the ADM-RO also forms part of the appeals committee that hears appeals from denials. We understand from Mr. Perron's second affidavit that the Senior Assistant Deputy Minister of the Regional Operations Sector, DISC, and the Senior Assistant Deputy Minister of the First Nations Inuit Health Branch, DISC, comprise the appeals committee. If the first official is the same individual to whom all recommended denials are referred, this violates what the Court of Appeal for British Columbia has described as "the ordinary principle of fair play that a [person] should

not be a member of the tribunal hearing appeals from his [or her] own decisions" (see *Kane v. University of British Columbia* (1979), 98 D.L.R. (3d) 726 at para. 37).

The Caring Society has also seen Jordan's Principle "Questions and Answers" sheets that indicate that "[t]he Jordan's Principle Focal Point will work with the child and/or their family throughout the appeal process to provide advice and guidance […]." However, given that any request that is denied must first be recommended for denial by the region, it is difficult to see how Focal Points can provide the kind of assistance a family would require to overturn a denial.

Additionally, the Caring Society has doubts that the same appeal process is being applied across the country. For instance, the First Nations Health Authority in British Columbia indicates on its website that Jordan's Principle appeals "follow the same process as FNHA Health Benefits appeals" (see: http://www.fnha.ca/what-we-do/maternal-child-and-family-health/jordans-principle/faqs#12).

Independence

The Jordan's Principle appeal process is an internal mechanism for DISC to review its own decisions. Canada does not appear to have "turn[ed] its mind to the establishment of an independent appeals process with decision-makers who are Indigenous health professionals and social workers" (2017 CHRT 14 at para. 103).

Independent, external reviews of decisions related to benefits are not foreign to the federal sphere. The Social Security Tribunal ("SST") hears appeals of decisions made by Employment and Social Development Canada under the *Employment Insurance Act*, the Canada Pension Plan, and the *Old Age Security Act*. The Veterans Review and Appeal Board ("VRAB") hears appeals regarding the disability pension and disability award programs administered by Veterans Affairs Canada.

Both appeal bodies operate at arm's length from the departments they respectively review. Both bring expertise to ensuring that the federal benefits schemes administered by federal departments operate as Parliament intended.

In particular, before the VRAB, applicants are represented free-of-charge by counsel from the Bureau of Pension Advocates (the "Bureau"). The Bureau is mandated under the *Department of Veterans Affairs Act*, R.S.C. 1985, c. V-1 (the "*DVA Act*") to assist applicants in preparing applications for review and to represent these applicants before the VRAB. What is more, the *DVA Act* provides that the Bureau's advocates, and those they represent, have a solicitor-client relationship. Given Canada's long history of discrimination, similar positive measures to ensure that families have the resources and information needed to challenge an adverse decision made by Canada are called for in this context in order for Canada to uphold its duty of fairness to Indigenous children and families.

Indeed, all of the tools that Canada employs in the context of other federal programs could be modified for the context of Indigenous families dealing with service gaps and would assist in the transformation of the "old mindset" within the federal government that is necessary to achieve true reform.

(3) Concerns regarding procedural mechanisms fettering timely processing of Jordan's Principle claims

Paragraph 135(2)(A)(iii) of the Tribunal's May 26, 2017 Order (as amended) imposes the following requirement on Canada:

> iii. Canada shall cease imposing service delays due to administrative case conferencing, policy review, service navigation or any similar administrative procedure before the recommended service is approved and funding is provided. Canada will only engage in clinical case conferencing for the purpose described in paragraph 135(1)(B)(iii).

The "purpose described in paragraph 135(1)(B)(iii)" is determining the requestor's clinical needs.

Despite this restriction, the Caring Society is aware of cases in which the receipt of services to a First Nations child is delayed by referrals within the federal government. For instance, some requestors are referred to the Non-Insured Health Benefits program, despite a lack of evidence that a timelier service-response is possible. The Caring Society acknowledges that the policies DISC has developed regarding Focal Points' work require Focal Points to ensure that federal government staff approve the service in question within 48 hours of the request's being made. However, these referrals are made despite a lack of evidence that such a service pathway will result in more efficient or effective delivery of services. In fact, there is a risk that where a service level that is greater than that provided for by an alternate federal program is required in order to achieve substantive equality, the matter will simply return to the Focal Point after the alternate federal program, leading to a delay.

The Caring Society is also aware of further cases in which services may be approved within 48 hours, but the receipt or delivery of those services to children is delayed by processes internal to government, for instance regarding payment. It is not clear to the Caring Society what, if any, service standards are applicable to DISC's actions after funding is approved for a service, or what, if any, metrics are being kept regarding the timing of these processes.

Finally, the Jordan's Principle intake form collects different kinds of information. As the Caring Society understands matters, some of this information is necessary to Focal Points to process requests for services, other information is characterized as "optional" for the requestor to provide, while still other information is collected to provide data to inform Canada's long-term approach to Jordan's Principle. The intake form should clearly indicate the difference in these types of information, so that the requestor's provision of the <u>necessary</u> information is not delayed by their collecting data not required to process the child's case. Focal Points can return to collect non-essential information once the approval process is under way.

(4) Timelines for obtaining further information where Focal Points are of the view that a Jordan's Principle request is incomplete and access to Jordan's Principle Focal Points

Further measures are required to ensure that front-line officials appropriately respond to the timelines in the Tribunal's May 26, 2017 order (as amended). Requests for information should not be used to delay or otherwise frustrate the 48-hour timeline for responding to individual

requests. While the draft Guide states that requests for information ought to be made by Focal Points within one business day of receiving the request, the Caring Society has seen multiple files that are delayed by days, if not weeks, by requests for information.

Additionally, DISC has yet to address all possible avenues of contact for families seeking assistance under Jordan's Principle. While the 24-hour contact line (1-800-572-4453) is a major step forward, the INAC Headquarters number that was previously advertised by Canada for Jordan's Principle cases (1-800-567-9604) must be updated either with the new number, or with an option that will transfer the caller to the 24-hour contact line. The former number was in public circulation for a considerable period of time, as such it is reasonable to expect that some families will still make contact with it, rather than the newer line. The material on Canada's websites and promotional material, as well as that of Enhanced Service Coordinators, should also be updated to reflect that the 24-hour contact line is advertised as such, as families might reasonably assume that the contact line is limited to business hours.

(5) Mechanisms to ensure compliance of Enhanced Service Coordinators and other community organizations

Many of Canada's functions in implementing Jordan's Principle have been delegated to "Enhanced Service Coordinators". Despite this delegation, Canada remains responsible for ensuring that these organizations deliver services in compliance with the Tribunal's orders in particular and the *Canadian Human Rights Act* in general. Canada cannot contract out of its human rights obligations to Indigenous children and their families.

Canada has yet to provide a satisfactory explanation for the mechanism it will use to review the actions of Enhanced Service Coordinators and to ensure that these are in compliance with Canada's human rights obligations.

For instance, the Caring Society has reviewed the Jordan's Principle website established by the First Nations Health Authority in British Columbia. That website contains references that are problematic, including a focus on health and social services, rather than ***all*** public services, and a failure to mention that Jordan's Principle also applies to services that go above and beyond the normative standard for non-Indigenous Canadians.

The Caring Society has also reviewed the Alberta Health Consortium's online materials. These materials also suggest that Jordan's Principle is confined to health, social, and educational needs (as opposed to ***all*** needs) and fails to adequately capture the important role of substantive equality in the implementation of Jordan's Principle.

The Caring Society appreciates that, as described in Mr. Perron's second affidavit, all of Canada's communications material has been provided in advance to the Parties for review and feedback. This is in keeping with the Tribunal's Order at para. 135(3)(E) of 2017 CHRT 14. However, more effort is required to ensure that the feedback provided in that context is also reflected in the public materials published by the Enhanced Service Coordinators with whom DISC has entered into agreements.

(6) The lack of interim measures to ensure that vulnerable families are not burdened with the cost of closing service gaps or achieving substantive equality

The Caring Society has seen cases in which Canada failed to ensure that low income families with a need for supplies related to the care of their children receive those supplies on an interim basis while their funding request is considered. Instead, these families must seek reimbursement from DISC after the fact. In many cases, this is not possible, given the disproportionate number of First Nations families living in poverty. Even where a First Nations family does not live in poverty, requiring these families to pay "up front" to receive services that are otherwise provided to Canadians or in order to achieve substantive equality perpetuates adverse differentiation in access to public services, contrary to the *Canadian Human Rights Act* and the Tribunal's Orders.

This system presumes that the service is not needed in the first place. Rather, the presumption should be that the service is required until DISC's decision making or appeal process finally determines otherwise.

The *Financial Administration Act* funding process cannot be cited as a bar to meeting the interim needs of First Nations families. Indeed, the Tribunal's May 26, 2017 Order prohibits Canada from relying on "administrative procedures" in order to delay the provision of a service. Interim needs could be easily met by analyzing the service requests DISC has received over the past fifteen months to see the types of supplies that are typically required, such as Ensure or other supplements, and keeping a reserve of such supplies that could be distributed on an interim basis until the funding request is approved and a more permanent means of providing the service is established.

(7) Questions regarding Canada's review of Jordan's Principle cases referred prior to May 2017

As Dr. Blackstock has expressed at numerous Jordan's Principle Oversight Committee meetings, the Caring Society has concerns with the manner in which Canada's review of Jordan's Principle cases that arose prior to May 2017 was carried out. For instance, the review of the treatment of cases involving orthodontic needs that engage substantive equality (one of which gave rise to the judicial review in *Shiner et al. v. Canada*, currently before the Federal Court of Appeal) is ongoing and has yet to reach a satisfactory conclusion. Furthermore, the lengthy period of time following the Tribunal's May 26, 2017 Order before the complaint in *Buffalo v. Canada* (recently discontinued at the Tribunal due to a settlement) is also concerning.

It is also unclear if cases referred to the Non-Insured Health Benefits program which were denied have been reviewed to determine if there was a service need that nonetheless should have been met in order to ensure substantive equality.

(8) Summary

In summary, we raise the following actionable items or requests for information in this letter:

(1) The exclusion of Inuit children and First Nations children who do not have, or are not eligible for, status under the *Indian Act*:

a. Action: Expand Canada's eligibility criteria for Jordan's Principle funding to include Inuit children and First nations children who are not eligible for *Indian Act* status;

b. Action: Communicate the rectification of the eligibility criteria referenced in (1)(a) to First Nations and Inuit, First Nations and Inuit service providers, and the public via national and indigenous media;

c. Action: Communicate the rectification of the eligibility criteria referenced in (1)(a) to federal government staff in writing and provide training on the rectification; and

d. Action: Review all cases where an Inuit child or a First Nations child who is not eligible for *Indian Act* status was refused Jordan's Principle funding on the basis of their Indigenous identity and provide retroactive coverage to remediate some of the disadvantage experienced by the child owing to Canada's improper narrowing of Jordan's Principle.

(2) The lack of an independent, fair, accessible and timely appeal process for rejected claims:

a. Information: Advise as to the membership of the appeals committee for refusals of Jordan's Principle funding, and their expertise;

b. Action: Ensure that the appeal process is applied consistently in all regions;

c. Action: Revise DISC's publicly available documentation regarding the appeal process to state the case that must be met in order to appeal a refusal of Jordan's Principle funding;

d. Action: Ensure DISC's refusal letters state, in plain language, the reasons relied upon to deny the request and ensure that these letters advise families not only of the appeal steps, but also of the kind of information that the family would need to bring forward to be successful on appeal;

e. Action: Ensure that all DISC refusal letters advise requestors of the appeal process;

f. Action: Ensure that appeal decision letters rejecting a request advise requestors of the availability of judicial review and provide basic information regarding the Federal Court;

g. Action: Ensure that DISC officials involved in denying a Jordan's Principle request (whether at the Focal Point or Headquarters level) are not involved in the appeal process; and

h. Action: Establish an external review mechanism for Jordan's Principle cases, supported by an arms-length advocacy office to support families in bringing an appeal.

(3) Concerns regarding procedural mechanisms fettering timely processing of Jordan's Principle claims:

   a. Action: Ensure that referrals of requestors to existing government services within the 48-hour period established by the Tribunal lead to such a service pathway will result in delivery or services that is equally or more efficient or effective as by way of the Jordan's Principle service pathway;

   b. Action: Establish, and track data on, service standards related to issuing payment for services after the service has been approved; and

   c. Action: Ensure that Canada's collection of "optional" data or data to inform Canada's long-term approach to Jordan's Principle does not increase chances of delays, for instance by causing requestors to gather non-essential information before submitting a request.

(4) Timelines and criteria for obtaining further information where Focal Points are of the view that a Jordan's Principle request is incomplete:

   a. Action: Ensure that the "next business day" timeline for clinical requests for information is implemented.

(5) Mechanisms to ensure compliance of enhanced service coordinators and other community organizations:

   a. Information: Explain what mechanism will be used to ensure that organizations with whom DISC contracts for Enhanced Service Coordination are in compliance with the Tribunal's Orders; and

   b. Action: Develop a mechanism to ensure that feedback provided by the parties regarding DISC's public education materials is reflected in public education materials assembled and published by Enhanced Service Coordinators.

(6) The lack of interim measures to ensure that vulnerable families are not burdened with the cost of closing service gaps or achieving substantive equality:

   a. Action: Develop a mechanism to meet the interim needs of vulnerable families while requests for Jordan's Principle are evaluated or clinical information is being collected or considered.

(7) Questions regarding Canada's review of Jordan's Principle cases referred prior to May 2017 (Shiner and long delay resolving Buffalo, unclear if they reviewed cases referred to NHIB):

   a. Information: Advise whether requests made to existing federal programs between April 1, 2009 and May 25, 2017, like the Non-Insured Health Benefits Program, were reviewed to ensure that substantive equality was also considered when requests for services were refused.

We look forward to discussion of the concerns and suggestions noted above with you and DISC's officials at the earliest opportunity. In order to allow us to consider your responses, we request a response at least three business days before any such meeting.

Yours truly,

David P. Taylor

Copy: **Jonathan Tarlton, Patricia MacPhee and Kelly Peck**
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow and Stuart Wuttke
Co-counsel for the complainant Assembly of First Nations

Daniel Poulin and Samar Musallam
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Krista Nerland
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni
Co-counsel for the interested party Amnesty International

Julian Falconer, Akosua Matthews, and Anthony Morgan
Co-counsel for the interested party Nishnawbe Aski Nation

Anne Levesque, and Sarah Clarke
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

DPT/dn

This is **Exhibit "D"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

From: Gideon, Valerie (HC/SC) <valerie.gideon@canada.ca>
Sent: Thursday, July 5, 2018 9:30 PM
To: Akosua Matthews; Maggie Wente; Martin Orr; Alvin Fiddler; Bobby Narcisse; Brian Smith; David Taylor; Dr. Cindy Blackstock; GC Anna Betty; GC Joel Abram; Jon Thompson; Lisa Nafziger; Buist, Margaret (AADNC/AANDC); Natalie Hansen; Millar, Patricia (AADNC/AANDC); Isaak, Paula (AADNC/AANDC); Robert Frater; Brickey, Salena (AADNC/AANDC); Stuart Wuttke; Anthony Morgan
Cc: Lorna Martin; Sinéad Dearman; Marlatt, Constance
Subject: July 9 CCCW Meeting - Eligibility expansion for Jordan's Principle

Good evening to everyone

In anticipation of next Monday's discussion related to the proposed consent orders from the Caring Society, and in response to concerns raised by the Chiefs of Ontario and Nishnawbe Aski Nation related to eligibility for Jordan's Principle, the Department of Indigenous Services Canada has been looking at the issue of who should be encompassed by the term First Nation child taking into consideration that the CHRT orders do not provide a definition.

I am pleased to advise you that non-status Indigenous children ordinarily resident on reserve are to be included in any requests received both pending and moving forward for services pursuant to Jordan's Principle. Specifically, the definition of "First Nation child" that Canada will apply will encompass all of the following:

1. First Nations children with a status number;
2. First Nations children entitled to registration, under the *Indian Act*
   - This would include those who became entitled to register under the December 22, 2017 amended provisions of the *Indian Act*, under Bill S-3;
3. Non-status Indigenous children who are ordinarily resident on reserve.

In addition, in response to requests from President Obed and the Caring Society, requests from Inuit children will be eligible under the Child First Initiative. All Inuit children will be eligible, regardless of where they reside. An Inuit specific approach to addressing unmet needs of Inuit children on a longer term basis will be codeveloped with Inuit leaders and communities leading up to the fall.

Requests that were put on hold pending this decision will now be dealt with as soon as possible and we report on their outcomes specifically at the Jordan's Principle Oversight Committee.

I thank you for your patience while we were examining this important question and look forward to Monday's discussion.

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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This is **Exhibit "E"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

Contents

ANNUAL GENERAL ASSEMBLY
JULY 25, 26, & 27, 2017, REGINA, SK

Resolution no. 30/2017

TITLE:	Inherent Authority to Define Citizenship
SUBJECT:	Citizenship
MOVED BY:	Chief Peter Collins, Fort William First Nation, ON
SECONDED BY:	Chief Tom Bressette, Chippewas of Kettle & Stony Point First Nation, ON
DECISION	Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
    i. Article 33 (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
    ii. Article 33 (2): Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.
B. There is a long history of hardship and discrimination imposed on Indigenous peoples by the *Indian Act's* Indian status provisions.
C. Federal legislation enacted in the past and implemented still today was designed to assimilate and erode First Nation citizenship.
D. Canada's *Bill C-31: An Act to Amend the Indian Act* was passed to end discrimination against Indian women, and new provisions ensured that all Indian peoples would continue to suffer losses related to Indian status over generations. However, the discrimination of inter-marriages continues.

Certified copy of a resolution adopted on the 27th of July 2017 in Regina, Saskatchewan

PERRY BELLEGARDE, NATIONAL CHIEF

30 – 2017

E. Indian children lose Indian status after two generations of out-marriage, and with the current rate of out-marriage many First Nations communities will disappear within a few generations due to rapid decline in numbers of Status Indians within their citizenship.

F. First Nations have always asserted their jurisdiction to determine and define their citizenship, regardless of Canada's unilateral imposition of the *Indian Act* that determines Indian status.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Affirm the authority of First Nations to determine their own citizenship and eligibility for registration.
2. Direct the Assembly of First Nations to call on the Government of Canada to end the practice of legislative assimilation and to provide adequate funding to First Nation governments to establish their own citizenship laws and processes.
3. Support the work of Fort William First Nation and all other First Nations who now exercise their jurisdiction over their citizenship and restore their children with their rightful heritage, which was lost due to the colonial and racist impacts of sections 6(1) and (2) of the *Indian Act*.

Certified copy of a resolution adopted on the 27th of July 2017 in Regina, Saskatchewan

SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC Resolution no. 71/2016

TITLE:	Descheneaux Decision: First Nations Jurisdiction on Citizenship and Identity
SUBJECT:	First Nations Citizenship
MOVED BY:	Chief Kim Sandy-Kasprick, Northwest Angle #33 First Nation, ON
SECONDED BY:	Chief Derrick Henderson, Sagkeeng First Nation, MB
DECISION	Carried, 1 abstention

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
   i. Article 33 (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
   ii. Article 33 (2): Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

B. On August 3, 2015, a Quebec Superior Court rendered its decision in *Descheneaux et al., v. Canada*. The court found sections to Indian registration under section 6 of the *Indian Act* violated the equality provisions guaranteed under the Canadian Charter because of difference in treatment in eligibility to Indian registration between Indian women, men and their descendants. The court delayed its decision to strike down the offending provisions of the *Indian Act* until February 3, 2017 to allow Canada to make the necessary legislative amendments.

C. Canada has until February 3, 2017 to amend section 6 of the *Indian Act* to eliminate the gender-based inequalities in Indian registration and has committed to continue with an engagement process beyond the February deadline to examine broader issues relating to registration, band registration and citizenship.

Certified copy of a resolution adopted on the 6th day of December 2016 in Gatineau, Québec

PERRY BELLEGARDE, NATIONAL CHIEF

D. On July 28, 2016, National Chief Perry Bellegarde stated, "This cannot simply be about amendments, but about working together to move beyond the Indian Act in a way that respects First Nations rights and is consistent with the UN Declaration on the Rights of Indigenous Peoples."

E. First Nations assert First Nation sovereignty and self-determination and promote decolonization and gradual disengagement from the *Indian Act*.

F. Jurisdiction on citizenship and other related issues (e.g. Identity and recognition of Treaty cards) ought to be part of the government process of reconciliation and commitment to repeal those laws of Canada that violate Indigenous rights.

G. The Government of Canada introduced Bill S-3, An Act to amend the Indian Act (elimination of sex-based inequities in registration), in the Senate without adequate consultation with First Nations, resulting in legislation that does not meet the needs or respect the rights of First Nations.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Support those First Nations who wish to disengage and opt-out of the *Indian Act* at their own pace to develop governance regimes in accordance to their own customs and traditions.

2. Support those First Nations who aspire to implement their own citizenship laws without regard to section 6 of the *Indian Act*. Unequivocally support the elimination of the second generation cut-off provision found in section 6(1) and (2) of the *Indian Act* that results in a decline of registrants and members of First Nations.

3. Call on Canada to repeal the impugned provision in its entirety and to transfer the authority of citizenship and identity to the First Nations.

4. Acknowledge those First Nations that have Treaty with the Crown in right of the United Kingdom to have Treaty cards, and call upon Canada to jointly recognize the reinstatement of the Treaty cards.

5. Call upon Canada to withdraw Bill S-3 and consult and accommodate with First Nations in a manner consistent with section 35 of the Constitution Act of Canada prior to reintroducing any legislation to accommodate.

Certified copy of a resolution adopted on the 6th day of December 2016 in Gatineau, Québec

SPECIAL CHIEFS ASSEMBLY
DECEMBER 6, 7, & 8, 2016; GATINEAU, QC Resolution no. 118/2016

TITLE:	Call on the Crown to Renounce its Purported Authority to Declare First Nations "Extinct"
SUBJECT:	First Nation Rights
MOVED BY:	Chief Byron Louis, Okanagan Indian Band, BC
SECONDED BY:	Chief Harvey McLeod, Upper Nicola Indian Band, BC
DECISION	Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples states:

   i. Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

   ii. Article 8 (2b): States shall provide effective mechanisms for prevention of, and redress for: any action which has the aim or effect of dispossessing them of their lands, territories or resources.

   iii. Article 33 (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.

B. The Chiefs-in-Assembly have passed Resolution no 53/2015, "*The Right of First Nations to Determine their Individual and Collective Identities*" directing the federal government to recognize individuals who belong to First Nations according to their customs, laws, and traditions, as Indigenous peoples, as Aboriginal peoples and as First Nation peoples under section 35(1) of the *Constitution Act, 1982*, and provide resources to First Nations to support their exercise of jurisdiction over citizenship.

Certified copy of a resolution adopted on the 8th day of December 2016 in Gatineau, Québec

PERRY BELLEGARDE, NATIONAL CHIEF

C. First Nation peoples have always governed themselves according to their customs, laws, and traditions, including the determination of their individual and collective identities.

D. The Crown has unilaterally interfered with First Nations and violated our inherent rights by purporting to have the authority under the *Indian Act* to declare that a First Nations group is "extinct" or has "ceased to exist".

E. Moreover, the Crown has used this purported authority, in violation of First Nations inherent rights, to dispossess First Nations of traditional lands.

F. For example, this purported authority is currently being relied upon in *R v Desautel*, in which Mr. Desautel—holding that he is a descendent of the Sinixt people—is accused of violating provincial hunting regulations in British Columbia.

G. The Crown in *R v Desautel* continues to allege that the Sinixt people became "extinct" in British Columbia, while ignoring relevant information held by First Nations in the area, such as other Insyilxcn speaking peoples'. An allegation by the Crown of "extinction" of a First Nations group, when disputed by First Nations of that area, is highly offensive, wholly contrary to the Crown's fiduciary obligations, and is the antithesis of reconciliation. This is particularly so in cases where, as in *R v Desautel*, the Crown seeks to rely upon Crown policies and practices regarding reserve delineation and allotment, the Crown's definition and creation of Indian Bands, Crown policies on "extinction", and the Crown's own records.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call on the Crown to renounce any authority it may purport to have to unilaterally declare that a First Nation is "extinct" or has "ceased to exist".

2. Call upon the Government of Canada to end its practice, in all legal proceedings to which it is a party, now and in the future, of relying on any authority that purports to unilaterally declare a First Nation "extinct" or having "ceased to exist".

3. Direct the Assembly of First Nations to work with the Government of Canada to propose legislative amendments to clarify that the *Indian Act* does not grant the Minister the authority to unilaterally declare that a First Nation is "extinct" or has "ceased to exist". Such amendments would not exclude or limit any decision by the Court in R v Desautel that are favorable to First Nation interests or rights.

Certified copy of a resolution adopted on the 8th day of December 2016 in Gatineau, Québec

ANNUAL GENERAL ASSEMBLY
JULY 12, 13, & 14, 2016; NIAGARA FALLS, ON Resolution no. 59/2016

TITLE:	First Nations Citizenship
SUBJECT:	Aboriginal Title and Rights, Citizenship
MOVED BY:	Grand Chief Joseph Tokwiro Norton, Mohawk Council of Kahnawake, QC
SECONDED BY:	Chief Don Maracle, Mohawks of the Bay of Quinte
DECISION	Carried by Consensus

WHEREAS:

A. First Nations are the sole custodians of their cultures, languages and history, and exclusively carry the right to maintain, control, protect and develop this precious heritage.

B. The First Nations who make up our Assembly are the only ones who rightfully hold and may assert Aboriginal title and Treaty rights.

C. First Nations have been holding forever the authority to determine the definition and acceptance of their members and citizenship in accordance with their customs and traditions, and that they are responsible and accountable to their members, regardless of where they reside.

D. The Federal Government of Canada has committed to engage in nation-to-nation rights-based discussions with First Nations on matters that concern nationality, jurisdiction and harmonious relations between Canada and First Nations.

E. The Federal Government of Canada, through evolving judicial and legislative doctrine, fosters ambiguity as to the existence of Aboriginal groups other than those recognized by its own constituting legislation, thus allowing the arising of confusion which impedes the recognition and the implementation of Aboriginal title and Aboriginal and Treaty rights of the First Nations.

Certified copy of a resolution adopted on the 14th day of July 2016 in Niagara Falls, Ontario

PERRY BELLEGARDE, NATIONAL CHIEF

F. There is increasing establishment of illegitimate groups that wrongly claim to be linked to First Nations and attempt to fraudulently exercise rights that do not belong to them, including unjust claims of recognition of status, and claims to territory and taxation-exemption.

G. The Federal Government of Canada, by inaction and/or engagement with illegitimate groups, is tolerating and fostering the growth of unfounded claims and placing the protection of the Aboriginal title and rights of First Nations, the proper and lawful rights holders, at risk.

H. The Supreme Court of Canada, in the recent CAP-Daniels Ruling directed the Federal Government of Canada to clarify once and for all the status of all groups which seek, without verifiable justification, to be recognized as "Aboriginal" nations.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Demand that the Federal Government of Canada assumes its fiduciary responsibility towards First Nations, and that it indicates immediately, clearly and publicly the measures it intends to take in order to put an end to the emergence of groups alleged to be Aboriginal, which are causing considerable damage to the First Nations and to the recognition and implementation of their Aboriginal title and Aboriginal and Treaty rights, and that the Government of Canada takes vigorous action against these fraudulent acts committed publicly and in impunity.

2. Demand that the Federal Government of Canada immediately disclose, cease, and abstain from any engagement with illegitimately composed groups claiming to be First Nations.

Certified copy of a resolution adopted on the 14th day of July 2016 in Niagara Falls, Ontario

SPECIAL CHIEFS ASSEMBLY
DECEMBER 8, 9, & 10, 2015; GATINEAU, QC Resolution no. 53/2015

TITLE:	The Right of First Nations to Determine their Individual and Collective Identities
SUBJECT:	First Nations Citizenship, *Indian Act* section 6
MOVED BY:	Chief Ronald Ignace, Skeetchestn Indian Band, BC
SECONDED BY:	Doug Kelly, Proxy, Soowahlie First Nation, BC
DECISION	Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples affirms the following:
   i. Article 8 (1): Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
   ii. Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.
   iii. Article 33 (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
   iv. Article 33 (2): Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

B. First Nation peoples always governed themselves according to their customs, laws, and traditions, which included the determination of their individual and collective identities. The federal government has unilaterally interfered with Indigenous peoples and violated our inherent rights by determining who is a registered Indian under the registration provisions of the *Indian Act.*

C. The "second generation cut off rule" under section 6 of the *Indian Act* will eventually result in the elimination and assimilation of all registered Indians.

Certified copy of a resolution adopted on the 10th day of December 2015 in Gatineau, Québec

D. First Nation peoples have the right to determine their individual and collective identities according to their own customs, laws, and traditions.

E. Our peoples have used the process of adoption, both formally and informally, as a way of confirming the identity of our people, within our families and within our communities.

F. The federal government must stop interfering with the right of First Nations to determine their individual and collective identities and recognize the people accepted by First Nations as belonging to them on the basis of their own customs, laws, and traditions.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Affirm that First Nation communities and individuals have the inherent right to have their cultures and identities protected, both now and into the future.
2. Affirm that First Nations have the inherent right to determine their collective and individual identities based on their own customs, laws, and traditions.
3. Direct the federal government to immediately cease imposing *Indian Act* criteria for registration upon First Nations and recognize citizens as defined by First Nations.
4. Call on the Department of Indigenous and Northern Affairs Canada to change its policies with respect to customary adoption, so that it respects the inherent right of First Nations to fully determine who is a member of their Nation and recognizes adoptions at the direction of First Nations.
5. Direct the federal government to recognize individuals who belong to First Nations according to their customs, laws, and traditions, as Indigenous peoples, as Aboriginal peoples and as First Nation peoples under section 35(1) of the *Constitution Act, 1982*.
6. Direct the federal government to provide resources to First Nations to support their exercise of jurisdiction over citizenship.

Certified copy of a resolution adopted on the 10th day of December 2015 in Gatineau, Québec

PERRY BELLEGARDE, NATIONAL CHIEF

ANNUAL GENERAL ASSEMBLY
JULY 7, 8 & 9, 2015, MONTRÉAL, QC

Resolution no. 36/2015

TITLE:	Indian Status Application Process
SUBJECT:	Registration and First Nations Citizenship
MOVED BY:	Doug Chevrier, Proxy, Nipissing First Nation, ON
SECONDED BY:	Chief Denise Restoule, Dokis First Nation, ON
DECISION	Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples states:
   i. Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
   ii. Article 33, (1): Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
   iii. Article 33, (2): Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

B. The *Indian Act* determines eligibility to register as an "Indian" and is not consistent with concepts of First Nations' own determination of citizenship.

C. Wait times for Aboriginal Affairs and Northern Development Canada (AANDC) to process Indian registration (status) applications are exceedingly lengthy, often taking between 9 months and two years before a decision is made and communicated.

D. First Nations do not have the option to mail Indian status cards to members not living in the community or members who otherwise are unable to travel to their community membership office.

Certified copy of a resolution adopted on the 9th day of July, 2015 in Montréal, Québec

PERRY BELLEGARDE, NATIONAL CHIEF

E. First Nations do not have the authority to issue temporary Indian status cards to members that have applied for replacement of lost or stolen Secure Certificate of Indian Status cards.

F. First Nation community membership offices do not have support outside of the general public national status inquiry line and do not have an Indian status application point-of-contact person at AANDC.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Direct the Assembly of First Nations (AFN) to continue to advocate for Aboriginal Affairs and Northern Development Canada (AANDC) to work with First Nations and their designated political organizations to amend the Indian registration (status) application process to reflect a more efficient and reasonable timeframe for approvals, renewals, replacements and delivery methods that meet the needs of community members.
2. Direct the AFN to urge AANDC to provide a support system and a specified point-of-contact for community membership clerks to obtain assistance in dealing with Indian status card applications and inquiries.
3. Direct the AFN to continue to advocate for support of the establishment of recognized Nation-based citizenship cards.

Certified copy of a resolution adopted on the 9th day of July, 2015 in Montréal, Québec

ANNUAL GENERAL ASSEMBLY
JULY 16, 17 & 18, 2013, WHITEHORSE, YT **Resolution no. 09/2013**

TITLE:	**Federal Response to implications of registration of new registrants under Bill C-3 amendments to the *Indian Act***
SUBJECT:	Fiscal Relations, Funding to First Nations
MOVED BY:	Grand Chief Konrad Sioui, Conseil de la Nation Huronne-Wendat, QC
SECONDED BY:	Chief Rufus Copage, Shubenacadie (Indian Brook) First Nation, NS
DECISION:	Carried by Consensus

WHEREAS:

A. The Department of Aboriginal Affairs and Northern Development Canada (AANDC) has still not confirmed the results of the Working Group tasked with examining at the national level, the financial implications of the new registrations following the entry into force of Bill C-3: *Gender Equity in Indian Registration Act* and the subsequent changes to the *Indian Act.*

B. The funding allocated by the federal government is already inadequate.

C. The lands reserved for the First Nations and the facilities made available to them are clearly insufficient and do not allow to house adequately all the families and citizens of First Nations.

D. The federal government has not yet been able to provide clear answers to First Nations in terms of how it will tackle the above-mentioned challenges following the changes to the *Indian Act* as a result of Bill C-3.

E. The new registrants, as First Nation members, have the right to be welcomed in their communities with respect, and to benefit from the same rights and services that are offered.

F. The federal government has a fiduciary obligation towards the First Nations, and that as such, it must take all appropriate steps so that all First Nation members can live in dignity and honour, to which they are entitled.

G. All Treaties signed, before and after the Confederation, between the First Nations and the Federal Crown, including Treaties of peace and alliance, must all be honoured, protected and applied to the full extent, by the Federal Crown.

Certified copy of a resolution adopted on the 17th day of July, 2013 in Whitehorse, Yukon

SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF

H. Under these Treaties, First Nations and the Federal Crown must cultivate ongoing partnering relationships, and as such, they owe each other mutual assistance, alliance to combat common threats, economic and commercial cooperation and equitable sharing of the territory and its resources.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call on the Assembly of First Nations (AFN) to urge the federal government to put in place a specific and concrete action plan in order to properly address the needs of the new members, which plan shall include in particular:

a. Realistic budget confirmations which allow the First Nations to cope with the arrival of their brothers and sisters registered since the changes made to the *Indian Act* as a result of Bill C-3, in order to offer them the services to which they are entitled along with decent housing within their community;

b. The elaboration of a calculation method similar to the one found in several treaties, which could help ensure that the total area of each reserve corresponds to the size of its population and that adequate resources are provided to meet the needs of the population; and,

c. Mandate the AFN Executive Committee to work with First Nations to take all the necessary measures to implement the said action plan, including judicial proceedings as appropriate.

Certified copy of a resolution adopted on the 17th day of July, 2013 in Whitehorse, Yukon

ANNUAL GENERAL ASSEMBLY
JULY 17, 18 & 19, 2012, TORONTO, ON Resolution no. 25/2012

TITLE:	First Nations Right to Determine Citizenship
SUBJECT:	Governance, citizenship
MOVED BY:	Grand Chief Derek Nepinak, Proxy, Buffalo Point First Nation, MB
SECONDED BY:	Chief William Montour, Six Nations of the Grand River Territory, ON
DECISION:	Carried by consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples recognizes First Nations' right to self-determination; and the right to freely determine their political status and freely pursue their economic, social and cultural development (Article 3) and have the right to determine their own identity or membership in accordance with their customs and traditions (Article 33).

B. First Nations have inherent and unextinguished jurisdiction to make laws to define who belongs to our respective Nations.

C. First Nations have inherent and unextinguished jurisdiction to make laws to define who belongs to our respective Nations. Exercising control over the act of defining identity is an important element in implementing First Nations' inherent right to self-determination.

D. Our identities are closely tied to our ancestral lands and languages and are informed by cultural and spiritual traditions, oral histories, traditional laws and complex social structures and governing systems.

E. First Nations still follow and respect their traditional laws and teachings – such as the Potlatch System and Two Row Wampum Belt – which continue to apply to their lands and resources, their citizens and to those passing through their territories.

F. First Nations must maintain our right to define citizenship under our own natural laws, policies and procedures or the future of our Nations' populations is uncertain.

Certified copy of a resolution adopted on the 19th day of July, 2012 in Toronto, Ontario

SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF

G. First Nations must also support and legitimize one another's authority by recognizing and respecting each other's inherent authority and the mechanisms used by each First Nation to determine citizenship, and by engaging with one another on a Nation-to-Nation basis.

H. As mandated by Chiefs-in-Assembly, the Assembly of First Nations facilitated an inclusive National Dialogue on First Nation citizenship, seeking views on matters of identity and nationhood and examining options on moving forward on First Nation jurisdiction over citizenship.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Affirm and re-assert First Nations' sovereign and inherent right to exercise jurisdiction to self-determine who are citizens are, through our own laws, reflective of our right to self-determination and exercise of our inherent right to self-government as expressed through our traditional governing structures and Treaties.

2. Acknowledge among ourselves that there is considerable diversity among First Nations in Canada and that we each have our own systems for recognizing and gaining citizenship within our respective Nations.

3. Continue to assert that First Nations' consent is required to any amendments to the *Indian Act* which impact on First Nations' jurisdiction over citizenship.

4. Assert and insist that Canada recognize all citizens as defined by First Nations and that First Nations negotiate with Canada to ensure fiscal transfers for the provision of services to our citizens.

5. Direct the Assembly of First Nations to work with Treaty, regional and provincial organizations and individual First Nations, and encourage them to share the results and recommendations of their exploratory discussions on Indian registration, membership and First Nation citizenship, and support the furtherance of these recommendations.

6. Direct the Assembly of First Nations to continue research on considerations and mechanisms to fully implement First Nation jurisdiction over citizenship, and that a comprehensive update and strategy be provided at the 2012 Special Chiefs Assembly.

Certified copy of a resolution adopted on the 19th day of July, 2012 in Toronto, Ontario

ANNUAL GENERAL ASSEMBLY
JULY 20, 21 & 22, 2010, WINNIPEG, MB Resolution no. 20/2010

TITLE:	Support for Recognition of Nationhood of Iroquois Hotinonsionne Confederacy and the Validity of Indigenous Passports
SUBJECT:	Indigenous Border Crossing Rights and Secure ID Cards and Passports
MOVED BY:	Grand Chief Mike Mitchell, Mohawks of Akwesasne, ON
SECONDED BY:	Chief Joseph B. Gilbert, Walpole Island First Nation, ON
DECISION:	Carried by Consensus

WHEREAS:

A. British settlement in North America was possible only through the friendship and military alliance of the Iroquois Confederacy who established a "Silver Convenant Chain of Friendship" with the Imperial Crown to protect British settlement.

B. In the disputes between the British with the French it was the support of the Iroquois Confederacy that ensured the existence of a "British North America", leading to the British committing themselves in many councils and treaties to perpetual recognition of the Hotinonsionne as "free and independent nations".

C. In the disputes among the British themselves in 1775 that led to the separation of the "Americans", it was the Iroquois Confederacy who remained true to its promise to keep the Silver Convenant Chain of Friendship strong, thereby losing their own homelands and causing their relocation into what later became "Canada", not as "British subjects" but as British allies.

D. It was the Iroquois Confederacy and other First Nations who supported Britain in its continuing disputes with the Americans in 1812 that sustained British settlements in British North America to this day.

Certified copy of a resolution adopted on the 22nd day of July, 2010 in Winnipeg, Manitoba

E. Given that history, it is incomprehensible and insulting that the British Government today would have shown such absence of gratitude and lack of respect by refusing to recognize the Iroquois passports of the Iroquois Nationals Lacrosse Team in their participation in an international tournament in Britain.

F. In these modern security-conscious times the United States of America has worked with First Nations to provide for border-crossing identification that does not require a declaration of Canadian citizenship.

G. Canada dishonours its own obligations to the Iroquois Confederacy and international law by insisting that the Iroquois people declare themselves to be "Canadian citizens" as a condition of obtaining a passport.

H. The peoples of the Iroquois Confederacy to this day remain citizens of their own nations.

I. The United Nations Declaration of the Rights of Indigenous People implicitly supports the right of the Iroquois Confederacy to have its own identity as Indigenous Nations of the Americas.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Stand in strong solidarity with the nations of the Iroquois Confederacy to preserve their status as Indigenous Nations, using their own passports for international travel.

2. Call upon the National Chief and all officials of the Assembly of First Nations to utilize every opportunity to support the position of the Iroquois Confederacy.

3. Call upon the Government of Canada to work closely with all First Nations in establishing a system of secure identification which does not require people of First Nations to declare that they are merely "Canadian citizens".

4. Support all First Nations who wish to act on and strengthen their own inherent and Treaty rights to border-crossing based on their own nationhood.

Certified copy of a resolution adopted on the 22nd day of July, 2010 in Winnipeg, Manitoba

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Affirm and re-assert First Nations' inherent right to exercise jurisdiction to determine who our citizens are, through our own laws, and continue to strongly object to the imposition and unilateral control exercised by Canada over defining who is a "Status Indian".
2. Assert that First Nations' consent is required on any amendments to the Indian Act affecting First Nations' jurisdiction over citizenship.
3. Recognize the need for a coordinated and unified strategy.
4. Recognize and support existing processes (such as Anishinabek's Citizenship Law and the Federation of Saskatchewan Indian Nations resolutions on a Citizenship Framework) and encourage all regions to establish Task Forces on citizenship, and to share their regional strategies and plans.
5. Direct the Assembly of First Nations (AFN) Executive to seek resources to establish a National Task Force, comprised of representatives from regional Task Forces or bodies. The National Task Force will develop recommendations to be considered by Chiefs-in-Assembly to further refine and guide a National approach.
6. Mandate the Task Force to develop an Action Plan for First Nation Citizenship, to include:
    a. Terms of reference
    b. Demographic, policy and legal research to support First Nations in their deliberations regarding models and approaches to citizenship
    c. First Nations options
    d. Legal and Political Strategies
    e. Communications and Education Plans
7. Direct the Assembly of First Nations to plan a Special Chiefs Assembly on Citizenship, to include the presentation of the Action Plan to Chiefs-in-Assembly.

Certified copy of a resolution adopted on the 10th day of September, 2009 in Gatineau, Quebec

SHAWN A-IN-CHUT ATLEO, NATIONAL CHIEF

This is **Exhibit "F"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

From: Miryan Castro <Miryan.Castro@coo.org>
Date: Thursday, November 22, 2018 at 11:08 AM
To: Jacquie Surges <reception@fncaringsociety.com>
Subject: Jordan's Principle - Med Trans - J

Good morning Jackie,

Further to our telephone conversation of earlier today. Below is the outline of the case discussed:

On Friday, November 9, 2018, I spoke to F J . They reside in Toronto. Her daughter does not have status. Her father is non-indigenous and her mother is of mixed ancestry. She advised that she received status through the grandmother bill. She is not able to pass her status to S .

Her daughter S J has a congenital Hyper Infiliasim, it is the opposite of diabetes. Her pancreas creates too much insulin which leads to seizure and can cause death due to her sugars being too low.

S requires a scan to see if only a certain area of her pancreas is affected or the entire pancreas is affected. The scan is required so that the doctors can do the surgery. There are only 3 places in the world that does the scan, the UK, USA (Philadelphia) and Canada (Edmonton).

Her physician is at Sick kids hospital in Toronto, Dr. Jennifer Harrington (416) 813-7654 ext 205991). Sick Kids applied for funding for the scan and therefore the mother does not have to pay.

The clinic requires flexibility in order for the blood work to be done, due to the procedure involving a radioactive dye and S has to go under anesthesia. They need to be at the Alberta hospital for a few days. The appointment is on Tuesday, November 27, 2018, and It has been requested that S stay until December 2, 2018.

The scan will be conducted at the University of Alberta Children's hospital Nuclear Medicine Department, S will have to be put under, it is similar to a CT Scan. She will need to be injected with a radioactive compound, which only last for 24 hours. The clinic has to make the

compound and that is why there is only 3 places in the world that do this type of scan. 1 hour of taking the compound the scan must be completed. This will allow the doctors to see which part of the pancreas will need to be removed. Should she require the entire pancreas to be removed S will be dependent on insulin for the rest of her life.

On Friday, November 9, 2018 , I contacted NIHB Medical Transportation department and spoke to the Southern Ontario Program Officer for Medical Transportation, James Robertson. He advised that he would submit this case to Jordan's principle. I have advised Mr. Robertson of the issue with regarding Ms. J status card having her maiden name not her married name and that her travel documents state her married name. He required their address and telephone number and I provided him with the information and sent him the letters from Sick Kids hospital and the Albert Hospital (Which are attached). Mr. Robertson advises that he will try to see if a response from Jordan's Principle comes in today, Friday, November 9, 2018, or on Tuesday, November 13, 2018, due to the Remembrance Day holiday.

On Tuesday, November 13, 2018, I was at a meeting in Ottawa at the NIHB office and followed up with James and he still did not receive a response. In my meeting with NIHB, I was informed that Mr. Robertson was starting a new position. On Wednesday, November 14, 2018, I sent emails to and left voicemail messages for Mr. Robertson following up to see if he received a response from Jordan's Principle. He sends me an email asking for the date of the procedure (which I provided to him previously on Friday, November 9, 2018. The I get another email stating that he is starting a new positon on Thursday, November 15, 2018, but he has cc'd his colleague Rexana Stickwood, who is the new Program Officer for Southern Ontario transportation. In his email it was also cc'd to Patricia Villeneuve who is working as a liaison with NIHB and Jordan's Principle.

On Friday, November 15, 2018, I sent an email to Julie Caves, Manager, Program Delivery FNHIB. Telephone calls and left voicemail messages with no response.

Monday, November 19, 2018, I call Julie Caves and left voicemail message and sent her an email cc' Patricia and Rexana with all the information from the case. I then receive an email being sent to Patricia Villeneuve where I am cc'd and it states the following:

> Hi Trish,
> I believe this case went to Jordan's Principle. Can we have an update asap please?

On Tuesday, November 20, 2018, I receive the following email from Patricia Villeneuve

I sent your request as soon as I received it yesterday, the case had been escalated to Jordan's Principle HQ for consideration. This case has been denied as the client is not registered and not eligible for registration in future.

Up to date I never heard from James Robertson's replacement and Patricia was cc'd in the email from Mr. Roberston stating that he is leaving and that Rexana will be taking over.

I contacted Patricia and she stated that there is a process, I asked for the process and then she says that it is not a definite process since Jordan's Principle is new. They needed to work with INAC to see if S was registered and if she would be eligible for status in the future.

Thank you,

Miryan Castro
Southern Ontario NIHB Navigator
Chiefs of Ontario Administration Office
468 Queen Street East | Suite 400 | Toronto, ON | M5A 1T7
Office: (416) 597-1266
Cell: (416) 522-7459

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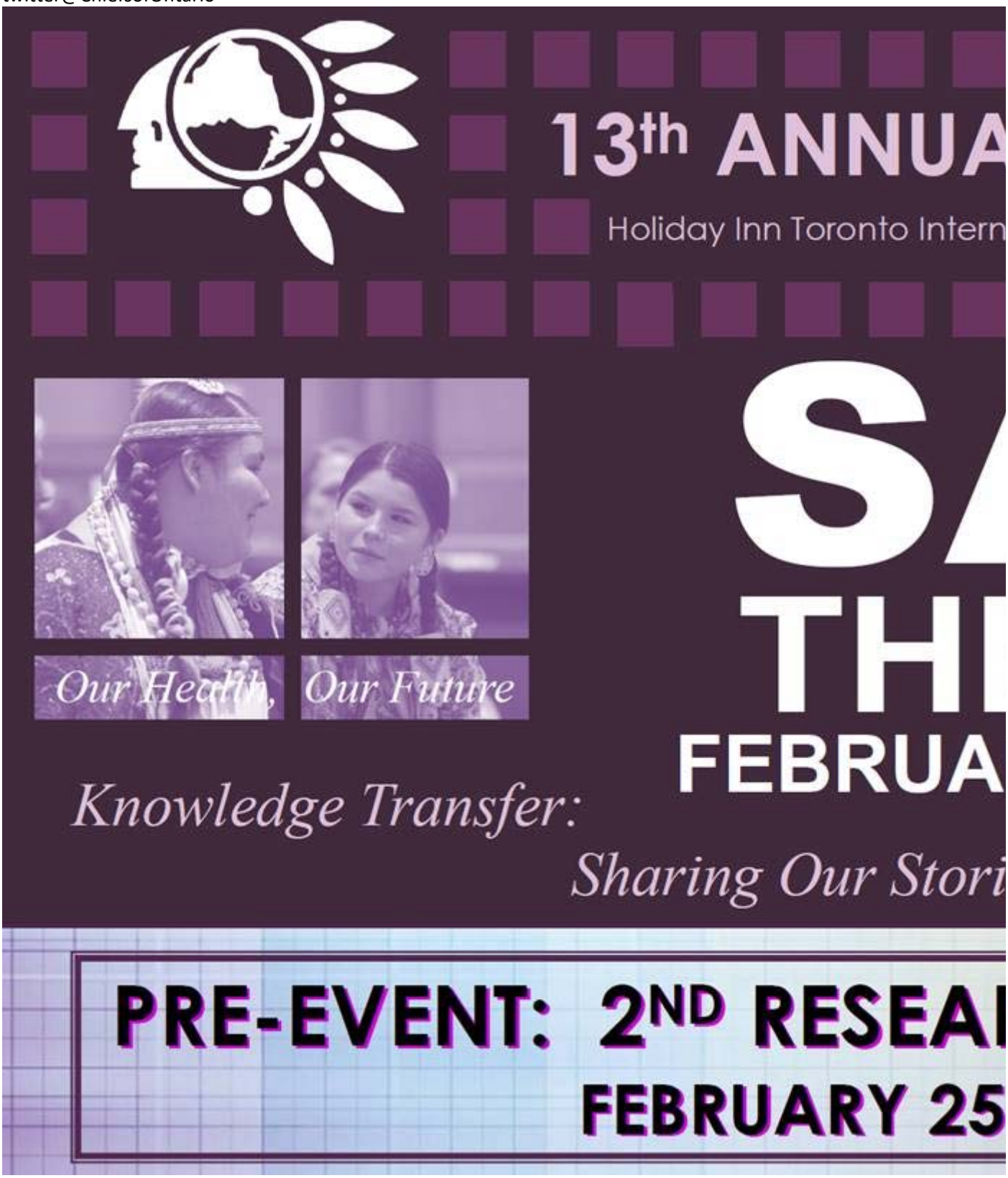

This is **Exhibit "G"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

SickKids
THE HOSPITAL FOR SICK CHILDREN

UNIVERSITY of TORONTO

Department of Pediatrics

Division of Endocrinology

Jennifer Harrington MBBS, PhD.
Staff Physician
Program Director, Pediatric Endocrinology Training Program
Division of Endocrinology
Department of Paediatrics
Hospital for Sick Children
Assistant Professor
University of Toronto

Phone: 416-813-7654 ext 205991
Fax: 416-813-6304

6th of November 2018

To whom it may concern

Re: S J

S is a patient followed in the Endocrine Department at the Hospital for Sick Children. She needs to attend a medical visit at Edmonton Hospital for an essential scan that is only available there. It is important that her parents are available to provide support for her during this visit. Her parents will need leave from work for at least between November 27th to December 2nd for this visit.

Thank you for your consideration of this request.

Kind regards,

Jennifer Harrington, MBBS, PhD
Staff Physician
Endocrine Division
The Hospital for Sick Children
034287-26

This is **Exhibit "H"**
to the affidavit of
Cindy Blackstock
Affirmed before me this
5th day of December, 2018

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

CONWAY

Litigation/Litige

David P. Taylor
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November 29, 2018

VIA EMAIL

Robert Frater, Q.C.
Chief General Counsel
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Jonathan Tarlton
Senior Counsel
Justice Canada
5251 Duke Street, Suite 1400
Halifax, NS B3J 1P3

Dear Sirs:

RE: ***CONSULTATION COMMITTEE ON CHILD WELFARE***
IMPLEMENTATION OF JORDAN'S PRINCIPLE

OUR MATTER ID: 5204-006

I write further to the discussions that have taken place at the Consultation Committee for Child Welfare in recent months regarding the definition of "First Nations child" in implementing the Tribunal's May 26, 2017 order (2017 CHRT 14). As you know, the Caring Society views Canada's current approach as non-compliant.

In particular, I am writing to raise the case of S.J., the full details of which Dr. Blackstock has shared with Dr. Gideon and her team. As I will describe below, S.J. is a very young First Nations child who resides off-reserve and does not have, and is not eligible for, *Indian Act* status although her mother and grandmother both have status. In raising this case, the Caring Society reminds Canada of the commitment Mr. Perron made to the Tribunal during his cross-examination on May 9, 2018 stating that Canada would ensure that the urgent needs of First Nations children would be met while the question of Canada's compliance with the Tribunal's order to apply Jordan's Principle equally to "all First Nations children" is resolved.

By way of summary, S.J. is 20 months old. She lives in Toronto with her mother, F.J., and her father, C.J. Her mother and maternal grandmother are members of a First Nation in Ontario, and both are registered Indians within the meaning of the *Indian Act*. S.J.'s First Nation's Membership Code does not preclude membership for individuals who do not have *Indian Act* status.

S.J. has a rare, potentially life-threatening, medical condition. S.J.'s medical team at Sick Kids Hospital in Toronto decided that she requires a diagnostic scan to determine the scope of further treatment. The Caring Society understands that S.J. has been waiting for this diagnostic scan since birth. As you can appreciate, the waitlist for the scan is quite long, and thus missing the appointment due to inability to fund travel would lead to a lengthy delay in S.J.'s treatment. The time-sensitive nature of the window for S.J.'s diagnostic made this an urgent case.

There are only two locations in North America that offer the diagnostic scan that S.J. requires, one of which is the Stollery Children's Hospital, in Edmonton, and the other is in the United States. S.J.'s family requested approval from Canada under the Non-Insured Health Benefits Program and Jordan's Principle for certain medical transportation costs (travel and accommodation) for S.J. and her parents well in advance of the date scheduled for the scan: November 27, 2018. Assistance was requested for both parents, as F.J. cannot carry S.J. for longer than 20 minutes due to complications from a serious motor vehicle accident.

Canada failed to classify S.J.'s case as urgent on receipt and there were long delays in Canada's assessment of this request, going well beyond the timeframes set by the Tribunal for both urgent and non-urgent cases. These delays, coupled with the urgency of S.J.'s case, led the Chiefs of Ontario Navigator to contact the Caring Society during the week of November 19, 2018 to request assistance. The Caring Society immediately escalated the matter to ISC Headquarters as an urgent case. Canada denied S.J.'s case on the basis that she does not have, and is not eligible for, *Indian Act* status. Canada did not present an alternate plan to meet the child's needs.

Canada's refusal to apply Jordan's Principle to S.J.'s case based on her lack of (and ineligibility for) *Indian Act* Status is rooted in a deeply colonial ideology and practice, consistent with the "old mindset" the Tribunal has repeatedly identified as problematic during the compliance phase of this complaint. S.J. does not have *Indian Act* status due to Canada's restrictions regarding the descendants of persons, like S.J.'s mother, who have status pursuant to subsection 6(2) of the *Indian Act*. Indeed, the reason that S.J. is not eligible for *Indian Act* status is due to her father, C.J., not having *Indian Act* status, such that the "second generation cut-off rule" applies. As such, S.J. is facing discrimination on the basis of national or ethnic origin, contrary to the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. She is also facing discrimination based on age, as children of less than 18 months who have one registered First Nations parent are entitled to benefits under the Non-Insured Health Benefits Program.

It is important to note that if S.J. was resident on reserve, Canada would have applied Jordan's Principle to her case, regardless of her lack of eligibility for *Indian Act* status. Moreover, S.J.'s case meets other key elements of Jordan's Principle:

1) substantive equality applies given the rare and potentially life-threatening nature of S.J.'s illness, the limitations in F.J.'s ability to hold her daughter, and F.J.'s and C.J.'s

> inability to afford all of the transportation and accommodation costs involved on their own;
>
> 2) there was clear and convincing professional documentation of a service need, in that the Sick Kids Hospital medical team recommended the scan and confirmed it was only available at Stollery Children's Hospital in Edmonton; and
>
> 3) it is clearly in S.J.'s best interests to receive the scan as soon as possible.

S.J.'s case is a clear example of the discriminatory impact of Canada's definition of "First Nations child" under its approach to implementing Jordan's Principle. This approach is not based on the best interests, needs and circumstances of all First Nations children. Instead, it relies on colonial concepts and metrics like *Indian Act* status and *Indian Act* reserve residency.

Canada's initial decision to apply Jordan's Principle only to children with (or eligible for) *Indian Act* status was made unilaterally, without seeking direction from the Tribunal or consulting the Parties. As has been expressed multiple times at the Consultation Committee for Child Welfare, the Caring Society's position is that the definition of First Nations child should extend to all children who identify as First Nations and are recognized as members by their Nation, whether or not they reside on-reserve. Canada's decision to expand its definition of "First Nations child" to children living on-reserve without (and not eligible for) *Indian Act* status but who self-identify as Indigenous does not address or respect the multiple resolutions made by the Chiefs-in-Assembly in support of First Nations' control over their own citizenship.

Furthermore, Canada's use of "on-reserve residency" as the guiding metric for the receipt of services under Jordan's Principle for "non-status children" leaves such First Nations children living off-reserve in the same position as <u>all</u> First Nations children living off-reserve prior to the Tribunal's September 14, 2016 Order that Canada's limitation of Jordan's Principle to reserves was non-compliant (2016 CHRT 16 at paras. 117-118). Indeed, the Tribunal did not support Canada's reasoning in limiting Jordan's Principle to *Indian Act* reserves:

> [t]his type of narrow analysis is to be discouraged moving forward as it can lead to discrimination as found in the *Decision*. Rather, consistent with the motion unanimously adopted by the House of Commons, the Panel orders INAC to immediately apply Jordan's Principle to all First Nations children, not only to those residing on reserve (at para 118).

S.J. will be receiving her long-awaited scan in Edmonton this week. The Caring Society is providing the necessary financial and logistical supports to support both parents to travel with S.J. to Edmonton to receive the scan. Costs include, but are not limited to, accommodation, meals, and transportation. In this case, it is the Caring Society that has implemented Jordan's Principle by putting the needs of the child ahead of mandate and jurisdictional payment disputes. However, it is important to understand the Caring Society is not funded to provide this type of relief and S.J., and other children like her, may well require additional supports. The Caring Society's position is that Canada's failure to address S.J.'s needs and the needs of other children like her due to her lack of *Indian Act* status and/or off-reserve residence is discriminatory.

Despite the assurances provided by Mr. Perron during his cross-examination, this case demonstrates a significant gap in Canada's approach, particularly as the denial could contribute to a life-threatening situation by denying access to the recommended medical treatment without assuring that the child received services using another timely mechanism. Absent the Caring Society's intervention, this child would have not have received her medical scan.

This case also demonstrates the impacts of Canada's definition of "all First Nations children" on "non-status" children living off reserve. Given the demographic information and assumptions in reports like Statistics Canada's 2015 Report *Population Projections by Aboriginal Identity in Canada*, which assumes 2.7 children per woman with *Indian Act* status (including women with subsection 6(2) *Indian Act* status), it can safely be estimated that the number of children like S.J. is in the thousands.

In light of the very real consequences of Canada's discriminatory approach for S.J. and for all other children in her situation, the Caring Society calls on Canada to fulfill the assurance provided by Mr. Perron on May 9, 2018 by adopting interim provisions to ensure these children have their urgent service needs met while resolution of the compliance of Canada's definition of "First Nations child" is pending before the Tribunal. We ask for a response by Tuesday, December 4, 2018. If not we will raise the matter of interim provisions for children like S.J. with the Panel at the earliest opportunity.

Yours truly,

David P. Taylor

Copy: **Patricia MacPhee, Kelly Peck and Max Binnie**
Co-counsel for the respondent Attorney General of Canada

David Nahwegahbow, Stuart Wuttke and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith, Jessica Walsh and Daniel Poulin
Co-counsel for the Canadian Human Rights Commission

Maggie Wente, Sinéad Dearman and Kaitlin Ritchie
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni
Co-counsel for the interested party Amnesty International

Julian Falconer, Akosua Matthews, and Molly Churchill
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada