

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

Affidavit of Valerie Gideon

I, Valerie Gideon, Senior Assistant Deputy Minister of the First Nations and Inuit Health Branch at the Department of Indigenous Services Canada, SWEAR THAT:

1. I am the Senior Assistant Deputy Minister of the First Nations and Inuit Health Branch (“FNIHB”) at the Department of Indigenous Services Canada (“ISC”). I have been in this position since 2017. Prior to that I was the Assistant Deputy Minister of Regional Operations at FNIHB for five years. I report directly to the Deputy Minister of ISC on all matters of First Nations and Inuit health. I am Mi’kmaq from the Gesgapegiag First Nation and have spent my entire career dedicated to First Nations and Inuit health and wellness.

2. In my capacity as Senior Assistant Deputy Minister of the FNIHIB, I have read the rulings of the Canadian Human Rights Tribunal (“Tribunal”) in relation to this matter, and have personal knowledge of Canada’s efforts to comply with the Tribunal’s orders (“Orders”).
3. As explained in my May and June 2018 affidavits, Canada has worked diligently to comply with the Tribunal’s orders. I acknowledge that more work needs to be done to improve our operating and reporting systems. I believe this work can be undertaken collaboratively with all the Parties and other First Nations partners across the country.
4. I have reviewed the motion for interim relief brought by the Caring Society in relation to the request for funding for the child referred to as S.J. While I did not make the decision in that case, I have personal knowledge of the facts, having reviewed the file that was presented to headquarters for evaluation and determination.
5. I also have personal knowledge of Canada’s efforts to develop a clear definition of a First Nations child for the purposes of implementing Jordan’s Principle per the Tribunal’s orders. I have been working diligently with the Parties at the Jordan’s Principle Operations Committee (JPOC) and the Consultation Committee on Child Welfare (CCCW) where key documents including the Jordan’s Principle Standard Operating Procedures (JPSOP) are drafted, reviewed, and where approval is sought.
6. At the November 9, 2018 JPOC meeting, the updated JPSOP was discussed and all the Parties agreed it would be used by Focal Points as an evolving document. Further improvements were recommended by the Parties at the December 18, 2018 JPOC meeting. Through these collaborative fora, matters such as the definition/eligibility of the term “First Nations child” with respect to Jordan’s Principle are discussed.
7. With respect to issues related to eligibility under First Nations children, Canada is aiming to continue to work with First Nations leadership through the Assembly of First Nations (AFN). Canada has heard from First Nations representatives that they do not support Canada further imposing a definition of who is First Nations.

Current Eligibility

8. On April 26, 2018 I hosted a meeting with representatives and counsel for the Complainants and Interested Parties, including inviting the Canadian Human Rights Commission. The goal was to address the questions raised by the Caring Society relating to the implementation and eligibility of Jordan’s Principle raised in their letters of March 27, 2018 and April 17, 2018. A copy of the letters are attached as **Exhibit “A”**.

9. At the meeting, I explained that there may be an opportunity to address concerns over eligibility and seek internal approval to expand the terms and conditions of Jordan's Principle – A Child-First Initiative. I asked that all Parties submit their views to support the policy work.
10. I provided regular updates to the Parties who expressed their interest in being involved in any eligibility changes on our policy work, including the internal discussions I had within government on the potential for expanding eligibility.
11. At no time did any of the Parties raise interest in Canada seeking the views of the Tribunal. As explained in all my affidavits, I feel that these issues are best discussed collaboratively, particularly with my knowledge that First Nations leaders have called on Canada to respect and recognize their own governance models including those related to membership.
12. To my knowledge, the Caring Society did not provide a draft definition for consideration by the Parties. As explained in the affidavit of Dr. Cindy Blackstock, we did have many discussions at the CCCW in which the Caring Society did express the need to broaden eligibility for children without *Indian Act* status and who live off reserve. However, no definition was submitted, and I did not hear agreement amongst all the Parties for the Caring Society's position.
13. On May 9, 2019, Mr. Sony Perron was cross-examined on his affidavits dated November 15 and December 15, 2017. During his examination, Mr. Perron confirmed that while the definition of a "First Nations child" was being considered, in urgent situations, Canada would act to provide assistance or a solution. Attached as **Exhibit "B"** is a copy of that transcript. As the successor to Mr. Perron as Senior Assistant Deputy Minister, I have pursued the same course. The First Nations Service Coordination organizations we fund and the regional Focal Points we employ, work diligently to support all families and children including in cases where eligibility under Jordan's Principle may be difficult to determine. I will explain their efforts further in this affidavit.
14. On June 19, 2018, Canada approved the expanded eligibility of Jordan's Principle to non-status Indigenous children ordinarily resident on reserve. This resolved any temporary uncertainty regarding the definition/eligibility of a "First Nations child" for the purposes of Jordan's Principle. The decision took into consideration the fact that most federal programs are residency based, not status based, and that Canada, as a matter of policy, already provides funding for services on reserve regardless of status. One key exception is the Non-Insured Health Benefits (NIHB) Program for which eligibility is based on registration under the *Indian Act*, or recognition by an Inuit Land Claim Organization. This program however is a supplemental, ameliorative program intended to address gaps in provincial and territorial health insurance coverage.
15. The recognition of Indigenous identity is a complex question. In August 2015, Bill S-3 amended the *Indian Act* by creating seven new registration categories, in

response to the decision in *Descheneaux c. Canada* rendered by the Superior Court of Quebec in August 2015. These provisions came into force in December 2017 and appropriately, Canada re-reviewed the requests submitted under Jordan's Principle for children who may have been impacted by the decision.

16. Additional amendments to the definition under the *Indian Act* will be developed subsequent to a period of consultation with First Nations. When part B of Bill S-3 becomes law, Jordan's Principle requests will be processed in compliance with whatever definition affecting eligibility emerges from that process.
17. On July 5, 2018, in an effort to address concerns raised by Parties regarding the definition of "First Nations child" in relation to Jordan's Principle, I wrote to the Parties and clarified the expanded terms of eligibility. A copy of this email is attached as **Exhibit "C"**.
18. In my July 5, 2018 correspondence, I advised that non-status Indigenous children ordinarily resident on reserve are to be included in any requests under Jordan's Principle. I confirmed that the expanded terms of eligibility would apply to any requests that were pending and on a go-forward basis. I clarified that "First Nations child" would encompass all of the following:
 - a) Children with a status number;
 - b) Children entitled to registration, under the *Indian Act* including those entitled to registration pursuant to the December 22, 2017 amended provisions of the *Indian Act*, under Bill S-3; and
 - c) Non-status Indigenous children who are ordinarily resident on reserve.
19. Following my correspondence on July 5, 2018, I proposed a further explanation of how Focal Points could consider requests of non-status Indigenous children who ordinarily reside on reserve and sought the views of the AFN. In the interim, a definition for use by the regions was incorporated in the November 9, 2018 version of the JPSOP, which was agreed to by all the Parties at the November 9 2018 JPOC meeting as an evolving reference document to be used by the Focal Points (see **Exhibit "D"** for the draft meeting's record of discussion).
20. In the JPSOPs, ordinarily resident on reserve is defined as an Indigenous child who:
 - lives on reserve;
 - normally lives on reserve despite child or one of the members of their household (i.e. sibling, parent, extended family living with child) may have been required to spend some time away temporarily from the community to access services such as health care or education where there are no other comparable services available in the community;

- was ordinarily resident on reserve immediately prior to accessing these services;
 - is a dependent of a family that maintains a primary residence on-reserve;
 - returns to live on reserve with parents, guardians, caregivers or maintainers during the year, even if they live elsewhere while attending school or to receive medical care or other services;
 - meets student eligibility requirements in the reference province or Yukon Territory.
21. The JPSOP also provide that a child who is under the care of a Child and Family Services Agency or care in a kinship/informal agreement is considered ordinarily resident on reserve where:
- the child’s parent or guardian lived on reserve at the time the child was taken into care; or
 - a child goes into the care of a guardian who lives on reserve.
22. In this context, reserves are deemed to include all land set aside by Canada for the use and occupancy of an Indian band. This includes all other Crown lands which are recognized by ISC as settlement lands of the Indian band.
23. On or about September 5, 2018, at the Consultation Committee for Child Welfare, I advised that the eligibility section of the JPSOP had not been updated as I was awaiting the outcome of the AFN Executive Committee conversation on that point. The AFN advised that they required additional time to reflect on the definition of a “First Nations child” and the issue would be further addressed during the upcoming Executive Committee. I respect this decision.
24. Few requests have been submitted for children who do not have nor are eligible for First Nations status registration. According to the JPSOP, when a request is received by a child who does not have status, the request is to be forwarded to headquarters for the evaluation and determination by FNIHB’s Assistant Deputy Minister of Regional Operations.
25. From July 1 to November 30, 2018, 17 requests for children without status but are ordinarily resident on reserve were submitted to headquarters for determination. Of the 17 requests, one was urgent and 16 were non-urgent. The expanded eligibility was applied to these requests and seven were approved, nine were denied, and one was cancelled. The one urgent case approved for dental treatment was for a child without status or a birth certificate but demonstrated that they met the criteria for ordinarily resident on reserve, as described earlier in this affidavit.

S.J.'s Case:

26. On November 9, 2018, the Non-Insured Health Benefits Program (NIHB) forwarded S.J.'s request to the Ontario Jordan's Principle team as they were considering it as a denial since it did not meet the Program's criteria. S.J. was not registered and was over the age of 18 months (up to 18 months, NIHB will consider coverage of an infant under a parent's registration number). The request was for funding to cover transportation, meals and accommodations for S.J. and two escorts from Toronto to Edmonton to participate in a medical study related to the child's medical condition.
27. The procedure in question is part of a University research study. While I understand that S.J. was receiving the appropriate care by her attending physician, on Page 5 of the Information and Consent Form, it states that the study "cannot guarantee any health benefit to your child" arising from their participating in the study. Attached as **Exhibit "E"** is a copy of the Information and Consent Form outlining the purpose and focus of the study.
28. The attending physician did not request that a scheduled Medivac was required as this was not a medically urgent situation. In speaking to the Director of Health Services at the Ontario Ministry of Health and Long-Term Care on November 23, 2018, I confirmed that the Province of Ontario does not cover these costs for any resident in the province. Attached as **Exhibit "F"** is a copy of the communications with the Ministry of Health and Long Term Care.
29. Upon receipt of the request from NIHB on November 9, 2018, the Ontario Jordan's Principle team evaluated the request. In accordance with the JPSOP, they worked with the Office of Indian Registry to confirm if S.J. or her parents were registered or eligible for status registration. The child was also determined not be a resident ordinarily on reserve. Attached as **Exhibit "G"** is a copy of the communications with the Registrar.
30. In accordance with the JPSOP, in recommending a denial, the region sent the request that same day for the evaluation and determination by the the Assistant Deputy Minister of Regional Operations at the First Nations and Inuit Health Branch.
31. On November 13, 2018 the Assistant Deputy Minister of Regional Operations denied the request as S.J. was living off reserve, was not recognized as being ordinarily resident on reserve, and was not be eligible for status registration. The denial was communicated immediately by headquarters to the Jordan's Principle regional team.
32. I understand that the denial from Jordan's Principle was not communicated by NIHB to S.J. or to the Chiefs of Ontario Navigator, who requested to be kept apprised on the decisions. Since the request originated from the family to NIHB,

we try to maintain a first point of contact to ISC's services and avoid risk of confusing the child and family.

33. I understand that the Senior Manager of NIHB worked with the Chiefs of Ontario Navigator from November 13 to the 19, 2018 to seek a mechanism to assist the family. As such, NIHB communicated the Jordan's Principle denial to the Navigator over the phone on November 20, 2018.
34. On December 3, 2018 headquarters mailed the denial letter to S.J. A copy of the letter was also shared with the Chief of Ontario Navigator the following day. Attached as **Exhibit "H"** is a copy of the denial letter.

Efforts to Assist Children

35. When a request is submitted on behalf of a non-status child, the Focal Point works with the requestor to understand if the child would be eligible for registration by learning about the parents' status, potential status under Bill S-3, as well as with the Office of the Indian Registrar. If there is uncertainty as to the eligibility of the child, the Focal Point can err on the side of caution and approve the request within the domain of "best interests of the child", particularly where there are concerns about meeting the ordered timeframes.
36. For example, in Alberta, the Focal Point received an urgent request for services to a child whose mother is registered under Bill S-3. Despite making inquiries, the mother was unable to find out whether she had 6(1) or 6(2) status. The mother was uncertain as to whether the father was registered or had status. Given the uncertainty around the eligibility of the child and the urgency of the request, the Focal Point erred on the side of caution and approved the request.
37. Focal Points work with individuals regardless of eligibility.
 - a) For example, Focal Points will complete intake forms and escalate requests even when it is unlikely the individual is eligible. In the meantime, the Focal Point works with the individuals to identify existing programs.
 - b) When a denial is received, Focal Points will assist the individual by contacting other programs and requesting those programs follow-up with the individual.
38. Additionally, Canada has established close contractual partnerships with Service Coordination organizations, many of which are First Nations. The goal of these partnerships is to work directly in communities and with families to ensure that children are receiving the services they need. Service Coordinators help to navigate children to existing services and where there are gaps, work with the Focal Points to make a Jordan's Principle request.

39. On various occasions, the Caring Society has noted that ISC is not verifying or validating the child's family's claim that the child is a First Nations child. We do not agree. As we have told our partners, all Focal Points are to verify if the child and/or the family/guardian is registered or is eligible for status by working directly with the Office of Indian Registry. While some regions have direct access to the registry, for those who do not, they work directly with the Office. This Office has made Jordan's Principle requests a priority so as to avoid possible delays in evaluating and determining requests.

Definition of First Nations is legislated

40. As communicated on paragraph 12, Indigenous identity is a complex question. It is defined in the *Indian Act* and which is used and implemented by all Government of Canada programming, including Jordan's Principle. Any amendments to the Act, including most recent Bill S-3, are adhered to accordingly. Concerns over the definition that is being used is not isolated within Jordan's Principle but is one for a broader discussion, certainly with First Nations partners across the country who may not agree to the views presented by one organization.
41. The AFN has told me on numerous occasions that they are concerned with expanding the eligibility to include self-identified Indigenous children living off-reserve. I also agree with these concerns as it would be very difficult to verify Indigenous identity without some parameters of validation beyond an individual or parent claim. I will continue to work with First Nations leadership through the AFN to identify solutions to challenges we may identify concerning Jordan's Principle that relate specifically to the definition of who is a First Nations child. However, in the interim, Jordan's Principle is applying the definition as per the *Indian Act* and did expand eligibility to also include Indigenous children ordinarily resident on reserve as a matter of policy and alignment with other ISC programs and in fulfillment of ISC's role and mandate.

42. Defining “First Nations child” is a legal obligation that demands consultation with all First Nations across the country. It should be subject to a broader level of informed discussions as it will impact all programing, federally and provincially/territorially. As Jordan’s Principle is about filling gaps in publicly funded services, the matter before us is one that will impact all programs. As such, it is my view that the Parties should continue working together through their own affiliations, including the AFN’s Executive Committee, with the aim of reaching a consensus on this seminal issue outside the Tribunal process.

SWORN TO before me at the City of
Ottawa, Province of Ontario,
December 21, 2018.



A Commissioner for Taking
Affidavits



Valerie Gideon

Exhibit "A" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)

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March 27, 2018

VIA EMAIL

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Dear Sirs:

**RE: FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL. V. ATTORNEY GENERAL OF CANADA
T#1340/7008**

OUR MATTER ID: 5204-002

I write with regard to the Department of Indigenous Services Canada's ("DISC") implementation of Jordan's Principle, further to the Tribunal's May 26, 2017 Order (2017 CHRT 14).

The Caring Society has grave concerns regarding the scope of DISC's application of the definition of Jordan's Principle. Specifically, the Caring Society is deeply concerned that DISC is restricting the reach of Jordan's Principle only to individuals with status under the *Indian Act*. As DISC is well aware, Indian status is by no means a sufficient metric of an individual's First Nations identity, nor of the jurisdictional obstacles that they face in achieving access to services that are substantively equivalent to those available to non-Indigenous individuals in Canada. Indeed, it was for that reason that Parliament enacted sweeping changes to the status provisions in the *Indian Act* with the passage of *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)*, S.C. 2017, c. 25. While the broadest of these changes remains unimplemented pending further consultation, the fact

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remains that the existing “Indian status” regime rests on a long history of discrimination against First Nations women, children, youth and families.

The Caring Society is unable to understand Canada’s apparent reliance on “Indian status” as a metric for eligibility under DISC’s implementation of Jordan’s Principle. Indeed, the Supreme Court of Canada clearly held in *Daniels v. Canada (Indian Affairs and Northern Development)* that the meaning of “Indians” in subsection 91(24) of the *Constitution Act, 1867* is a broad one,¹ and the Crown conceded in that case that non-status “Indians” are recognized as “Indians” under subsection 91(24).² Furthermore, it has long been the case that Inuit peoples fall within the meaning of “Indians” for the purposes of subsection 91(24).³

The Caring Society has been contacted by families of non-Status First Nations children who have applied for services pursuant to Jordan’s Principle as recently as March of 2018. Based on these reports, the Caring Society understands that Canada is denying claims made under Jordan’s Principle on the basis that the child is not a “registered Indian”, even though the child and/or his or her family identifies as First Nations. In some cases, the Caring Society understands that cases are not even being referred for consideration by DISC personnel on the basis that the child is not a “registered Indian”. In either case, the Caring Society understands that DISC is not verifying or validating the child’s family’s claim that the child is a First Nations child, rather DISC officials are simply refusing to process the claim on basis of the child’s lack of Indian status. These service denials have resulted in undue stress and hardship for non-Status First Nations children and their families.

The Caring Society is also deeply concerned that Inuit children and their families are being excluded from DISC’s activities in implementing Jordan’s Principle, particularly in relation to services provided by First Nations and Inuit Health Branch. In the wake of the Tribunal’s historic May 26, 2017 decision regarding Jordan’s Principle, Canada should be proactively seeking to eliminate the discriminatory provision of services to Inuit children instead of unilaterally exempting these children from the non-discrimination protections that Jordan’s Principle provides.

The Caring Society has been contacted by Inuit families and health care professionals who are in need of Jordan’s Principle services for their children. These children would be eligible to have services provided under DISC’s approach to Jordan’s Principle if the children in question were First Nations children rather than Inuit children; however, Canada has denied their requests. In doing so, Canada explicitly noted that the denial is because the child is Inuk. Canada’s service denials have created hardship for Inuit children and their families. We understand that the Inuit Tapiriit Kanatami (ITK) and Dr. Radha Jetty, Chair of the Canadian Paediatric Society’s First Nations and Inuit Health Committee⁴ also raised concerns with Canada about the exclusion of Inuit children from Jordan’s Principle.

¹ *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para. 35.

² *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para. 20.

³ *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; *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para. 35.

⁴ Dr. Jetty made these remarks in the context of an appearance before the Inter-American Committee on Human Rights in Bogota, Colombia on February 28, 2018.

The Caring Society has also repeatedly expressed these concerns to senior staff at DISC and has not received assurances that the exclusion of non-status First Nations children and Inuit children has been addressed.

In the event that Canada is now fully applying Jordan's Principle to Inuit and non-Status children, please advise us at the earliest opportunity. If Inuit children and First Nations children who do not have status under the *Indian Act* are indeed being excluded from these activities, please confirm the reasons for this exclusion in writing at the earliest opportunity and no later than 7 days prior to the dates set for the cross-examination of Mr. Perron.

Yours truly,



David P. Taylor

Copy:

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April 17, 2018

VIA EMAIL

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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

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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 First Nations 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 individual's 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. 1.19, 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:
 - o the name and date of birth of your child;
 - o the product/service requested; and
 - o 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 necessary 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 of 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**
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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

Exhibit "B" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA

(representing the Minister of Indian and Northern Affairs)

Respondent

- and -

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA

and **NISHNAWBE ASKI NATION**

Interested Parties

HEARD BEFORE: Ms. Sophie Marchildon, Panel Chairperson

Mr. Edward P. Lustig, Panel Member

PLACE HEARD: Unknown

DATE HEARD: Wednesday, May 9, 2018

APPEARANCES: Dr. Cindy Blackstock

Mr. David Taylor

For the First Nations Child and Family
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Mr. Stuart Wuttke

Mr. Thomas Milne

Ms. Julie McGregor

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Mr. Brian Smith

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Ms. Krista Nerland

Ms. Maggie Wente

For the Chiefs of Ontario

APPEARANCES: Ms. Akosua Matthews
For the Nishnawbe Aski Nation

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1 **THE CHAIR:** Thank you. Please be seated.
2 Today is May 9, 2018, in the matter of the First Nations
3 Caring and Family Society against the Attorney General of
4 Canada, and I'm calling for appearances, please.

5 **MR. TAYLOR:** David Taylor and Dr. Cindy
6 Blackstock on behalf of First Nations Child and Family
7 Caring Society of Canada.

8 **MR. WUTTKE:** Good afternoon. Stuart Wuttke,
9 Thomas Milne in the back, and Julie McGregor for the
10 Assembly of First Nations.

11 **MR. SMITH:** And good morning. It's Brian
12 Smith, counsel with the Canadian Human Rights Commission.

13 **MS. NERLAND:** Krista Nerland and Maggie
14 Wente, counsel for Chiefs of Ontario.

15 **MS. MATTHEWS:** Good morning. Akosua
16 Matthews, counsel for Nishnawbe Aski Nation.

17 **MR. TARLTON:** Good morning. Jonathan
18 Tarlton and Robert Frater, Q.C. for the Respondent, the
19 Attorney General of Canada.

20 **THE CHAIR:** Thank you. Good morning,
21 everyone. First of all, we want to acknowledge that this
22 hearing is being held on the traditional and unceded
23 territory of the Algonquin people. We want to start
24 without further ado and invite Mr. Tarlton and Mr. Frater,
25 if your witness has arrived, if you want to introduce your

1 witness. Thank you.

2 **MR. FRATER:** Thank you. Mr. Perron, can you
3 come forward, please.

4 **MR. SONNY PERRON**, (Sworn)

5 **THE CLERK:** Please state your full name for
6 the record.

7 **THE WITNESS:** Sonny Perron.

8 **THE CHAIR:** Before we go ahead, is it okay
9 with everyone if I ask my questions in French?

10 **MR. FRATER:** Yes.

11 **THE CHAIR:** Yes? I don't have any right
12 now, but in case I do. Thank you.

13 --- **DIRECT EXAMINATION BY MR. FRATER:**

14 **Q.** Good morning, Mr. Perron. You've sworn
15 two affidavits in this matter, in November and December of
16 last year. Is that correct, sir?

17 **A.** Yes.

18 **Q.** And at the time that you swore those
19 affidavits, what was your position, sir?

20 **A.** I was the Senior Assistant Deputy
21 Minister for the First Nation and Inuit Health Branch. The
22 first one, the branch was located into the Department of
23 Health Canada. When I swear the second one, the branch had
24 been moved into a new department, which is Indigenous
25 Service Canada.

1 Q. All right. And I understand you've been
2 promoted since you swore those affidavits?

3 A. Yes. On December 18, I became the
4 Associate Deputy Minister for Indigenous Service Canada.

5 Q. And how have your responsibilities
6 changed?

7 A. I have a broader range of responsibility
8 in Indigenous Services because, in this department, in
9 addition to health for First Nation and Inuit, we also have
10 -- responsible for education, social, economic development
11 and a number of other functions that are related to the
12 application of the **Indian Act**.

13 Q. And who occupies your former position?

14 A. Madame Valerie Gideon.

15 Q. And I understand Ms. Gideon will be
16 filing the updated affidavit in this matter next week?

17 A. You're right.

18 Q. All right. And she's not present here
19 today?

20 A. No, she's not.

21 Q. Back at the office working on the
22 affidavit?

23 A. Exactly. Yes.

24 Q. Thanks. Those are all our questions.

25 **THE CHAIR:** Thank you very much. I believe

1 it's the Caring Society that will start with the cross-
2 examination?

3 MR. TAYLOR: Thank you, Madame Chair.

4 THE CHAIR: Thank you.

5 --- CROSS-EXAMINATION BY MR. TAYLOR:

6 Q. Good morning, Mr. Perron.

7 A. Good morning.

8 Q. My name is David Taylor. I'm counsel
9 for the Caring Society. I understand that you may want to
10 give some of your answers in French. That's perfectly
11 fine. [French - not transcribable].

12 A. Merci.

13 Q. So, I'd just like to start at paragraph
14 1 of your first affidavit. You addressed a little bit of
15 this with My Friend, Mr. Frater, that you were the Senior
16 Assistant Deputy Minister of F-N-I-H-B, or FNIHB, as it's
17 known in Ottawa sometimes, and that you held that position
18 starting in 2014?

19 A. Yeah, January 2014.

20 Q. And I was just wondering if you could
21 give us some details of your time with Health Canada before
22 2014.

23 A. Yeah, I've been in Health Canada and
24 most of the time in the First Nation and Inuit Health
25 Branch since 2001, where I've occupied a number of position

1 from planning, system service development for the Non-
2 Insured Health Benefit Program. I was the Director General
3 of the Non-Insured Health Benefit Program as well. And
4 then I worked at Health Canada in the Deputy Minister
5 office for a while. I was the ADM, Corporate Service
6 Branch for Health Canada overall. And I came back in 2014
7 as FNIHB Senior ADM.

8 Q. And so, when would you have been working
9 in the Deputy Minister's office? What time period? Just
10 years is fine.

11 A. It was 2011, 2012.

12 Q. And then prior to that, you would have
13 been DG of the ---

14 A. Non-Insured Health Benefit and other
15 less senior position before.

16 Q. Okay. Now, in terms of your education
17 and training, where did you go to school at?

18 A. I have a BA in Urban Planning and a
19 Master's Degree in Public Administration and a College
20 Degree in Health Science.

21 Q. And the BA and the Master's were from
22 which institutions?

23 A. The BA from the Universite du Quebec a
24 Montreal; and the Master, Ecole nationale d'administration
25 publique.

1 Q. Okay. Now, in terms of Jordan's
2 Principle, when would you first have encountered that in
3 your career as a public servant?

4 A. I would say probably around 2007/08 when
5 the government passed the motion, and then there was a
6 creation of a fund to address cases that will fall under
7 the definition that was adopted after that. And I was not
8 responsible for Jordan Principle, however, being in --
9 after all, in Non-Insured Health Benefit Program, we had to
10 deal with situation where child were coming with demand
11 that were sometime not totally aligned with what the
12 program will do normally, and we were exploring if they
13 would fit under Jordan Principle definition. And as you
14 know, there was no cases in the past that fit at anytime,
15 so -- but we were always trying to find a way to assist
16 children, and even adults, to find a solution even when
17 they were not aligned with the rules of the program. So,
18 we did explore Jordan Principle, but in absence of the
19 possibility to cover these cases under Jordan Principle
20 because there was the rules and the definition that were in
21 place at that time, we were finding alternate ways to get
22 to address the needs of the children when they were coming
23 to us.

24 Q. So, when you say that there were no --
25 there weren't any Jordan's Principle cases at the time,

1 that was under the old definition or the old program
2 structure.

3 A. Exactly, yeah. In fact, there was a
4 situation where a child needed services and we were
5 exploring, as program people, if we could find a way to
6 assist them using Jordan Principle and the way it was
7 defined at the time, but none of the case that I was
8 exposed to were fitting these criteria that the Tribunal
9 later on decided were not appropriate.

10 But we were, despite this, trying to find a
11 way, within existing program, to assist. So, we had, like,
12 situation of children that had the rare disease for drugs
13 that would cost half a million dollar a year. They were
14 not fitting the criteria of the program, but we were
15 finding a way to support the cost of their drugs anyway.
16 But, at first, we were trying to see if Jordan Principle
17 would be the way to deal with this, and it was not working.

18 So, this was really my first exposure -- a
19 number of attempt to address situations that were brought
20 to my attention through Jordan Principle, but the rules of
21 the program, the way it was defined -- and it was not under
22 my responsibility at the time -- were not working, so we
23 were finding other ways to get at serving these situations.

24 Q. Now, My Friend mentioned Dr. Gideon,
25 who, as I understand, has taken the position that you

1 occupied at the time ---

2 A. Yes.

3 Q. . . that the affidavits were sworn. And
4 she was working with you -- or I guess I should ask the
5 question another way -- how long has she worked with you?

6 A. I've worked with Dr. Gideon when she was
7 at the Assembly of First Nation at the (inaudible) Social
8 Sector, Health & Social Sector. She was a partner into one
9 of our partner organization. And then she came back, I
10 think, at Health Canada. I would not say exactly which
11 day, but she was the Regional Director of Ontario.

12 So, we have worked together on a number of
13 files putting together in place probably the first opiate
14 treatment, addiction to opiate treatment program for youth
15 using Suboxone drug, so, trying to find a way, outside of
16 what we have in term of tools, to address emerging problems
17 where youth and sometimes adults were facing a challenge
18 and we did not have the tools. So, we have been working
19 together in many occasion. And more recently, I think
20 since my arrival in the Senior ADM position, she was the
21 ADM, Regional Operations, so she was my direct colleague
22 managing the operation.

23 Q. And that would be since 2014.

24 A. This was since 2014, you're right.

25 Q. And the two of you would have worked

1 together following the Tribunal's May 26, 2017 order ---

2 A. Yes. When the ---

3 Q. --- on the (inaudible) response.

4 A. When the first decision came in January
5 2016, Dr. Gideon was on leave. So, she came back a bit
6 later in the year. So, she was not there at the time the
7 first order came.

8 Q. Do you have a sense approximately when
9 she was back from her leave?

10 A. It will be in the fall, but I don't
11 remember exactly the date.

12 Q. But certainly, by the time of the 2017
13 decision, she was back.

14 A. Yes, she was, yes.

15 Q. Now, if you turn up Tab 1, there's a
16 binder in front of you. And I'll just explain ---

17 A. The one that you have provided?

18 Q. Yes. It should be in a narrower binder
19 than your affidavits. So, these are some of the documents
20 we'll be talking about today.

21 A. Okay.

22 Q. Now, some of these, you may have seen.
23 Some of these, you may not have seen.

24 A. Yes.

25 Q. And when you haven't seen a document,

1 certainly we can acknowledge that and discuss it, but we're
2 not in a court, so we have some different rules of
3 procedure, so we are able to talk about documents for --
4 what's on the document, and I'll, of course, understand
5 that that's potentially the first time you've seen it, if
6 that's what you say.

7 Now, under Tab 1, there's a letter here, and
8 it's a letter from myself to your counsel, Mr. Frater.
9 Have you seen this letter before?

10 A. I think I do -- I did, yes.

11 Q. So, this is a -- just by way of summary,
12 it's a letter that essentially sets out some of the Caring
13 Society's areas of concern regarding Jordan's Principle.
14 And if you turn to page 2 ---

15 A. Yes.

16 Q. --- there's a list that goes 1 to 7?

17 A. Yeah.

18 Q. Now, I'd like to spend most of our time
19 here this morning talking about No. 1 and No. 7. There are
20 some additional questions and concerns around Nos. 2 to 6
21 and 1 to 7, but we understand Dr. Gideon is going to be
22 providing an affidavit which will have more up-to-date
23 information.

24 A. Yeah.

25 Q. Obviously these affidavits here are a

1 few months old now and are things that have happened more
2 directly to the -- closer to the program she's been dealing
3 with.

4 **A.** If I may, can I provide you with a
5 little bit of clarification of my role since December?

6 **Q.** Absolutely.

7 **A.** So, despite the fact that I'm not the
8 Senior ADM of FNIHB anymore, I do have a relationship with
9 this program because it's one of the -- an important area
10 of our operation in Indigenous Service Canada. So, I may
11 not be aware of the fine detail of the operation as I was
12 previously in my previous role, but we do get involved
13 regularly at the DM level into where the service is going,
14 what are the operational issue that Dr. Gideon and our
15 colleagues are facing. So, I do have a certain level of
16 knowledge, but I won't be able, as you said, (inaudible).
17 And I understand that, last week or two weeks ago, Dr.
18 Gideon met with most parties to ---

19 **Q.** Yes.

20 **A.** --- provide a great update on all these
21 seven points. And of course, you have been able to all
22 notice that she has the last information around this.

23 **Q.** Yes, the latest [French not
24 transcribable].

25 **A.** Exactement.

1 Q. Exactement. Now, just in terms of this
2 letter, point No. 1 here speaks of the exclusion of Inuit
3 children and First Nations children who do not have or are
4 not eligible for status under the **Indian Act**. Now, **Indian**
5 **Act** status is -- and I don't want to get into legal
6 questions or concepts, but it's as a program element,
7 it's something you're familiar with, given your role?

8 A. Yes, I am.

9 Q. And now, in terms of your role as
10 Associate Deputy Minister, did any of the -- the Registrar
11 of the -- the list of band membership that functions under
12 parts of the **Indian Act** where there have been no membership
13 code or status registration provisions, do those fall
14 within your wheelhouse?

15 A. Exactly. Yes.

16 Q. Yes. So, you've got oversight of them,
17 too. So, the changes with Bill S3, which passed -- I
18 believe it was at the end of last year -- those would be
19 something that is in your

20 A. Exactly.

21 Q. --- area of responsibility as well.

22 A. Exactly. Yes.

23 Q. Okay. Now, Tab 2, this is going back in
24 time a little bit from April of 2013 back to July of 2016.
25 Now, this is a news release, and I've noted at the top here

1 that it's an exhibit from -- an excerpt from Exhibit RB3.
2 So this is something that was put to Ms. Buckland on her
3 cross-examination of February of 2017. And I've not
4 included the whole exhibit in order to try and save some
5 paper. So this is page 2 of 3, and it's an attachment to a
6 letter that Ms. Isaac, who, at the time, I believe, was ADM
7 for the Social Sector in INAC, as it then was, and then
8 yourself. And I believe, at the time, you were at Health
9 Canada.

10 A. Yes.

11 Q. So, this is sending a letter to a
12 distribution list, and attached to that letter was this
13 news release. The second paragraph says:

14 "Today we are responding to these
15 concerns and announcing a new approach
16 to implement Jordan's Principle. This
17 approach will put the needs of children
18 first and ensure that First Nations
19 children living on Reserve receive the
20 health and social services they need in
21 a timely manner."

22 Now, in terms of First Nations children
23 living on Reserve, given some information we've learned in
24 the last few weeks, which we'll go into a little bit later,
25 we're given to understand now that that meant, in fact,

1 children who had **Indian Act** status or who were eligible for
2 **Indian Act** status who were living on Reserve. Is that
3 correct?

4 A. So, first, about this exhibit here, this
5 is a recommendation that, I think, was sent to provincial
6 colleagues, provincial and territorial colleagues, for them
7 to understand what was happening and give a chance for
8 dialogue.

9 Q. Yes.

10 A. And this was prior the order from the
11 Tribunal that told us that the definition restricting the
12 application of Jordan Principle on Reserve was a error, and
13 this was problematic. So, after that, there was
14 correction.

15 Q. Yes.

16 A. So, the on-Reserve dimension here was
17 really about the initial definition that went out and that
18 was, later on, determined by the Tribunal that it was not
19 appropriate.

20 Q. Yes. No, and I absolutely ---

21 A. This was the purpose. It was informing,
22 at the time, the partners, but not -- I would not say this
23 is the policy. The policy ---

24 Q. No. I'll stop you there, though, Mr.
25 Perron, because my question isn't about the on-Reserve

1 piece.

2 A. Okay. Okay.

3 Q. We litigated that and were successful
4 and we understand that's no longer being applied.

5 A. Yeah. Okay.

6 Q. It's really more about the words "First
7 Nations children."

8 A. Yes.

9 Q. And again, in fairness to you, for
10 context, this was after the second order, 2016CHRT10.
11 There were two further orders that came in September 2016
12 and then in May of 2017. So, I understand that, for this
13 document, and for some of the other documents that we'll
14 look at, particularly around Ms. Buckland's cross, the
15 landscape has changed following that.

16 A. Okay.

17 Q. But what we're trying to clarify is --
18 because, in reading this, "First Nations children living on
19 Reserve," at least, it's not evident to me, on the face of
20 that wording, that we're talking about children with **Indian**
21 **Act** status or who are eligible for **Indian Act** status. And
22 so, just what I'm asking is, at the time, in July 2016, was
23 it the case that having registration or eligibility for
24 registration under the **Indian Act** was a program criteria
25 for Jordan's Principle?

1 A. Yes, it was.

2 Q. Yes, it was. Now, in looking at Tab 3
3 -- and this is the May 2016 decision so this is
4 paragraph 33. So, this says:

5 "The panel orders INAC to immediately
6 consider Jordan's Principle as
7 including all jurisdictional disputes.
8 This includes disputes between federal
9 government departments and involving
10 all First Nations children, not only
11 those children with multiple
12 disabilities."

13 So, just to confirm, the wording here
14 matches "all First Nations children" -- we're speaking of
15 the same thing -- but the Tribunal hasn't mentioned
16 anything about **Indian Act** status in this order.

17 A. No. I would agree with you it's not
18 mentioned. Our interpretation, however -- and this is the
19 way most federal program have been working, and the
20 division of responsibility with provinces and territories
21 is that, when we talk about serving First Nation, it's
22 First Nation with status. (Inaudible) to have status. If
23 you look at the division of responsibility and when there
24 is a provincial program that is eligible for children, for
25 example, and they exclude First Nation from it, they

1 exclude First Nation with status. The status is making a
2 great difference in terms of policy application in general.
3 So ---

4 Q. Well, I'll ---

5 A. --- usually those who self-identify as
6 First Nation will not encounter challenge to access
7 normative program anywhere in the country because they are
8 not excluded unless they have status.

9 Q. There's a lot in there, Mr. Perron, and
10 we won't get to evidence of what actually happens on the
11 ground with provincial programs and the positions that the
12 provinces take. What I'm really interested here in and
13 what my questions was directed to is, first of all, what
14 was in that July news release, what was in the order.

15 A. Yeah.

16 Q. And so, if we can just turn to Tab 4,
17 just -- this is kind of the third document in the series
18 here -- this is the second paragraph here. So this is the
19 May 10, 2016 letter that is Canada's compliance report with
20 the order we just looked at.

21 A. Yeah.

22 Q. In the second paragraph, it says that:

23 "The panel ordered INAC to immediately
24 consider Jordan's Principle as
25 including all jurisdictional disputes.

1 INAC and Health Canada, now that are ---

2 Q. Now they're DISC.

3 A. --- unified under Indigenous Services,
4 they were both responsible. And all the actions that have
5 been taken have been jointly taken between the two
6 department at the time.

7 Q. So, speaking to your experience, then,
8 which would have been Health Canada's, Health Canada, at
9 this time, is reading paragraph 33 and is reporting back to
10 the Tribunal in the May compliance report, and then is
11 stating in its news release -- it's echoing the words,
12 "First Nations children," but it is reading that as, in
13 fact, being children with Indian status.

14 A. Exactly. Or entitled to be registered.

15 Q. Or entitled to be registered. Now,
16 that's not something Canada ever explained to the parties
17 that that's what it meant.

18 A. I would say that, in our interaction --
19 and I had many with partners -- when it comes to
20 leadership, most of the time they understood clearly that
21 what we were talking about is community member recognized
22 with status.

23 Q. Did you have that conversation ---

24 A. Except in some situation, if I can bring
25 the clarification, we did receive question from leaders

1 when we were funding community-based projects to see if
2 they can extend their services to community members that
3 are a recognized community member, but they are not really
4 a -- they don't have status. And like any other community-
5 based program that we have, they are under the control and
6 the administration of the local community or authority, and
7 we do not control that level of (inaudible).

8 Q. And I want to ask you a further question
9 about that distinction between the community-based programs
10 and other requests, but first I just want to confirm -- you
11 mentioned you had those discussions with leadership. Did
12 you have those discussions with the Caring Society?

13 A. I think this was probably raised during
14 a Jordan Principle Operation Committee meeting, but I would
15 not remember exactly when unless if I was to go and look at
16 the minutes of the meeting.

17 Q. I see. Now, in terms of the distinction
18 between ---

19 A. I do remember -- if I can bring a
20 clarification -- something that Dr. Blackstock brought to
21 our attention -- is the level of information we were
22 collecting to make sure that we were not going too far, but
23 ---

24 Q. And we'll talk in a moment about the
25 information about registration because I do have some

1 questions about that, but I just want to deal with this
2 community programming piece ---

3 A. Yeah.

4 Q. --- because I think it's important for
5 the Tribunal to understand. So, my understanding of the
6 situation is that if a First Nations -- this is more the
7 group requests that come in -- there's the two streams
8 essentially that ---

9 A. Yeah.

10 Q. --- the group request to provide a
11 program, and then there's the individual requests. And
12 this is through the Service Access Resolution Fund.

13 A. Yeah.

14 Q. Now, if it's the community that's
15 administering the program, say, for instance, to provide
16 respite within the community, DISC now isn't involved in
17 deciding which children are or aren't eligible to
18 participate in that. That's up to the community.

19 A. When the demand is submitted for
20 approval of the group service request, they are giving us
21 an assessment of the number of children that have a need
22 and the cost that this will require and how they will be
23 setting up the service. And it's on that basis that we
24 approve the funding for the community or the travel
25 counsellor. There is different type of organization to

1 advance the work. It's only on individual cases where we
2 go a little bit further and know exactly the situation of a
3 child.

4 Q. So, you don't ask essentially screening
5 questions about the number of children and their status
6 when it's a group request where the community administers,
7 but, if it's an individual whose mother or father or social
8 worker who's involved in their case -- or I believe they're
9 called the Enhanced Service Coordinator within the
10 community -- has found this family and brought them
11 forward. That's when the **Indian Act** status comes in as
12 screening.

13 A. Yeah. A general group request will be
14 for Indian status First Nation because those are the
15 resident on Reserve most

16 Q. On Reserve. So, the off-Reserve
17 communities, you aren't seeing as many group requests from
18 them.

19 A. There is some, but I would say most of
20 them are under the leadership of communities, so then, de
21 facto, mostly focusing on population on Reserve.

22 Q. Now, in terms of the individual requests
23 -- so, if you had a -- just so I understand the scenarios
24 that we're working with here, so if you had a family who
25 was living either on Reserve or in a First Nations

1 community, and they themselves did not have **Indian Act**
2 status, the discussion stops at that point.

3 **A.** Not really.

4 **Q.** In terms of the Service Access
5 Resolution Fund.

6 **A.** Not really. Our Jordan Principle focal
7 points are mandated to do an assessment right at the
8 beginning to make sure -- to assess the risk of the
9 situation. So, if there is an imminent risk or a
10 condition, or if the person is not able to provide status
11 information, it's possible that you will find cases where
12 we have approved coverage for a time or a duration to make
13 sure we deal with the immediate needs or until we were able
14 to further assess. So, the direction given to the staff is
15 to be able to support immediately if there is an urgent
16 situation or it assists the family. Or if there is no way
17 to confirm -- so, we have, for example, children that have
18 not been registered because they are very young, so the
19 Jordan Principle focal point will have some discretion to
20 approve in the meantime until we can confirm. So it
21 doesn't stop there. Nobody is hanging the phone. The
22 mandate of our department and our different sectors that
23 work on Jordan Principle is to assist family, is to provide
24 services. It's not to hang up the phone and not assist.
25 Even in situation where we found the criteria of the

1 program was not -- or the coverage was not possible for a
2 family, we did try to use other program and other tool to
3 assist the family when there was needs.

4 Q. But that falls more under the service
5 navigation component in terms of linking them to another
6 service that could provide .

7 A. Well

8 Q. --- or calling the Province. What I'm
9 asking really about is the Service Access Resolution Fund
10 because the order from the Tribunal has been, in urgent
11 cases, to resolve the or to have the service approved or
12 not within 12 hours; and in 48 hours, to have -- or for
13 non-urgent individual requests. And in terms of those
14 activities, I mean, is DISC tracking for non-**Indian Act**
15 status or non-**Indian Act** status eligible children,
16 particularly how those timelines are working out in terms
17 of actually meeting the service need within the timeframes?

18 A. I am aware of a number of non-status
19 children cases we have received, but I would not be able to
20 tell you the duration of the treatment of the case.
21 Unfortunately, I don't have that information. I do know
22 that -- you were talking about the fund -- in some
23 instances, we did use the fund to spend on some services
24 because the Jordan Principle focal points were ordered to
25 try to accelerate the treatment, and they went ahead and

1 covered some services until we discovered that maybe the
2 client was not eligible under Jordan Principle.

3 Q. So, essentially, the Service Access
4 Resolution Fund is available in cases of uncertainty as to
5 status, but if there is certainty, when the contact is
6 made, that the family is not a status or status-eligible
7 family, then essentially the attempt to coordinate with
8 other programs is all that the focal points can do.

9 A. Yeah, or -- yes. And right now, there
10 is a number of case where we have written to the family
11 saying that we are doing a review of that situation, and so
12 they are pending. But none of them are urgent requests or
13 require urgent intervention.

14 Q. But those -- nonetheless, the pending
15 ones, they're falling outside the 48 hours, are they not?

16 A. Yes, they are falling outside the 48
17 hours.

18 Q. I see. Now, in terms ---

19 A. But we are still trying to find a
20 solution to assist wherever we can.

21 Q. But not through the Service Access
22 Resolution Fund.

23 Now, in terms of the -- in terms of just
24 families who have -- and this is at a theoretical level --
25 I'm not saying that -- I don't have a particular . I'll

1 have some particular situations later, but -- so, you could
2 have a family living in a First Nations community, whether
3 it's a Reserve or not, and they have relatives who have
4 status, but through the operation of the myriad ways in
5 which people can lose status under the **Indian Act**, some of
6 which I'm sure you're familiar with, given your role,
7 they've come out as a family that does not have status, and
8 so, that family, with the exception of service navigation
9 or attempts to connect them to other programs, would not
10 have access to the Service Access Resolution Fund if there
11 was no uncertainty as to their status.

12 A. The way Jordan Principle have been
13 implemented until now -- and this is what I mentioned
14 before - is for registered children that -- either
15 registered or entitled to be registered -- we are doing an
16 analysis of the situation for the non-status situation and
17 we have kept a number of case pending. We are in
18 relationship with the family. I think there is around 50
19 case across the country right now that have been brought to
20 our attention -- to see how we can support that. Some of
21 the parties have brought to our attention some ways we
22 could deal with this. One of the party, for example,
23 suggested that if a family is recognized by the band as a
24 community member, we should treat them like First Nation
25 with status. So, we are doing analysis of these situation

1 and see how best to assess access going forward.

2 Q. So, for First Nations children who don't
3 have status, the current state for those individuals is
4 assistance from focal points and connecting with other
5 existing status and DISC, in your chain of command,
6 considering policy options to assist more of them,
7 essentially, depending on their circumstances.

8 A. Or accessing normal services that are
9 available to the rest of Canadian that are non-status
10 either because they are not excluded from the provincial
11 coverage.

12 Q. Assuming they're not excluded from the
13 provincial coverage.

14 A. I think -- I'm not aware of any policy
15 in Canada -- and I spent a number of years at least in the
16 health area -- where non-status children are officially
17 denied coverage or service under a program policy in the
18 province. I know, though, some program and policy in some
19 provinces that do exclude First Nation with status.

20 Q. You're aware, though, there are some
21 provinces that don't provide services on Reserve in terms
22 of health.

23 A. I'm aware of this.

24 Q. So, if you had a non-status or non-
25 status-eligible child in, for instance -- my understanding

1 is Quebec is one of these provinces -- who is living on the
2 Reserve, that the province would say they wouldn't be
3 providing that service?

4 **A.** I would say -- I would not agree with
5 your statement that this is the policy of the Province of
6 Quebec because I saw example where there are actually some
7 support to family also on Reserve, so

8 **Q.** So, whether it's Quebec or not, there
9 are provinces that will draw a line at the Reserve and say
10 that that's not their jurisdiction.

11 **A.** Yeah, there is.

12 **Q.** And so, for those children, they won't
13 be able to access the non-status population programs.

14 **A.** A lot of the service are not necessarily
15 delivered where the person lives. So, it doesn't prevent
16 necessarily -- and it does happen to First Nations with
17 status living on Reserve to have to go outside of their
18 community to get the service because this is where the
19 service provider is located. So, it's not necessarily your
20 location of residence that is a discriminating factor.
21 It's sometimes just a question that go to the service
22 provider location which is nearby.

23 **Q.** But for non-status children, they would
24 then have to face the realities around transport and
25 getting to the service.

1 A. Yes.

2 Q. And that's certainly something, my
3 understanding is, the NIHB assists, and that wouldn't be
4 available to a non-status child.

5 A. This is what our program people are
6 doing assessment on right now, to understand what are the
7 gaps and the limitation that may be facing these children.

8 Q. But the [French - not transcribable],
9 today, if a focal point is called, they're limited to
10 attempting to access existing services rather than bringing
11 in funding from the -- for the Service Access Resolution
12 Fund.

13 A. I would say, generally speaking, you're
14 right. The application of Jordan Principle is for
15 registered First Nation and children that are eligible for
16 registration.

17 Q. Now, just in terms of the communications
18 with leaders you were mentioning before where essentially
19 there's an understanding on both sides of the table that
20 this is really for **Indian Act** status or **Indian Act** status-
21 eligible children, were those formal meetings or were those
22 informal discussions?

23 A. I would say there has been formal,
24 informal, at different point in time.

25 Q. And would there be any written records

1 of those meetings that would record that being discussed?

2 A. I cannot answer that right off the top
3 of my head. A lot of my interaction with leaders is about
4 many subject at the same time, and Jordan Principle
5 sometime will fall into this, so, I don't think there is
6 something specific -- or there was no event that I was part
7 of that was specifically on Jordan Principle where we would
8 have had these conversation. It's discussion that happened
9 as part of other conversation.

10 Q. But, in terms of these broader
11 conversations, would they be the kinds of broader
12 conversations that would have minutes taken of them?

13 A. Not always. I think bilateral meetings
14 sometime lead to some action and follow-up, but they are
15 not always subject to minutes.

16 Q. Not always, but there may be some.

17 A. Most of the time, I would say, bilateral
18 with me are not captured in minutes. If there is action
19 that are related after, maybe staff in the department will
20 be asked to follow up on some specific question but not the
21 full set of minute of all the conversation, unfortunately.

22 Q. In terms of non-bilateral meetings that
23 don't involve you, there are within your chain of
24 command, there are other meetings that happen with partners
25 where this might be discussed?

1 **A.** Yeah.

2 **Q.** Now, would there be written records of
3 those?

4 **A.** Sometime there will be.

5 **Q.** If those exist, would we be able to have
6 them?

7 **A.** I think we will have to be more specific
8 because I ---

9 **Q.** Well, in terms of a specific request, it
10 would be then between the 26th of April 2016, which was the
11 date that we had the decision from the Tribunal with that
12 definition in paragraph 33, and I know there were a series
13 of presentations in the fall of 2016 to partners. So, if
14 we went out to November 2016?

15 **A.** I would say it will be more interesting
16 and useful to go to the specific meetings that were
17 organized around Jordan Principle across the country to
18 look at the minutes because this is really where the detail
19 about how the Jordan Principle was implemented or it was to
20 be implemented. We'll get the -- you will get the
21 information. My interaction on that subject was really
22 here and there as part of other conversation. I'm doubtful
23 that this will have been even captured in these evidence.

24 **Q.** So, in terms ---

25 **A.** There was a session -- I can give you an

1 example -- there was a session a couple of months ago in
2 Toronto, the First Nation held summit, and there was some
3 side discussion on Jordan Principle. That's not been
4 captured in the minute of that ---

5 Q. No, I understand. I mean, what I'm
6 interested in is, you know, essentially your -- what I take
7 from your evidence is that your view is that, on the other
8 side of the table, to call those that, you know, DISC or
9 Health Canada and FNIHB would be meeting with, that there
10 was an understanding that this was essentially a program
11 approach, the Service Access Resolution Fund, that was
12 limited to ---

13 A. My assumption is that, yes, you're
14 right, and I do think that the Jordan Principle Operation
15 Committee minutes will have some of this information.

16 Q. Well, I'll review ---

17 A. I haven't checked myself, but I'm pretty
18 sure that if there was place where personally I was
19 involved into these discussions and something would have
20 been recorded in minutes, it's this committee.

21 Q. And certainly I'll review those again.
22 I mean, I haven't seen it, and I don't want to give
23 evidence, and we don't have them in my binder. But in ---

24 A. And - -

25 Q. --- terms of those other -- I'll just

1 if you let me finish.

2 A. Yeah.

3 Q. In terms of those other meetings, the
4 ones that I'm interested in would be in that period between
5 April 2016 when the decision came out and, say, the end of
6 the year where this new approach is being presented to the
7 communities to see if there are -- if there are any of
8 those written records that mention the fact it's limited to
9 status Indian -- or status -- **Indian Act** status or **Indian**
10 **Act** status-eligible children, that those be provided.[u]

11 A. I think we can look at all the
12 publication we did on the program, which has been shared
13 with the parties, because, I think, in the last year, there
14 is nothing that had been published and sent out without
15 prior consultation. Normally you will find the description
16 about the application of Jordan Principle, and we should
17 have mentioned in there that this was about children with
18 status, but -- if you're looking for official
19 communication, this will be in these types of documents for
20 sure.

21 Q. Now, well, actually, we'll look at one
22 example of a communication --

23 A. Yeah.

24 Q. --- that mentions it. And it may be
25 that we're able to sort some of this out because my

1 understanding of this document has changed since the cross-
2 examination, which we'll look at in a second. So, if you
3 look at Tab 5. And this may well be where we're starting
4 from, and we'll go through that. So, this is, again,
5 another exhibit from Ms. Buckland's examination in February
6 of 2015. It's a slide deck. And this one, in particular,
7 was presented to the Non-Insured Health Benefit -- in the
8 Atlantic Region on September 15, 2016. Now, I've just
9 included the cover page and slide 8. Now, I don't know if
10 you were involved in the compliance reporting process in
11 the fall of 2016, but you'll understand that there was -- a
12 number of these presentations were provided -- I believe it
13 was in October 2016.

14 A. Yeah.

15 Q. Now, this one has essentially an
16 eligibility determination on it, at No. 2, where it asks:

17 "Is the child a registered First Nation
18 individual? Yes or no?"

19 And that's something that I raised with Ms.
20 Buckland when she was -- well, she wasn't here -- we were
21 around the corner at a reporter's office. And under Tab 6
22 is the transcript of that cross-examination. Again, to
23 save paper, I've only provided an excerpt. And so, if you
24 turn the page, after you turn up the tab, to page 45, do
25 you see question 132 there? It says 132 on the ---

1 longer a part?"

2 And then the answer is:

3 "We are still using each -- I believe
4 we're still asking each of the
5 questions. So, for the part of the --
6 it's part of the intake assessment
7 where I guess that it's not, again, a
8 properly articulated -- is in terms of
9 eligibility determination, so, for
10 example, does the request fall within
11 the normative standard. So, if the
12 answer is 'no' that doesn't mean the
13 case will not be dealt with."

14 Then if you turn the page over, we start to
15 go through the individual boxes there on slide 8.

16 A. Yeah.

17 Q. And so, at 139, I say:

18 "So, if I'm understanding your answer
19 correctly, a 'no' tick on any one of
20 these eight criteria is not necessarily
21 determinative of a funding request."

22 Answer:

23 "Meaning whether we'll fund it or not."

24 And then I say:

25 "Yes."

1 And then Ms. Buckland says:

2 "So let's go through them."

3 Which we do. And if you look at 142, the
4 question is:

5 "Now, number 2, is the child a
6 registered First Nations individual?"

7 And the answer is:

8 "So this is important information for
9 us to collect because, again -- and I
10 think something we haven't had an
11 opportunity to talk about yet -- this
12 approach is an interim approach where
13 we are trying to figure where we should
14 be going in partnership with our
15 partners in the long term. So,
16 establishing whether the individual is
17 registered or not, that's important.
18 That's going to be an important part of
19 the puzzle. How do I say this? No,
20 the case will still be considered.
21 It's a piece of information versus
22 eligible or not eligible."

23 So, I had understood, at least until this
24 time -- and I think it's far to say the Caring Society had
25 understood as well -- that essentially the box No. 2 there

1 on slide 5 was more of a demographic information piece and
2 that the case would still be considered for eligibility for
3 the fund. And what I'm understanding now is that's not
4 quite right, that it still was a person that Health Canada
5 or DISC would work with, but not necessarily, unless there
6 was doubt, or at least -- I should say doubt in the interim
7 while the status was being investigated -- someone who
8 would be eligible to access that 352 or 327 million over
9 three years for services.

10 A. Okay. Thank you. I think for those who
11 need translation, I'm going to switch to French because I
12 really want to make sure that this is clear.

13

14 [6-minute French section - not transcribable]

15

16 --- BY MR. TAYLOR:

17 Q. I'll go back to English ---

18 A. Yeah.

19 Q. . . at least for a little bit here.

20 Now, you mentioned the House of Commons motion. We don't
21 have the text of that with us, but it's famous enough that
22 I'll read it, and if there's an issue, we can certainly
23 provide a copy at the break. It is in evidence in front of
24 the Tribunal. So the motion is:

25 "In the opinion of the House, the

1 government should immediately adopt a
2 child first principle based on Jordan's
3 Principle to resolve jurisdictional
4 disputes involving the care of First
5 Nations children."

6 And I said it's in the record. In fact,
7 it's in some of the Tribunal's decisions as well. But
8 again, that's First Nations children, it's saying, and not
9 Indian status children. So that's Canada's interpretation
10 of the words "First Nations children" is children with
11 status under the **Indian Act** or eligible thereto.

12 **A.** This is the way we have understand the
13 direction since the beginning and we have applied.

14 **Q.** Merci. And so, just one other point on
15 the -- I guess the communications. We looked at Tab 2 at
16 that news release which used the phrase, "First Nations
17 children." We don't have them before us, but certainly
18 Canada has done promotional and outreach activities on the
19 basis of Jordan's Principle and has used the words "First
20 Nations children" in those products as well --

21 **A.** Yes.

22 **Q.** --- and not "children with **Indian Act**
23 status or eligible for **Indian Act** status."

24 **A.** I cannot remember or I wouldn't
25 necessarily have seen all. But I think, most of the time,

1 we say "First Nation children."

2 Q. Your understanding of the common
3 practice is to use the words, "First Nations children."

4 A. Yes.

5 Q. If we look at Tab 30 ---

6 A. Thirteen?

7 Q. I'm sorry, Tab 30 -- Tab 8. I don't
8 know where I got the number 30. Oh, November 30th, that's
9 where the 30 came from. So, this is a statement from
10 Minister Philpott, who, by this time, is now Minister of
11 Indigenous Services and no longer Minister of Health. So
12 ---

13 "The government of Canada recognizes
14 that our commitment to Jordan's
15 Principle is fundamental to ensuring
16 that First Nations children receive the
17 care and services they need when and
18 where they need them."

19 And then, further down the page:

20 "Canada is fully committed to
21 implementing Jordan's Principle and
22 complying with the orders of the CHRT.
23 We are working with First Nations
24 partners and communities, as well as
25 provinces and territories, to ensure

1 that all First Nations children get the
2 care they need."

3 And then in the last line of the page there:
4 "If a First Nations child is not
5 receiving the services and support they
6 need, families are encouraged to
7 contact us."

8 And then there's the phone number. And so,
9 again, in this document, we should be reading the words
10 "First Nations children" as meaning children with **Indian**
11 **Act** status or eligible to be registered for **Indian Act**
12 status.

13 **A.** This is the way we have implemented
14 Jordan Principle so far, yes.

15 **Q.** Merci. So, if you look at Tab 9, so,
16 this, as I understand it, is, if not the most recent, then
17 a very recent version of the intake form ---

18 **A.** Yeah.

19 **Q.** -- for Jordan's Principle. It says --
20 at the top of the page here, it says, "Version - July 28,
21 2017." So, certainly after the Tribunal's ruling in May.
22 And "Revised April 25, 2018." Now, 3.0 at the bottom of
23 the page says, "Client information, age." And then if we
24 turn the page over, it says, "3.2 status."

25 **A.** Yeah.

1 Q. And so, certainly that mirrors the
2 presentation we looked at earlier, slide 8 there under Tab
3 5, discussing age first, and then on to status. And so,
4 the question is:

5 "Is the child a registered Indian as
6 per INAC's Indian registration system?"

7 Now, I'm just wondering, the asterisk here,
8 it says -- on the first page, it says:

9 "The asterisk represents elements that
10 are considered for the determination of
11 requests."

12 A. Yeah.

13 Q. So, that asterisk next to the child
14 being registered, that denotes that this is essentially a
15 key component of the [French - not transcribable].

16 A. Consistent with what I just said.

17 Q. Yes. And that is -- I mean, subject to
18 a revision after April 25th that we haven't heard about,
19 that's the current form that would be used by a focal point
20 when -- or something like this would be ---

21 A. And they are using a form. I would not
22 be able to say if this is the form or not.

23 Q. But certainly as regards three point ---

24 A. It was the form at the time -- where the
25 date is July ---

1 Q. On April 25th. But certainly since --
2 between April 25th and today, there hasn't been a policy
3 change within DISC that would make the question in 3.2 no
4 longer a mandatory question.

5 A. No. But, like I said, we are assessing
6 the situation that were brought to our attention to see if
7 there is any change or action that needs to be taken to
8 address that.

9 Q. Now, just in terms of how some of that
10 is actually playing out, if we could look at Tab 10.

11 A. Yes.

12 Q. And you'll see there's some redactions
13 on this page and in the subsequent exhibits. And I'll
14 explain a bit what those redactions are. So, essentially,
15 we've tried to remove any identifying information for the
16 parent or the requester, I should say, to give even less
17 identifying information, and as well as any non-public
18 contact information for the government personnel involved,
19 in terms of Ms. Beach, her position and her phone number
20 available in GEDS, the government's electronic directory
21 system. So, we've left those in, but we've tried to take
22 anything -- all of the rest out. And certainly, if I've
23 missed anything, we'll avoid reading it into the record.

24 So, this is a letter, it's dated May 4th,
25 2018, and it's to Ms. M. And so, it says:

1 "Thank you for submitting a request for
2 services for CM under Jordan's
3 Principle for medication coverage,
4 psycho-educational assessment,
5 therapeutic riding lessons and mental
6 health counselling. We regret the
7 delay in replying to your request,
8 however, we want to inform you that
9 your request is pending a review by
10 DISC under Jordan's Principle."

11 So, that's essentially what you were
12 referring to there, the status of the people who are
13 essentially on hold.

14 **A.** The first time I see letter -- because I
15 was not involved in sending -- but, I think consistent to
16 discussion that happened with the parties in the last few
17 weeks, the program teams are doing assessment of the
18 situation and preparing recommendation about how we should
19 address these situation. I know that some parties have
20 provided us with some of their perspective about how we
21 should address that, so this work is underway right now.

22 **Q.** But this is an example of that deferral
23 essentially of the decision until ---

24 **A.** Yeah.

25 **Q.** --- such time as the policy changes.

1 **A.** I think -- my interpretation is that
2 it's to give a signal to the families that their case are
3 not closed with us at this time.

4 **Q.** Yes. Now, we'll look through some of --
5 the next tabs here are some communications essentially that
6 precede this letter. I'll call it a deferral letter.

7 **A.** Yeah.

8 **Q.** Now, I'm going to operate on the
9 assumption you haven't seen these emails before because
10 you're not copied on the chain. And in some cases, it's
11 not Health Canada people that, as I mentioned, were
12 operating in the Tribunal environment, and so it's --
13 they're here for what they say. And again, it's
14 recognizing that you haven't necessarily seen these before.

15 So, now, looking at Tab 11, now this is a --
16 and in fact, actually, we'll start with Tab 12. So this is
17 an email chain between JM, who is referenced in the
18 deferral letter, and Marc Sandani (Sp?). Do you know Marc
19 Sandani?

20 **A.** No.

21 **Q.** So, he's an individual who works at the
22 Caring Society. If you look about the middle of the page,
23 it says he's the Reconciliation and Research Coordinator.

24 **A.** Okay.

25 **Q.** And are you aware that the Caring

1 Society is sometimes contacted by families who are having
2 difficulties with Jordan's Principle?

3 **A.** Yeah. And I did receive, in my previous
4 role, communication from Dr. Blackstock and from people
5 from her office bringing case to our attention. And most
6 of the time, these actions were really useful to us because
7 we were able to unlock situations. So, maybe even Mr.
8 Sandani have been in contact with me, but I don't know him
9 personally.

10 **Q.** Yes. And certainly no -- I'm sure you
11 get many emails in a day. But more what I was trying to
12 get at is the idea that this -- what we're going to look at
13 here, a chain of emails in which someone contacts the
14 Caring Society and then the Caring Society assists them in
15 contacting DISC -- that's not something that's out of the
16 ordinary in your experience as a ...

17 **A.** No, it's normal practice.

18 **Q.** Normal practice. Okay. So ---

19 **A.** And the only one thing I would just
20 mention is that --- and I know that Dr. Blackstock and her
21 team are really aware of that -- there was a way for us to
22 interact with third party on behalf -- or on specific
23 client case. As long as we know that they have been
24 authorized by the family, we do that gladly.

25 **Q.** Of course.

1 Principle and had been turned down
2 several months ago because Robin
3 Boychuk (Sp?)..."

4 Do you know who Ms. Boychuk is?

5 A. Not personally, no.

6 Q. It would appear from this email -- and
7 we'll see a signature -- in fact, if we look at Tab 11, the
8 bottom of the page, she's the Acting Jordan's Principle
9 focal point, First Nations and Inuit Health, Atlantic
10 Region, Health Canada. So she would be a Health Canada
11 official ---

12 A. Yeah.

13 Q. --- on the basis of that.

14 "We are non-status and have lost our
15 connection to the Band. We were told
16 that unless we are status and/or have a
17 status relative in a Band, that we are
18 not..."

19 I believe this should say:

20 "...eligible for Jordan's Principle. I
21 waited several months, then tried
22 again, and called Jordan's Principle
23 Call Centre, who told me that was wrong
24 information and to call again and
25 submit an application. I called again

1 and Robin was not there, but a worker
2 was, who told me my application would
3 be denied and he would take it, but
4 that basically if I was non-status, it
5 would just come down to him being
6 ineligible."

7 I think the "him" there is the child.

8 "...that the word 'First Nation' is now
9 being determined as status First
10 Nation, and if we are not status, then
11 it will not apply to us."

12 And then she's pasted in the reply below
13 from Ms. Boychuk. It says:

14 "Thanks for your inquiry last week
15 about..."

16 Now, she says "Metis" here, but, as we'll
17 see, this is a non-status case. We'll get to that in
18 another document.

19 "...for Jordan's Principle funding. I
20 haven't gotten a response from
21 headquarters yet, but I didn't want too
22 much time to pass before I followed up
23 with you. While I'm not a lawyer, my
24 understanding is the **Daniels** decision
25 did not impact on Metis and non-status

1 individuals' eligibility for federal ..
2 programs and services currently
3 targeted to those who are registered
4 First Nations. On this point, I should
5 also mention that the Inuit are also
6 not accessing Jordan's Principle
7 because the initiative exclusively
8 targets First Nations children. As I
9 briefly mentioned on the phone,
10 Jordan's Principle is available to
11 children who meet one of the following:
12 (1) He/she is status First Nation.
13 (2) He/she has an application for
14 registration pending.
15 (3) He/she has one parent who is status
16 First Nation."

17 And then just to close the loop here, Tab
18 11, this is actually the text of that email there that has
19 been pasted in.

20 **A.** Yeah.

21 **Q.** And that's under the "From Robin Boychuk
22 to..." and then it's redacted. And then copying Ms.
23 MacEachern, who, as we'll see later, is one of those
24 individuals you mentioned for organizations who assist
25 claimants. And then there's a note here from Ms. Boychuk

1 about next steps being to try to contact the Congress of
2 Aboriginal Peoples. So, at this point, Ms. Boychuk then is
3 correct in terms of the three bulleted criteria she's put
4 at the bottom of the page here. I know I'm jumping around
5 a lot, but it's the second page of Tab 12, that "status
6 First Nation application pending or has a parent who is
7 status." That's correct.

8 A. I would say this is one way to
9 characterize it. The simplest way to characterize it is
10 "registered First Nation or eligible to be registered First
11 Nation." Now, the one parent, these are trigger for us to
12 go further to assess if they are entitled to be registered.
13 But it's one way to communicate what I said before. One
14 thing I don't want to comment on -- and I don't feel I can
15 really help is that there is a mention of the **Daniels**
16 decision in there.

17 Q. And that's -- I'm not going to get into
18 a legal ---

19 A. Frankly, I cannot comment on that.

20 Q. No, that's for Mr. Frater and I to argue
21 about.

22 A. Since you pulled that, I don't have
23 anything to offer on that.

24 Q. And I wouldn't expect you to.

25 A. Okay. Thank you.

1 Q. Now, one question I have is, the last
2 bullet here, "He/she has one parent who is status First
3 Nation."

4 A. Yeah.

5 Q. This is going to sound like a legal
6 question, but I'm going to try and phrase it as a program
7 question. For parents who have status under Subsection
8 6(2), the other parent of the child is a non-status person,
9 the child does not receive **Indian Act** status. Am I correct
10 in my explanation of that?

11 A. I think, generally speaking, but I'm not
12 a specialist on registration.

13 Q. But it does fall under your wheelhouse,
14 we could say.

15 A. Yeah. But there is people that are
16 specialized.

17 Q. Specialized.

18 A. There is a Registrar that do exactly
19 that kind of work, and so ---

20 Q. And it's very complicated. But, if I'm
21 right that a 6(2) individual's child where that child's
22 other parent is non-status, doesn't themselves receive
23 **Indian Act** status and is not eligible for **Indian Act**
24 status, would they still nonetheless be considered on the
25 basis of this third bullet, them having a status parent?

1 Or because they themselves don't have the status and aren't
2 eligible for it, they're out of the ---

3 **A.** What I understand is happening -- and,
4 frankly, we should ask people that are in the operation of
5 the program on a daily basis to make sure that it's the
6 case -- is that when we find a situation like that, they go
7 a step further to assess, with the assistance of the
8 Registrar, if there is a possibility. And you all know
9 about S3.

10 **Q.** Um-hmm.

11 **A.** So, which lead to a number of decisions
12 that were made in the past in terms of who is registered
13 and who is falling under 6(2) or six -- the different
14 portion of the Act might change over time, so, we have
15 created a process to make sure we verify to make decision
16 the best informed possible in that context because the
17 context around this brings the level of complexity there.
18 So, this information is like the departure point. They do
19 this assessment, I understand.

20 **Q.** Now, in terms of -- and I'm going to
21 have a request here, but I'm just going to ask my second
22 question so that the request is complete -- because you may
23 not know the answer to this.

24 In terms of S3, there's two components to
25 S3. There's the first component which responded to

1 (inaudible) decision, which came into force -- I believe it
2 was -- if it wasn't on royal accent, it was before the
3 deadline set by the Court of Appeal for Quebec.

4 The second component is a broader series
5 that will come into force at a date that is to be
6 proclaimed. Now, the work that the Jordan's Principle team
7 will do with the Registrar, does it capture those to-be-
8 proclaimed children as well, or is it really only limited
9 to the changes that are in force today?

10 **A.** I think it's about the change that have
11 been in force because the second part of the work, if I
12 understand all the process, which involve a large
13 consultation about how we define that membership and
14 indigenous status as something that has much broader
15 implication and will probably go on for a while with
16 partners. So, at this time, the focus is on the first ---

17 **Q.** The first group.

18 **A.** --- that I mentioned. And the time it
19 takes for people that might be now eligible for
20 registration to come forward with their requests is unknown
21 either, so, we are trying to minimize the risk of having
22 someone that is excluded that should not be excluded by
23 doing some analysis. And in case where we feel that it's
24 likely someone that will be eligible for registration in
25 the future, we lean on that side and we cover under Jordan

1 Principle.

2 Q. And that would fall under the
3 eligibility to register because they may have themselves
4 other eligibility -- a parent who needs to change from 6(2)
5 to 6(1), etcetera.

6 A. Yeah.

7 Q. But just if we could have, in terms of a
8 request, just a confirmation of what happens to a child
9 whose parent is a 6(2) status person, so, essentially a
10 person whose parent status is 6(2). We realize that might
11 change on the basis of Bill S3, but where the parent is
12 6(2) and the child has no status and is not eligible for
13 status because the status of the parent is 6(2), what
14 happens to that child's eligibility? Because, in my
15 understanding, it's a bit vague based on Ms. Boychuk's
16 email here.[u]

17 MR. FRATER: So, you're asking -- first of
18 all, do we have any such cases?

19 MR. TAYLOR: More what would happen if one
20 arrives.

21 MR. FRATER: So, it's a hypothetical.

22 MR. TAYLOR: Well, I mean, it's a
23 hypothetical, but it's a program framework question. If a
24 focal point has the case arrive, what would be done with
25 it? Because that's -- what we're in the operation of here

1 is to ensure that needs are met when they arrive, I guess,
2 from the Caring Society's perspective.

3 --- BY MR. TAYLOR:

4 Q. So, if we could just turn to Tab 13.

5 A. Yes.

6 Q. Now, if we could go to page 4. So, this
7 is an email from Marc Sandani (Sp?) to Dr. Gideon. So,
8 this is the this would then be that -- what you were --
9 I think you referred to as a typical -- I forget the exact
10 word -- wherein the Caring Society will bring a case to the
11 attention of now Dr. Gideon, who's in your former role.
12 So, this says:

13 "The Jordan's Principle focal points do
14 not seem to be moving Ms. M.'s
15 referrals along the proper channels.
16 Ms. M has tried to refer her son's case
17 twice, once last year and once again
18 March 20, 2018."

19 And I'll just note that the Tab 11 date --
20 you don't necessarily need to turn it up is August 14,
21 2017. That was that first exchange where we had the email
22 about the Congress of Aboriginal Peoples and the three
23 bullets that we were looking at there.

24 A. Yeah.

25 Q. And the **Daniels** discussion, we don't

1 want to get into.

2 And then, in this case, in point No. C, Mr.
3 Sandani is just asking for confirmation of Canada's
4 position regarding non-status children under Jordan's
5 Principle.

6 And then, if we look to No. 3 -- or sorry,
7 the email No. 2 that we'd looked to would be on page 3.
8 And it's from Ms. Beach to Mr. Sandani. And so this is -
9 she states that she's writing on behalf of Dr. Gideon in
10 response. And point C is:

11 "Canada is reviewing the issue of non-
12 status children funding under Jordan's
13 Principle and will respond under
14 separate cover following appropriate
15 briefing."

16 So, this is now March 28th, 2018. And you
17 mentioned that this is something that's been under review
18 and that Canada has been essentially deferring
19 consideration of these cases until I guess a policy
20 decision has been made. How long has that review been
21 ongoing?

22 **A.** I think we have started to look at the
23 issue of non-status as soon as we got a request. Now we
24 see -- we have a profile -- I think there was 53 or 54
25 cases. So, what is the demand and where are they located?

1 We need more information. We did not collect all
2 information that gave us everything we need to do the full
3 analysis, but they are working on that and will bring
4 recommendation to Ministers for Conservation in the future.

5 Q. So, my question was when did it start.
6 And so, your answer was when ---

7 A. I cannot tell. It probably started the
8 first time we got a case that was denied based on the fact
9 that there was a non-status situation. Now, when it comes
10 to the notion of the non-status, you have a variety of
11 situation.

12 Q. And I don't ---

13 A. You mentioned one, which is the 6(2)
14 situation.

15 Q. Yes.

16 A. But you also have people that claim
17 indigenous ancestry that have ---

18 Q. Yes, and ---

19 A. --- have nothing. So, there is ---

20 Q. I'm not interested in ---

21 A. --- a broad spectrum, and this is what
22 is being looked at is what are the situations.

23 Q. I'm not interested in getting into the
24 broad spectrum here. Really we're at the -- there's a door
25 that's been placed, and regardless of where anyone is on

1 that spectrum, they can't get through that door. And so
2 that's really what I'd like to address. So, just if we
3 could have as a request when the first non-status case
4 request would have been received.[u]

5 **A.** And I think Dr. Gideon would have
6 informed the parties into a session two weeks ago about
7 where they were at in their analysis and preparing
8 recommendation on that.

9 **Q.** Yes. But, in any event, it's been
10 ongoing since 2018. And do you have a sense of when that
11 analysis will be complete?

12 **A.** I think internal analysis is -- I cannot
13 -- I don't have a date on this.

14 **Q.** So, at this point, at least, there's no
15 prospective timeframe.

16 **A.** Not at this time.

17 **Q.** And I should just, for the record
18 obviously we don't have a Notice of Motion or anything like
19 that kind of formally structuring what the Caring Society's
20 request will be here, and just to note that my questions
21 really are focused on the non-status First Nations
22 children. That's the scope of the complaint that was
23 brought was with regard to those children being served.
24 So, questions relating to Metis and Inuit children are
25 really something that are separate and aside. We'll get to

1 a couple of documents about the Inuit children just to
2 confirm that that's also the case, but we're not looking to
3 touch on the Metis question or the Inuit question
4 necessarily here. What we're really looking at is non-
5 status First Nations.

6 And then just the next email up the chain
7 here, or two emails up the chain, is Mr. Sandani writing
8 back to Ms. Beach a couple of times, April 4th and April
9 6th, asking if there is an update following the March 28th
10 email. And then, the second email on the first page here,
11 Ms. Beach writing back and saying -- you know, apologizing
12 for having yet to hear her request, noting that:

13 "There is complexity to requests such
14 as Ms. M.'s with regards to non-First
15 Nations status. As mentioned to you in
16 my email of March 28, Indigenous
17 Services Canada has received a legal
18 opinion on the issue of First Nations
19 status as it pertains to Jordan's
20 Principle eligibility. That is still
21 being discussed. This is an important
22 issue that the government wants to be
23 sure is given appropriate consideration
24 and analysis before responding to
25 requests from individuals like Ms. M.

1 who do not have status at the time of
2 submitting a request."

3 And then there's some questions about
4 confirming information from Ms. M. So, just to confirm
5 here, the reason for the delay for Ms. M., who contacted
6 through the Caring Society on March 27th to April 6th and
7 then on to May 4th, is really is this policy review that
8 was ongoing. There are a couple of information questions
9 ---

10 **A.** And what -- there is -- of course, as
11 part of a policy review, there is legal analysis that has
12 been looked at. There is consultation with -- and
13 gathering views from the parties, and we got the Caring
14 Society's position. We got, I think, some other parties'
15 position on that as part of that work, and understanding
16 what is the demand in the case that came forward. You
17 casted the question around the non-status, those who are
18 children of 6(2) registered First Nation. I have to say
19 that, in this, there is other situation than that as well,
20 so we have to get to what is really the nature of the
21 demand for these situation and what could be the options
22 for addressing if there is a fundamental issue of fairness
23 there.

24 **Q.** But there's no end date for that
25 analysis yet. You don't have a -- you can't say today when

1 ---

2 A. We will be providing our recommendation,
3 but I cannot comment on what is the proceeding from ---

4 Q. And what's the next step then? Once
5 DISC comes to a view on this, what's the next step
6 following that?

7 A. I think we'll make our recommendation to
8 the Minister, and then, from there, a decision will be made
9 if this need to be brought to the attention of Cabinet or
10 other authority for policy discussion.

11 Q. And that would certainly be a step that
12 would be required if the Service Access Resolution Fund was
13 to be expanded to account for additional children coming
14 into the eligible group.

15 A. Likely.

16 Q. And that would involve Treasury Board
17 and also a Cabinet decision?

18 A. Likely. These process varies from one
19 type of authority to another.

20 Q. I see. Now, just at Tab ---

21 A. The organization sees about the
22 situation. The Minister is aware of the situation. In
23 fact, (inaudible) money during the level of approval and
24 denial. So far, overall, the denial is very low for any
25 requests. We have this group that are put pending right

1 now where we are putting attention because, at the end,
2 this program and this initiative is about saying "yes."

3 Q. Um-hmm.

4 A. And where we encounter a situation where
5 we say "no" we have to make sure that it is failsafe there
6 to make sure that these "no" are appropriate, do not have
7 undue impact on First Nation children, and that we look at
8 what might be the condition that should lead us to make a
9 different decision if there is, like, substantial equality
10 is be considered. I did not mention that before, but,
11 September 2017, we changed the process in terms of

12 Q. I don't want to get ---

13 A. --- having a failsafe process and ---

14 Q. Mr. Perron ---

15 A. -- these questions are being looked at.

16 Q. --- if I can just help, because I do
17 have other counsel coming behind me this morning. And we
18 will talk about some of this stuff with Dr. Gideon. I
19 don't want to cut your answers off.

20 A. But it's relevant because you're
21 implying somewhere that we are delaying and putting
22 children at risk here. I have to tell you there is several
23 step in each of the denial, or even in these cases that
24 have been pending, being looked at for consideration to
25 make sure that we are making the best decision possible on

1 these. And so, this second step, which is Jordan Principle
2 focal points in the region are not authorized anymore to
3 say "no" to cases. And any denial needs to be first
4 reviewed by an ADM in HQ that have a mandate to verify and
5 assess and challenge all these cases to make sure we
6 haven't missed a point, or guide Jordan Principle focal
7 point to further assess the situation before a denial is
8 being issued. So, it's why, right now, the level of denial
9 is very low overall compared to the number of requests we
10 have received. And it's very important in that because we
11 may take time to do sound analysis and proper consideration
12 of issues, but we have built some measure in the system to
13 avoid or minimize the impact on children because the idea
14 is to support them as much as we can.

15 Q. No, and I realize there's an apparatus
16 around these cases, but the point that I'm trying to get
17 your evidence on, which I've been getting your evidence on,
18 is that the 50 or so children, when they come to the part
19 of the apparatus that is the Service Access Resolution
20 Fund, so that fund that will provide services either -- you
21 know, that are available within the normative standard
22 right away, or, if they're not available in the normative
23 standard, will consider the substantive equality
24 considerations, that that door is closed to this group of
25 55 children. I understand there may be a whole different

1 swath of circumstances and individuals within that, but
2 that there is a -- there's a -- at least, in (inaudible) at
3 the first -

4 A. And we are not sure that these 53 cases
5 that were mentioned -- I hope it's 53, the right number,
6 but it's in this range -- are all children of 6(2). I
7 cannot even tell you about this, so ---

8 Q. No, and I understand that, and I'm not
9 ---

10 A. Maybe the issue you're bringing forward
11 is for a subset of these, and this is what the team has
12 been asked to assess and understand.

13 Q. And now, just in terms of some of the
14 questions then that are being asked in Tab 14 here, this is
15 -- Ms. Beach had mentioned in the Tab 13 email she had some
16 follow-up questions. And so these are between Monday,
17 April 9th -- and that's just on page 5 there, that's the
18 first email -- and then up to ---

19 A. So, you're under, sorry, Tab 14?

20 Q. Tab 14, sorry. It's an email chain here
21 between JM and Ms. Beach.

22 A. Okay. The first date is April 17, isn't
23 it?

24 Q. That's the -- because of the way these
25 work, that's the most recent email.

1 A. Yeah.

2 Q. It goes back in time.

3 A. Okay.

4 Q. So, page 5, we've got April 9th. Ms.

5 Beach is saying that she's the Director of Jordan's

6 Principle, located in Headquarters. Has a few questions.

7 And then we see the questions here that are first on page

8 3, on April 13th:

9 "Question: Do you or your daughter's
10 father have a status number as provided
11 by DISC?"

12 And "daughter" is subsequently corrected to
13 "son" here.

14 "...has a status number as provided by
15 DISC or does your daughter live on
16 Reserve, and if so, which one?"

17 And so, just a question here in terms of the
18 information gathering process. I mean, it's -- you know,
19 Ms. Beach lets Mr. Sandani know on April 6th that she's got
20 some questions. Obviously that's -- she doesn't hear back
21 from Mr. Sandani until the 9th, which was the Monday.
22 Obviously the weekend intervened. And she gets in touch
23 first on the 9th, and then there appears to be some email
24 difficulty and then gets the questions in on the 13th. I
25 mean, it's really not until the 17th again that it's been

1 clarified. Like, this -- when you say that these cases are
2 being looked into, is it usually -- or do you have a sense
3 of whether it's a week like this, if that's a normal period
4 of time it takes DISC to find out this information?

5 **A.** I think our commitment is to do the
6 initial assessment within the timeframe that we have been
7 guided by the Tribunal. On that specific situation, I
8 cannot comment because I don't know what are the
9 circumstances, the type of information that came in on all
10 this. I'm thinking of what Mrs. Beach is trying to assess
11 is that, if the child is not registered, is there a
12 potential that, under the parents, we can find indication
13 that the child is entitled to be registered. I think this
14 is what she's doing. Normally this should happen pretty
15 fast. I don't know what was communicated to the parents or
16 to the demander from the Jordan Principle focal point,
17 which is really the person that should initially have the
18 interaction and give a signal in terms of the response to
19 the need. So I cannot comment on what you're asking
20 without reviewing the sequence and the chronology of all
21 the steps. Bonnie Beach here, it's an HQ worker, someone
22 that gets involved only on cases that cannot be resolved at
23 the local level. So it's -- if I had a better -- if I had
24 time to read all this, I may be able to provide you more
25 substantive comments, but ---

1 Q. Well, and I don't necessarily expect you
2 to have, you know, particular substantive comments about
3 this individual case. It's more the idea of, you know,
4 there's a 48-hour timeline and there are individuals whose
5 cases are, under Canada's current program criteria, a "no."
6 And essentially, there's a deferral of that and an
7 information gathering process, and to try and get a sense
8 from you, if you know, given that you're now the Associate
9 ---

10 A. If we -- where we ---

11 Q. I'll just finish my question.

12 A. Yeah, sorry.

13 Q. Given that you're Associate Deputy
14 Minister now and not the Senior ADM, for individuals who
15 fall into this category who are essentially waiting for a
16 "no" or a "yes" if policy changes, are they approached --
17 you know, here there's been a lot of time and a lot of back
18 and forth. Is the Department's position that that's
19 appropriate or is it that they should be resolved in the
20 same 48-hour timeline or the same timelines in the order as
21 amended in November?

22 A. I think we should strive to give an
23 answer to all the demander within the time that the
24 Tribunal gave us. Here what I see is that they are trying
25 to give us the further -- if the initial answer is "no"

1 based on the fact that the child is not registered, I want
2 the staff in the region and HQ to try to push the envelope
3 to make sure that there is not a way to say "yes" or we
4 should not say "yes" because maybe the child is eligible
5 for registration. This can take a bit more time because we
6 have to access some additional information that we do not
7 request upfront. So, I think the attempt is still to
8 respond within the 48 hours timeline that have been given,
9 and in all case, to perform a risk assessment or what is
10 being asked. Is there an urgent need here. So, to make
11 sure that people are not waiting for us to act on something
12 that require urgent attention.

13 **Q.** Now, if we could just look at Tab 15
14 here, you'll notice there's an "A" and a "B".

15 **THE CHAIR:** Mr. Taylor, I'm sorry to
16 interrupt. Do you have -- how long do you have before --
17 I'm thinking of a break soon. So, I don't want to cut you
18 off in a line of questioning. And I'm thinking about the
19 witness too. He's been there testifying for an hour and a
20 half, so, I'm just mindful of this.

21 **MR. TAYLOR:** A break is fine by me, and I'm
22 about to move to another set of documents. That's fine.
23 I'm about three-quarters of the way through, so I don't
24 expect to be too much longer. I should be done before
25 lunch.

1 **THE CHAIR:** Okay. So, do you want to -

2 **MR. TAYLOR:** A break is fine.

3 **THE CHAIR:** --- complete this question or
4 just ---

5 **MR. TAYLOR:** No, no.

6 **THE CHAIR:** - stop here? Okay. I know
7 this is a different process, but to give it credibility, I
8 would still request the witness to not discuss your
9 evidence today until you've completed your testimony. Do
10 you understand? So, you remain under oath. Unless it's
11 helpful for parties to have discussions about information
12 gathering. If nobody has any objection, then these types
13 of conversations could occur during the break or during
14 lunch. Do anybody object?

15 **MR. TAYLOR:** I think, as you noted, Madame
16 Chair, we have a usual process when witnesses are under
17 examination. At least for our part, we can -- if we have
18 questions on information sites, we can hold them till the
19 end of the day.

20 **THE CHAIR:** Okay.

21 **MR. TAYLOR:** So, to follow the normal
22 process, we'd be happy with that.

23 **THE CHAIR:** Okay. Thank you. So, we'll
24 take 15 minutes break. Thank you.

25 --- Upon recessing at 11:17 a.m.

1 --- Upon resuming at 11:41 a.m.

2 THE CHAIR: Are you ready to continue?

3 MR. TAYLOR: Yes, we're ready to proceed.

4 --- BY MR. TAYLOR:

5 Q. Now, Mr. Perron, I just wanted to ask
6 you a question to follow up on some of what we were
7 discussing in terms of the 50 children -- or we think the
8 number is about 50 who are kind of in a deferral stage,
9 given the issue with regard to their status. And one of
10 the things you'd mentioned this morning was the
11 availability of provincial programs to these people or to
12 these individuals, these children, these families. And I
13 was wondering if one of the options that was being
14 considered by DISC is for Canada to provide the service
15 upfront and then to seek reimbursement from the province
16 after the fact.

17 A. I think it was mentioned in one of the
18 order that this is a direction that should be taken. And,
19 of course, if we feel that there is places where we need to
20 recover, we can take action of this nature.

21 Q. But in a case of a child who doesn't
22 have **Indian Act** status and is not eligible for it, who
23 arrives to a focal point seeking a service that Canada
24 knows the province can provide, the current direction is
25 not to provide that service and then seek reimbursement

1 from the province.

2 A. Sorry, I have difficulty to follow your
3 scenario here.

4

5 [4-minute French section - not transcribable]

6

7 --- BY MR. TAYLOR:

8 Q. I have a question about Yukon and about
9 -- and again, if this is technical, we can do it by way of
10 a request, but, in Yukon, you're aware that there are self-
11 governing First Nations in the Yukon.

12 A. Right.

13 Q. And that those self-governing First
14 Nations, they determine their membership by their
15 membership codes and not by the **Indian Act**. And that there
16 is also, under the **Indian Act**, there's a Section 10, which
17 allows Bands to adopt a membership code, and so you have,
18 in those cases, Band membership that is not synonymous or
19 equivalent with **Indian Act** status. How are those cases --
20 so, Yukon self-governing First Nations, Section 10 **Indian**
21 **Act** Bands, and then other First Nations with self-
22 government agreements -- how do they interact with the
23 Service Access Resolution Fund?

24 A. [French - not transcribable].

25 Q. Now, if we just take a look at Tab 15.

1 And as I mentioned, these are -- the scope of the questions
2 is really focused on the question of non-status First
3 Nations persons. So, it's 15(a) and 15(b). These are both
4 communications concerning Inuit children and families.

5 The first is an email, October 10, 2017, and
6 the second -- and this is where we see Ms. MacEachern, who
7 we mentioned earlier, that she's a Jordan's Principle
8 Service Coordinator with the Confederacy of Mainland
9 Mi'kmaq. And that's in Truro, Nova Scotia.

10 And the second is a letter from Tracey
11 Hazelwood to Andrea Evans, who is noted as being an
12 assistant professor at the Hospital for Sick Children. And
13 in the first Tab A, it's noted in the first paragraph, the
14 reason for the denial or ---

15 "The reason they are unable to fund the
16 request is that Inuit children are not
17 eligible for coverage under Jordan's
18 Principle at this time."

19 And then the February 5th, 2018 letter, the
20 third paragraph:

21 "At present, Jordan's Principle does
22 not include coverage for Inuit
23 children. Inuit children living in the
24 territories receive services from the
25 territory in which they live. This

1 includes Inuit children who move to the
2 territories from another part of
3 Canada."

4 So, at least in terms of the question of
5 Inuit children -- and the first email notes that:

6 "The question of Inuit children is
7 currently being reviewed by our
8 national office."

9 And that's October 2017.

10 **A.** Yeah.

11 **Q.** So, is it likely that when we look at
12 when this issue started arising, that it's at least by the
13 fall of 2017 that we're considering both Inuit and non-
14 status children, or were Inuit children considered earlier
15 than the non-status ---

16 **A.** Again, it's when these cases came
17 forward that we started to question about how we should
18 manage these situation.

19 **Q.** I see. So, at least with regard to --
20 so, for Inuit children, we can say it's -- at least by
21 October 2017, it's being considered by the national office.
22 And the non-status piece, it will depend on what we hear in
23 terms of that.

24 **A.** And during fall, maybe even summer last,
25 there was an Inuit case where I was personally involved in

1 trying to find a solution.

2 Q. Right. So the issue would come up ---

3 A. There was, probably a year ago, a case
4 of -- a few cases of Inuit children asking for support.

5 Q. It'd be fair to say that DISC or Health
6 Canada has been considering the issue for at least the last
7 year.

8 A. So, we have been looking at that. We
9 are concerned about the fact that Inuit children are facing
10 challenge in accessing services in the territories and in
11 the northern part of the country. We are actively
12 participating in an Inuit/Crown partnership table where
13 health and safety of children has been identified as a
14 priority, and we have taken a number of measures to enhance
15 services and programming to serve Inuit population in the
16 area of mental health, mental child health, suicide
17 prevention, tuberculosis. And there is other priorities
18 that are being worked on in partnership with the land claim
19 organization, the Inuit land claim organization,
20 territorial/provincial government, to try to get to
21 improvement of service overall. But this is not done under
22 Jordan Principle. It's done under action to improve
23 service and support Inuit population and close the health
24 and economic and socio-economic gaps between the Inuit
25 population and the Canadian population. There is a

1 process, and we are working on this very seriously.

2 Q. Tab 16.

3 A. Yes.

4 Q. So, this is a news release, and it's
5 dated August 28th, 2017.

6 A. Yeah.

7 Q. And it's -- or I should say, sorry, it's
8 a backgrounder, which was attached to a news release. And
9 this is from the -- at least from the note at the top
10 right-hand side of the page, it says, "Prime Minister of
11 Canada," so, from the PMO. So, this is saying, the
12 government:

13 "We recognize that relationships built
14 on colonial structures have contributed
15 to unacceptable socio-economic gap.
16 While day-to-day realities in
17 indigenous communities must continue to
18 be addressed directly, there must also
19 be a path to systemic change."

20 And then there's a list of progress and
21 structures that are at work. And then:

22 "These structures are advancing
23 important work, but existing colonial
24 structures have not helped us work
25 coherently on both tracks. We believe

1 that we need to do more to be able to
2 construct a relationship that has never
3 before been achieved with success. In
4 particular, Indigenous and Northern
5 Affairs Canada, which serves as a focal
6 point in the government's relationship
7 with indigenous peoples, is charged
8 with implementing the **Indian Act**, a
9 colonial paternalistic law. INAC was
10 also not designed or conceived of to
11 support and partner with Inuit and
12 Metis peoples based on their unique
13 history, circumstances and aspiration.
14 To put it plainly, the level of
15 ambition of this government cannot be
16 achieved through existing colonial
17 structures."

18 So, that last sentence:

19 "The level of ambition of this
20 government cannot be achieved through
21 existing colonial structures."

22 Is that something that animates your work as
23 Associate Deputy Minister at DISC?

24 **A.** Yeah. And it did also guide the
25 solution of INAC as a department in creation of two new

1 structure, Indigenous Service Canada that we talked about a
2 bit earlier today, and the Crown and Indigenous
3 relationship and Northern Affair organization, so, with a
4 different mandate. And I had mentioned before in my
5 intervention, our mandate is to try to say "yes" wherever
6 we can and advance trying to find solution.

7 And this is driven also by collaborative
8 work with partners, indigenous partners. So, we have
9 distinction-based engagement process to try to move
10 priorities, and one of them is the Inuit/Crown partnership
11 table that is head by the Prime Minister, and then there is
12 Minister table under that, and official table under that,
13 and we are advancing a number of priorities, and one of
14 them is really to improve health, safety and wellbeing of
15 Inuit children. And we have taken a number of measures
16 that aim to build better access and support in Inuit
17 communities overall. And this is done with Inuit partners,
18 but also with territorial government. And our commitment
19 is advancing this agenda there.

20 Q. But, at least for the moment, access to
21 some of those initiatives that are advancing the agenda is
22 filtered by **Indian Act** status?

23 A. Not for the Inuit.

24 Q. But not -- I'm -- not on Inuit. I'm
25 referring mainly to the non-status question here with the

1 Jordan's Principle.

2 A. We have distinction-based work with each
3 of the three group, the Metis, the First Nation and the
4 Inuit, and each of them -- each of these process have their
5 own priorities, and we are advancing them. So, status is
6 not necessarily an impediment to advance the agendas. That
7 is something that is relevant when it comes to the First
8 Nation process, but it is not an impediment when it comes
9 to the Inuit process because Inuit process have -- Inuit
10 have access to distinction-based programming and services,
11 and there is funding in the last few budget that was
12 directed to Inuit. Inuit have access to a range of program
13 that are sometimes specific to them as well. So, it's -- I
14 would not agree with your assertion that the Indian status
15 have an impact on the Inuit population.

16 Q. No, I should be a bit more -- I
17 apologize if I was unclear. I was referring to the access
18 of the First Nations children who don't have **Indian Act**
19 status to the Service Access Resolution Fund. It seems to
20 me that the Service Access Resolution Fund is something
21 that falls within this bulleted list of progress that is
22 being made on the tracks that the government is pursuing,
23 and that certainly that -- as regards those children --
24 setting aside Inuit and First Nations children who do have
25 or are eligible for **Indian Act** status, that this -- what's

1 noted as being a colonial and paternalistic law is being
2 applied as a filter with regard to those children accessing
3 that instrument of the Service Access Resolution Fund.

4 A. There is clear recognized problem with
5 the **Indian Act** and this is why working on self-
6 determination, empowering nations to deliver, build their
7 services, run their services, instead of having government
8 doing it is the way to advance self-determination. And
9 this is part of our mandate. It's part of the DNA of our
10 new department, which has something else in its DNA, which
11 is the obsolescence. The idea is that, at one point, this
12 department will not be relevant, and the service will be
13 billed, in the end, of the nation themselves. So, we will
14 be there as a partner, but we will not have -- we will not
15 be involved in the service delivery. But this is about
16 self-determination. It's being done sector by sector and
17 nation by nation, and we are making progress. So, yes, the
18 **Indian Act** is an instrument of the past, but we need to
19 build alternative to this.

20 Q. Now, looking at Tab 17, this is the
21 mandate letter for Minister Philpott, October 4th, 2017. I
22 imagine you've seen this document before?

23 A. Yes.

24 Q. And it's something you work with on a
25 regular basis?

1 A. Yeah.

2 Q. And this guides the implementation of
3 programs and your work.

4 A. The overall direction of the department,
5 yes.

6 Q. Now, over the break, we managed to
7 obtain the printout of today's version of the Jordan's
8 Principle homepage.

9 A. Yes.

10 Q. So, it's, unfortunately, not tidally
11 bound in the binder, but it's loose. And this is a website
12 you recognize?

13 A. Yes.

14 Q. And are you involved in the approval of
15 the content that goes up on this website?

16 A. Initially when -- I think after the May
17 2017 Tribunal order when we have changed the statement of
18 the definition and decided to use the terms that were in
19 the order itself, yes, I was involved. Since, there was
20 change probably made in the document that I was not
21 involved in.

22 Q. And just to confirm the terms that were
23 in the order itself, if we look at page 3, 135, and then
24 there's the little (i):

25 "It's a child first principle that

1 applies equally to all First Nations
2 children whether resident on or off
3 Reserve."

4 And so, again, that's all First Nations
5 children, and not First Nations children with **Indian Act**
6 status or who are eligible for it.

7 **A.** In the application, it has been First
8 Nation children with status and eligible to be registered.

9 **Q.** Yes. And in terms of -- we discussed
10 leadership a bit earlier. Is there any way for the public
11 to know that it's limited to **Indian Act** status before they
12 contact the focal points?

13 **A.** I would say a number of products that
14 you have pointed to this morning talk about First Nation in
15 general and do not mention status, so, I would say probably
16 for general public, no. I would assume that, most of the
17 time, people with whom we interact, though, in the channel
18 we are using to reach out, children and families will know
19 that is for children with status because we mostly work
20 with partners that are related to Bands, and so they know
21 that indigenous services -- most of the program are for
22 indigenous with status.

23 **Q.** Now, I have a few questions for you
24 about some matters flowing from your first affidavit. So,
25 we're now into some of the background points. So we've

1 kind of finished with point 1 of the letter. And like I
2 said, I'm not going to go through all seven points with
3 you. But I just -- I had some questions about the review
4 of past cases from -- I believe what was ordered was
5 November 2009 forward, but DISC went back two years behind
6 that, November 2007.

7 Now, in terms of when we're talking about at
8 paragraphs -- and if this is helpful to you, it's 19 to 23
9 of your first affidavit, which starts on page 3.

10 A. So, this will be the November affidavit?

11 Q. November, yes. Yeah, it's addressed in
12 both, but I think we can just look at the first. In
13 paragraph 20, your affidavit says that:

14 "Canada reviewed all of the requests
15 that had been denied since April 1,
16 2007."

17 So, just when we're referring to ---

18 A. Could you just give me a minute?

19 Q. Yes, absolutely.

20 A. I try to find the space in the document.

21 Okay, you said paragraph 20?

22 Q. Paragraph 20, yes, the one that starts,
23 "Canada reviewed..."

24 A. Okay, good.

25 Q. So, it says:

1 "Canada reviewed all of the requests
2 that had been denied since April 1,
3 2007."

4 So, when we're talking about the idea of a
5 denial, that's a denial under the Jordan's Principle
6 program as it existed at the time, or is that a general
7 request for services of the federal government that was
8 denied?

9 A. It's all the requests that we had
10 received under Jordan Principle at the time, yes.

11 Q. So, if there had been a request to, for
12 instance, the Non-Insured Health Benefits Program that was
13 denied and not referred to Jordan's Principle, that case
14 wouldn't have been considered.

15 A. Early on, for a number of services under
16 Non-Insured Health Benefit Program, there was a process in
17 place for the program, when they were not able to approve
18 based on the Non-Insured Health Benefit Program, to refer
19 these case to Jordan Principle unit for them to be
20 considered there. So there was an internal referral
21 process.

22 Q. And you said "early on." Did that
23 change?

24 A. Early on, I think when we put the -- we
25 put the measure -- the first real process was implemented

1 in June 2016. So, at that time, we started to look at now
2 the information can flow within the organization to make
3 sure we are not missing. And this was applying, for
4 example, to medical transportation.

5 Q. Right.

6 A. So, Jordan Principle allowed us to go
7 way further than what is normally covered by provincial
8 programming. So, we did have a referral process. It was
9 maybe a bit different from one region to the other, but
10 there was that internal limit. So, some of these potential
11 denial that will have come from basis program have been
12 captured by Jordan Principle over time.

13 Q. Now, in terms of "over time" you
14 mentioned June 2016. So that's under the child first
15 initiative. But, before -- so, going back to before the
16 2016 decision from the Tribunal, were those kinds of
17 referrals happening between NIHB and the Jordan's Principle
18 team at the time?

19 A. It was, but, as you know, there was no
20 case that were accepted under Jordan Principle, so,
21 solutions were found within other program.

22 Q. So, in terms -- assuming solutions were
23 found, it would have been from another program.

24 A. Yeah.

25 Q. But the denials from NIHB or other

1 programs prior to the child first initiative beginning
2 sometime in the summer of 2016, there's no way for you to
3 say whether those went over to Jordan's Principle as well
4 or if they stayed with the unit that denied them in the
5 first place.

6 A. (Inaudible) medical transportation, I'm
7 pretty certain they were going. On others, because there
8 is appeal process built in, they were not systematically
9 transmitted. I think maybe Dr. Gideon will be able to
10 provide you a bit more detail, but I do think that when the
11 appeal process is exhausted, under the regular program,
12 maybe there was an (inaudible) out from the program to
13 Jordan Principle for consideration.

14 Q. But you're not sure.

15 A. But there was -- I'm aware of cases that
16 were denied under Non-Insured Health Benefit Program that
17 have been accepted under Jordan Principle.

18 Q. That would be after 2016, though.

19 A. Yes.

20 Q. And would that have included ---

21 A. Because if it -- before that, as you
22 know, there was no case accepted of Jordan Principle.

23 Q. And that would have included the cases
24 for orthodontics prior to 2016 that would have been denied
25 through the NIHB. Those would not have been referred on to

1 Jordan's Principle.

2 **A.** They would not have been referred to
3 Jordan Principle. And one of the reason is that, overall,
4 the data we have on Non-Insured Health Benefit, it's around
5 24 million claims a year. Most of them are being paid
6 right on time, real time. And the data doesn't allow to
7 extract the information that will allow us to see if, at
8 the end, the child may have received something else covered
9 by the program. The program data has not been structured
10 this way.

11 **Q.** And in terms of your review or your
12 team's review that was conducted before your November
13 affidavit -- I believe just -- I may be confirming this
14 again, but that was limited to the Jordan's Principle
15 program and not to denials under another program.

16 **A.** No. You're right. But we did advertise
17 -- and I think it was in my affidavit -- we did advertise
18 and did some research with Library and Archive also to try
19 to identify cases that might have qualified.

20 **Q.** And, actually, I have a few questions
21 for you about that.

22 **A.** Okay, good.

23 **Q.** So, 19(c), which is just a few lines up
24 from paragraph 20, which we were just looking at -- it's on
25 page 4.

1 A. Yeah.

2 Q. And this is still in your November
3 affidavit.

4 A. Yeah.

5 Q. So, it says:

6 "Health Canada contacted Library and
7 Archives HC."

8 A. Yeah.

9 Q. So that's Health Canada's Library and
10 Archives?

11 A. No. It's Library and Archive Canada, I
12 believe.

13 Q. So, what would the HC -- because I had
14 read that as Library and Archives Health Canada.

15 A. I don't think there is something called
16 Library and Archives Health Canada.

17 Q. Okay.

18 A. So it's why my assumption is that it's
19 Library and Archive Canada.

20 Q. Well, it's your affidavit, so, you would
21 know.

22 A. We can reconfirm this.

23 MR. TAYLOR: Could you just confirm if it's
24 an internal library or if it's the ---[u]

25 --- BY MR. TAYLOR:

1 Q. Now, it said:

2 "A literature review to identify
3 articles regarding Jordan's Principle."

4 So, are those scholarly articles or are they
5 news media articles?

6 A. It's mostly, I think, news media
7 article. This is where we would have found issues that
8 would have been raised specifically around a situation.

9 Q. And then 19(d):

10 "Regions contacted all communities by
11 email or informal communications
12 requesting that they contract their
13 Jordan's Principle focal points to
14 notify them of any requests that were
15 made and denied."

16 So, those informal communications, who would
17 they have been with and what kind of form would they have
18 taken? Obviously not formal, but what does that mean,
19 "informal"?

20 A. I cannot comment on who exactly
21 communicate in each region systematically. We can check
22 and confirm the distribution and the contact.

23 Q. You'd have a description then of what

24 --

25 A. I got confirmation before I signed my

1 affidavit that this was done because we had asked all the
2 regions to do it, so this was a checkpoint. We also
3 advertise to invite parents to come back to us if they have
4 been denied or if they have received a "no" in the past,
5 and we received some cases through that process.

6 Q. So, I'm just going to confirm the
7 request, so we have it on the record. So that would just
8 be, for 19(d) of the November affidavit, who are the and
9 it says, "all communities" but who are the individuals
10 within the communities contacted and what was the means of
11 doing so in terms of what's meant by "informal
12 communications." [u]

13 And so, in terms of paragraph 20, now it
14 says:

15 "Canada reviewed all of the requests
16 that had been denied since April 1,
17 2007."

18 So, given our exchange earlier, we wouldn't
19 have necessarily all denials covered. It's really all
20 denials that were identified through the Jordan's Principle
21 program as it existed at the time.

22 Now, in terms of paragraph 21 -- and this, I
23 believe, aligns with some of your evidence earlier today --
24 it mentions:

25 "Through the re-review, it was

1 determined there were a number of
2 instances where service requests had
3 been previously submitted under
4 Jordan's Principle but had been
5 resolved via other programs. This
6 means the existing programming was
7 leveraged to address the needs of the
8 child."

9 But if I understand what you were saying
10 regarding the data set, we don't know how long it took to
11 get from the time of inquiry to the time of the service
12 being provided.

13 **A.** No. Maybe the detail of all the
14 assessment that was done on the case can tell the story,
15 but I don't have this with me.

16 **Q.** So, it may well have been a period of
17 time longer.

18 **A.** So, I think the main question was what
19 was the demand initially, and have we found a way to get
20 through this kind of service or a service that will meet
21 the need.

22 **Q.** Yes.

23 **A.** And for each of the cases that we'll
24 look at, the conclusion was documented.

25 **Q.** But in terms of there being, you know,

1 two components to Jordan's Principle being without denial
2 or delay, you're able to address the denial aspect of it
3 through whether the service in fact was provided in the
4 end, but the delay, in terms of how long it took to
5 provide, that's not something that the records ---

6 A. We would not necessarily have this
7 information because we were operating under different
8 operating rules.

9 Q. Now, in terms of your review I mean,
10 2007 is quite a while ago now.

11 A. Yeah.

12 Q. Children who were seven will be coming
13 up on 18. Did you encounter any children who are now
14 adults who had been denied services in their childhood?

15 A. I think someone mentioned to me that
16 there was an instance, and I think the direction to staff
17 has been to treat these case with open mind, and that the
18 age might not be, like, the right criteria because we are
19 trying to redress something if there is something which
20 should have been done.

21 Q. Does DISC have any --

22 A. But, of course, the needs might not be
23 present, the same needs that was present maybe five or ten
24 years ago, so

25 Q. It could be worse.

1 there are? Because there may not be cases ---

2 A. I think there might be one case that
3 I've heard at the time.

4 Q. So, just looking at the website here,
5 the long page, in terms of the -- it states in the little
6 paragraph with the (i) next to it:

7 "From July 2016 to March 2018, there
8 have been more than 70,000 requests for
9 products, services and supports
10 approved for First Nations children
11 under Jordan's Principle."

12 And I understand that the approval rate is
13 rather -- is high. Most requests are approved.

14 A. Yes.

15 Q. And so, the total number of requests
16 shouldn't be much more than 70,000, given the percentage is
17 quite high.

18 A. Yeah. I don't have the actual denial
19 number, but it's very low overall.

20 Q. And so, in terms of past cases that
21 might still be in the system, is DISC working with the
22 assumption that most of these needs will, like the ones
23 that are in the system now, be ones that have a high
24 likelihood of being approved or needing to be approved?

25 A. I'm not sure I understand your question

1 about "those who are in the system," what you mean by that.

2

3 [5-minute French section - not transcribable]

4

5 --- BY THE WITNESS:

6 **A.** And there is programs for adults. For
7 example, we have a mental health benefit program that allow
8 20 session of mental health support for any First Nations
9 -- there is ---

10 **Q.** I was just asking about the ---

11 **A.** These may have been addressed by these
12 other source that are ---

13 **Q.** But there was not -- there wasn't one
14 child who is now an adult who didn't receive the services.
15 There's one you know of, but there are more and likely many
16 more.

17 **A.** Yeah. But some may have got services by
18 other means. Right now, Jordan Principle become often an
19 entry point rather than going to the other places where
20 there was actually service available. And it's fair.

21 **Q.** Now, in terms of DISC's definition of
22 best interests of the child, we don't need to turn it up,
23 but there is a mention of that in the Minister's mandate
24 letter of making, you know, decisions or implementing best
25 interests of the child. What's the definition of best

1 interests of the child that DISC applies?

2 A. You're asking -- I think we have worked
3 on -- and with the parties . to try to develop tools to
4 assist our people that are doing the decision at the front
5 line to assess substantial equality -- substantive equity
6 substantial . I always mix these two term. That one
7 that has been prescribed by the Tribunal. Let's say we
8 agree on this. And because, on the day-to-day basis, we
9 have tens of people across the country that are reviewing
10 case, and we need to give them tool. So, I think, as part
11 of my affidavit, I have provided an outline of the initial
12 questions, and we have refined them with the participation
13 of the parties here to make sure that folks on the ground
14 look at all the case from that perspective as well. First
15 they will look at is this something that normally is
16 available to all. So, if "yes", then you go there. And
17 then, after that, we provide them with a series of
18 questions to look at to prevent apprehensive, for example,
19 to prevent the fact that the family could not care about
20 their kids and will have to move or get outside of their
21 community, or to prevent situation where the child will not
22 have access to culturally safe services. So, we have
23 provided criteria for the reviewer, the Jordan Principle
24 focal points, to be able to make the best decision possible
25 in each and every case. But it has to be looked at in the

1 context. And this is the difficulty, but I think,
2 generally speaking, the Jordan Principle focal points
3 understand that and try to push this to the maximum. And
4 if they are uncertain and they need guidance -- because
5 sometimes maybe in their region they will only see one case
6 of this nature coming to the HQ team for some support.
7 They may rely on what have been seen elsewhere. And
8 sometime we are getting request for things that are --
9 practices that are not approved in Canada, a therapy that
10 ---

11 Q. We're getting a little bit off my
12 question, which was ---

13 A. But all these things gets into the
14 assessment of trying to make the best decision in the
15 interests of the child and -

16 Q. So, that's how. I understand. There is
17 a whole process for how, and there is information in your
18 affidavit as well, both of them, and I'm sure in Dr.
19 Gideon's next week. But what I'm really getting to is, in
20 terms of the best interests of the child, if you have a
21 definition at a very high level that you work with in
22 thinking of what is the child's best interest.

23 A. I think it will be oversimplifying
24 having a definition with a few lines. We will not get
25 there. We have to get into the detail about all the factor

1 that need to be considered, and this is the approach we
2 have taken with the key questions that have been outlined
3 in the technical material we have provided to the staff.

4 Q. So, speaking to some of the, I guess,
5 technical material, I have a question about training ---

6 A. Yes.

7 Q. --- which you address in your
8 affidavits. Now, at Tab 18, these are more documents that
9 may not be familiar to you. So I've got -- well, really,
10 there are two documents. I could have put an "A" and "B"
11 tab as I did for the letters under Tab 15. But the first
12 two pages here, so the first sheet of paper is a learning
13 roadmap for INAC employees. And then, over the page, which
14 is really the last four pages here, is a learning roadmap
15 for INAC executives. Is this the kind of document you've
16 seen before?

17 A. No. It's the first time I see that.

18 Q. Okay. Well, at the top right-hand
19 corner of the page, it says, "Released under the **Access to**
20 **Information Act.**" So, this is the information coming from
21 March 30, 2017, and it's got -- well, it notes INAC at the
22 front, and there's a number of ANSE (Sp?) email addresses
23 along the way. And it notes modalities in terms of -- or
24 sorry, registrations, so how to register for courses
25 offered by INAC.

1 A. Yeah.

2 Q. And then, also, CSPS, which I take is
3 Canadian School for Public Service.

4 A. Yeah.

5 Q. And then modalities online, virtual
6 courses, and then classroom courses. So, turning the page
7 on the employee side -- and we'll just deal with that one
8 because it's the same box for executives. So, under the
9 heading of "Indigenous Awareness," "Aboriginal Elder
10 Protocol" and "Inuit in Canada." And the Elder Protocol is
11 noted as being -- it's got the mouse next to it, which is
12 that online course. So, are you aware that the only
13 mandatory training for all -- at least at the time -- INAC
14 employees regarding indigenous awareness was these two
15 courses?

16 A. I was at Health Canada. I was not aware
17 of the curriculum that was used at INAC.

18 Q. I see. And at DISC, what mandatory
19 curriculum ---

20 A. We are working on this right now. Our
21 mandate is to indigenize further the organization, so we
22 are working on a plan to bring training. There is an RFP
23 that had been launched in collaboration with ITK and AFN to
24 try to build a new program as well. I think Dr. Gideon can
25 talk to you about that because she is leading the process

1 to refine the tools that we have had at Health Canada
2 before. There is also a community development program
3 which involve indigenous employee that existed at Health
4 Canada before that have been stopped but continue in the
5 former INAC organization, which is really well regard. So,
6 it goes further than these online training. That brings
7 people into a much deeper understanding of the culture, the
8 relationship, and the past story as well. So, I cannot
9 offer you more because I haven't seen this program in
10 action, but I have heard really really positive comments
11 from many parts of it including indigenous people from the
12 various groups we are dealing with.

13 Q. And are those mandatory courses that all
14 employees must take?

15 A. They are not mandatory course under
16 indigenous service at this time because, since the
17 organization has been created only a few months ago, we are
18 building these processes and we will be seeking input from
19 our partners about how we structure this properly.

20 Q. And have you taken either of these ---

21 A. But these have not stopped. I think
22 they are still active, but, in terms of saying what in
23 Indigenous Service Canada is mandatory, it's coming.

24 Q. And have you taken either of these
25 courses?

1 **A.** I've taken the -- but not the INAC
2 course, but I took the aboriginal awareness course at
3 Health Canada before and participated to a number of
4 events, yes, over the years. You know, I've been there for
5 almost 18/19 years in these programs, so I have
6 participated in many sessions.

7 **Q.** Have you taken training on best
8 interests of the child and child development?

9 **A.** Not personally, no.

10 **Q.** Do you know if some of the work on best
11 interests of the child, for instance, done by the UN
12 Committee on the Rights of the Child, is part of what Dr.
13 Gideon is working on with her team?

14 **A.** I don't know. You will have to ask her.
15 I know that these things were -- this question was
16 discussed now. I cannot tell you the detail about the
17 training approach.

18 **Q.** Are you familiar with the UN Convention
19 on the Rights of the Child?

20 **A.** This was brought to my attention by Dr.
21 Blackstock a number of months ago for the first time, and
22 then I did my reading.

23 **Q.** And does that reading inform your view
24 on the best interests of the child?

25 **A.** I think, yes, but, again, like I said

1 before, it's quite general in the application. We need to
2 offer the team members tools for them to translate this
3 into application on a case-by-case. I think the philosophy
4 is something that can be built into training and can be
5 communicated to staff for sure.

6 Q. In terms of that case-by-case assessment
7 of each child, the values and the principles ---

8 A. I would say it's not the case-by-case by
9 child. We are not assessing the child. We are assessing
10 the needs of the child.

11 Q. In terms of each child who has a service
12 need that comes into contact with your program
13 architecture, that contextual evaluation, which has to
14 happen on, I guess, a request-by-request basis, that should
15 take into account the values that are underlying the United
16 Nations Convention on the Rights of the Child.

17 A. Generally speaking, yes.

18 Q. Just under Tab 19, it's the document --
19 it's called the Spirit Bear Plan.

20 A. Yeah.

21 Q. Is this something you've seen before?

22 A. Yes.

23 Q. Now, in terms of the plan, there is a
24 number of points that are directed to a number of different
25 organizations, but in terms of some of the -- the point

1 that's directed at the federal government, what efforts is
2 DISC taking to ensure that all federal programs outside of
3 those that are -- Jordan's Principle and Child Welfare --
4 provide services to First Nations children that aren't
5 discriminatory?

6 **A.** There is not many program in our
7 infrastructure that are individual services, that are
8 focused on individual services. Most of the service and
9 program are directed to communities, so, we are funding
10 community organization to deliver their programs and their
11 services. So, it's a bit different. We have three area of
12 our organization that have individual service arrangement.

13 The first one is the Non-Insured Health
14 Benefit. In fact there is four with Jordan Principle.
15 Non-Insured Health Benefit Program, which is individually
16 based. We have Jordan Principle child first initiative.
17 Then we have the Postsecondary education program where we
18 are funding individual, but through, most of the time,
19 Chief and Council. And there is the registration, which is
20 a bit different.

21 All the other functions are mostly funding
22 third party organization to deliver the service. One thing
23 we learned, though, over time, is that, as an organization,
24 despite the fact that we are funding a tribal council or a
25 Band council, we have a responsibility to make sure that

1 they are delivering the service to the child at the end.
2 And if someone is excluded from the service, we have a
3 responsibility to address that. And some of these case
4 came back under Jordan Principle where we discovered that,
5 despite the fact that we had funding arrangement with the
6 Chief and Council for delivering services, if they had
7 decided not to serve some of their members for reasons that
8 might be diverse, we have to try to find a way to assist
9 that family. So, we cannot only let it, in the end, of the
10 Nation to do that. Fortunately, most of the time, though,
11 they are taking care really well of their people, so these
12 programs are working. Whether it's School Board or social
13 programming or education, economic development, they are
14 taking an inclusive approach, so we don't have to. But
15 there has been a few exception here and there, and some
16 that you're probably aware, where, despite the fact that
17 the program existed and was funded by our organization, the
18 service has not been rendered by the organization we had.
19 We had to find a way to address that.

20 Q. Certainly based on 70,000 service
21 requests approved over time, there's quite a few services
22 that are being funded now that weren't before.

23 A. Yeah.

24 Q. In terms of the broader program elements
25 you're speaking of, do those have a lens that considers how

1 they impact on substantive -

2 **A.** Yes. In this ---

3 **Q.** --- equality and outcomes for ---

4 **A.** In this ---

5 **Q.** Let me finish my question, please -- how

6 they impact on substantive equality and outcomes for

7 children.

8 **A.** All these program and people in our

9 organization have been bring into training to understand

10 the impact, and they are doing this with the spirit of

11 trying to improve the -- deal with the socio-economic gap,

12 improve the services. We have major transformation

13 initiative in various area, and the plan is to try to

14 modernize the service, put more control in the hand of

15 First Nation when it's First Nation programming. So, at

16 the end, our staff is mandated to try to find creative

17 solution. And it doesn't have to be the same in Alberta

18 than we will pursue in Atlantic because we have different

19 partner and they may approach the program and the service

20 differently, so, we have also asked our staff to be very

21 very flexible in order to create the best outcome at the

22 end.

23 **Q.** Now, in terms of point No. 4, that calls

24 for:

25 "An independent 360-degree evaluation

1 to identify any ongoing discriminatory
2 ideologies, policies or practices and
3 address them."

4 A. Yeah.

5 Q. What is DISC doing on the heading of
6 this 360-degree review?

7 A. So, first, this is Dr. Blackstock plan,
8 it's not DISC plan, but we have ---

9 Q. No, I'm just asking what DISC is doing,
10 not what DISC plan is.

11 A. But you're asking me to assess what we
12 are doing against the plan that has been developed by
13 (inaudible) order. What I'm telling you, it's not our
14 plan. However, we met with Dr. Blackstock and we have made
15 a commitment to develop an assessment model that will bring
16 what she's looking for with this. This is one -- a couple
17 of lines. We need to articulate that to make sure that we
18 are getting the feedback of our partners, the feedback of
19 the clients, and have a cycle that is useful and creates
20 feedback loops, so we can improve the service over time.
21 So, this plan is being worked on and will be shared.

22 Q. And I didn't mean to attempt to imply
23 that this was DISC's plan. It's clearly got First Nations
24 Caring Society, bottom left.

25 A. Yeah.

1 Q. Spirit Bear is -- well, he's a frequent
2 attendee at many events, not a DISC individual, he's part
3 of the Caring Society's team. And your answer was exactly
4 what I was asking, which was what DISC is doing, which is
5 developing a framework.

6 A. The answer I provided you I provided to
7 Dr. Blackstock several times.

8 Q. Yes. And ---

9 A. (Inaudible) here to repeat a lot of
10 information we have provided several time to all parties.

11 Q. Yes, and not to the Tribunal, which is
12 why we're here today putting this on the record.

13 Now, just a point for awarenesses in terms
14 of if you're aware that at the FN specialist -- or FN
15 assembly in December, that the FN also adopted the Spirit
16 Bear plan -- if you were aware of that.

17 A. Yes.

18 Q. Yes. And last question on this. Do you
19 sit on any inter-departmental committees for senior
20 officials at your level?

21 A. Yes.

22 Q. And are other departments, similarly to
23 DISC, contemplating a framework for a 360 review in terms
24 of impact on indigenous children?

25 A. I'm not sitting on any inter-

1 departmental committee that will have this kind of focus.

2 Q. I see. Those are my questions. Thank
3 you very much, Mr. Perron. Merci beaucoup.

4 THE CHAIR: Thank you very much. Is one
5 hour enough for lunch. I know there's a food court
6 downstairs. If it's sufficient, we would like to break for
7 an hour. All right? Okay, so we'll be back at 1:30.
8 Thank you very much.

9 --- Upon recessing at 12:30 p.m.

10 -- Upon resuming at 1:30 p.m.

11 THE CHAIR: Good afternoon. I believe that
12 I was informed that the Chiefs of Ontario will proceed now?

13 MS. NERLAND: That's correct. Thank you.

14 THE CHAIR: Thank you very much.

15 --- CROSS-EXAMINATION BY MS. NERLAND:

16 Q. Good afternoon, Mr. Perron.

17 A. Good afternoon.

18 Q. I'm Krista Nerland. I'm one of the
19 counsels for Chiefs of Ontario, and I'm just going to ask
20 you a few questions. Just before we get going, I was
21 actually finding you a bit tricky to hear this morning.
22 I'm wondering if you could speak up just a little bit this
23 afternoon.

24 A. Yeah.

25 Q. Thank you. So, do you have a copy of

1 your affidavit sworn in November with you?

2 A. Yes.

3 Q. And do you have your December affidavit
4 there as well?

5 A. Yes, both of them.

6 Q. Great. And while you are preparing your
7 affidavits, did you review the Tribunal's decision in 2016
8 CHRT2? So, the first decision?

9 A. Yes, but I mostly focused, to be honest,
10 on the spring CHRT decision which was the May one ---

11 Q. The May decision.

12 A. --- which was the one that was ordering
13 these reporting.

14 Q. Did you review also the April 2016
15 compliance decision?

16 A. I don't remember, sorry.

17 Q. That's okay. And what about the
18 September one?

19 A. September 2017?

20 Q. Um-hmm.

21 A. Probably, yes, but ---

22 Q. Okay. And have you reviewed the
23 affidavit ---

24 A. So, those -- the section that pertains
25 are related to Child and Family Services ---

1 Q. And Jordan's Principle.

2 A. --- I paid less attention than the
3 Jordan's Principle section.

4 Q. That's understandable. And have you
5 reviewed the affidavit submitted by Ms. MacDougall?

6 A. Yes.

7 Q. And Ms. Jones as well?

8 A. Yes.

9 Q. Great. So, what I'd like to start with,
10 actually, is trying to get a bit of a sense of how the
11 reporting structure is working within your department. I
12 was trying to find an org chart online and I was having a
13 difficult time. And I know my clients have been having
14 some trouble here too. So, I want to start with -- what
15 I'd like to do, actually, is have you draw it out for us,
16 and so I've got a flip chart there, and we'll see how we
17 go.

18 A. Do I really need to draw? It's a bit
19 unusual. You know, I can describe things, but drawing
20 things is something that ---

21 Q. Well, I mean, it's not going to be a
22 piece of art, I just want to see how the branches relate to
23 one another. And what the reporting structure ---

24 A. I can provide an org chart if you want.
25 But unless the panel member asks me to draw -

1 **THE CHAIR:** Let's just ask the question,
2 what are you looking into, first?

3 **MS. NERLAND:** What I'd like to do is
4 understand the reporting structure between the people who
5 are approving Jordan's Principle cases, reviewing them, Mr.
6 Perron, where things go up the chain, what the
7 responsibilities of each team is. It has not been clear
8 always, to my clients, how this is working. And so, I'm
9 trying to get a sense of that on the record.

10 **THE CHAIR:** Thank you. So, you're
11 uncomfortable with this?

12 **THE WITNESS:** I don't even know how I can
13 draw something like that, to be honest. I can try to
14 illustrate the structure of the department, but drawing it
15 --

16 --- **BY MS. NERLAND:**

17 **Q.** Okay, what about this, are you able to
18 provide me with an org chart.[u] If I have questions about
19 it, perhaps I'll ask Ms. Gideon when it's her turn.

20 **A.** We can produce an org chart.

21 **Q.** Okay. And can you ensure that it
22 includes everybody who deals with Jordan's Principle in
23 Ontario, as well as nationally?

24 **A.** There is probably -- yeah.

25 **Q.** Okay. Why don't you provide me with

1 what you have and what I'll do is we'll ask questions about
2 it next time if there are gaps.

3 A. Because the structure is not made of
4 people that only deal with this program, as they are built
5 into a structure that is much broader than that, so it is
6 difficult to just trace the relationship. Many of the
7 actors in the structure will be doing more than supporting
8 Child-First Initiatives of Jordan's Principle.

9 Q. Okay.

10 A. So, we can provide org charts for the
11 various sectors of the organization, the regional section
12 as well. It's pretty -- it will be a pretty thick document
13 though.

14 Q. That's fine. I don't mind.

15 **THE CHAIR:** Just a moment. I think this
16 question has merit. I understand that you don't have the
17 chart right now, but perhaps there are some questions that
18 can be asked of the witness ---

19 **MS. NERLAND:** Yeah, I'm just looking

20 **THE CHAIR:** -- on the process. I'm
21 interested. So, if you have any questions now ---

22 **MS. NERLAND:** Yeah.

23 **THE CHAIR:** - and it can be revisited
24 later but ---

25 **MS. NERLAND:** Absolutely.

1 **THE CHAIR:** --- feel free please. Thank
2 you.

3 **MS. NERLAND:** Okay, that's great. So ---

4 **THE CHAIR:** Just a moment, please. Sorry
5 about that. Thank you.

6 --- **BY MS. NERLAND:**

7 **Q.** That's okay. So, maybe it makes sense
8 then, to start from the bottom, when an application for
9 Jordan's Principle comes into an Ontario regional Focal
10 Point. Now, I understand there are different Focal Points
11 who deal with Health matters, and Education and Social
12 matters, is that correct?

13 **A.** Wherever the request comes, they are
14 supposed to be able to deal with all the requests. There
15 is -- the truth is that there was two branches, one in
16 former INAC and one in Health Canada that had a role to
17 play in the implementation of the Jordan's Principle Child-
18 First Initiative, and they were located, one in the
19 Education and Social sector at INAC and the other one in
20 Health. But if a request for education comes and it's a
21 first -- a FNIHB worker that receives that, they are to
22 proceed with it, even if it's not necessarily where they
23 are specialized.

24 And we are, to be honest, in the last few
25 months, working toward a greater integration now that all

1 these sectors are within the same department. It's part of
2 my job and my (inaudible) work, I would say, related to the
3 implementation of Jordan's Principle is to try to integrate
4 the way the work is being done, leverage the best practices
5 that exist in various sectors, and try to make them work
6 for everybody. But all the Focal Points are supposed to be
7 able to deal with all types of request. They may request
8 assistance from those who have specialties, they know a bit
9 more substance, but they are supposed to be able to handle
10 all the requests.

11 Q. But they have different reporting
12 structures, the Education side and the Health side?

13 A. Yeah, they are in different
14 organizations, and this was because we were in two
15 different departments. Now that it's together, the
16 structures are becoming much more common over time.

17 Q. Okay, well maybe we'll get to that in a
18 minute. Let's talk about how things are.

19 A. Yeah.

20 Q. So, if an application comes in to a
21 regional Focal Point, in Ontario say, that person decides
22 they need to push the application up for review.

23 A. No.

24 Q. No, no, no, if the person -- the premise
25 is, the person looks at the application and they're like,

1 "I don't know what to do here," I need further guidance
2 from Headquarters.

3 A. This is an option, but first before they
4 get there, they're supposed to try to make a decision and
5 be positive. It's only if they are in a situation where
6 they are of a view that the answer should be denial ---

7 Q. Yeah.

8 A. --- that they will escalate it, or if
9 they feel that they need additional support. But this is
10 not the way the process should work. The way the process
11 should work is that decisions should be made, as much as
12 possible, closer to the line. What we have built is a
13 fail-safe process to avoid a first line officer making a
14 denial. They have to consult before making a denial.

15 Q. Okay, but what I'm really interested in
16 is the reporting relationship ---

17 A. Yeah.

18 Q. --- and the way that the application
19 would move if it was going up. I understand you have
20 policies about what stays and what goes and that you're
21 making your best efforts and all of these things. So, who
22 do -- the Ontario regional Focal Points, on the Health
23 side, who do they report to?

24 A. They report to the regional executive in
25 Ontario region.

1 th

2 A. It's -- in the First Nation (inaudible)
3 branch it's an EX3, so it's a kind of a Director General.

4 Q. Who is that?

5 A. In Ontario it's currently Lori Doran.

6 Q. Lori Doran?

7 A. Yes.

8 Q. And she's the Director General of
9 Ontario?

10 A. She's the Regional Executive for Ontario
11 Region, yes.

12 Q. Okay. And who does Ms. Doran report to?

13 A. She reports to Mr. Keith Conn, which is
14 the ADM Regional Operation.

15 Q. Okay. And does he report to you?

16 A. He reports now to Valerie Gideon.

17 Q. He reports to Valerie Gideon.

18 A. Yeah.

19 Q. And Ms. Gideon reports to you.

20 A. Yeah. In fact, reports to the Deputy
21 Minister. I'm the Associate, so the formal reporting
22 relationship is to the Deputy Minister. I'm in the box
23 beside the Deputy Minister, we share function, but at the
24 end he's the head of the organization.

25 Q. The last word.

1 A. The last word ---

2 Q. --- is with the Deputy Minister.

3 A. And I'm doing what the Deputy allows me
4 to do as Associate. Which is a lot.

5 Q. But as an Associate ---

6 A. Yeah.

7 Q. --- this stream of Regional Operations
8 for Health, this would fall under your envelope of
9 responsibilities?

10 A. Yeah, I have a role to play there, yes.

11 Q. Okay. Now ---

12 A. And the equivalent structure on the
13 former INAC, which is the ---

14 Q. Yeah.

15 A. --- Education, Social Development --
16 exactly the same situation. However, there is no reporting
17 relationship between the ADM Education and Social sector
18 and the Regional Operation. Those are two distinct
19 structures right now.

20 Q. Let's come back to the Education side in
21 a minute. What I'd like to do is focus on the Health side
22 and then talk about the other reporting relationships, so I
23 don't get lost.

24 So, you said you have a role to play in
25 managing the sort of reporting structure or the

1 branch that came from Health Canada into the new
2 Department, and some of these structures.

3 So, as a result, because there is a big
4 element of the Jordan's Principle Child-First Initiative
5 which is in -- was in Health Canada, I'm still really
6 involved in this and trying to align the practice on both
7 sides for what was already in the organization, because
8 we've also got the Education and Social sector in
9 Indigenous Service, trying to amalgamate this, and leverage
10 the best practices.

11 Q. Okay. Let's come back to that as well.
12 You have, I know, sort of a national level or headquarters
13 level team within First Nations and Inuit Health branch,
14 that's also tasked with Jordan's Principle matters, is that
15 right?

16 A. Yeah. Everybody is tasked for this.

17 Q. Okay. So, can you ---

18 A. Some have a great role, but whether a
19 demand from a child comes, they have a responsibility to
20 make sure it is being funnelled to the place where we can
21 support that.

22 Q. Okay, but can you tell me what the
23 reporting relationship is -- what the offices are that are
24 tasked with this specifically, at the Headquarters level,
25 within First Nations and Inuit Health Branch.

1 A. Okay. So, there is a role for the ADM
2 Office in supporting the overall relationship and managing
3 and participating to the Jordan's Principle Oversight
4 Committee.

5 Q. And that's Ms. Gideon.

6 A. That's Ms. Gideon.

7 Q. And what's her title?

8 A. She's the Senior ADM of the First
9 Nations Inuit Health Branch, which is the title I had when
10 I signed these affidavits.

11 Q. Right.

12 A. And she has sitting beside her, Keith
13 Conn, which is the ADM Regional Operation ---

14 Q. Right.

15 A. --- where all the regions report to.

16 Q. And he reports to her.

17 A. He reports to -- the ADM reports always
18 to the Deputy Minister, but in the branch there is a
19 functional relationship between these two functions.

20 Q. What's a functional -- what do you mean
21 by a functional relationship?

22 A. It means that annually it's not Ms.
23 Gideon that does the assessment of Mr. Conn. It's not her
24 that -- she's not the (inaudible).

25 Q. She's not like looking at his work plan

1 ---

2 **A.** But she has the policy responsibility
3 for a whole branch, so anything that is being designed for
4 the branch, is Ms. Gideon's responsibility and Mr. Conn is
5 responsible for the implementation as Regional operation
6 lead.

7 **Q.** Okay.

8 **A.** There's a functional direction there --
9 resource allocation, program planning, program design, is
10 being done by Ms. Gideon and her team, in collaboration
11 with Mr. Conn.

12 **Q.** I should say Dr. Gideon, I think.

13 **A.** Yeah.

14 **Q.** Okay. So below Ms. Gideon on the
15 Headquarters side ---

16 **A.** There is a ---

17 **Q.** --- what's the next team?

18 **A.** There is a Directorate of Primary Care

19 -

20 **Q.** Yeah.

21 **A.** --- which is headed by Robin Buckland.

22 She's a head nurse.

23 **Q.** And what's her title?

24 **A.** She's the Executive Director of the
25 Office of Primary Care, I believe.

1 Q. And what's the role of that office in
2 relation to Jordan's Principle?

3 A. There is a unit in this area that is
4 responsible for the implementation of Jordan's Principle.
5 So, they have been the one doing -- developing the
6 guidelines, developing the tools, organizing training,
7 organizing weekly or bi-weekly sessions with Jordan's
8 Principle Focal Points to keep them apprised, train them.
9 They are the one also, collecting the data on a weekly
10 basis on where we are at on the approval of cases,
11 monitoring the denials. They will be also the one
12 receiving the requests when there is a decision at the
13 local level, that there is maybe a need for denial, though
14 they will be the one bringing this to the attention of Mr.
15 Conn.

16 They will be providing the secretariat for
17 the Jordan's Principle Oversight Committee. They will be
18 providing the secretariat for the Appeal Committee. So,
19 and they have been working on a regular basis, to provide
20 input and clarification to the parties of this process on
21 questions, so they are doing that too. They are preparing
22 the affidavits, the reports that we have provided to the
23 Tribunal over time. So, I would say, generally speaking,
24 this is their function.

25 But they have a huge operational role, which

1 is to make sure that we get the data. The staff at the
2 front line receive the guidelines, a tool, that we have a
3 good communication plan around that, informed by the
4 partners to make sure that the products we put out are a
5 benefit from the input of the partner, as it was ordered by
6 the Tribunal. So, this is what they do in the NCR.

7 They are not really managing the intake of
8 the case, except for the creation in February of the -- a
9 call centre, where we -- now we have a 24/7 call centre.
10 So, they are taking care of making sure that these
11 positions are staffed. There is not such a large number of
12 calls going to that, I don't have the stats. Most of the
13 requests to the call centre are for inquiries about the
14 program, how it works and things like that, but they still
15 manage that function.

16 Q. Now, Ms. Beach is the Director of this
17 office, is that correct? Bonnie Beach.

18 A. Yes, she is.

19 Q. Okay. And so, she reports directly to
20 Ms. Buckland.

21 A. Exactly.

22 Q. Okay. And what's the relationship
23 between the sort of, flow of information between the Region
24 and the Headquarters level team? So, is it primarily
25 between Ms. Gideon and Mr. Conn that these linkages get

1 made?

2 A. It depends on the subject. So, for
3 major policy or direction or authority, the direction will
4 come from Ms. Gideon or Mr. Conn, or when I was there, from
5 myself, to the Regional Executive that will flow the
6 information down in their organization. But when it's for
7 operational questions, when there is new guidelines, new
8 tools or training, or demand for reporting or information,
9 this will be done at the level of Mme. Beach, or others in
10 her team. There is a collegial reporting relationship
11 there.

12 Q. Is there a regular mechanism in place
13 for the Region to communicate what's happening on the
14 ground to the National policy level team?

15 A. There is -- I think it's every two weeks
16 there is a Jordan's Principle Focal Points meeting. There
17 is also, I think twice a year, a face-to-face meeting.
18 There is probably also (inaudible) calls that happen on
19 case specific, I'm sure. But then, I think, probably Ms.
20 Buckland or -- will be better placed than me to answer
21 that.

22 Q. Okay. Okay, let's move over to the
23 Education and Social side now.

24 A. Yes.

25 Q. So, I understand that team used to be a

1 part of the old Indigenous and Northern Affairs Canada?

2 A. Yeah.

3 Q. And now it's moved over to the new
4 Indigenous Services Department.

5 A. Yes.

6 Q. When did that happen?

7 A. It happened on November 5th, 2017.

8 Q. And their primary responsibility,
9 although I understand your position that files may be going
10 to different places, their primary responsibility is
11 Jordan's Principle files that relate to Education and
12 Social, is that right?

13 A. They are supposed to be able to deal
14 with all the demands -- because you don't know ---

15 Q. Yes, but what's their responsibility?
16 Their primary responsibility.

17 A. It has not been defined like that. They
18 have been -- their responsibility is to put in place
19 Jordan's Principle Focal Points to welcome cases. And you
20 receive them in from the same family, the same children
21 that are related to Health and Education and it's a mix.
22 So, they are taking what is coming in. And I think the
23 Tribunal was really clear that all departments needed -- so
24 we made sure that it was organized like that. It doesn't
25 mean, though, that for expertise purpose they are not

1 talking to each other.

2 Q. Okay.

3 A. But they had -- there was a similar
4 structure designed into the former INAC, for handling
5 cases. The reality is that the stats indicated most of the
6 cases were going to the Health team, rather than the
7 Education and Social Development team.

8 Q. Education and Social Development though,
9 it has a separate reporting structure that deals with
10 Jordan's Principle?

11 A. They -- yes, but when it comes to us,
12 usually the information is integrated. And when I say us,
13 it's the Deputy.

14 Q. Okay. At the high level.

15 A. FNIB and the SDPP will work together and
16 merge, so everything is being combined.

17 Q. Up at the Deputy, Assistant Deputy
18 level. Okay, so the Assistant Deputy Minister of
19 Education, that's Paula Isaac?

20 A. She is, yes.

21 Q. And is she responsible for Headquarters
22 level teams and Regional teams, or just the Headquarters?

23 A. No, she's responsible for the
24 Headquarter policy team.

25 Q. Okay. And what team is that?

1 A. It's a group that is mostly policy
2 focused.

3 Q. What's the name of the group, I mean?

4 A. It's Education -- ESDPP, Education and
5 Social Development -- something like that.

6 Q. And who's the director of that group?

7 A. She's the ADM.

8 Q. Okay, so she runs -- that's like the
9 branch that she's responsible for.

10 A. The branch -- in former INAC it was
11 called a sector, yes.

12 Q. A sector, okay. And so, below that is
13 there an office, a directorate, a branch, that is
14 responsible for Jordan's Principle?

15 A. Yeah. There is a number of DG, a DG on
16 Social Development, there is a DG on Education, there is
17 another one that I don't remember the title. But I know a
18 bit less of that structure because I do not lead that
19 structure.

20 Q. And do any of those offices have
21 responsibility over Jordan's Principle policy development?

22 A. The group that is responsible for Child
23 and Family Services ---

24 Q. Okay.

25 A. --- has been the one with whom the

1 Health team has been interacting on Jordan's Principle.

2 Q. And who's the Director of that team?

3 A. The DG is Margaret Buist.

4 Q. That's Margaret Buist's team?

5 A. I think so, but there is a number of
6 other people in that group.

7 Q. Right. And are there teams ---

8 A. And I think there is a Director that is
9 specifically responsible for Jordan's Principle, but I --
10 the name, I don't ---

11 Q. You don't remember the name. So, within
12 Margaret's Directorate General, I guess is the right word
13 for that, there is a Directorate that has responsibility
14 for policy matters in Education and Social, related to
15 Jordan's Principle, is that correct?

16 A. For Jordan's Principle, although it's
17 not called that, Education and Social. I think there is a
18 Directorate for Jordan's Principle.

19 Q. Yeah, I'm only saying that because
20 they're within this structure ---

21 A. Yeah.

22 Q. --- of Education and Social.

23 A. Yeah.

24 Q. And then there's also a separate
25 regional structure, is that correct?

1 **A.** Yeah. So, those who are operating in
2 the Region, the Focal Points are in a different branch or
3 different sector called Regional Operation.

4 **Q.** And who -- what's their reporting
5 structure like?

6 **A.** They are reporting to an ADM. Her name
7 is Lynda Clairmont. She is the ADM Regional Operation, so
8 she has all the regions in the southern Canada, so it
9 doesn't include the territorial regions ---

10 **Q.** Okay.

11 **A.** --- reporting to her, and her mandate is
12 all the functions that are being performed, but Health.
13 So, Emergency Management, Social, Education, Economy,
14 Development, Land Registration, all these functions are
15 being operated in various regions and report to Lynda as a
16 Regional Operation.

17 **Q.** So, presumably there's quite a few
18 people between the Focal Points in Education and Social,
19 and Ms. Clairmont who has all of those responsibilities.

20 **A.** Yeah, but the structure is not the
21 structure that is used to travel files.

22 **Q.** I understand that. I want to get the
23 reporting structure clear, and then we'll talk about how
24 the files move through that structure. So, what's the
25 structure between the Focal Points and the and Ms.

1 Clairmont, the Assistant Deputy Minister?

2 A. I think it might vary from region to
3 region, but those are officers, so I would suggest -- I
4 would expect that they will be reporting to a manager in
5 the region, and then the Regional Director General.

6 Q. Okay.

7 A. Like we had on the Health side.

8 Q. Okay. And what's the relationship
9 between Ms. Clairmont and -- who's the Assistant Deputy
10 Minister of the Regional Operations, and Ms. Isaac?

11 A. All these ADM's are sitting in the same
12 management committee.

13 Q. Okay. It's not a reporting
14 relationship, it's more like an information-sharing
15 relationship.

16 A. No, it's a horizontal accountability
17 approach where we share responsibility for some actions.

18 Q. Can you explain what -- I'm sorry, a
19 horizontal accountability approach is?

20 A. So, when you design an operation you
21 define the policy, you define the objective that you're
22 pursuing, and some are responsible for the tools
23 development, the training of the staff, the communication,
24 and some are responsible for the implementation.

25 Q. Yes, the regional ---

1 A. And these responsibilities have been
2 laid out between the various sectors, and they are well
3 understood. There is tools that have been provided to
4 staff that have been seen by their managers, and they are
5 responsible to make it happen, because they have been asked
6 to manage regions.

7 Q. So, by that you mean, sort of having
8 different responsibilities and sharing information.

9 A. Yeah. But also adhering to similar
10 principles and practices.

11 Q. Okay.

12 A. Like last week I was meeting with Mme.
13 Clairmont, Mme. Isaac and all the Regional DG's on the
14 Regional Operations side to talk about Jordan's Principle,
15 about how payment needs to be issued and expedited.
16 Because we found that in some regions it was a bit slower,
17 and the practice was not equivalent to what we have found
18 on the Health side. So, I brought everybody together,
19 including the two ADM's, to have a conversation and ask all
20 the RDG's to exercise their leadership to make sure that in
21 their Region, this process was followed.

22 Q. Great.

23 A. So, this is part of -- when I say, our
24 results and accountability, we all have the same purpose,
25 but we all have a role to play to make this happen. There

1 is -- in addition to the Jordan's Principle Focal Points,
2 there is a number of other officers that have a
3 contribution. When it's time to issue a payment, there
4 will be a financial officer involved in that. When it's
5 time to do a contract, there's a contracting officer, and I
6 need these executives to exercise their leadership to make
7 sure that in all regions this is working really well.

8 Q. Okay, thank you. Let's move over to how
9 an application would move through this process, okay?

10 A. Yeah.

11 Q. So, let's imagine you're in Ontario
12 Region -

13 A. Yeah.

14 Q. --- and an application for Jordan's
15 Principle funding comes into an Ontario Regional Focal
16 Point.

17 A. Yes.

18 Q. Let's imagine -- and I don't want to get
19 into what your policy is on when they do this, and when
20 they don't do this, let's imagine that for whatever reason
21 they have to do this, they decide they need a further
22 review of the application before they decide whether to
23 approve it. Maybe they're recommending a denial, whatever
24 it is. Who does it go to from the Ontario Regional Focal
25 Point?

1 **A.** It will be going to someone in Bonnie
2 Beach's team, in the NCR. But you mentioned a further
3 review, this scenario for me is a bit foreign. I would say
4 it's when they are of the view, based on the assessment
5 they have made, that it should be or could be a denial.
6 Maybe they go to HQ for their question, but I'm not aware
7 of this.

8 **Q.** Correct me if I'm wrong, though. Isn't
9 there a direction that, for instance, orthodontic and
10 dental cases go up for further review at Headquarters?

11 **A.** I'm not aware of that.

12 **Q.** You're not aware of that. Okay. Maybe
13 I'll come back to that point later. What about cases where
14 someone's Status is in question? Would those cases
15 normally go up for further review?

16 **A.** It will, because if it's someone Non-
17 Status, then it will lead to a denial at the first level.
18 So, it will be escalated for sure, yes.

19 **Q.** Okay.

20 **A.** It should be.

21 **Q.** Okay. Well leaving aside the issue of
22 why the review is happening, let's imagine they're
23 recommending a denial then. Who does the application go to
24 from the Focal Point? It goes to Ms. Beach?

25 **A.** Someone in the teams of Ms. Beach.

1 Q. One of her policy analysts.

2 A. Likely.

3 Q. And the policy analyst would review that
4 recommendation?

5 A. They'll prepare the material for

6 Q. What's the material?

7 A. I think probably the application, the
8 background, what has been collected by the Jordan's
9 Principle Focal Point in the Region for the review of the
10 ADM Regional Operation.

11 Q. And would that be like a briefing note
12 or ---

13 A. I'm not sure this is in the form of a
14 briefing note, I think it's the original document that is
15 being prepared.

16 Q. So, they're just

17 A. I don't know if they put the cover on
18 it. Sorry, I don't remember.

19 Q. What I'm trying to get at is, are they
20 just forwarding what the Regional Focal Point gave them, or
21 are they generating new materials with their own assessment
22 at that level?

23 A. I don't think I'm the right person to
24 answer that level of information.

25 Q. You don't know.

1 A. I've never been in the fail-safe role
2 where you receive them, and you decide if you maintain them
3 or not.

4 Q. Okay.

5 A. So, I cannot answer that, sorry. But
6 their role is to bring this information in a timely manner
7 to the ADM Regional Operation. That is the only individual
8 in the system that is authorized to deny something.

9 Q. Okay. The policy analyst in Ms. Beach's
10 team, from them the material would go to Ms. Beach for
11 review?

12 A. I don't know.

13 Q. You don't know anything about how it
14 gets from her office to the ADM?

15 A. No. No. I usually ---

16 Q. Nothing about that process.

17 A. They will come, as a team, to present
18 that to the ADM. Like for any files, they will come and
19 bring the file and the ADM, when making a decision, whether
20 it's for Jordan's Principle or any other decision, will ask
21 questions and try to have the facts and the information
22 necessary to make the best decision.

23 Sometimes, I know that, they will ask to go
24 and seek additional information, because if you want to
25 achieve and ensure that substantive quality has been

1 achieved, to make sure that this has been looked at, so
2 they may have questions. And then this team will be tasked
3 to gather that information.

4 Q. Okay. Are you tracking -- is Indigenous
5 Services tracking how long this process takes to move up to
6 the ADM level, when an application is being ---

7 A. I think there is a standard for that,
8 but I'm not sure what it is, sorry.

9 MS. NERLAND: Okay. If there is tracking on
10 that process, Mr. Frater or Mr. Tarlton, can we get
11 information about how long that process is taking, and also
12 what the service standard is?[u]

13 MR. FRATER OR MR. TARLTON: We'll look into
14 that.

15 --- BY MS. NERLAND:

16 Q. Thank you.

17 A. Because the objective is still to try to
18 achieve the 0 to 24 or 48 hours ---

19 Q. Right.

20 A. so, if at all possible, the Jordan's
21 Principle Focal Point is concluding within that delay, that
22 they are to say no, they would bring that to -- up to try
23 to achieve it in the same timelines. Now, I'm not too sure
24 how we are performing against that standard.

25 Q. And you don't know if you're tracking

1 it.

2 A. Yeah. And the number of denied cases is
3 very low, so we probably have enough information on these
4 specific cases.

5 Q. Okay. Is the process the same on the
6 Education side? Would it go from the Focal Point to, I
7 guess on that side it would be an analyst in Ms. Buist's
8 office.

9 A. Yeah. I think, and maybe Dr. Gideon
10 will be in a better place than me to tell you -- with the
11 integration of the two organizations, there has been some
12 streamlining of that process. I think now all these
13 denials also are going to Mr. Conn in ---

14 Q. But presumably they don't go straight
15 from the Focal Point, all the way up to the ADM in Health,
16 the Regional Office of ADM ---

17 A. No, they will go from the Focal Point,
18 to Ms. Beach's group. But again, like I told you ---

19 Q. From the -- on the Health side, they'll
20 hop over - .

21 A. It's the same department now.

22 Q. But it's a different structure, so I'm
23 just wondering if the offices that have responsibility --
24 does it all go to Ms. Beach regardless of whether it's
25 Education or Social?

1 **A.** I think so, but you will have to get
2 precision on that to ask Dr. Gideon. I've not been in the
3 branch at that level of operation for the last five months
4 ---

5 **Q.** Okay.

6 **A.** --- so, she will be better than me to
7 tell you that. And what happened since my departure is
8 that the integration of the two organizations, so things
9 have changed, and I don't want to mislead the Tribunal
10 about that, and the parties. So, you're better to ask them
11 to tell how the fine-tuning is happening. But one thing I
12 can tell you is that there will be further adjustments
13 because the two organizations are getting more and more
14 integrated in terms of collaboration, and there is
15 advantages to streamlining the process and have a robust
16 team, rather than many teams doing the same work.

17 **Q.** And you're overseeing just -- it was
18 your testimony that you're actually overseeing this process
19 of integration.

20 **A.** Yes.

21 **Q.** But you're not exactly aware of how they
22 fit together now.

23 **A.** Not at that level. This is one of the
24 tens of programs we have in the department, so I'm looking
25 at the integration of the branch, which is 2,500 employees,

1 into an organization that is already around 5,000 people,
2 with a very large mandate. So, making this work altogether
3 at the macro level -- the detail on program by program, I
4 get involved sometimes, but the Assistant Deputy Minister
5 is way better placed than me to tell you the details about
6 that.

7 **MS. NERLAND:** Okay. Well if there's
8 information available, Mr. Tarlton and Mr. Frater, on how
9 exactly these applications are moving up the process, both
10 for Health and Education, we'd appreciate receiving
11 that.[u]

12 **--- BY THE WITNESS:**

13 **A.** There is a core procedure document that
14 I think I tabled in my first affidavit, or with my
15 affidavit, and then was further refined after, that I think
16 one of them included a flow chart that explains the
17 movement of the file. And this is supposed to be similar
18 wherever is the entry door for the file.

19 **Q.** Yeah, so I've reviewed - I mean, I know
20 that Ms. Gideon shared a draft of a standard operating
21 procedures with the parties a couple of weeks ago. What
22 wasn't clear to me from that was whether the structure was
23 the same for Education and Social. And you can't confirm
24 that for me.

25 **A.** I think it's getting -- before the

1 amalgamation of the two departments, it was two different
2 structures. I think since November 5th we have made some
3 progress in getting this much more streamlined. We have
4 discussed that with the parties before, and we were also
5 told, "Don't go too fast on changing the structure." So,
6 we have been also listening to that comment. And when they
7 are doing changes, they are fully transparent with the
8 parties on this.

9 Q. Okay. I'll come back to this with Ms.
10 Gideon maybe. I just want to come back to something you
11 were speaking about this morning now. I understand that
12 your testimony to Mr. Taylor was that children who are
13 becoming eligible for Status, under Bill S-3, they're
14 generally either being approved or being put aside, like
15 they're applications are being held to be dealt with later,
16 is that correct?

17 A. No. If we have evidence that they will
18 become eligible under S-3, or that they are eligible to be
19 -- they are treated like someone that has Status already in
20 our approval.

21 Q. They are.

22 A. Yes.

23 Q. And how long has that been your policy?

24 A. I don't know. I think it's something
25 that we have integrated into our practice. I know

1 initially when we implemented the Child-First Initiative we
2 were having some measures on children that did not have yet
3 -- get their registration, and this is why we were looking
4 if their parents had ---

5 Q. Yeah.

6 A. - registration, so to avoid saying no
7 to someone that will be eligible for Status. Now when S-3
8 came forward, then we -- well we had to make some
9 adjustments there. But again, this is at the time where
10 Ms. Gideon was directing the branch, so you will more ---

11 Q. Right. So, you don't know.

12 A. --- you will get more information about
13 that.

14 Q. Can I ask you to look at Tab 18 of the
15 book that I handed out?

16 A. 18, yes.

17 Q. Yeah.

18 A. Yeah.

19 Q. I'll wait for everybody to turn it up
20 here. So, what I've got here is an e-mail forwarded by
21 Leeann Shimoda who's one of the Jordan's Principle
22 Navigators for the Independent First Nations and that role
23 is essentially someone who helps families in the First
24 Nation ---

25 A. Yeah.

1 Q. --- in the various First Nations manage
2 the Jordan's Principle process.

3 A. Yes.

4 Q. So, she's sent along an e-mail from
5 Tracey Hazelwood, who looks to be at Health Canada, to
6 Vanessa Follon and Amanda Mitchell, who are Ontario
7 Regional Focal Points for Jordan's Principle.

8 A. Yeah.

9 Q. This is an e-mail from February 2nd, 2018
10 and it says:

11 "Hi Vanessa. This case was reviewed by
12 Keith Conn, Acting ADM Regional
13 Operations, FNIHB, this morning. The
14 summary of the review is below. Let me
15 know if you have any questions."

16 And it gives the case number, and it says --
17 sets out the requested items, and it says:

18 "Decision denied on the basis of non-
19 First Nations Status, and non-
20 eligibility."

21 But it also notes:

22 "Child will be eligible once Bill S-3 is
23 passed."

24 Now, Bill S-3 received Royal Assent, I
25 think, in December 2017 so I'm wondering, is this

1 consistent with the policy that was in place at the time?

2 A. This seems to be very confusing.

3 Q. Um-hmm.

4 A. Not much more to offer. I think it's --
5 at this time, the practice should be that if it's someone
6 that is entitled to be registered, and we have evidence, we
7 will treat this request as someone that has Status.

8 Q. So, this would be outside of what you
9 would understand your policy to be.

10 A. I don't understand -- I don't understand
11 the text. I would have to ask the staff to explain to me
12 why -- how they came to that conclusion.

13 Q. Okay. And I see they've flagged this
14 case to bring back for consideration ---

15 A. Yeah.

16 Q. --- once Bill S-3 has passed for another
17 review. Do you know ---

18 A. I have some hypothesis about what is the
19 situation, but frankly my hypothesis are probably as good
20 as yours so I could not ---

21 Q. You have nothing ---

22 A. --- I won't venture there.

23 Q. Okay. And so, in the meantime, I guess,
24 this child will be without services until whenever this
25 review happens.

1 A. Yeah.

2 Q. Okay.

3 A. I would say without coverage from this
4 fund.

5 Q. Without Jordan's Principle funding for
6 the services that they have identified as an unmet need,
7 then.

8 A. Yeah.

9 Q. Okay. So, I don't know if you're going
10 to be able to help me with something that's in this level
11 of detail, but let's see what we can do. I want to just
12 ask a couple of more questions about the process of
13 reviewing a Jordan's Principle application. Now I
14 understand that when a new case comes into the inbox of one
15 of your Focal Points, it gets time stamped, is that right?

16 A. It's supposed to be, yes.

17 Q. Okay. And that's, I guess, to ensure
18 that the application receives a response within 48 hours?

19 A. Yes, exactly, and track our performance
20 against that.

21 Q. Now ---

22 A. And since we have a very large
23 organization, it's to see where we might have some
24 problems, so having good tracking. In recent months we
25 found a situation though where -- I think at the inception

1 the problem is not there, but the codification of pending
2 case, or pending for -- waiting for additional information,
3 I don't think, generally speaking, we have a perfect
4 approach there. Our Jordan's Principle Focal Points may
5 have been more focused on getting the work done, and
6 working with the families and the demand, other than
7 putting the dates on everywhere. So, our reports have some
8 adjustment there and some, I would say calibration, that
9 needs to be done for sure.

10 Q. So, you're saying there may be gaps in
11 their practices of time stamping in cases where more
12 information is required?

13 A. Yeah, so rather than putting them in
14 Pending, Waiting for Information, they left the case open.
15 This is what I was told when I asked questions about that.
16 So we need to make sure that everybody practices the same
17 way in all regions.

18 Q. Okay, let me ask a question about --
19 this is an Approval, Pending Information -- is that right?
20 That's what you're referring to?

21 A. Yeah. So ---

22 Q. And in that circumstance, it's your
23 position that the clock would have stopped once that
24 response went out -- Approval, Pending Information.

25 A. In TRE, yes, if it's information that is

1 necessary to make a determination, yes. But sometimes we
2 can proceed without and do immediate services, and gather
3 this information after.

4 Q. But in that case would it be an
5 Approval, Pending Information, or would it just be an
6 Approval?

7 A. I think when it's -- when it's called an
8 assessment, for example. I was involved in a case last
9 fall where a First Nation child, in fact there was two, I
10 think, from the same location, were requesting coverage for
11 natural -- des produits naturels, des médicaments naturels
12 ---

13 Q. Naturopathy?

14 A. Yeah. Il y a pas nécessairement de
15 protocoles pour ça -- sorry, je va le faire en français. Il
16 y a pas nécessairement de protocoles pour ça, c'est pas
17 quelque chose qui est couvert par le programmes, par
18 exemple Ontario Health doesn't cover these things. Donc, la
19 référence pour ça est très limitée, donc on a demandé à la
20 famille, je pense qu'il y avait quelqu'un qui assistait la
21 famille d'obtenir une évaluation médicale d'un médecin pour
22 s'assurer que si on payait pour ce genre de produit là, on
23 engendrait pas des risques pour la famille, ou pour
24 l'enfant, donc, il y a eu dans ce cas là, normalement le
25 cas devrait être mit, pending, waiting for medical

1 assessment, that's because it can take a week, it can take
2 two weeks to get that. But we needed to make sure that if
3 we put approval for paying these products, these products
4 are safe for a five, six, seven-year old. So, in these
5 cases, the expectation is that Jordan's Principle Focal
6 Point will put the case pending.

7 Q. So, if the case is approved pending more
8 information like this ---

9 A. Yeah.

10 Q. --- the family can go ahead and access
11 the service and you'll reimburse them for it, is that
12 correct? If they're say - imagine they're paying out of
13 pocket.

14 A. Everybody can go and pay out of pocket.
15 We are going to reimburse ---

16 Q. Right. That's not what I want to get
17 ---

18 A. --- we are going to reimburse the ---

19 Q. --- right, you'll pay for the service is
20 what I'm trying to get at.

21 A. Yeah.

22 Q. What happens if the information doesn't
23 come in as you expect, and the family has submitted these
24 receipts relying on your Approval, Pending Information?

25 A. I think -- normally the cases I've seen,

1 I can only speak about what I saw, it's cases that were
2 coming not when the therapy or the service was started, but
3 rather prior to. So, then they were waiting for us to say
4 if we would be covering or not.

5 Q. So, they were getting it anyway so ---

6 A. No.

7 Q. Okay.

8 A. They can buy if they want but waiting
9 for the coverage -- if I go back to my natural product
10 example, we were waiting to get an assurance from the
11 physician that had reviewed the case, not our physician but
12 the family physician, with an understanding of the need of
13 the child, to tell us that this was safe to practice that.

14 Q. Right. So, what I'm asking is, if you
15 ultimately don't get the information that you need, and the
16 family has relied on your Approval, Pending Information,
17 and they've gone out and sought the services, will you
18 still pay for those services that were acquired prior to
19 you realizing you don't have the information you need?

20 A. If the information comes after and there
21 is an approval, if the family went ahead, we will reimburse
22 them for what .

23 Q. What if the information doesn't come?

24 A. We will work with the family to try to
25 get it. Otherwise it will likely not be approved. If I go

1 back to the safety issue, we would not say ---

2 Q. So, the approval then, it doesn't
3 actually mean the family is guaranteed to get the money
4 back, or the service provider is guaranteed to get paid for
5 that time. Actually the approval is really only in place
6 .

7 A. I think this is what you're saying, when
8 I'm talking to you about approving the coverage of a
9 product, so it's not the provider, it's the product. It's
10 buying a product that the client will use.

11 Q. But there's a variety of cases, right?

12 A. Yeah, but I ---

13 Q. You may, of course, approve a service as
14 well, pending information.

15 A. Yeah.

16 Q. So, this applies to all different kinds
17 of cases. So what I'm trying to understand is ---

18 A. But if it's urgent services, we are
19 going to proceed even if we don't have information. In the
20 case where I was -- the example I had on waiting for
21 information, this was a safety reason where we wanted to
22 make sure that paying for this was a safe practice.

23 Q. Yeah, I don't -- and I'm not trying to
24 get into the justifiability of the review process, what I'm
25 trying to get into is understanding what happens in that

1 period when it's pending more information. And what
2 happens if, ultimately that information doesn't come. Do
3 you fund or reimburse for things purchased, services
4 received in that period?

5 A. If it's approved, yes.

6 Q. If it's approved, pending information.

7 A. No, if it's approved after receiving the
8 information, we are going to -- if the parents -- we have a
9 number of examples where parents came to us with things
10 they did years before, and we reimbursed them for their
11 expenditure. They went on their own and this is something
12 that was considered eligible and coverable, so we went and
13 reimbursed for their own expenditure.

14 When it's for initiation of new services, we
15 usually try to go fast so the parents do not have to wait.
16 But in a few instances, we have to get additional
17 information for safety reasons, for procedure reasons. The
18 cases that I'm aware of, that I've been personally
19 involved, it's those unusual situations where usually there
20 was a safety issue, and where staff would have told me,
21 "Sonny, we have a case here that is a bit complex, and
22 here's how we are handling that." But the other cases that
23 are more regular, unfortunately I was not involved in any
24 of them.

25 Q. So, you can't say whether it's possible

1 that a family would be left with a bill that they thought
2 was going to be paid that wouldn't be paid.

3 A. I think that the instruction for our
4 staff is to be really clear about receiving a request and
5 trying to answer in 48 hours is our mandate and our role

6

7 Q. Okay.

8 A. --- and then -- and within that 48
9 hours, normally we should go back to the family and give
10 them an answer, so they will not have to go out of pocket
11 and to make a decision on their own.

12 Q. But when you've issued an Approval,
13 Pending Information, you consider that to stop the 48-hour
14 clock.

15 A. We do not issue an Approval, Pending
16 Information, we are asking for additional information to
17 make a decision for approval. Maybe you have been exposed
18 to a case which says it's approved if we receive this,
19 maybe. But I'm not aware of these situations. Sometimes
20 there will be approval and we will say, "Send us the
21 costing." So, we are going to pay for the service, but
22 then after that we need to know what is the value of that,
23 so it might come after.

24 But going ahead with the service is
25 something that we say we are going to cover, now we have to

1 work with the family to identify the provider, if they
2 don't have a provider, or identify the cost to make sure we
3 booked the cost properly to cover the fee. So, there is --
4 after an approval, sometimes there is additional steps that
5 we do with the family ---

6 Q. Yeah, I understand.

7 A. --- to get to the service delivery,
8 which is sometimes challenging.

9 Q. We'll come back to that. That's a
10 little further than I need to go right now. I just want to
11 come back quickly to this idea of how you track when the
12 applications come in to the inbox.

13 A. Yeah.

14 Q. Do you start the clock running for your
15 48 hours when the, sort of e-mail hits the Focal Point's
16 inbox, or do they have to undertake some preliminary review
17 before they start the clock?

18 A. I think the clock should start, and
19 should start as soon as the Focal Point is made aware that
20 there is a request in. Whether it's a phone call or an e-
21 mail in the inbox, this is where the clock starts, the
22 first contact.

23 Q. So, sorry to be so detail-oriented, but
24 you mean sort of, if the time stamp of the arrival is 2:32
25 p.m. and the Focal Point has gone to get a coffee, and they

1 come back, and they see the e-mail at 2:47 p.m., it's 2:32
2 p.m. that would be the start of the clock? You don't know.

3 A. My sense is that it's when the Focal
4 Point takes note of this arrival. Sometimes it will be a
5 voicemail, sometimes it will be an e-mail.

6 Q. Right.

7 A. We have made arrangement over time to
8 have people that work 24/7 ---

9 Q. Um-hmm.

10 A. --- that are on-call for dealing with
11 these requests. So, it's as soon as the Focal Point is
12 made aware of the request. But again, maybe Dr. Gideon
13 would be -- or someone else on the team, could be more
14 precise on how the mechanics work.

15 Q. About whether it's when they receive the
16 e-mail or whether it's when they read the e-mail, for
17 instance. Okay. Thank you.

18 A. And I'm sure there are instructions that
19 have been provided to staff on that, but I haven't seen
20 them.

21 Q. Okay. Is Indigenous Services tracking
22 what proportion of the applications are being sent up to
23 Headquarters, like leaving the Focal Points for further
24 review?

25 A. I don't know.

1 ~~Q. Okay.~~

2 A. What I look at my level is the number of
3 cases that have been approved versus the number of cases
4 that have been denied. And from time to time I also
5 receive a copy of the weekly report that gives us the
6 approval rates ---

7 Q. Um-hmm.

8 A. --- within the 48 hours.

9 Q. Yeah.

10 A. So, we can work with the ADM of the
11 sector to see if they are working to fix a place where we
12 may not be at the level we want.

13 Q. But at your level, you're not able to
14 review -- to disaggregate, for instance, things that go up
15 for further review from things that don't.

16 A. Yeah.

17 Q. Or cases that start in Education, for
18 instance, from cases that start in Health.

19 A. No.

20 Q. You don't have any information about ---

21 A. I think we have some stats where was the
22 entry point, yes.

23 Q. Where the entry point is?

24 A. Between the Education, Social
25 Development sector ---

1 Q. Yeah.

2 A. --- and the FNIHB, I think, yes, we have
3 assessed that about the entry point. I was mentioning ---

4 Q. Would you be able to disaggregate that
5 by month?

6 A. I was mentioning earlier that most, like
7 the large majority of requests goes to the Health, right?
8 So ---

9 Q. Yes, I understand that. Would you be
10 able to ---

11 A. --- based on these stats that I see from
12 time to time.

13 Q. Would you be able to disaggregate that
14 information about the different time -- processing times
15 for Education and Health by month? So you could compare
16 how they were doing in January, to how they were doing in
17 February, to how they were doing in March, for instance?[u]

18 A. I assume, yes, but again, this is
19 something that you will have to -- will have to ask for
20 those who manage the program right now.

21 Q. Yeah, in the meantime can you look into
22 whether this is available for us? Thanks.

23 A. I think there is a weekly report, and I
24 would be surprised that those are segregated between the
25 two organizations.

1 Q. Okay. Can I ask you to turn to your
2 December affidavit now?

3 A. Yes.

4 Q. I'd like to go to paragraph 48 of that
5 affidavit.

6 A. Yes.

7 Q. Thank you. So, it says:

8 "Concerns were also raised by Fawn
9 MacDougall about Canada's response time
10 to their request for services. I have
11 confirmed with my staff that all of the
12 services listed in Exhibit A to Ms.
13 MacDougall's affidavit have been
14 approved."

15 Now, can you confirm for me that this was
16 accurate to the best of your knowledge at the time?

17 A. Yes, it was.

18 Q. So, I'd like to look know at --

19 A. I have not reviewed individual cases, I
20 would not even be able to tell you what are the lists of
21 requests that came under that in the recent past. But when
22 we did the affidavit, I remember the affidavit from Ms.
23 MacDougall, and I asked the team to provide me with an
24 assessment of how they had dealt with each and where we
25 were at, and they had something pretty clear, so I was

1 comfortable to state this.

2 Q. Okay. Well let's look at Ms.
3 MacDougall's affidavit for a moment.

4 A. Which is ---

5 Q. I have it in my book, if it's easier for
6 you, it's at Tab 5 of my compendium. So, Exhibit A, and
7 you'll see -- I'll wait for you to turn it up. You'll see
8 here that she's identified the client number, the type and
9 request of service ---

10 A. Yeah.

11 Q. --- the date that that application was
12 submitted to Canada, the date it was approved, and then her
13 notes, and then also the date that any funds were received.
14 I just want to draw your attention to the bottom of the
15 second page of this exhibit, so ---

16 A. Yeah.

17 Q. --- where it says HC-ON-0487.

18 A. Yeah.

19 Q. That's an orthodontics case for braces.

20 A. Yeah.

21 Q. Submitted on October 17th, 2017. And
22 when this affidavit was sworn, which was November 28th,
23 2017, there was no follow-up on the case.

24 A. Yeah.

25 Q. And your staff information and your

1 testimony was that they had all been approved, including
2 presumably, HC-ON-0487. I just want to draw your attention
3 to the loose piece of paper that I circulated alongside
4 this compendium. Do you want a new copy?

5 **A.** This one?

6 **Q.** That's the one. Yeah. You'll see that
7 this is a letter dated actually, yesterday, in relation to
8 the same file, HC-ON-0487, signed by Vanessa Follon, who's
9 the Regional Lead, the Focal Point Lead in Ontario Region.

10 **A.** Yeah.

11 **Q.** And you'll see that it says:

12 "On January 10th, 2018 you made a
13 request to appeal the denial of the
14 orthodontic treatment of your child.
15 Your request, along with the submitted
16 documentation was reviewed by the
17 Appeals Committee on February 9th,
18 2018."

19 And you'll see at the third paragraph it
20 says:

21 "We regret to inform you that the
22 Appeals Committee determined that your
23 request cannot be approved under
24 Jordan's Principle."

25 **A.** Yeah.

1 Q. So, you'll agree with me that this
2 letter seems to suggest that application was not approved,
3 in fact it was denied, and also denied again on appeal?

4 A. Yeah.

5 Q. Okay, so there may be some problem with
6 the information you were given?

7 A. Yes.

8 Q. Let's talk for a minute -- I understand
9 you used to be the Assistant Deputy Minister for First
10 Nations and Inuit Health Branch, with responsibility for
11 NIHB ---

12 A. Yes.

13 Q. --- the program, the Non-Insured Health
14 Benefit program. Okay, I want to talk for a moment now
15 about the relationship between Jordan's Principle funding
16 and the Jordan's Principle process, and the Non-Insured
17 Health Benefits program. So, I understand that the Non-
18 Insured Health Benefits program is still sometimes used as
19 a source of funding for Jordan's Principle -- for cases that
20 come to Jordan's Principle Focal Points, is that correct?

21 A. A source of funding?

22 Q. As in the Jordan's -- the ultimate
23 service may be funded through NIHB rather than through say,
24 the Service Access Resolution Fund.

25 A. If it's something that should have been

1 funded by Non-Insured and they have -- it's mostly -- it's
2 not the funding, the issue, it's more the process. For
3 example, if a family needs access to a medication, the Non-
4 Insured Benefit program has arrangements with all the
5 pharmacists to pay them directly and make sure that the
6 child gets the service. So, they rely on the process, the
7 tools and the contract arrangement, but I think that the
8 file is being dealt with as a Jordan's Principle request.

9 Q. It's being dealt with as a Jordan's
10 Principle file, but the actual program funding that it's
11 using is NIHB program funding. It wouldn't come out of the
12 Service Access Resolution Fund.

13 A. I don't know how that -- if there is a
14 funding adjustment into the books to compensate for these
15 transactions, but I know that there is a number of
16 instances where we have an already existing arrangement
17 that will facilitate access and expedite service that
18 Jordan's Principle team will rely on Non-Insured to flow
19 the money to the provider, or make sure that the clients
20 get the service right at the desk of the pharmacist, yes.
21 Now, is there a funding adjustment between the two
22 programs, I don't know.

23 Q. Okay. Now, imagine that a Focal Point,
24 one of the regional Focal Points, receives an application,
25 say for dental services.

1 A. Yeah.

2 Q. Okay. The Jordan's Principle Focal
3 Point, one of their first steps is to try to determine
4 whether this application has already gone to NIHB?

5 A. They will -- I think they will do a
6 verification to see if this is not already something that
7 has been approved or covered there, yes.

8 Q. So, they might ask the family, for
9 instance, if they've submitted the matter to NIHB?

10 A. I think they can, they may do that, yes.

11 Q. Or the Jordan's Principle Navigator
12 who's assisting with their case? They might ask that
13 person?

14 A. Yeah, to avoid, I think, having double
15 entry, or double approval for the same request, yes.

16 Q. And they might ask for a copy of the
17 NIHB denial letter?

18 A. I don't know.

19 Q. You don't know about that. And I
20 understand they have to mark on the intake form if the
21 materials have already been submitted to NIHB, is that
22 correct?

23 A. It's possible, but I ---

24 Q. Should we look at the ---

25 A. --- you're getting into the level of

1 detail that I'm not sure, yeah.

2 Q. You're not aware of how this process
3 works.

4 A. Yeah. I know that there is integration
5 and work between the two programs, because one can be
6 helpful to expedite the service to the client, yes. And we
7 have had instances in my tenure as Senior ADM, where we
8 found that an approval was already given under Non-Insured
9 for something that was also coming under Jordan's
10 Principle, so ---

11 Q. Right.

12 A. --- the source of fund is not like the
13 first preoccupation, it's getting the service to the client
14 that matters.

15 Q. Okay. One second here.

16 A. Like I mentioned earlier today, there is
17 24 million dollar -- 24 million transactions a year coming
18 under Non-Insured so, and most of them are automated, so if
19 a patient shows up at the pharmacy desk with a
20 prescription, the pharmacist is going to fill the
21 prescription and they don't even interact with Health
22 Canada, we just pay behind the scenes. So, we have these
23 arrangements for seamless payment that that patient does
24 not have to go through.

25 Q. I'm actually going to go to a different

1 document, and I'm sorry it's not in front of you, it's
2 actually in a different book, and so we'll circulate --
3 we'll just take a moment to circulate these to counsel and
4 the Tribunal. I would like to talk about this process a
5 little bit with you. Thank you. So, what I'd like to do
6 is look at Tab 15. Do you recognize this document?

7 A. Yeah.

8 Q. So, this is a Standard Operating
9 Procedures for the Department of Indigenous Services.
10 That's the Standard Operating Procedures that you use in
11 your team for Jordan's Principle?

12 A. Yeah.

13 Q. And this was circulated -- it looks like
14 it was last revised on April 25th, 2018.

15 A. Yeah.

16 Q. And this was circulated to the parties
17 on the 25th as well, I believe. So, can we just turn to
18 page 22 of this document? And I just want to start midway
19 down the page it says:

20 "For all requests covered by NIHB. If a
21 request is submitted for any product,
22 service or support which may be covered
23 by NIHB, i.e. drugs, dental including
24 orthodontics, medical supplies and
25 equipment, vision, medical

1 transportation or mental health, Focal
2 Points should first contact NIHB to
3 determine whether the request has
4 already been reviewed by that program.
5 NIHB will work directly with the
6 National Coordinator within the
7 timeframes to review the request under
8 Jordan's Principle. If NIHB has not yet
9 reviewed the request, the request is
10 forwarded to NIHB for review. If
11 approved, NIHB contacts the requestor
12 and Focal Point to advise of the
13 decision. If denied, NIHB forwards it
14 to the Jordan's Principle National
15 inbox. If NIHB has reviewed and denied
16 the request, the Focal Point gathers the
17 information and sends it to the Jordan's
18 Principle National inbox, and the
19 request will be reviewed by the National
20 Coordinator and the Jordan's Principle
21 Director."

22 So, that's a Headquarters level review that
23 it goes to, if something has been denied by NIHB. Okay.

24 **A.** And the reason is that, these are often
25 specialized services like drug coverage, and medical supply

1 and equipment coverage and these things, so I think this is
2 why it's being done at a National level.

3 Q. But also, mental health services are on
4 this list as well.

5 A. Yeah, exactly.

6 Q. So, those have to go through NIHB first
7 before they can be reviewed under Jordan's Principle.

8 A. The reason is that NIHB is probably the
9 richest public plan in terms of mental health coverage
10 across the country. Not only for First Nations, for
11 everybody in Canada, so going there, there is already
12 agreement with a number of providers across the country,
13 thousands of them, where we pay them directly. So, that's
14 why, I think, they look at if there is a way to leverage
15 that.

16 And it's only Status-based, so it's not a
17 need, there is no decision. If you're First Nations
18 Status, or an Inuit person, you go to Non-Insured Mental
19 Health and you're approved right away for 20 sessions, 20
20 hours of services, and you can get an extension of the
21 number of sessions. So, this is really an easy way for
22 people to access services.

23 So, I assume this is way they want to
24 leverage this, it's expediting the service, and providers
25 are aware there is already an agreement to flow the money.

1 So, I think this is what they are doing. If there is a
2 demand that is already in place and they can accelerate
3 that, this what they are doing. But if Non-Insured, for
4 whatever reason, does not cover, then Jordan's Principle
5 takes on right away, and -

6 Q. It goes right up to the Headquarters
7 level then, for further review.

8 A. Yeah.

9 Q. If it doesn't fit under NIHB. And
10 that's mental health claims, as well as dental and
11 orthodontic claims.

12 A. Yeah.

13 Q. Okay. So, before the matter then, has
14 been reviewed by the Jordan's Principle team, it gets sent
15 over to NIHB, and that's before any approval has been
16 granted as well.

17 A. I think this is what the procedure says,
18 yeah.

19 Q. Okay. And then it's reviewed through
20 the NIHB process.

21 A. Yeah. Now, like I said a bit earlier,
22 this is the level of granularity -- I can read the same
23 thing as you and say this is the procedure that has been
24 sent, but I'm not doing this myself, so I cannot -- I think
25 you're pushing me to get into a very granular level, where

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Q. Well, I'm trying to understand how the programs are working for our client.

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A. --- unfortunately, this is not what I do on a day-to-day basis. There is like hundreds of people doing this kind of work, so if you want that minutiae of about how things are circulated between people, I cannot really answer that.

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Q. I mean, I'm trying to understand generally about the practice of your Focal Points and sending things to other programs, which is sort of well within the scope of the orders and well within what you've testified about. Do you have any information about how long it takes for NIHB to review a new application?

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A. Yeah. On the drug side it's very fast, I think it's 24 hours. And most of the requests are -- do not require approval. So, if they are in, it can be immediately approved.

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Q. What about on the mental health side?

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A. On the mental health side, it's -- I think it's mostly approved at the Regional levels. I don't know what is their cycle. It's pretty fast as well, because it's only eligibility. If you're a Status First Nation or if you're an Inuit person, you have access to the 20 sessions right away. And it's one among many other ways

1 to access mental health services, but this is the model
2 that is mostly asked under Jordan's Principle, which is
3 private provider.

4 Q. But you're not aware if you're tracking
5 that timeline for these cases that are handed over to
6 Jordan's Principle?

7 A. No. I assume because it's a Jordan's
8 Principle, we are tracking all the requests that come in at
9 Jordan's Principle, but the fine detail about how between
10 the various players, that that is tracked, I cannot answer
11 that.

12 Q. Now I understand the Focal Points are
13 expected to arrange -- the Jordan's Principle Focal Points
14 are expected to arrange after hours coverage so that the
15 process can continue to move when they're not working. Do
16 you know, is the NIHB staff expected to do the same thing
17 when they're reviewing Jordan's Principle cases?

18 A. We have also the call centre that is the
19 back-up.

20 Q. Yes. But do you know if the NIHB staff
21 are expected to do the same thing? Are they expected to
22 arrange for after hours coverage when they're reviewing
23 Jordan's Principle cases?

24 A. I don't know. I don't think so.

25 Q. Okay. Okay. I just want to turn your

1 attention, while we're on the review process issue, to
2 paragraph 7A of Ms. MacDougall's affidavit, and that's in
3 our first volume at Tab 5.

4 A. You said Tab 5?

5 Q. Tab 5, that's right. Paragraph 7A.

6 A. On Tab 5 I don't have Ms. MacDougall.

7 Q. Are you in the Volume 1 or Volume 2?

8 A. This is the ---

9 Q. That's Volume 2.

10 A. Oh.

11 Q. The other one, the thicker one. Thank
12 you.

13 A. Sorry. You said 5.

14 Q. Yeah. Tab 5.

15 A. Okay. Paragraph?

16 Q. Okay. Okay.

17 A. Which paragraph?

18 Q. 7A. It's on page 3.

19 A. Yes.

20 Q. It says:

21 "On a number of occasions, the
22 government department of first contact
23 has improperly refused to pay for the
24 required services. For example, special
25 education requests are sent to INAC,

1 how
2 requests until an INAC representative
3 has done education with the community to
4 encourage the community to pay for the
5 service out of their other funding
6 sources, or to find some other source of
7 funds."

8 A. This is not appropriate, and this is not
9 the current practice. Was this the practice at the time of
10 this, I can only rely that Ms. MacDougall is presenting
11 fact, but this is not the practice. This is not what
12 determines the order, and it should not be like that.

13 Q. Okay. So, would this have changed
14 subsequent to November 2017?

15 A. To my knowledge this is not the practice
16 right now.

17 Q. Okay.

18 A. And if it is, I will have to ---

19 Q. Okay.

20 A. I will for sure do a follow-up after
21 this session. But I'm sure it's not the case any more. If
22 it has been the case.

23 Q. Okay. So you were testifying that you
24 -- that senior management, or you, actually, receive a
25 weekly tracking report on Jordan's Principle cases.

1 **A.** Yeah. At the branch level, so between
2 Valerie Gideon and Paula Isaac, they are seeing, I think
3 the weekly report. From time to time, these reports are
4 being brought to the Associate level for information. But
5 since I'm not part of the regular operation any more ---

6 **Q.** You don't see it every week.

7 **A.** --- I don't -- but we -- it's part of
8 our priority, so we have regular discussion with the ADM
9 about how this is going and where are the difficulties and
10 what they are doing to address them, and the new
11 developments like the -- we were regularly briefed on the
12 creation of the call centre function, and so.

13 **Q.** So, they might bring you, for instance,
14 a weekly report if there was a problem that week, or
15 something like that.

16 **A.** And I mentioned to you my concern about
17 the way the Focal Points are stamping the pending
18 situation, this came from discussion when reviewing the
19 data, and I was asking questions, and this was brought to
20 my attention. And I was also informed at the time, that
21 they were doing some calibration to make sure we have a
22 more robust practice in our Region for making sure that the
23 Focal Points are really consistent in their tracking of
24 time.

25 **Q.** I'm afraid I don't understand the word

1 calibration. Is that -- are you auditing different Focal
2 Points to make sure that they're keeping, or reviewing
3 things in this way to understand ---

4 **A.** No. Calibration is a practice held in
5 social areas where you bring workers to understand the same
6 principle, the same criteria, and making sure that
7 something that you do in one region or one location, is
8 done on the same basis elsewhere.

9 **Q.** So, it's training.

10 **A.** And this is calibration, it was not
11 about decision-making but it's calibration about the
12 practice of codifying the various steps of the treatment of
13 a file to make sure that the way the dates are entered and
14 the practice of putting files in pending is done the same
15 way everywhere, so we can rely that the data means
16 something consistent.

17 **Q.** Got it. It's essentially training on
18 your operating procedures and ensuring they're being
19 applied consistently.

20 **A.** Yeah.

21 **Q.** Okay, thank you.

22 **A.** Yeah. But the real team on this -- when
23 you train people to adopt a similar practice, is
24 calibration.

25 **Q.** Okay. I just want to look at Exhibit I

1 of your affidavit which is, I guess, one of the examples of
2 one of these weekly tracking reports. This is your
3 December affidavit.

4 A. The November affidavit or the December?

5 Q. December, Exhibit I.

6 A. Can I ask you to show me the document to
7 make sure I'm looking at exactly the same one as you,
8 because ---

9 Q. Yeah, of course. Of course. Are you in
10 -- this is your -- I have a copy of your affidavit here, it
11 says, "Individual Requests, Jordan's Principle Weekly
12 Recording." This is it.

13 A. Oh, yes.

14 Q. Yeah. Okay. And does everybody else
15 also -- should I come around with my book to make sure
16 we're all -- we're good?

17 A. I think the others are low maintenance,
18 I'm not. Sorry.

19 Q. You're entitled. You're the witness.
20 Okay. So, this is a report, a weekly report from October
21 25th to 31st, 2017, is that right?

22 A. Yes.

23 Q. And I see it includes information about
24 how many applications were approved during that week, in
25 each region.

1 A. Yeah.

2 Q. And it also says how many were denied.

3 A. Yeah.

4 Q. And it gives a percentage that were
5 adjudicated within 48 hours. Now do you know, is that the
6 percentage adjudicated within 48 hours that were submitted
7 that week, or that were decided that week? You may not
8 know this answer.

9 A. I just -- I'm just doing the math to see
10 if it works. It seems to be -- "Total Number of Product
11 Service Requests Received This Week," so those are the ones
12 received in the week. The basis of the calculation is the
13 first column.

14 Q. Well not necessarily. Perhaps some of
15 the ones that were approved could have come in in earlier
16 weeks. Especially back in October 2017, I think there was
17 still ---

18 A. You're right, though it seems -- doing
19 quick math, it seems to be pretty consistent, so I think
20 it's those who have come in the week, approved in the week.

21 Q. But you're guessing.

22 A. I'm doing the maths here and it works.
23 It seems to work.

24 Q. Okay. Now, do you know, does Indigenous
25 Services also track each week separately, like does it keep

1 record of the processing time for each case that is
2 approved or denied? Is that information ---

3 A. Can you repeat again?

4 Q. Yes. So we have here the aggregate, and
5 I assume that means you also track each individual case --
6 this one took 54 hours, this one took 36 hours.

7 A. Yeah, I think we have provided a long
8 spreadsheet with ---

9 Q. Yeah.

10 A. --- examples of case by case and all the
11 steps in there.

12 Q. Yeah. In your affidavit that was a very
13 small one, so I couldn't see all of the details on that
14 one. And so, you receive this report, but only sometimes.

15 A. This is the only way to generate this
16 report.

17 Q. Yeah.

18 A. You need to track case by case.

19 Q. Yeah. And this information is also
20 rolled up on a monthly basis, is that right?

21 A. I cannot tell on this. I know that
22 I'm aware of the weekly report.

23 Q. Okay. What I'm wondering is, if you
24 could provide me with the information of the percentage of
25 cases that were - the number approved -- sorry. The

1 percentage approved and denied, the percentage that were
2 decided within 48 hours, and the average processing time
3 for each month, since the May order.[u]

4 Do you want me to go through that again? It
5 may not have been clear.

6 A. I assume that ---

7 Q. Or simply all the weekly reports that
8 you've issued, that would also be fine.

9 A. And I assume that we have made the
10 weekly -- all the weekly reports available in a further
11 request for information already, but I think we can provide
12 them for sure.

13 Q. That would be great to have them here.
14 (Inaudible).

15 A. But I want to make sure that the
16 Tribunal is aware that we have (inaudible) transparency
17 angle, so everything that we have been asked, we are
18 providing. Sometimes it takes time to put things together,
19 but we are providing to the parties. Even things that have
20 been asked today, are information that often we have
21 provided.

22 Q. I mean, I'm not sure that's quite fair.
23 A number of times, for instance, my clients have asked for
24 an org chart and have been unable to get an org chart out
25 of your office. Okay. Let's move on. I want to talk now

1 a little bit more about the reimbursement process which you
2 brought up earlier in your testimony.

3 A. Yeah.

4 Q. After a Jordan's Principle claim has
5 been approved for a child, that family can take their child
6 to go get the service that was approved, let's say it's a
7 service case, it's tutoring or counselling or whatever it
8 is, they can go get that directly from the service
9 provider, is that correct?

10 A. Depends on the arrangement, yes.

11 Q. Can we look at Ms. MacDougall's
12 affidavit one more time, that's Tab 5 of the Volume 1.

13 A. Yes.

14 Q. I just want to look at paragraph 7C. Is
15 everybody there?

16 "In some cases, Health Canada employees
17 have requested that the parents of
18 children seeking Jordan's Principle
19 funding should pay for the service up
20 front, and that Jordan's Principle
21 funding should be used to reimburse
22 parents later for their out of pocket
23 costs. This defeats the purpose of
24 Jordan's Principle."

25 Would you agree with Ms. MacDougall that

1 sometimes families are paying out of pocket and being
2 reimbursed later for their costs?

3 A. This is what is said here. The practice
4 is to do -

5 Q. That your ---

6 A. --- all the means possible to pay up
7 front, and to provide -- to pay directly to the provider if
8 at all possible. I'm not aware of the specific case that
9 is being mentioned here, but the ---

10 Q. But are you aware of cases where
11 families are paying up front?

12 A. No, I'm not personally aware of a case.
13 The only -- the first time I get the mention is this
14 paragraph here. But I don't know which case she's
15 referring to.

16 Q. Is it contrary to your policy to have
17 families pay up front and get reimbursed?

18 A. The family can pay up front if they
19 want, but we should strive to organize everything we can to
20 pay up front. And this is why we are relying on procedure,
21 like we have contracts established with pharmacists,
22 medical supply and equipment providers, dentists, to pay up
23 front to avoid patients being out of pocket. This is ---

24 Q. What about families who can't access
25 those kinds of service providers?

1 **A.** So, I think the commitment is to try to
2 work with them to make these arrangements. At the end we
3 need also to have a willing provider that will accept us to
4 pay directly.

5 **Q.** Right.

6 **A.** The provider. I cannot comment on that
7 specific case, but I think our attempt is to organize
8 services, so we avoid families having to pay themselves, or
9 avoid that this becomes a barrier to services.

10 **Q.** Okay. The policy is, I assume, that
11 where a family has paid up front, they'll be reimbursed
12 after?

13 **A.** Yeah, for sure.

14 **Q.** Do you have service -- does Indigenous
15 Services have service standards in place for how long it
16 should take to pay families back for their out of pocket
17 costs?

18 **A.** There are procedures that have been
19 developed to expedite reimbursement of expenditures to
20 providers, but also to families.

21 **Q.** And what's the service standard?

22 **A.** I don't know. I'm sorry.

23 **Q.** And do you know how long those standards
24 have been in places?

25 **A.** The procedures have been established, I

1 I think -- this was worked on during summer 2017, so I think
2 it was for more than a year that it's been in place.

3 Q. Okay.

4 A. And I think we have ---

5 Q. Do you track

6 A. --- we have shared with the parties some
7 details about that (inaudible).

8 Q. Does Canada track how long it's taking
9 to process payments to families who are paying service
10 providers out of pocket?

11 A. I don't know.

12 Q. Okay. Can I ask you to turn -- is there
13 someone in your organization that does have that
14 information? About whether you're tracking this payment
15 standard?

16 A. I think there will be a way to extract
17 from the financial system, information about a sample of
18 cases, for example, and be able to know between the demand
19 for payment and the issuing of a pay, we have tracking
20 system that will allow to do this.

21 Q. If possible I'd like to get that
22 information for Ontario.[u]

23 A. One of the barriers that we encounter
24 for paying directly to the provider, especially when it's
25 the first time we have an arrangement with a provider, is

1 that before we do a direct payment, direct deposit, there
2 is a step that we need to organize with the provider to do
3 a one-send deposit to make sure that the account works.
4 And we have, and I'm aware of situations like that, where
5 there has been a delay of getting the provider payment out,
6 because the provider was not doing it's part of the work,
7 which was to confirm that the deposit actually works.

8 Q. I'm still talking about cases where
9 families are paying the provider. I'll come to the service
10 provider ---

11 A. I can only speak about the case I know,
12 so I am sharing with you the situation that I was made
13 aware of over time.

14 Q. Right. Okay, let's go back to Exhibit C
15 of Ms. MacDougall's affidavit at Tab 5.

16 A. This is an e-mail?

17 Q. Do you want to take a moment to review
18 the letter? It's a letter from Grand Chief Joel Abram of -
19 --

20 A. Okay, I don't have the right thing. You
21 said ---

22 Q. Volume 1 ---

23 A. Tab 5

24 Q. --- Tab 5, Exhibit C.

25 A. Okay, I've got it.

1 Q. Okay, great. This is a letter from
2 Grand Chief Joel Abram of the Association of Iroquois and
3 Allied Indians, and it's to Minister Taylor and Minister
4 Philpott, dated September 22nd, 2017. Have you seen this
5 letter before?

6 A. Yes.

7 Q. Okay. I'd like to take you to the last
8 bullet on the second page.

9 A. Okay.

10 Q. It's under Number 1. Grand Chief
11 writes:

12 "For your reference and information, the
13 specific outstanding challenges our
14 staff are experiencing with Jordan's
15 Principle program are outlined below."

16 And the last bullet says:

17 "Failure to issue payments in a timely
18 manner. To date none of AIAI's approved
19 JP claims have been provided payment..."

20 Or ---

21 A. Issued.

22 Q. "... issued payment". Thank you.

23 A. Yeah.

24 Q. And now can I ask you to turn to Exhibit
25 D, which is on the next page. This is a follow-up letter,

1 again from Grand Chief Abram, again to Minister Philpott,
2 dated November 9th, 2017. Have you seen this letter before?

3 A. I think so.

4 Q. Okay. I'd like to just take you to the
5 fifth bullet on the first page. And again, Grand Chief
6 references the failure to issue payments in a timely manner
7 and the lack of information on payment information. So,
8 you'd agree with me that these letters are identifying the
9 failure to issue payment is a problem facing the
10 communities in AIAI?

11 A. This is what the Chief is bringing
12 forward, yes.

13 Q. And that this was identified as a
14 problem to the Minister as early as September 2017?

15 A. Yeah. And I know that there has been a
16 number of meeting work sessions with AIAI to resolve our
17 procedure issue, process issue there.

18 Q. Okay. Can I ask you to turn back to
19 paragraph 10 of Ms. MacDougall's affidavit? So, we know --
20 she writes:

21 "Even when funding has been approved
22 under Jordan's Principle, payments are
23 not issued in a timely manner. As of
24 November 6, 2017, only four of AIAI's
25 approved Jordan's Principle claims had

1 been issued payment."

2 So, none in September, four by November.

3 A. Yeah.

4 Q. Would you agree that sometimes the
5 reimbursement process can take weeks?

6 A. I think the comments here in the
7 affidavit, in the letter from the Chief, are raising this
8 issue. I'm not sure if it's something that we have a
9 problem nationally, or it was located in this area, a
10 process issue in Ontario Region. I know that, based on
11 these letters, there has been a number of meetings and
12 sessions with AIAI to try to resolve and provide additional
13 capacity to support this process, resolving that. The
14 procedures have been refined to expedite payment. Sorry.

15 Q. You're meeting with AIAI to enhance your
16 capacity to issue payments in a timely way?

17 A. No, no, no. To resolve -- there is a
18 number of issues in that letter that are raised, there is
19 the payment, but there has been also a number of meetings
20 and work sessions . . .

21 Q. Right.

22 A. --- to try to resolve the whole issues
23 that were raised --

24 Q. But I just want to focus on the payment
25 issue right now.

1 **A.** Yeah. But what I can say about that, we
2 have a procedure now that is in place to expedite payment.
3 We have -- I think this has been -- the work on this has
4 started the summer before, so a year ago. Right now, it
5 seems to work well, but the Chief is raising the issue, the
6 affidavit has raised the issue, so I cannot say -- oppose
7 that they are saying that, I just -- I need to take it for
8 a fact, there was a problem there. But I know that since,
9 there has been a number of work sessions with AIAI to try
10 to improve processes. And what was the reason why the
11 payment was not issued, if it's actually happening? I'm
12 not aware of what are the sequences.

13 **Q.** In any of their cases, yeah.

14 **A.** There is that circumstance with the one
15 cent payment, I'm aware and I think it's related to the
16 AIAI situations.

17 **Q.** Yeah. It's not just one of their cases
18 though, right? It's almost all of their cases that weren't
19 receiving payment in this period.

20 **A.** This is your view.

21 **Q.** This is the evidence that they've
22 submitted.

23 **A.** This is what they say, and I said I
24 acknowledge that it's there, so -

25 **Q.** So, in these cases it's not the

1 department of first contact that's paying out of pocket,
2 it's the family or the service provider or whoever, and
3 they're waiting for the department to reimburse them.
4 You'd agree with that.

5 **A.** I'm not sure I understand your question,
6 sorry.

7 **Q.** So, the person who's paying for these
8 services is not the department of first contact, it's not
9 Indigenous Services, or Health Canada, it's the family,
10 it's the service provider, and they're waiting for your
11 reimbursement.

12 **A.** I'm not sure I have anything to add to
13 your point here.

14 **Q.** Okay. If a family is working with one
15 of the Jordan's Principle Navigators or the Coordinators,
16 sort of at the political -- you know at AIAI or IFN or
17 wherever.

18 **A.** Yeah.

19 **Q.** Is it the practice of Indigenous
20 Services to alert that Navigator when the payment is
21 issued?

22 **A.** I'm not sure.

23 **Q.** And do you have -- I know there are
24 cases where you've arranged with a service provider that
25 you'll reimburse the service provider as well.

1 A. Yes.

2 Q. And do you have service standards in
3 place for that situation, for how long the reimbursement
4 should take?

5 A. I think I mentioned before, I'm not
6 aware of the service standard. There is a procedure, and I
7 think there is a standard built in there, but I'm not aware
8 of what it is. I cannot state it -- I cannot state it
9 here.

10 Q. And you also -- you would also track,
11 presumably, the reimbursement of these service providers to
12 find out how long it's taking?

13 A. I assume on specific cases we can go
14 back in the financial system and find how long it took
15 between the decision and the actual payment.

16 Q. Could you aggregate that? Could you
17 tell me how long it's taking on average, in Ontario, to
18 reimburse service providers?[u]

19 A. I think we can probably extract
20 information from the financial system and do something. It
21 might be an undertaking that is longer than the usual 10
22 days though, because you're talking about manual ---

23 Q. That's okay. I understand. Mr.
24 Tarlton, Mr. -

25 A. Our financial systems are not designed

1 to track these kind of things. And what we may have
2 difficulty is to understand what has been the barrier --
3 did we receive the invoice, did the test payment was issued
4 with the provider, all these questions. There might be
5 some analysis to do there.

6 Q. Right. But we can at least dig out the
7 numbers and see what the scale of the problem is. Okay.
8 Now, you're aware that there, of course, are families and
9 children who are struggling to find service providers to
10 provide the services they need?

11 A. Yes.

12 Q. And are you aware of any service
13 providers who are threatening not to serve kids funded
14 under Jordan's Principle, because of these delays?

15 A. Not specifically.

16 Q. Okay.

17 A. There has been situations before in
18 various programs where we had a provider that preferred to
19 do their private practice and get paid directly by the
20 clients, than dealing with government programs, and yes, we
21 have that.

22 Q. Because of the reimbursement times.

23 A. Because the fact that there is rules,
24 because the fact there is process, and because the fact
25 that they prefer to get someone paying at the cashier and

1 not have to deal with processes. But the team, and our
2 workers, are tasked to help to find providers, and find
3 arrangements.

4 And it's also why we welcome all the
5 situations where communities came forward and proposed to
6 have community-based approach, rather than -- and group
7 service request, rather than individual transaction
8 wherever possible, because it does allow to secure long-
9 term service for not only one child, but for many children
10 in communities. So, we have supported this process because
11 sometimes actually, it's not the willingness of government
12 to pay, sometimes there is a shortage of service offering
13 in some areas.

14 Q. But of course, there are children with
15 unmet needs who can't find a community program that fits
16 them, and so they'll need to go through your processes.

17 A. Yeah, yeah, yeah, yeah. But they can
18 come as -- some come for group requests, so we build -- we
19 support a service offering, and sometimes we have to try to
20 help to find a provider.

21 Q. Right.

22 A. We have, I think it's around 15,000
23 pharmacist providers registered. I don't know how many
24 thousands of mental health providers. We have a large
25 number of -- I think it's 15,000 dental providers

1 registered. So, we try to go to these to facilitate the
2 transaction and avoid clients having to pay out of pocket.

3 We don't necessarily have a traditional
4 arrangement with any -- I would say allied care, like
5 physiotherapists, speech therapists, occupational
6 therapists, and this is something with the Jordan's
7 Principle Child-First Initiative, we had to start to
8 develop, because we had none of these arrangements before.

9 Q. So, these are cases where a family might
10 be more likely to have to pay out of pocket, because you
11 don't have ---

12 A. Not necessarily, but we have to develop
13 the arrangement with the provider ---

14 Q. But in the meantime ---

15 A. --- we cannot rely on an existing
16 arrangement.

17 Q. --- in the meantime. If they want
18 service.

19 A. I'm not sure about your conclusion.
20 What I have to say is that we have to work harder to make
21 these arrangements because there is a demand for these
22 services and there was no structure of service before.

23 Q. Okay. I'm sure you don't have this
24 information off the top of your head but let me know if you
25 do. Do you have a sense of the total value of all the

1 approved individual claims in Ontario so far?

2 A. No.

3 Q. Or ---

4 A. I have a sense of the National level. I

5 know that Ontario's probably one of the front-leading

6 region with Manitoba, on group requests.

7 Q. Yeah, I'm asking about the individual

8 ones.

9 A. Individual, I'm not sure.

10 Q. What I'm interested in is what

11 proportion of these requests have been paid out so far, and

12 what value of the money has -- like, if you have say, four

13 million dollars (\$4,000,000) in claims approved, how many

14 million have actually been paid?[u]

15 A. Yeah.

16 Q. Is that information that's possible to

17 get?

18 A. Probably, yes.

19 MS. NERLAND: Can you look into that for me,

20 Counsel? Thanks.

21 --- BY THE WITNESS:

22 A. The commitment might be higher

23 specifically when we are at the beginning of a fiscal year

24 than the amount that has been paid, because when an invoice

25 comes, we pay them, but the commitment will be set aside

1 for this child if it's a long-term service arrangement.

2 Q. Okay. So, I'm coming up to the part
3 where it might be time to go *in camera*, and so I'm
4 wondering, did folks want to take a break? I know we've
5 been going for some time.

6 THE CHAIR: So, what we'll do, we'll take 15
7 minutes break, then start with the *in-camera* session. So,
8 what will happen is that the media will be -- sorry about
9 that, will be excluded for that portion -- yes, coffee
10 break, and we'll lock the doors, so we'll have this *in*
11 *camera*, and once we're done -- we'll go on a separate
12 record, and once we're done, then we can continue. So, in
13 15 minutes, is that sufficient? Not enough? Yes? Okay.

14 REGISTRY OFFICER: Order please. We're off
15 the record.

16 (BREAK)

17 REGISTRY OFFICER: And we're on the record.
18 Thank you. Please be seated.

19 THE CHAIR: I will invite NAN's questions,
20 cross-examination questions to the witness.

21 MS. MATTHEWS: Thank you, Madam Chair.

22 THE CHAIR: That's all right. Thank you.

23 --- EXAMINATION BY MS. MATTHEWS:

24 Q. Good afternoon M. Perron.

25 A. Good afternoon.

1 Q. How are you?

2 A. Well, so far.

3 Q. It's been a long day. I'm going to keep
4 my questions short. My colleagues at Chiefs of Ontario
5 have done a lot of work for me today. I just want to let
6 you know that I'm an Anglophone, so I'm not going to be
7 able to respond in French, but feel free, if you need. I'm
8 also going to pull a bit of a millennial lawyer move here
9 and read questions off of an iPad. So, if you see me
10 typing, it's not that I'm updating my Instagram or anything
11 of that sort, okay?

12 A. Right.

13 Q. So, I want to make sure that you have
14 your December affidavit in front of you, as well as Wendy
15 Trylinski's affidavit.

16 A. Sorry, which one?

17 Q. Wendy Trylinski's affidavit. It's very
18 tiny. There are no exhibits.

19 A. I'm not sure I have this one, though.
20 Would it have been provided into a separate document?
21 Okay. Thank you.

22 Q. Now, before we get to either of those
23 affidavits, I just want to remind you that I'm counsel for
24 Nishnawbe Aski Nation, which I will refer to as NAN for
25 short, and I'm not sure to what degree that you're familiar

1 with NAN. NAN was a latecomer to these proceedings as an
2 Intervener after the Tribunal's main decision in January.
3 And NAN represents 49 First Nation communities, 35 of which
4 are remote, fly-in communities, meaning that there's only
5 access by ice road during the winter, in some cases, or
6 just by air.

7 And so, NAN has really focused their
8 contribution to this proceedings on the fact that there are
9 really two levels of discrimination. Not only the main
10 level discrimination between Indigenous and non-Indigenous,
11 but the fact that when you live in a remote community, it's
12 harder to access services. Sometimes those services are
13 unavailable, and where they are available, the costs are
14 much higher. So, I'm going to be asking questions from
15 that lens and that framework.

16 So, I'm going to ask you to pull up Wendy
17 Trylinski's affidavit, and I will ask that you turn to
18 Paragraph 11, which is on Page 5. Now right away you're
19 going to see the words, "Treasury Board Guidelines", and I
20 know that counsel for COO has asked you a few questions on
21 this issue, so I'm not going to cover the same ground, but
22 I want to explore your responses in your December
23 affidavit.

24 So, if you don't mind, I'm just going to
25 briefly summarize who Wendy is, for everyone's benefit.

1 She is the Director of Public Health Education for NAN.
2 She sits on the Jordan's Principle Technical Working Group.
3 She was involved in creating the position, the JP Navigator
4 position for NAN, and the JP Navigator that was hired in
5 September, reports to her. Okay?

6 So, at Paragraph 11, she states, "Treasury
7 Board Guidelines" is the title:

8 "A significant area of concern for NAN
9 communities is that the Treasury Board
10 Guidelines for JP funding require
11 services to be rendered prior to funding
12 the service, either through a contract
13 or invoice from a service provider. In
14 effect this means that members of NAN
15 communities are forced to find
16 alternative ways to fund a service up
17 front, including travel and
18 accommodations, if they need to access a
19 service outside their community, and
20 await reimbursement later. In some
21 cases, the family pools financial
22 resources to fund the service. In other
23 cases, the Band Council has assisted.
24 In any event, this Treasury Board
25 Guideline is not in the spirit of

1 Jordan's Principle in the sense that the
2 government body of first contact, is to
3 pay for the service up front. Instead
4 the upfront costs are being borne by
5 families and their communities."

6 Now, I presume you've read Wendy's affidavit
7 top to bottom?

8 A. Yeah.

9 Q. And you're familiar with this paragraph
10 in particular?

11 A. Yes.

12 Q. So, you understand that the concern is a
13 bit more acute in a Northern community, right, where the
14 costs are higher, and the services are limited?

15 A. Yes.

16 Q. Right. So, I now want to -- I know you
17 have a response to this, because you filed a reply
18 affidavit, so I want to take you to your December
19 affidavit. And your responses are captured at Paragraphs
20 24 through 28 of your affidavit and encompass Exhibit C of
21 your affidavit. I'm not going to go in order. I'm going
22 to start with Paragraph 26, and I'm just going to
23 characterize it and I want you to tell me if you think it's
24 a fair characterization.

25 So, this paragraph is talking about an

1 Exhibit C; there's a chart, which outlines how payments are
2 processed. So, let's just quickly turn to Exhibit C. And
3 the chart is found roughly three pages in. It has a bunch
4 of boxes ---

5 A. I got it.

6 Q. --- hexagons and circles.

7 A. Yeah.

8 Q. Okay. And from what I can tell, it
9 appears that there's two types of payment tracks. One
10 called A-1, and one called A-2. Does that look correct?

11 A. Yeah.

12 Q. Okay. So, as far as I could tell, A-1
13 looks like it's a track to pay the vendor, the person
14 providing the service, correct?

15 A. Yeah.

16 Q. And A-2 is the track to reimburse a
17 family or Band Council that pays for the service.

18 A. Yes.

19 Q. So, am I correct in understanding that
20 those are really the only two mechanisms for paying for a
21 service, through reimbursement or through direct payment to
22 the service provider.

23 A. Yeah. This is about payment -- I
24 understand that there is a process to do advances as well

25 --

1 Q. Right.

2 A. --- which is not captured into this
3 chart. That is the way to avoid someone having to out of
4 pocket. I did check with our Financial Officer who's
5 following this program to see if there was any sense of
6 advances, and he has not been able to bring to my attention
7 where advances have been requested.

8 Q. Okay.

9 A. So, but I understand from the affidavit
10 that there is situations where parents seem to be out of
11 pocket. This is why earlier today -- sorry, I cannot see
12 you otherwise, this is why earlier today I mentioned that
13 our attempt is really to organize services directly with
14 the provider, because most provider will accept to offer
15 the service and then send us the invoice, as long as we
16 tell them that when they bill us, we are going to cover.

17 Q. Right.

18 A. So, this is the arrangement. Even on
19 transportation, like for hotels, meals, flights, all these
20 expenditures, we have procedures and methods to do that,
21 and organize it so avoiding parents getting into situations
22 where they have to pay themselves their flight tickets for
23 them and their child. So, we have these arrangements.

24 But it seems, according to the affidavit
25 here, we have a situation where parents are still out of

1 pocket, so we have to work on that. And there is a way to
2 do advances. There is a way for us, also, to make
3 arrangements with Band Councils for us to float them
4 supplementary funding so they can accommodate that for
5 their community member. So, that's why the community-based
6 solution is often the most practical when it comes to
7 remote and isolated, and even semi-isolated communities, to
8 build a model of service that is more integrated, rather
9 than service by service, or action by action.

10 Q. Right. And NAN had done that for ---

11 A. And we will have, and we will always
12 have, I believe, individual situations that are
13 exceptional, and we have to have a tool and a process to
14 support these families as well.

15 Q. Right.

16 A. So, you're right to argue on this point,
17 and we have to have a mechanism, and there is one that is
18 supposed to be there. Now, it doesn't seem that it's used.

19 Q. Okay. So, M. Perron, you've said quite
20 a bit, I'm going to try to take it piece by piece, if you
21 don't mind.

22 A. Yeah.

23 Q. So, just looking at this chart, you've
24 agreed that this third track that you're talking about,
25 providing advance payment so that people don't have to pay

1 out of pocket, it's not reflected on this chart.

2 A. No.

3 Q. Are you aware of any chart where that is
4 reflected?

5 A. No, I don't think so. And like I said,
6 I'm not aware of any situation where it has been used,
7 which is more concerning.

8 Q. Okay. So, can we now head back to the
9 body of your affidavit? I believe, Paragraph 25, and I'm
10 just going to read the first sentence, so:

11 "Section 34 of the **Financial**
12 **Administration Act**, allows Canada to
13 make payments before a service has been
14 provided in exceptional circumstances,
15 and when there is no other payment
16 alternative."

17 So, this, I'm going to call Track 3, which
18 is what your previous comment was about.

19 A. Yeah.

20 Q. Now you indicated you spoke to someone,
21 who was that person that you spoke to?

22 A. I did ask, I don't know who exactly, but
23 they went to the Branch Senior Financial Officer for the
24 First Nation in the Health Branch, to see in the records if
25 we have any evidence in the financial system where advances

1 would have been provided.

2 Q. Okay.

3 A. And the answer I got was, no.

4 Q. And can you tell me when you got this
5 information?

6 A. It's as recently as, I think, maybe
7 early this week or late last week.

8 Q. Okay.

9 A. When preparing for this, I went back and
10 said, "Okay, I need to see if this is being used or not."

11 Q. Right. And do you have any idea why the
12 answer is no one's used this?

13 A. Time did not allow me to go there, but
14 ---

15 Q. Now, are you aware of any part of the
16 form for a requester, where they could provide information
17 saying, "Look, I'm not able to provide out of pocket
18 expenses, and we are unable to find a service provider that
19 will accept direct payment."

20 A. I don't think it's built in the form.
21 It's something that should occur during -- in the
22 conversation when needs are being assessed. There is a
23 certain level of information that is being captured on the
24 form, but a lot of the contextual situation is also part of
25 the dialogue and the relationship that should exist between

1 the Jordan's Principle Focal Point and the person making
2 the request.

3 Q. And are you aware of any kind of
4 information, package, either on a website or provided in
5 paper, that would explain that this option exists?

6 A. I don't think so.

7 Q. Okay. So, it seems like there is a lack
8 of knowledge that this is even an option.

9 A. Yeah, a lack of knowledge within staff
10 as well, if it has not been called on.

11 Q. Not only within staff, but also
12 potential applicants.

13 A. Yeah.

14 Q. And that perhaps explains why no one has
15 used it to date.

16 A. Exactly. And I think in the affidavit
17 that you presented, it's referred to the Treasury Board --
18 I think it's the **Financial Administration Act** that is the
19 right reference there.

20 Q. Okay.

21 A. In case we have to refer to this in the
22 future, and public records, it's probably better to use the
23 reference I had in my affidavit than the one that appeared
24 in the other affidavit.

25 Q. Right. So, Track 3 we'll park now, for

1 now. Going back to the first two tracks, reimbursement
2 versus direct payment.

3 A. Yeah.

4 Q. Are you aware if whether Canada keeps
5 data on how many individual requests are paid through
6 direct payment, or paid through reimbursement?

7 A. Our financial system will contain this
8 kind of information, I'm sure.

9 MS. MATTHEWS: And is that something,
10 Counsel, that could be provided for Ontario?

11 --- BY MS. MATTHEWS:

12 Q. I guess the reason why I'm asking is, if
13 we could see the proportion, we would see whether or not
14 the burden is being placed on individuals having to pay out
15 of pocket, or Band Councils, for example, versus a service
16 provider.

17 A. Yeah. It will also have reimbursement
18 to family to institutions where ahead of time, the family
19 have went and bought the service themselves, and you will
20 have a lot of families that tried to find solutions for
21 their child themselves.

22 So, reimbursement is also a sign that maybe
23 family went ahead and organized service, may have been
24 paying for service for a while before coming to us. So,
25 you will have reimbursement for these situations as well,

1 not only for situations where we approve, but they had to
2 pay themselves.

3 **MS. MATTHEWS:** Sure. So, the information
4 I'm looking for, counsel, is proportion of individual
5 requests in Ontario that are paid for through direct to the
6 service provider versus reimbursement.[u]

7 --- **BY MS. MATTHEWS:**

8 **Q.** Now I'm just going through my remaining
9 questions. It looks like I don't have any left, but let me
10 just check. So, I believe those are all my questions.
11 Thank you, M. Perron.

12 **A.** Thank you.

13 **THE CHAIR:** Thank you. So, I believe that
14 the AFN also had some questions. Oh, a surprise?

15 **MR. SMITH:** Sure, I don't mind just saying,
16 on behalf of the Commission, the counsel here for the
17 Complainants and Interested Parties have covered a lot of
18 ground. We don't have any questions for the witness.

19 **THE CHAIR:** Thank you. I wasn't avoiding
20 you. You told me earlier.

21 **MR. SMITH:** I did. I just want to say it
22 for the record one more time. But thank you.

23 **THE CHAIR:** Yes. No problem. Thank you.

24 --- **CROSS-EXAMINATION BY MR. WUTTKE:**

25 **Q.** Good afternoon, Mr. Perron. My name is

1 Stuart Wuttke, I'm counsel with the Assembly of First
2 Nations. I'm here with my colleague, Thomas Milne. We
3 just have a few questions. The nice thing about going last
4 is most of the questions have been asked by my colleagues.
5 But there are a few areas we would like some clarification
6 on. There was a lot of discussion this morning on Jordan's
7 Principle. Now would you agree that Jordan's Principle was
8 created as a response to First Nations children being
9 excluded, or not provided with services that other people
10 within a province was generally had available to them?

11 **A.** I would suggest a complexity of
12 jurisdictional situation, yes.

13 **Q.** And because of those jurisdictional
14 situations at that time, they were mainly dealing with
15 Status Indians that were denied services, is that correct?

16 **A.** Yes, correct.

17 **Q.** And prior to Jordan's Principle, Non-
18 Status Indians and Métis individuals would be provided with
19 services funded by the provincial governments as opposed to
20 First Nations as Status Indians.

21 **A.** Yeah, they were not provided, for sure,
22 by Health Canada or INAC at the time. And I'm not aware of
23 policies of legislation in the provinces and territories
24 that will exclude Non-Status people from the application of
25 these programs.

1 Q. And the Non-Status individuals would
2 include Métis, Inuit and Non-Status Indians.

3 A. People self-identifying as Indigenous,
4 yeah.

5 Q. Thank you. Now there was some
6 discussion this morning on what a First Nation child is.
7 Is it your understanding that First Nations children would
8 be Status Indians?

9 A. The way we have operated under Jordan's
10 Principle and the Child-First Initiative is that our
11 understanding of a First Nation child is a child that is
12 registered First Nation under the **Indian Act** or entitled to
13 be registered.

14 Q. Okay, thank you. Now this morning there
15 was a reference to a door -- basically a philosophical door
16 where certain people are let through and provided services,
17 and other individuals such as certain Non-Status groups
18 will not be able to get through that door. You sort of
19 mentioned there was a spectrum of what would be considered
20 Non-Status individuals. Can you clarify what that spectrum
21 would entail?

22 A. I think you're bringing me in an area
23 where I'm far from being a specialist. I think you're
24 colleagues from -- representing the Child Family -- Child
25 Caring Society have been pretty clear on the 6 -- the child

1 of a -- someone registered as 6(2), so this is one
2 situation. But then there is other situations where people
3 claim Indigenous (inaudible) and they will identify
4 themselves as Non-Status, or being Métis. There is people
5 that are much more knowledgeable about this decision than
6 me to explain that further.

7 Q. And for the people that you sort of say
8 they have identified, that's self-identification as an
9 Aboriginal person, is that correct?

10 A. Yeah. And we have some program of
11 application that are generally aware, it's for Indigenous
12 people living in urban areas, there is different groups.
13 But most of the programs that we have at Indigenous
14 Services Canada are for registered First Nation, and Inuit
15 populations. And to some extent, a lower degree, we have
16 some programming for urban Aboriginal people.

17 Q. Okay. There was some discussion on the
18 **Descheneaux** case this morning. I'm not sure if the panel
19 is fully aware of the **Descheneaux** case. If you can sort of
20 explain some of that.

21 A. I would say maybe the same way as I
22 mentioned before, I'm not really a specialist. I can talk
23 about **Descheneaux** in general. There was a court decision
24 in recent months that has indicated that Canada's practice
25 under the **Indian Act** for registration was not appropriate,

1 in fact was discriminatory, depending on if the ancestor
2 was a woman or a man.

3 So, there was some adjustment. There was a
4 decision previously about that too. So, under **Descheneaux**
5 now, a number of people that had been denied Status in the
6 past will now be eligible to acquire Status under this
7 change of rule that has been, I think approved by law,
8 during the winter.

9 And there is a second part of that which is
10 an engagement process with First Nations across the
11 country, on the discussion of, not citizenship, it's rather
12 who is defined as a First Nation person and how First
13 Nation should be recognized going forward. Because right
14 now what we have is a Colonial act that defines how this is
15 working, while on the Reserve, a self-determination
16 perspective, some will say that Chief and Council, and
17 Leader of Nations have a role to play there. But this is
18 the context. Now there is an engagement process to get to
19 the bottom of this question. I don't know if the counsel
20 knows much more than me about that. We'll agree that this
21 is a general description.

22 Q. Thank you. So, going back to the first
23 phase. The first phase of **Descheneaux**, Bill S-3

24 A. Yeah.

25 Q. --- corrected the provisions of the

1 **Indian Act** that the court said were discriminatory, is that
2 correct?

3 **A.** Yes.

4 **Q.** And a second phase really is a process,
5 or a framework that is too to be developed where the
6 Federal government will engage First Nations to determine
7 other areas of **Indian Act** Status reform that may be
8 necessary, including adoptions, First Nation control over a
9 Status Indian whose definitions -- and all these other
10 potential categories.

11 **A.** I should have got a brief from you
12 before coming here.

13 **Q.** So, are you aware of certain statements
14 made by the Minister that the Federal government should get
15 out of the business of determining who is a Status Indian?

16 **A.** I've heard that before.

17 **Q.** And that is, in your view, consistent
18 with the Phase 2 of **Descheneaux**.

19 **A.** I would say it's also very consistent
20 with the vision to get out of the **Indian Act** over time,
21 advance self-determination and self-government, yes.

22 **Q.** Now with respect to the Inuit population
23 in Canada, does the Federal government determine who is an
24 Inuit?

25 **A.** No, it's the -- for at least

1 administration of program that we have a responsibility
2 for, it's the Land Claim organization that informs us about
3 who has been recognized as a land claim right holder.

4 Q. And that would also apply similarly, to
5 the Métis population.

6 A. It's a bit more complex in terms of what
7 is the process there. I'm less knowledgeable about that.

8 Q. Okay. And with respect to, again First
9 Nations in brackets, are you aware of who's a First Nation
10 or -- who is a First Nation and how is that determined at
11 the community level?

12 A. I think some communities have their own
13 codes. It might vary from one community to the other. But
14 again, there is diversity across the country, I think.

15 Q. And you spoke this morning about an MOU
16 process for the Inuit and the discussions under the MOU is
17 really set by the Inuit determining who, or I should say,
18 what their own issues are or what their own priorities are.

19 A. Yeah, there is permanent (inaudible)
20 process with the three distinct groups, First Nation, Inuit
21 and Métis. For the Inuit there is an Inuit Crown
22 partnership table and process, and under this process Inuit
23 have identified priorities that they want to work with the
24 Federal government, with the Federal Ministers, with the
25 officials to advance. And there is a cycle of meetings and

1 we are making a number of progress in this area. And one
2 of the areas where we're working is on child health --
3 healthy child development.

4 Q. Okay. So, essentially those bilateral
5 processes are the Federal government engaging with each
6 distinct Aboriginal group within Canada.

7 A. Yeah. And some of the discussion there
8 will inform budget decisions, new programming and things
9 like that, yes.

10 Q. Would you also agree that, with respect
11 of the three groups, First Nations, Inuit and Métis, they
12 have distinct rights that are only applicable to those
13 groups?

14 A. They are distinct groups, they have
15 distinct priorities, and I think rights are often driven by
16 the treaties and the arrangements that have been signed
17 over time, so of course they will be different, yes.

18 Q. Okay. Now going back to, you know,
19 discussion on Non-Status people, to your knowledge, has any
20 First Nation government asked or requested that Non-Status
21 people be covered under Jordan's Principle?

22 A. I am not aware that the right holders
23 would have done that. I'm aware that parties in this room
24 have brought some opinion about how we should handle this.

25 Q. But First Nations governments

1 themselves, to your knowledge, have not asked that.

2 A. I'm not aware, no, of any situation
3 where they would have done that.

4 Q. And with respect to programs that were
5 discussed today, with respect to Education, Health, other
6 programs that may be covered under Jordan's Principle,
7 would you agree that under the Department of Indigenous
8 Services that a lot of those programs have capped the
9 budgets?

10 A. Yeah. There is -- I don't really like
11 the term "cap". Some programs are associated with an
12 annual escalator, some do not have. I would say in recent
13 years, a lot of work has been done to create sustainability
14 and rebasing several programs. So, the blank assertion
15 that there is a cap everywhere is not really true. I think
16 there is built-in escalators that have been developed. I
17 think recently there was great progress around the
18 Education funding model, for example. So, this is
19 evolving.

20 Q. The budgets themselves aren't infinite.
21 There is ---

22 A. I would like to live in the world where
23 budgets are infinite but, I don't think there is any place
24 where budgets are infinite.

25 Q. All right. And to sort of ---

1 A. But we have to be judicious and deal
2 with what is really important, for sure, yeah.

3 Q. Okay. And just building on that, would
4 you agree that the funding levels that are currently
5 provided for these programs, do not fulfill all their needs
6 with respect to Education, housing, water?

7 A. The needs in many areas are always
8 greater than what we can afford. However, I would say in
9 Child and Family Services, the last budget had brought, I
10 think, the sustainability there, Education is getting to
11 the right place as well. We have received in some funding
12 areas for Health, better sustainability in the reinvestment
13 which is really positive. So, again, it's not a blanket
14 statement. I think the vision of sustainability and
15 appropriateness of funding for these services is really in
16 the work that we do every day, yeah.

17 Q. And similarly, in respect to Jordan's
18 Principle funding, it's not an infinite budget, there is
19 limits to it.

20 A. It's not an infinite budget, however I
21 think it was in one of my affidavits that the signal there
22 is that if there is need for more money, we have a process
23 to access more money. We have in the first year of the
24 application of the Child-First Initiative, re-profiled
25 money that was not used to make sure it stays in the

1 envelope. And if the money falls short, there is a
2 process, because the commitment towards Jordan's Principle
3 is not time limited.

4 While the Child-First Initiative was an
5 interim measure for three years, the commitment is not
6 ending after three years. It's an obligation and it's
7 something that has provided value, I believe, to a number
8 of families across the country, so the commitment is there
9 now. The form that this will take, there is a process
10 underway involving many parties, including the FM, to try
11 to explore how do we build a long-term approach to Jordan's
12 Principle.

13 So, to make sure that instead of responding
14 to requests for people facing difficulties, we build, maybe
15 up front, what is needed for these families to access a
16 service without having to ask for it, because it will be
17 there for them.

18 So, I think this is the work that will lead
19 us next fall with maybe a proposal to design for the
20 future. There will be always a need, from my perspective,
21 and this is my personal perspective with two years and a
22 half working on this file, for exceptional situations.
23 There is families in this country, not First Nation, but
24 you have that also in the rest of the Canadian population,
25 but there is in First Nations populations, families that

1 are struggling with really difficult situations, because
2 where the live, there is (inaudible) disadvantage, and
3 there is a need to have a flexible tool to answer to their
4 specific needs. But if we can have something that is a bit
5 more proactive and available to everybody, this will be
6 better. But this is my own view.

7 Q. Okay. Considering what you said before
8 that, Jordan's Principle was initially developed because of
9 this jurisdictional gap that First Nation Status Indians
10 were not getting access to services. Would the inclusion
11 of Métis people, and Non-Status people, a self-identified
12 people, including them, if they were included in Jordan's
13 Principle, would this add pressure to the program, and add
14 pressure to the already constrained budget?

15 A. I would say this -- the analysis is
16 being done, like a mentioned a bit earlier today, on the
17 Non-Status situation and on the Inuit situation, to see how
18 we can get to help them and deal with gaps if there is
19 service gaps. Your question is a bit broader there. I
20 think there is always an issue if you increase the number
21 of people that are eligible, there is more resources. But
22 as we've seen in the past when there was a change to **Indian**
23 **Act** to increase the number of people that were registered
24 First Nation, for example, we sought additional funding to
25 deal with these individual services to accommodate that new

1 population.

2 Q. Okay. I just have one more question.
3 It was suggested earlier that one option for dealing with
4 Non-Status individuals would be for the Department of
5 Indigenous Services to pay for the service and then seek
6 reimbursement for -- from the provinces for people that
7 should be covered under the provinces in the first place.
8 Is this a practical option?

9 A. I think there is some value of exploring
10 the option. One of the pitfalls in this is that right now,
11 under the Jordan's Principle approach we have, which looks
12 at substantive equality, we go way beyond in many places to
13 what the province will be doing, which is fair. Because
14 there was disadvantage in the past, doing more is the right
15 way to address the deficits of support and services for the
16 past, somehow. But if you start to do it with a broader
17 population with the intention to claim it back from someone
18 else, the other government may see that we went way beyond
19 what they would have done otherwise. So, I'm not sure that
20 it's going to work everywhere. It might work for some
21 element of services, but not for all.

22 Q. Okay. Those are all my questions.
23 Thank you.

24 **THE CHAIR:** Thank you. Just a moment
25 please.

1 --- CROSS-EXAMINATION BY MR. LUSTIG:

2 Q. I just have a couple of questions. The
3 53 or so cases that are deferred while you're looking at
4 the Non-Status situation, can I assume that any urgent
5 cases are being attended to in some fashion?

6 A. Yes. So, if there is something that is
7 urgent, even - you know, our commitment is to make sure
8 that we are helping the families and the children, so if
9 something is very urgent, we would have acted on this, we
10 would have tried to find a solution to assist. There is a
11 number of cases where we have worked to try to help the
12 families, even if they were not eligible. But it might be
13 a request for speech therapy, it might a request for these
14 kinds of services which are legitimate needs from a family,
15 but they are not life-threatening situations, I am told.

16 Q. Okay. And the second question that I
17 have, in response to some of the questions that were posed
18 by counsel for NAN, you indicated that Ms. Gideon was going
19 to be -- or could address some of these questions because
20 they were more specific to what her duties were. Will you
21 be undertaking to advise her of what's been requested
22 during these proceedings, so that maybe she can include in
23 her affidavit those items?[u]

24 A. For sure. And, just to be fully
25 transparent with the Tribunal here, in my previous role,

1 probably I would have been pleased to answer these
2 questions. It's just that I'm not actually doing the work,
3 Dr. Gideon is doing that now. So, she has been following
4 the detail of some of the action and measures that are a
5 bit more distant for me now.

6 Q. Okay. Thank you.

7 A. But I will for sure, bring this to her
8 attention and will also work with Justice colleagues to
9 make sure she's well prepared.

10 Q. Thank you.

11 THE CHAIR: So, I have decided to wait to
12 ask my questions. We'll discuss the process for Dr. Gideon
13 later on, perhaps in a case management after the hearing.
14 So, this would be the time for the Attorney General's re-
15 examination.

16 MR. FRATER: No questions, thank you.

17 THE CHAIR: No questions, okay. I'm just a
18 little bit surprised. Sorry about that. Okay. Thank you
19 very much. Thank you very much for your evidence and you
20 may step down. So, we'll adjourn for 15 minutes. And if
21 it's possible to come back after 15 minutes to have a case
22 management to address other issues. Thank you.

23 REGISTRY OFFICER: And we're off the record.

24 (BREAK)

25 CASE MANAGEMENT

1 **THE CHAIR:** (Inaudible) of the evidence
2 that's being brought before the Tribunal to Dr. Gideon's
3 affidavit that's coming on May 18. I'd like to get a sense
4 of where the parties are at and what is the anticipated
5 process that you would like to have for this portion. So,
6 there are some information requests that have been made.
7 This will likely create a little delay, I don't know.
8 Please inform us on how you wish to proceed moving forward.
9 Sure, go ahead.

10 **MR. FRATER:** Okay, I can start. So, it's
11 next Tuesday that ---

12 **THE CHAIR:** A moment please. Is your
13 microphone open? Thank you.

14 **MR. FRATER:** Sorry. Next Tuesday Dr. Gideon
15 will be filing her affidavit. Some of the matters
16 discussed here today will be dealt with in her affidavit.
17 We'll review all the requests that were made and see how
18 much can be contained in that affidavit. Otherwise, we'll
19 be looking into whether we can answer all those questions
20 and providing the information that we can. After she
21 files, I suppose, as with this, Mr. Perron's affidavit,
22 parties will have to consider whether they're going to file
23 responding affidavits and we would then consider whether
24 we're going to file a reply affidavit.

25 There was an issue raised today about the

1 Status versus Non-Status, and whether that leads to a
2 Notice of Motion for Non-Compliance, or an argument about
3 Non-Compliance. I can say that before that issue is
4 considered, Canada would like to file evidence on that
5 issue so that there can be a full discussion. So, whether
6 that is in response to a Notice of Motion or otherwise, we
7 would like to file evidence on that issue. So, I would see
8 that probably as coming after Dr. Gideon's affidavit, the
9 responses and reply. But we would then be in a position, I
10 suppose, the parties have to consider whether they were
11 going to cross-examine Dr. Gideon and we'd need a date for
12 filing of evidence on the Status issue.

13 So, those are the markers, how we proceed on
14 that, you know hopefully I think all of that rolls out over
15 the next two months, would be our hope. But we're
16 conscious of the fact that government is tasked with other
17 -- another report due on the 24th, so there's a fairly
18 intensive process within the government for responding.
19 So, we were careful not to make any commitments today about
20 timelines. That would be our preference because of the
21 amount of work that's going on, but most of this, I think,
22 on the Court's schedule, or the Tribunal's schedule gets
23 done before the end of June.

24 **THE CHAIR:** Thank you. Any other comment,
25 response?

1 **MR. TAYLOR:** Just in terms of, from the
2 Caring Society's perspective ---

3 **THE CHAIR:** Yes.

4 **MR. TAYLOR:** --- you know, certainly we have
5 at least a prospective calendar for receiving more
6 information from Canada regarding Jordan's Principle in
7 terms of the affidavit of Dr. Gideon. You know, we'd have
8 to see, I guess, where we're at in terms of the requests
9 that were made today, how many are responded there. And
10 then of course there's the 2018 CHRT 4 where there's a
11 process there, and just briefly looking at it, I think that
12 runs out to the 21st of June.

13 Where there's a little less detail, I guess,
14 is the timelines for responding to Dr. Gideon's affidavit
15 from the parties. If my quick mental math is correct, it
16 was about two weeks, I think, following the affidavits that
17 were for Mr. Perron's initial affidavits, and also in the
18 order for 2018 CHRT 4. So, a similar process there would
19 put some kind of response from the Complainant, Interested
20 Parties and Commission around the end of May, and then a
21 further response from Canada in June. That might be a lot
22 of responding in the same period of time for my friends,
23 but we haven't discussed a calendar given the -- I think
24 the direction at the end of 2017 CHRT 14 was a further
25 affidavit six months later, and that's where we're at with

1 May 15th.

2 In terms of the Status and Non-Status issue,
3 I agree with my friend that some kind of articulation of
4 what would be sought in terms of relief would be important
5 to frame that discussion. If further steps are taken on
6 that, Mr. Perron gave some evidence today we'll have to
7 consider and there's a few requests for information,
8 particularly regarding Yukon and Section 10, Indian Act
9 bands, that will be important to consider in terms of
10 what's happening on the ground. And as was alluded to
11 during the cross-examination, there is quite a spectrum in
12 the Non-Status First Nations universe, and so what of that
13 would be addressed in a motion is something that we're
14 still -- I'm still seeking instructions on. So, we're not
15 in a position today to advise as to an order that we would
16 be seeking, if an order is to be sought. But certainly, in
17 the next few weeks, two weeks, we should be able to advise
18 if there is -- what the structure of that would look like.

19 At one point, in the interim, Member Lustig
20 had asked about the 55 or so cases that are pending,
21 whether they're urgent, and we were relieved to hear that
22 the urgency has been considered. And just one thing that
23 we would encourage Canada and DISC officials to do is to
24 continue to check with those families to ensure that the
25 situation doesn't move from a non-urgent one, to an urgent

1 one.

2 Service needs can materialize, and if the
3 family has received -- we have an example of a deferral
4 letter, which essentially says, you know, "We'll get back
5 to you. Please be patient." But if Focal Points can be
6 checking in with the family at some type of regular
7 interval, whether it's a week or two weeks, I don't -- I
8 can't speak to that, I don't have the expertise in terms of
9 what would be required, but just that there is some
10 monitoring for the cases in the Deferral category, while
11 they're awaiting a policy decision from government, to see
12 if urgency inserts itself into the family's life.

13 Subject to any questions from the panel,
14 those are my submissions on case management.

15 **THE CHAIR:** Thank you. Do you have any
16 questions? Okay. Would it be fair to say that we could --
17 everybody could check with the Tribunal next week, once
18 everything has been reviewed, to establish some timelines?

19 **MR. TAYLOR:** Just in discussing briefly with
20 my friend, I think likely the week of May 21st would be the
21 period we would have a more concrete idea. Because the
22 affidavit of Dr. Gideon will come in early next week, and
23 by the time the requests for information filter in as well,
24 and that will give us enough time to correspond. There are
25 a number of parties, but if it's not late next week, we

1 could certainly be back to the panel by early the week of
2 the 21st.

3 **THE CHAIR:** Okay. And I know that we've
4 given some orders, but we're also interested in having the
5 best information possible. So, I'm trying to be mindful
6 that there are some information requests that have been
7 made and the Attorney General has said that they're going
8 to make best efforts to address some of these information
9 requests and answer some of these questions. Would it make
10 any sense to just postpone this a few days or a week so
11 that the affidavit would come with more -- addressing more
12 questions from the parties?

13 This is -- we have to be creative here.
14 We're trying to look to ensure that the best interests
15 of the children are in force, respected. We want the best
16 information possible. There is no point in rushing things
17 and then we have unending, you know, correspondence between
18 everybody and then we may have questions and -- I'm just
19 trying to -- I'm turning to all of you to see if we can
20 make this work. Sometimes one week doesn't make a big
21 difference for this process, but it does make a big
22 difference for the people that have to do the work. So,
23 I'm just trying to be respectful of that.

24 **MR. FRATER:** I really would need to speak to
25 Dr. Gideon. Given the list, we have to, you know, triage

1 the list and see what's possible for next week. I'm not
2 sure that all of those requests need to find their way into
3 Dr. Gideon's affidavits. So, I appreciate the offer to
4 delay that, and we will get back to you before the 15th to
5 see what's possible.

6 **THE CHAIR:** Would that work with everybody?

7 **MR. TAYLOR:** That's fine for the Caring
8 Society.

9 **THE CHAIR:** Yes.

10 **MR. WUTTKE:** That also would be acceptable
11 for the Assembly of First Nations.

12 **THE CHAIR:** Thank you.

13 **MR. SMITH:** That sounds fine. Thank you for
14 the Commission.

15 **MS. NERLAND:** That's fine for us as well.

16 **MS. MATTHEWS:** And that's fine for NAN.

17 **THE CHAIR:** Okay. Thank you. So, is there
18 any other comment on this topic? Not for now? Thank you.

19 So, the second topic that we had was the
20 list of questions that we have asked the Attorney General
21 to answer. There was a timeline that was established.
22 Again, we gave a timeline -- our understanding is that some
23 of the replies or responses have not been filed, or maybe
24 there are no responses. So, forgive me if they were filed
25 and I don't have a copy with me. We had some -- did you --

1 did the Chiefs file any response. Were you anticipating
2 filing any -- no? Was there any other outstanding response
3 coming in?

4 **MR. WUTTKE:** Not from the Assembly of First
5 Nations, no.

6 **THE CHAIR:** No? Okay. My understanding
7 also is that not every -- you were -- the Caring Society
8 was in the process of looking into the information and you
9 still had some outstanding questions. We've received a
10 letter, we've reviewed the letter, we're aware of all the
11 questions raised. Thank you for that. But I was just
12 wondering if the Attorney General are ready to respond
13 today. Because I've offered them to reply orally today,
14 but I'm also mindful that they didn't have the benefit of
15 having all the responses, it's quite lengthy so. Yes.

16 **MR. TARLTON:** Thank you. I may be -- and I
17 may have missed something as well, Madam Chair, but I had
18 understood NAN had sent a communication saying that they
19 wanted further time, and if indeed -- I hadn't received
20 anything from them, so I had assumed that until that
21 response came, or the other parties had confirmed, that we
22 were sort of in a holding pattern. So, I would suggest in
23 light of that, if NAN wishes not to make any further
24 submissions or comments in respect of that, I would want --
25 I would like some further time just to go back and confirm

1 with my client if indeed we have anything further to offer.

2 I mean, we did -- our initial response to
3 your questions was, I think, roughly four pages and
4 contained several annexes, so I'm really -- I take it that
5 our friends from the Caring Society who did respond, did
6 have some comments that seemed to dig very -- deeper into
7 certain issues, but I would have to take some time to go
8 back to my clients. Assuming those are the only
9 submissions that we have to respond to and see if they wish
10 to clarify anything further.

11 **THE CHAIR:** Thank you. I agree we received
12 the letter and we will be able to speak to it. I had the
13 same understanding, I thought that we were waiting to
14 receive submissions on Monday or Tuesday. I didn't receive
15 any, so you can update us.

16 **MS. MATTHEWS:** So, this is the first I'm
17 hearing of it because I did send in something late Monday
18 afternoon. So, I will look into where that went. I'm not
19 sure if there was any kind of e-mail issue, but it was a
20 one and a bit page. Did anyone else receive? Okay.

21 **MR. TARLTON:** We'll go back and check. It
22 is possible I was travelling the other day. I may have --
23 it may have just simply missed it. I don't recall getting
24 one. I do recall getting the e-mail from my friend
25 indicating she needed more time and I was fine with that.

1 But in any event, if I've inadvertently misplaced that I
2 will have a look at it. But again, in light of that I
3 would still want to go back and just confirm with my client
4 if they have anything further to add, and share NAN's
5 comments with them so that they have a chance to appreciate
6 and respond to that fully.

7 **THE CHAIR:** Yes. And when would you be able
8 to respond? Approximately?

9 **MR. TARLTON:** Well, I think in light of the
10 fact that, as my friend Mr. Frater has indicated, we're
11 having two affidavits coming fairly close together, and I
12 will be out of the country next week. I'd like a bit
13 further time to -- perhaps maybe if we could have that
14 response towards the end of May or early June? So that I
15 would have -- just because I will be out of the country
16 until the 18th of May, and then I know there's a holiday
17 weekend. And then we're dealing with the other affidavits
18 so, and likely the same people -- my same contacts with the
19 client will be working on that affidavit that would be
20 responding to this.

21 So, I think to be fair, I'd like to have --
22 I'd like to have that further reply, if there's one
23 necessary, after those affidavits have been addressed. So,
24 again, if we could put this to the first week of June, that
25 would be, I think -- I think that would be an acceptable

1 timeframe.

2 **THE CHAIR:** With -- I have no issue with
3 this. We'll ask the parties. There was a request made to
4 amend some of our orders. As long as you -- everybody has
5 the understanding that we're not going to amend those
6 orders until we have the full completion of all the
7 submissions. Is there any objection for the week of June
8 1st? No objections?

9 **MR. TAYLOR:** No objection from the Caring
10 Society.

11 **MR. WUTTKE:** No objection from the Assembly
12 of First Nations.

13 **MR. SMITH:** Yeah, I can confirm that we did
14 receive the NAN letter on Monday, but we have no objections
15 to this.

16 **THE CHAIR:** Thank you.

17 **MS. NERLAND:** COO is fine. No objections,
18 that's fine.

19 **THE CHAIR:** Thank you.

20 **MS. MATTHEWS:** No objections from NAN.

21 **THE CHAIR:** Thank you. And I apologize, we
22 will find out what happened with your letter.

23 **MS. MATTHEWS:** Okay.

24 **THE CHAIR:** I haven't seen it, but I'm sure
25 it's there somewhere. So, we'll find out.

1 **MS. MATTHEWS:** Thank you.

2 **THE CHAIR:** Is there can we just confirm
3 the date, Mr. Tarlton? I don't have a calendar in front of
4 me.

5 **MR. TAYLOR:** Madam Chair, in an attempt to
6 be helpful, the affidavit for the Child and Family Services
7 is due on Thursday, the 24th of May, and if there's a
8 response from the complainant parties and interested
9 parties and Commission, that's Thursday the 7th of June.
10 Just in the interest of our being able to consider and deal
11 with Canada's reply while we're not in the midst of
12 finalizing submissions on that, if it's workable for my
13 friend for Thursday the 31st of May, which is one week
14 following the affidavits, to reply that reply. That way
15 when we're working on the submissions regarding that May
16 24th affidavit, the week of June 4th we're able to focus on
17 those, and also bear in mind Canada's responses in the
18 reply to the panel's questions.

19 **THE CHAIR:** Thank you for that. Mr.
20 Tarlton?

21 **MR. TARLTON:** Sorry, I was -- for the
22 response to -- for the comments to the letter I'm proposing
23 the first week of June. But then if, if I understood my
24 friend saying that the Caring Society is due on the 7th, we
25 would need to file our reply, if there is any further reply

1 necessary, on the 8th, which is a Friday. Is that
2 agreeable?

3 **THE CHAIR:** Yes, it is. Any objection?

4 **MR. TAYLOR:** No objection.

5 **THE CHAIR:** I take it that if nobody takes
6 the microphone, it's fine. Thank you very much. Is there
7 anything else that you would like to discuss during this
8 case management?

9 **MR. WUTTKE:** Yes, the Assembly of First
10 Nations, we would just like to put on the calendar that we
11 would like a date set sometime in the future for another
12 case management to deal with the outstanding requests, such
13 as compensation that the Tribunal has retained jurisdiction
14 on. And we'd like to at least to begin a process to begin
15 to address some of those.

16 **THE CHAIR:** Yes. So, let's look into --
17 you're looking into what month?

18 **MR. WUTTKE:** I know summer is coming up
19 pretty quick, so probably sometime in September, if that
20 would work for people. Or maybe even sooner.

21 **MR. TARLTON:** Late June may make sense for
22 another case management appearance in any event. At that
23 point we'll have the two new affidavits from Canada,
24 submissions in response and reply, if any. And if there's
25 a possibility to deal with the way forward on those, as

1 well as the outstanding issues, there's also the, I believe
2 it was termed as abuse of process in regard to the
3 disclosure, from the Caring Society, that we could discuss
4 those at that point. Perhaps the 25th or 26th of June?

5 **THE CHAIR:** I believe that's fine for the
6 panel. Let's verify if everybody's available. Just a
7 moment please. Is everybody available on the 26th?

8 **MR. WUTTKE:** AFN is not available.

9 **THE CHAIR:** No? 25th?

10 **MR. WUTTKE:** No, I'm not available that
11 whole week, sorry.

12 **THE CHAIR:** Oh, okay. How about the
13 following week?

14 **MR. TARLTON:** Perhaps we could canvas dates
15 if that would be more efficient for the panel. There's a
16 lot of calendars in the room.

17 **THE CHAIR:** That's fine. Thank you very
18 much. Anything else? Well, I would like to thank
19 everybody for today, and wish you safe travels for those
20 who travel. And I've enjoyed seeing you all again. And
21 so, have a good day. Thank you.

22 **REGISTRY OFFICER:** And we're adjourned and
23 off the record.

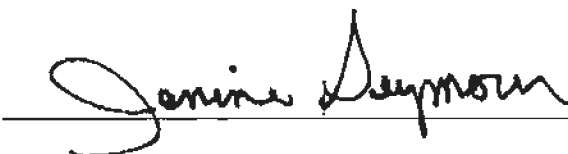
24 **(HEARING ADJOURNS)**

25

CERTIFICATE OF COURT TRANSCRIBER

We, Janine Seymour and Tracey McGee, Court Transcribers, hereby certify that we have transcribed the foregoing and that it is a true and accurate transcript of the proceedings in this matter, CANADIAN HUMAN RIGHTS TRIBUNAL between FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS and CANADIAN HUMAN RIGHTS COMMISSIONS and ATTORNEY GENERAL OF CANADA (representing the Minister of Indian and Northern Affairs) and CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION taken by way of electronic recording on Wednesday, May 9, 2018.


Pages 1 to 116



Janine Seymour

Court Transcriber (Reg. No. 2006-28)

Pages 117 to 240



Certified by Philomena Drake

Court Transcriber (Reg. No. 2006-36)

Halifax, Nova Scotia

Monday, December 10, 2018

Exhibit "C" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)

From: Gideon, Valerie (HC/SC) [<mailto:valerie.gideon@canada.ca>]

Sent: July 5, 2018 9:30 PM

To: Akosua Matthews <akosuam@falconers.ca>; Maggie Wente <MWente@oktlaw.com>; Martin Orr <MOrr@afn.ca>; Alvin Fiddler <afiddler@nan.on.ca>; Bobby Narcisse <bnarcisse@nan.on.ca>; Brian Smith <brian.smith@chrc-ccdp.gc.ca>; David Taylor <dtaylor@conway.pro>; Dr. Cindy Blackstock <cblackst@fncaringsociety.com>; GC Anna Betty <dgcachneepineskum@nan.on.ca>; GC Joel Abram <jabram@aiai.on.ca>; Jon Thompson <JonThompson@afn.ca>; Lisa Nafziger <lisa.nafziger@canada.com>; Buist, Margaret (AADNC/AANDC) <margaret.buist@canada.ca>; Natalie Hansen <natalie.hansen@slfnha.com>; Millar, Patricia (AADNC/AANDC) <patricia.millar@canada.ca>; Isaak, Paula (AADNC/AANDC) <paula.isaak@canada.ca>; Frater, Robert <Robert.Frater@justice.gc.ca>; Brickey, Salena (AADNC/AANDC) <salena.brickey@canada.ca>; Stuart Wuttke <swuttke@afn.ca>; Anthony Morgan <AnthonyM@falconers.ca>

Cc: Lorna Martin <lornam@afn.ca>; Sinéad Dearman <SDearman@oktlaw.com>; Marlatt, Constance <Constance.Marlatt@justice.gc.ca>

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

Cell: (613) 219-4104

@valerie_gideon

Exhibit "D" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)



**JORDAN'S PRINCIPLE OVERSIGHT COMMITTEE / COMITÉ DE SURVEILLANCE DU PRINCIPE DE JORDAN
DRAFT RECORD OF DISCUSSION**

November 09, 2018

Chair: Valerie Gideon (DISC-FNIHB)

Participants: Andrea Auger (Caring Society); Robin Buckland (FNIHB); Sinéad Dearman (COO); Leila Gillis (FNIHB); Jonathon Thompson (AFN); Stephanie Wellman (AFN);

Resources: Kelly Cirtwill (ESDPP); Scott Coutts (ISC); Dana McDonald (FNIHB); Laura Mitchell (FNIHB); Anick Roberge (FNIHB); Mariane Small (FNIHB).

Item/Summary	Actions
1. Welcome & Introductions – V. Gideon	
<ul style="list-style-type: none"> V. Gideon reviewed the Agenda. 	
2. Committee Business – V. Gideon	
<p><u>Record of Discussion</u> Purpose: To approve the Record of Discussion from September 28 , 2018 JPOC; provide update on action items raised at previous meetings; and review the Monthly activity report. Key Points:</p> <ul style="list-style-type: none"> Record of Discussion was reviewed and approved. 	<p>ISC</p> <ul style="list-style-type: none"> Provide before Christmas rationale for 226 requests to determine rational of decision
<p><u>Terms of Reference</u> Purpose: To present and review the Terms of Reference as approved by the Consultation Committee on Child Welfare. Key Points:</p> <ul style="list-style-type: none"> ToR updated to remove reference to CFI and allow for review every 2 years. 	<p>Actions</p> <p>ISC</p> <ul style="list-style-type: none"> Undertake final review for spelling and to ensure all references to Child First Initiative removed. Jon Thompson (AFN) to be the First Nation representative chair on JPOC

<ul style="list-style-type: none"> • S/ADM added as co-chair of committee. • ToR approved by JPOC with minor amendments. 	<ul style="list-style-type: none"> • Rotate chair more frequently – every 6 months, but ISC maintains secretariat function
<p>Monthly Activity Report Purpose: To provide a snapshot of the activity being undertaken with respect to Jordan’s Principle.</p>	
<p>3. Operations</p>	
<p>Face to Face Meeting Agenda – L. Gillis Purpose: To provide a draft framework of the proposed agenda for the bi-annual face to face meeting with Focal Points being held November 20-22 Key Points:</p> <ul style="list-style-type: none"> • An Elder, and a First Nations Facilitator have been invited to assist at the meeting • Focus is on calibration of the Standard Operating Procedures • SIA will be participating to discuss IT solutions 	
<p>Standard Operating Procedures - L. Gillis Purpose: To provide an update on Standard Operating Procedures (SOP) Key Points:</p> <ul style="list-style-type: none"> • V.Gideon comments that Canada is looking for leadership from First Nations organizations to validate who is a First Nation member. • Post –age of majority services is an area to be explored in post 2019 collaborative policy work. • Language in denial and appeal letters has been updated to be more consistent with the CHRT decision, and provide requesters with details of the rationale for the decision. • Approved for use by JPOC, with understanding that the document will be iterative as further changes may be required 	<p>Actions</p> <p>ISC:</p> <ul style="list-style-type: none"> • Undertake final review for spelling and to ensure all references to Child First Initiative removed. • Remove language on page 13 regarding exhausting appeals processes under NIHB • Hyperlink “JPCaseManagement Inbox” on page 15 • All iterative versions of SOP to be shared with JPOC.

<p>Case Studies – S.Couts</p> <p>Purpose: To present on the Jordan’s Principle Case studies exercise undertaken between August –September 2018.</p> <p>Key Points:</p> <ul style="list-style-type: none"> • Focus on three case studies, that represent three different models • My Child/My Heart (MB) [since 2015] • ECIP (SK) [expansion of provincial program] • Choose Life [new project] <p>Challenges include –</p> <ul style="list-style-type: none"> • 2 year funding window too narrow • Aging out (post age of majority) • Lack of program design and strong implementation • Availability of Human resources –qualified staff, training, • Ability to link program activities with desired outcomes <p>Positives include:</p> <ul style="list-style-type: none"> • Most requests were approved • Many if not most service gaps were addressed <ul style="list-style-type: none"> ○ Reduction in suicides ○ Improved school attendance and academic achievements ○ Increased ability to remain on reserve ○ Improved environment for parents 	<p>Actions</p> <p>ISC</p> <ul style="list-style-type: none"> • Distribute presentation material • Complete draft report by December.
<p>4. Communications & Outreach – D. McDonald</p>	
<p>Purpose: Discussion on process for gathering stories from families</p> <p>Key Points:</p> <ul style="list-style-type: none"> • Important to reach out and raise awareness to broader public (Canadians). • Plan proposed for outreach activities – last year focus on digital based communication was best received. • Family stories/testimonials –to showcase Jordan’s Principle <ul style="list-style-type: none"> ○ V.Gideon proposes that AFN profile the work ○ AFN to discuss further. 	<p>Actions</p> <p>ISC:</p> <ul style="list-style-type: none"> • Connect with provincial correctional facilities; detention centres re youth at risk. • Share comments re social media posts by Tuesday November 14, 2018. • Communications to propose broader advertising campaign for mainstream audience.

	<ul style="list-style-type: none"> • input on social media posts requested and suggestions for broader mainstream campaign for December JPOC 	
Other Action Items		
<ul style="list-style-type: none"> • For next JPOC, pull out of financial system whether child and family services agencies have accessed Jordan's Principle. • For next JPOC – provide copies of anonymized denial letters for review to determine if modifications are helpful to requesters. 		

Exhibit "E" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)



Participant Information and Consent Form - Parent of Child

Title of Study: ^{18}F -DOPA PET Imaging: an evaluation of biodistribution and safety.

Principal Investigator: Dr. Jonathan Abele (780-407-6907)

Why is my child being asked to take part in this research study?

Your child is being asked to participate in this research study because your referring physician believes a ^{18}F -DOPA PET/CT scan would be valuable for your child's clinical care.

^{18}F -DOPA is a molecule which we can image with a PET scanner. It is useful in managing many diseases. It is used in other places in Canada and in many other countries but must be made locally as it expires in 1 day. This research is being done to ensure that ^{18}F -DOPA that is made in Edmonton is similar to ^{18}F -DOPA made elsewhere. This is needed to meet Health Canada requirements.

This study is only being performed at the University of Alberta with ^{18}F -DOPA made locally at the Edmonton PET Centre. A total of approximately 400 patients (children and adults) are expected to participate. It is expected that approximately 40 of these will be children.

Before you make a decision one of the researchers will go over this form with you. You are encouraged to ask questions if you feel anything needs to be made clearer. You will be given a copy of this form for your records.

What is the reason for doing the study?

^{18}F -DOPA PET/CT imaging is a new type of scan which is beneficial to the clinical care of many different types of patients. While it is used in many other countries routinely, the scan

agent (^{18}F -DOPA) must be produced locally as it expires very quickly (only lasts 1 day). This agent is produced locally at the Edmonton PET Centre. While it is produced using the same methods as elsewhere, we must evaluate patients receiving this agent in order to ensure that it is safe (as expected) and behaves in a similar fashion as elsewhere.

What will I be asked to do?

If you agree for your child to be in this study, you will first sign this consent form. Your child will then have a small amount of ^{18}F -DOPA injected intravenously (ie. small plastic tube inserted into a vein). After resting quietly for a period of time (generally less than 1.5 hours) a PET/CT scan will be performed either of your child's brain alone, a part of your child's body, or your child's whole body (depending on the reason for the scan). In some cases, two PET scans are performed, one right after the other. The total scan time will range from 20 minutes to 90 minutes depending on the reason for the scan.

Study personnel will also ask you questions about your child's medical history. Other information collected will include medications, recent tests your doctor may have ordered, and basic information such as age, weight, height. These questions are similar to what would be asked for a routine CT or nuclear medicine scan. This information will be kept confidential.

Children who cannot lie still for the scan may require sedation. If required, this will be performed by a pediatric anaesthesiologist in a manner that is similar to other scans that are done routinely in the department.

A few basic clinical measurements will also be taken before and after the scan including blood pressure and heart rate.

You and your child (together) will be interviewed immediately after the scan. You will be contacted 10-14 days later by telephone to ensure there have been no complications related to the scan (this is a precaution, no complications are expected).

What are the risks and discomforts?

The risks and discomforts your child may experience related to your participation in this study are similar to those your child would experience related to a usual CT scan or PET scan. There is a small risk of slight bruising around the injection site.

If sedation is required for the scan, this is generally considered to be very safe with extremely low rates of serious physical harm. There is a very low risk of death associated with sedation which is less than the risk of driving for 1 year in Alberta (less than 10 in 100,000). Animal studies have raised concerns about the impact on brain development of sedation medications in very young children. Recent Canadian studies in children have been reassuring. An international study comparing very young children having the same short procedure with and without sedation showed no impact on the children's development at 2 years of age. It is not possible to rule out any chance of developmental impact, but any possible risk that does exist must always be balanced against the possible harm to children that may occur from delaying investigations requiring sedation that are necessary to provide the best medical care. The pediatric anaesthesiologist will be available to discuss sedation with you and answer any questions you may have prior to the scan.

Your child will receive ionizing radiation. This is in the range of 2 - 8 mSv. This is less than usually received with a normal PET/CT scan. This amount is similar to what someone receives normally living for 1 year in Edmonton from the environment. This is well below any levels that have had measured negative effects (100 mSv). We will ensure that the lowest dose possible is used in each test.

There is a risk that the ^{18}F -DOPA produced in Edmonton does not distribute in the same way as expected. This may result in a sub-standard test. The risk of this is considered very low. If the tracer does not work as expected, a repeat test or alternative test may be suggested to your doctor.

Note that in areas where ^{18}F -DOPA is used outside of Edmonton, there have been no adverse events reported to date.

What are the benefits to me?

Because we are doing this study to confirm the ^{18}F -DOPA works, we cannot guarantee any health benefit to your child being in the study. The results of the scan may improve your child's clinical care. We hope that the information we learn will allow us to be able to offer this type of diagnostic test to people who require it in Edmonton in the future.

Do I have to take part in the study?

Your child's participation in this study is your choice. If you decide for your child to be in the study, you can change your mind and stop participation in the study at any time, and it will in no way affect the care or treatment that you are entitled to.

You may withdraw your child from the study at any time without having to explain why. If you decide to withdraw, no further scanning or data collection will occur.

Are there other choices to being in this research study?

If you choose not to be in the research study, an ^{18}F -DOPA PET scan will not be performed. Your doctor will then help you manage your disease in the same manner as is currently done when ^{18}F -DOPA is not available. This may or may not involve other imaging tests.

Will I be paid to be in the research?

You will not be paid to participate in this research study.

Will my child's information be kept private?

During the study we will be collecting health data about your child. We will do everything we can to make sure that this data is kept private. No data relating to this study that includes your name or your child's name will be released outside of the researcher's office or published by the researchers. Sometimes, by law, we may have to release your information with your name(s) so we cannot guarantee absolute privacy. However, we will make every effort to make sure that your health information is kept private.

The investigator or their study staff may need to look at your child's personal health records or at those kept by other health care providers that you may have seen in the past (ie. your family doctor). Any personal health information that we get from these records will be only what is needed for the study.

During research studies it is important that the data we get is accurate. For this reason your child's health data, including their name, may be looked at by people from the University of Alberta auditors and members of the Research Ethics Board, the University of Alberta, or Health Canada.

By signing this consent form you are giving permission to the study team to collect, use and disclose information about your child from their personal health records as described above.

After the study is done, we will still need to securely store the health data that was collected as part of the study. In Canada, the law says we have to keep the data stored for 25 years after the end of the study.

If your child leaves the study, we will not collect new health information about them, but we may need to keep the data that we have already collected.

What if I have questions?

If you have any questions about the research now or later, please contact:

Principal Investigator:	Dr. Jonathan Abele	780-407-6907
Co-Investigators:	Dr Ryan Hung	780-407-6907
	Kristy Romaniuk	780-407-7446
	Greg Wandzilak	780-407-7446
	Adwait Trivedi	780-407-8669
Study coordinators:	Joanne McGoey	780-407-8365
	Bonnie Woloschuk	780-407-8365

If you have any questions regarding your rights as a research participant, you may contact the Health Research Ethics Board at 780-492-2615. This office is independent of the study investigators.



Title of research Project: ¹⁸F-DOPA PET Imaging: an evaluation of biodistribution and safety.

Principal Investigator:	Dr Jonathan Abele	780-407-6907
Co-Investigators:	Dr Ryan Hung	780-407-6907
	Kristy Romaniuk, Greg Wandzilak	780-407-7446
	Adwait Trivedi	780-407-8669
Study coordinators:	Joanne McGooley, Bonnie Waloschuk	780-407-8385

Please circle your answers to the following questions:

1. Do you understand that your child has been asked to be in a research study? yes / no
2. Have you read and received a copy of the attached Information Sheet? yes / no
3. Do you understand the benefits and risks involved with taking part in this study? yes / no
4. Have you had opportunity to ask questions & discuss this study? yes / no
5. Do you understand your child is free to leave the study at any time, without having to give a reason and without affecting their future medical care? yes / no
6. Has the issue of confidentiality been explained to you? yes / no
7. Do you understand who will have access to your child's records, including personally identifiable health information? yes / no

Who explained this study to you? _____

I agree to my child, _____ (name of child), participating in this study:

Signature of parent or legal guardian Printed name Date

Signature of witness (if required) Printed name Date

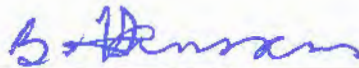
I believe that the person signing this form understands what is involved in the study and voluntarily agrees to the participation of their child:

Signature of Investigator or designee Printed name Date

THE INFORMATION SHEET MUST BE ATTACHED TO THIS CONSENT FORM AND A COPY GIVEN TO THE RESEARCH PARTICIPANT

Exhibit "F" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)

That's great. Pauline, you have my cell below. Contact me when you can - the appointment of this family is on the 28th so they are anxious to see if they can access support. I am available tomorrow except for 10-11am. Thank you

Valerie Gideon, Ph.D.

Senior Assistant Deputy Minister/Sous-ministre adjointe principale FNIHB/DGSPNI Indigenous Services Canada/Service aux Autochtones du Canada

Tel: 613-957-7701

Cell: 613-219-4104

@valerie_gideon

Original Message

From: Guerriero, Lynn (MOHLTC)

Sent: Thursday, November 22, 2018 7:19 PM

To: Gideon, Valerie (HC/SC); Ryan, Pauline (MOHLTC)

Subject: Re: Case HC-ON-1965N

Hello Valerie, I'm copying Pauline Ryan on this email. Pauline can discuss the issues around services received out-of-province with you.

Lynn

On Nov 22, 2018, at 7:06 PM, Smith, Sharon Lee (MOHLTC)

<SharonLee.Smith@ontario.ca<<mailto:SharonLee.Smith@ontario.ca>>> wrote:

Hi Melanie and Lynn,

See below. Am introducing you electronically to Valerie Gideon, who is the federal Senior Assistant Deputy Minister for Indigenous Services Canada. Issue is an Ontario non status Indian toddler who needs travel support to go to Edmonton for an endocrine scan. Feds can only provide full coverage if toddler is a status Indian. Is there a way we can support the travel? I am not totally familiar with the ins and outs of what we can cover. Can you please have someone communicate directly with Valerie? She is a valued colleague and very helpful to MOHLTC.

Many thanks.

SL

On Nov 22, 2018, at 5:47 PM, Gideon, Valerie (HC/SC)

<valerie.gideon@canada.ca<<mailto:valerie.gideon@canada.ca>>> wrote:

Hey just wondering if you would have any advice for me on possible options we wouldn't be aware of within provincial system. Toddler is non status so we can't cover under Jordan's Principle or NIHB but would be great to assist them. The scan is covered. The child was referred by Sick Kids and appointment booked. They need travel support.

Valerie Gideon, Ph.D.

Senior Assistant Deputy Minister/Sous-ministre adjointe principale FNIHB/DGSPNI Indigenous Services Canada/Service aux Autochtones du Canada

Tel: 613-957-7701

Cell: 613-219-4104

@valerie_gideon

From: Buckland, Robin (HC/SC) <robin.buckland@canada.ca<mailto:robin.buckland@canada.ca>>

Sent: Thursday, November 22, 2018 5:29 PM

To: Gideon, Valerie (HC/SC)

Subject: FW: Case HC-ON-1965N

Our colleague with the province of Ontario may offer some suggestion in terms of potential options for this family.

I will continue to explore options on my end.

Robin Buckland, RN MScN

Executive Director & Chief Nursing Officer/Directrice Exécutive et Chef des soins infirmiers Office of Primary Health Care/Bureau des soins de santé primaires First Nations and Inuit Health Branch/Direction de la santé des Premières nations et des Inuit Department of Indigenous Services Canada/Ministère des Services aux Autochtones robin.buckland@canada.ca<mailto:robin.buckland@canada.ca>

613-957-6359

PIN: 2C3E4E0B

From: Gillis, Leila (HC/SC)

Sent: 2018-11-22 4:14 PM

To: Buckland, Robin (HC/SC)

Subject: FW: Case HC-ON-1965N

Hi Robin,

We have a case that has come to our attention under the above-noted number for a non-status child.

The child is 1 1/2 year old and lives in Toronto with her parents. She is followed by the Endocrine Department at the Hospital for Sick Children and has been referred by the Endocrine Division to attend an essential scan that is only available at the Edmonton Hospital on November 28th. A physician within the division identified the scan to be essential.

The request was for \$4614 :

1. Airfare for the child and her parents, Toronto to Edmonton (\$3282),
2. Meals for 6 nights (\$432) and,
3. Accommodations for 6 nights (\$900).

The scan is called an 'F-DOPA'* scan (F-DOPA PET/CT scan) and is a part of a research study.

Leila

*F-DOPA is a molecule which can be imaged with a PET scanner. It is useful in managing many diseases. It is used in other places in Canada and in many other countries but must be made locally as it expires in 1 day. This research is being done to ensure that F-DOPA that is made in Edmonton is similar to F-DOPA made elsewhere. A total of approximately 400 patients are expected to participate in the study. It is expected that 40 of these will be children. - University of Alberta; Department of Nuclear Medicine Diagnostic Imaging.

.....

Hi Melanie and Lynn,

See below. Am introducing you electronically to Valerie Gideon, who is the federal Senior Assistant Deputy Minister for Indigenous Services Canada. Issue is an Ontario non status Indian toddler who needs travel support to go to Edmonton for an endocrine scan. Feds can only provide full coverage if toddler is a status Indian. Is there a way we can support the travel? I am not totally familiar with the ins and outs of what we can cover. Can you please have someone communicate directly with Valerie? She is a valued colleague and very helpful to MOHLTC.

Many thanks.

SL

On Nov 22, 2018, at 5:47 PM, Gideon, Valerie (HC/SC)
<valerie.gideon@canada.ca<mailto:valerie.gideon@canada.ca>> wrote:

Hey just wondering if you would have any advice for me on possible options we wouldn't be aware of within provincial system. Toddler is non status so we can't cover under Jordan's Principle or NIHB but would be great to assist them. The scan is covered. The child was referred by Sick Kids and appointment booked. They need travel support.

Valerie Gideon, Ph.D.

Senior Assistant Deputy Minister/Sous-ministre adjointe principale FNIHB/DGSPNI Indigenous Services Canada/Service aux Autochtones du Canada

Tel: 613-957-7701

Cell: 613-219-4104

@valerie_gideon

From: Buckland, Robin (HC/SC) <robin.buckland@canada.ca<mailto:robin.buckland@canada.ca>>

Sent: Thursday, November 22, 2018 5:29 PM

To: Gideon, Valerie (HC/SC)

Subject: FW: Case HC-ON-1965N

Our colleague with the province of Ontario may offer some suggestion in terms of potential options for this family.

I will continue to explore options on my end.

Robin Buckland, RN MScN

Executive Director & Chief Nursing Officer/Directrice Exécutive et Chef des soins infirmiers Office of Primary Health Care/Bureau des soins de santé primaires First Nations and Inuit Health Branch/Direction de la santé des Premières nations et des Inuit Department of Indigenous Services Canada/Ministère des Services aux Autochtones robin.buckland@canada.ca<<mailto:robin.buckland@canada.ca>>
613-957-6359
PIN: 2C3E4E0B

From: Gillis, Leila (HC/SC)
Sent: 2018-11-22 4:14 PM
To: Buckland, Robin (HC/SC)
Subject: FW: Case HC-ON-1965N

Hi Robin,

We have a case that has come to our attention under the above-noted number for a non-status child.

The child is 1 1/2 year old and lives in Toronto with her parents. She is followed by the Endocrine Department at the Hospital for Sick Children and has been referred by the Endocrine Division to attend an essential scan that is only available at the Edmonton Hospital on November 28th. A physician within the division identified the scan to be essential.

The request was for \$4614 :

1. Airfare for the child and her parents, Toronto to Edmonton (\$3282),
2. Meals for 6 nights (\$432) and,
3. Accommodations for 6 nights (\$900).

The scan is called an 'F-DOPA'* scan (F-DOPA PET/CT scan) and is a part of a research study.

Leila

*F-DOPA is a molecule which can be imaged with a PET scanner. It is useful in managing many diseases. It is used in other places in Canada and in many other countries but must be made locally as it expires in 1 day. This research is being done to ensure that F-DOPA that is made in Edmonton is similar to F-DOPA made elsewhere. A total of approximately 400 patients are expected to participate in the study. It is expected that 40 of these will be children. - University of Alberta; Department of Nuclear Medicine Diagnostic Imaging.

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Senior Assistant Deputy Minister/Sous-ministre adjointe principale
FNIHB/DGSPNI
Indigenous Services Canada/Service aux Autochtones du Canada
Tel: 613-957-7701
Cell: 613-219-4104
@valerie_gideon

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To: Gideon, Valerie (HC/SC)

Subject: FW: Case HC-ON-1965N

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Robin Buckland, RN MScN
Executive Director & Chief Nursing Officer/Directrice Exécutive et Chef des soins infirmiers
Office of Primary Health Care/Bureau des soins de santé primaires
First Nations and Inuit Health Branch/Direction de la santé des Premières nations et des Inuit
Department of Indigenous Services Canada/Ministère des Services aux Autochtones
robin.buckland@canada.ca
613-957-6359
PIN: 2C3E4E0B

From: Gillis, Leila (HC/SC)

Sent: 2018-11-22 4:14 PM

To: Buckland, Robin (HC/SC)

Subject: FW: Case HC-ON-1965N

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The child is 1 1/2 year old and lives in Toronto with her parents. She is followed by the Endocrine Department at the Hospital for Sick Children and has been referred by the Endocrine Division to attend an essential scan that is only available at the Edmonton Hospital on November 28th. A physician within the division identified the scan to be essential.

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Exhibit "G" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)

From: Handy, Velma (AADNC/AANDC)
Sent: 2018-11-09 4:34 PM
To: Bartlett, Melissa (HC/SC)
Subject: RE: elibility verification

Hello,

Based on the information the child is not eligible.
An application can be filed for an official decision.

Thanks

Velma Handy
Registration Officer/ Pratique l'agent d'enregistrement
Ontario Region/ l'Ontario région
Governance, Individual Affairs and Government Relations
Gouvernance, affaires individuelles et Relations gouvernementales
Indigenous Services Canada (ISC)/Services aux Autochtones Canada (SAC)
655 Bay Street Suite 700 /655 rue Bay burea 700
Toronto, Ontario. M5G 2K9/Toronto l'ontario M5G 2K9
Telephone: (416) 973-6064/ Téléphone : (416) 973-6064

From: Bartlett, Melissa (HC/SC)
Sent: Friday, November 09, 2018 3:09 PM
To: Handy, Velma (AADNC/AANDC)
Subject: elibility verification

Good afternoon

Can you verify if the following child is eligible for registration as she resides off reserve and is not registered. S - mother is Status #:

Melissa Bartlett

Senior Program Officer, Jordan's Principle, FNIHB Ontario Region
Indigenous Services Canada/Government of Canada
Melissa.bartlett@canada.ca

Exhibit "H" mentioned and
referred to in the affidavit of Valerie Gideon

Affirmed or Sworn before me this 21st day of December, 2018



A Commissioner for taking affidavits

(Bernard Hanssens LSO #185510-7)



DEC 03 2018

Re: HC-ON-1965N – Request for \$

Dear

On November 13, 2018, your request for transportation, meals and accommodations for S and two escorts under Jordan's Principle was reviewed by the Assistant Deputy Minister, Regional Operations, First Nations and Inuit Health Branch, Indigenous Services Canada. We apologize for the delay in formally communicating the decision rendered on your request.

Further to this decision communicated to you by your Regional Focal Point we are writing to formally inform you that the review has concluded Jordan's Principle funding is not available for this request. Jordan's Principle funding is available to First Nations children who are registered Indians under the Indian Act, those entitled to be registered, living on and off reserve as well as those Indigenous children ordinarily resident on reserve. As such, it is our understanding from information provided to the Department that S is non-status, is not eligible for status nor does she ordinarily reside on a reserve.

However, as part of our commitment to all Indigenous people, your Regional Focal Point can work with you to help to facilitate access to available services through your local health organization or provincial/territorial authority. Your regional Focal Point contact for the Department of Indigenous Services Canada, Ontario Region is:

Vanessa Follon

Regional Focal Point contact for the Department of Indigenous Services Canada

Department of Indigenous Services Canada, Ontario Region

(613) 862-5418

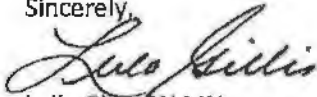
Vanessa.follon@canada.ca

Should you wish to appeal this decision, please submit a request in writing to your regional Jordan's Principle Focal Point contact within one (1) year of this decision, who will work with you throughout the appeal process. Please include any new or additional information in your submission. Please note new information is not required to request an appeal.



Jordan's Principle is about helping to ensure all First Nations children have access to the same government-funded supports and services as other children, no matter where they live in Canada. For more information, please visit www.canada.ca/jordans-principle, contact your regional Focal Point, or call 1-855-JPCHILD (1-855-572-4453).

Sincerely,



Leila Gillis RN MN

A/ Director / Directrice

Jordan's Principle/ Principe de Jordan

First Nations and Inuit Health Branch/Direction Générale de la Santé des Premières Nations et des Inuit

Indigenous Services Canada/ Services aux Autochtones Canada

Government of Canada /Gouvernement du Canada

