

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

Ottawa, Canada K1A 1J4

**BETWEEN/ENTRE:**

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

**Complainant**

**Plaignant**

**and/et**

CANADIAN HUMAN RIGHTS COMMISSION

**Commission**

**Commission**

**and/et**

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

**Respondent**

**Intimée**

**and/et**

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and  
NISHNAWBE ASKI NATION

**Interested Parties**

**Parties intéressées**

**BEFORE/DEVANT:**

Sophie Machildon  
Edward Lustig

CHAIR  
PANEL MEMBER

Judy Dubois

REGISTRY OFFICER

**FILE NO. /NO CAUSE:** T 1340/7008

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## **APPEARANCES:**

Robert Frater, Q.C.

for the Attorney General of Canada

Stuart Wuttke

for Assembly of First Nations

David Taylor

Sarah Clarke

Adam Williamson

Shelby Thomas

Dr. Cindy Blackstock

Andrea Auger

for First Nations Child and Family  
Caring Society of Canada

Natalie Posala

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Maggie Wente

Emily King

for Chiefs of Ontario

Brian Smith

for the Canadian Human Rights  
Commission

Judith Rae

for Innu Nation

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1 Via Zoom Videoconference

2 --- Upon commencing on Friday, January 8, 2021

3 MS. DUBOIS: Today, January 8th,  
4 2021, we are meeting for the cross-examination of  
5 the witness, Natalie Nepton in the matter of First  
6 Nations Child and Family Caring Services Canada et  
7 al and AGC, CHRT file number T-1340/7008.

8 I will turn over the proceeding  
9 now to the panel chairperson, Sophie Marchildon.

10 THE CHAIR: Good morning,  
11 everyone. Welcome, parties. It's good to see you  
12 all. A special welcome to our newly added  
13 interested party, the Innu Nation, and Ms. Rae,  
14 representing them. And finally, welcome to the  
15 other members of the public who are watching.

16 I would like to start by wishing  
17 you all a happy new year filled with health, peace,  
18 and especially hope. Hope for many things,  
19 including the advancement of reconciliation in  
20 Canada.

21 The purpose of the hearing today  
22 is to allow the parties to ask questions by way of  
23 cross-examination of Canada's witness and to allow  
24 the Attorney General of Canada to follow up with  
25 re-examination questions.

1                   This forms part of a motion filed  
2 by the Caring Society with respect to First Nations  
3 children and families living on-reserve and in the  
4 Yukon who received child and family services from  
5 provincial/territorial service providers as opposed  
6 to First Nations agencies pursuant to Indigenous  
7 Services Canada's First Nations Child and Family  
8 Services program. I'm giving this overview just  
9 for the benefit of the public.

10                   So the Tribunal now calls for  
11 appearances, please.

12                   MR. TAYLOR: Good morning, Madam  
13 Chair. It's David Taylor for the First Nations  
14 Child and Family Caring Society of Canada, and I'm  
15 appearing today as counsel with Ms. Sarah Clarke  
16 and Ms. Shelby Thomas, and we're also joined today  
17 from representatives of the Caring Society, Dr.  
18 Blackstock, Ms. Auger, and of course, Spirit Bear.

19                   MR. WUTKE: Good morning. Happy  
20 new year. It's Stuart Wuttke appearing for the  
21 Assembly of First Nations.

22                   MR. SMITH: Good morning. I will  
23 jump in next. It's Brian Smith, counsel appearing  
24 on behalf of the Canadian Human rights Commission.  
25 Good morning.

1 THE CHAIR: Good morning.

2 MS. WENTE: Hi, it's Maggie Wente  
3 for Chiefs of Ontario, and I have our articling  
4 student, Ms. Emily King, with us today, and Ms.  
5 Miller from Chiefs of Ontario is in the gallery as  
6 well. Thank you.

7 THE CHAIR: Thank you.

8 MS. RAE: Good morning. It's  
9 Judith Rae here on behalf of Innu Nation, and it's  
10 just myself here today. Thank you.

11 THE CHAIR: Thank you.

12 MS. POSALA: Good morning,  
13 everyone. This is Natalie Posala here, appearing  
14 on behalf of NAN.

15 THE CHAIR: Thank you.

16 MR. FRATER: And Robert Frater for  
17 the Attorney General of Canada. Ms. Nepton and I  
18 are in the same room, so I will be wearing a mask  
19 today. If there's any trouble hearing me, please  
20 let me know.

21 THE CHAIR: Thank you. Can  
22 everyone hear me well? Yes? Okay.

23 We have received a number of  
24 documents this morning. I hope this won't create  
25 any delays or issues. Is there anything that

1 parties would like to address before we have Ms.  
2 Dubois swear in or affirm the witness?

3 MR. TAYLOR: None from the Caring  
4 Society.

5 MR. WUTKE: And nothing from the  
6 Assembly of First Nations.

7 THE CHAIR: Okay. I am seeing you  
8 all, so it looks like there's no issue. That's  
9 good news.

10 Since we're seeing Ms. Nepton with  
11 us -- hi, Ms. Nepton. Thank you for being here. I  
12 do not know if you have chosen to have a swearing  
13 in or an affirmation, but Ms. Dubois will take care  
14 of this now.

15 Ms. Dubois, could you affirm or  
16 swear in the witness, please?

17 MS. DUBOIS: Yes, I will affirm  
18 Ms. Nepton now.

19 AFFIRMED: NATHALIE NEPTON

20 MS. DUBOIS: Please state your  
21 full name for the record.

22 THE WITNESS: My full name as it  
23 appears on my birth certificate or my -- Nathalie  
24 Nepton.

25 MS. DUBOIS: Nathalie Nepton is



1 fine.

2 THE WITNESS: Thank you.

3 THE CHAIR: Thank you. Ms.

4 Nepton, to preserve the integrity of the testimony  
5 and the proceedings, we want to make sure that  
6 you're not communicating, texting, emailing other  
7 people while you're giving your evidence.

8 If you are consulting documents  
9 that we are not aware -- that are not shared on the  
10 screen, we might -- you might need our approval.  
11 I'm just going to step in sometimes if I see that  
12 some documents that we're not aware of are being  
13 consulted. The thing is we just want to make sure  
14 that everybody has the same documents that were  
15 shared, and if there's an issue, counsel will raise  
16 it and we'll address it as we go.

17 All throughout you're giving your  
18 testimony, I would like for you not to communicate  
19 outside -- anything about your evidence must not be  
20 discussed all throughout the day. Hopefully we  
21 will finish today so you won't remain under oath.  
22 That's the goal here.

23 I won't repeat this every time,  
24 but I'm asking you not to discuss your evidence  
25 with anybody outside. Is that --

1 THE WITNESS: Yes.

2 THE CHAIR: -- understood? Thank  
3 you. Okay.

4 Before we start with the cross-  
5 examination, Mr. Frater, as we have done in the  
6 past, would you lead your witness in a few  
7 introductory questions, please?

8 MR. FRATER: Yes. Thank you,  
9 Madam Chair. I would be happy to start that way.

10 EXAMINATION-IN-CHIEF BY MR. FRATER:

11 Q. Ms. Nepton, you have filed on  
12 affidavit in this matter dated November 20th; is  
13 that correct?

14 A. Yes, that's correct.

15 Q. Just by way of introduction  
16 to the Court -- to the Tribunal, I note that in the  
17 first paragraph of that affidavit, you describe  
18 yourself as a First Nations person. What is your  
19 nation, Ms. Nepton?

20 A. I am from the Innu Nation in  
21 Lac Saint-Jean, also known as Mashteuiatsh, which  
22 is about two hours further north, a little bit  
23 west, of Quebec City. And yes, I have been a  
24 member since birth.

25 Q. All right. And you have

1 today before you a binder of materials; is that  
2 correct?

3 A. Yes.

4 Q. And that binder consists of  
5 your own affidavits and other affidavits filed on  
6 this (inaudible)?

7 A. Yes.

8 Q. All right. Can you just tell  
9 us what your current position is?

10 A. I currently hold the position  
11 of Director General of First Nations Child and  
12 Family Services program within the Child and Family  
13 Services Reform sector.

14 Q. Okay. In that job, what do  
15 you do, generally?

16 A. Generally, my job consists of  
17 the implementation of the CHRT orders passed and as  
18 well as liaising, for example, with other partners  
19 and also liaising with the parties to the CHRT  
20 orders through the CCCW. Also, an important part  
21 of my job is the review and administration of the  
22 claims process. As well, there's a lot of  
23 horizontality among sectors, and ensuring that  
24 sectors other than the First Nations Child and  
25 Family Services Reform sector are aware of the

1 orders and also that it's more than just our  
2 implication; it's a departmental obligation.

3 Q. All right. In your job, I  
4 take it you manage other people?

5 A. Yes, I manage a team of  
6 approximately 30 people.

7 Q. Okay. Are they in the  
8 national capital region or are they across the  
9 country?

10 A. The majority of them are  
11 located in the national capital region. We have  
12 maybe one or two that are located elsewhere in the  
13 country.

14 MR. FRATER: All right. Madam  
15 Chair, I think those are all the questions I have  
16 by way of introduction for Ms. Nepton.

17 THE CHAIR: Thank you very much.  
18 The next person will be Mr. Taylor. Is that  
19 correct?

20 MR. TAYLOR: That's right.

21 THE CHAIR: It's the Caring  
22 Society's motion, so I would expect that you start.  
23 However, we also have Ms. Clarke, so whoever wants  
24 to start, please go ahead.

25 MR. TAYLOR: Potentially to

1 everyone's detriment, I will be conducting the  
2 examination today, so I will get started if that's  
3 all right, Madam Chair.

4 THE CHAIR: Yes. Please get  
5 started.

6 MR. TAYLOR: Thanks very much.

7 CROSS-EXAMINATION BY MR. TAYLOR:

8 Q. Ms. Nepton, good morning.

9 A. Good morning.

10 Q. I'm David Taylor. Of course  
11 you know me from past CCCW meetings and other  
12 encounters, but I think this is the first thing we  
13 have been together in the tribunal forum. So I  
14 will be asking you some questions this morning on  
15 behalf of the First Nations Child and Family Caring  
16 Society of Canada.

17 Just kind of by way of  
18 housekeeping, I have done a few of these virtual  
19 examinations. They're always a bit of a challenge,  
20 so if ever my internet cuts out and you don't  
21 understand anything that I have said, please stop  
22 me and I will do my best to go back over it, though  
23 I can't promise to get the exact wording of the  
24 question I might have asked right.

25 Similarly, if there is any time I

1 don't understand something from your end because of  
2 the connection, I will let you know. And also,  
3 just generally, if there are questions I'm asking  
4 where you don't understand, please feel free to ask  
5 me to rephrase. I can't promise to always be the  
6 most straightforward speaker.

7                                   And another point is, today, my  
8 questions are not really -- they're not a memory  
9 exercise. I understand that you have a lot of  
10 files that are part of your branch, so if there's a  
11 question where you don't know the answer, just let  
12 me know and we can go from there.

13                                   A. Thank you.

14                                   Q. I just have a couple of  
15 questions arising from Mr. Frater's examination in  
16 chief. You had mentioned a claims process that  
17 you're responsible for or that you oversee, and I  
18 just wanted to confirm that that's the -- when you  
19 say "claims process," you mean the process by which  
20 First Nations Child and Family Services agencies  
21 can make claims for funding at actuals in certain  
22 areas ordered by the Tribunal in 2018; is that  
23 right?

24                                   A. That is correct, along with  
25 the Community Well-being and Jurisdiction

1 Initiative.

2 Q. Is that a claims-based  
3 process, the CWJI? I will just refer to that  
4 Community Well-being Jurisdiction Initiative as  
5 CWJI. Is that claim-based or is that administered  
6 regionally? I had understood it was the latter.

7 A. We -- I administer the fixed  
8 pot of money, but the decision on how that money is  
9 spent is done regionally, along with partners, and  
10 in accordance with, from my understanding, as it  
11 predates my arrival to this sector, a formula or a  
12 distribution methodology that was agreed to by  
13 CCCW, or at least CCCW was consulted.

14 Q. Right. Okay. And we will  
15 get to that a little bit later, but I just wanted  
16 to clarify the claims process was indeed the  
17 actuals claims process there.

18 And then the second point was you  
19 had noted that there was a departmental obligation  
20 in terms of some of your -- I think you referred to  
21 it as horizontality, some of your efforts. Are you  
22 referring to the department's obligation as a whole  
23 to implement the CHRT orders?

24 A. Yes, the department as a  
25 whole to implement, yes.

1 Q. Thank you. That is helpful.

2 In your affidavit and just now in  
3 your examination in chief by Mr. Frater, you noted  
4 that you're the Director General of the Children  
5 and Families branch at ISC? That is correct?

6 A. Yes, that is correct.

7 Q. I understand you have been  
8 the DG since June of 2019; is that right?

9 A. Exactly. June 3rd, 2019.

10 Q. Right. Thank you. And your  
11 predecessor in that role, that was -- her name was  
12 Odette Johnston?

13 A. Odette Johnston was the  
14 acting on an interim basis. Prior to her, I  
15 believe it was Margaret Buist.

16 Q. That was my understanding as  
17 well. And just so I'm clear -- thank you for the  
18 precision that she was acting. So Ms. Johnston  
19 acted in that role, my understanding is, from  
20 November 2018 until June 2019. Is that right?

21 A. I can't say with certainty.

22 Q. Okay. Do you know Ms. Buist,  
23 who was her predecessor, she was the Director  
24 General at the time the complaint was decided in  
25 January of 2016; is that right?



1                   A.    I can't say with certainty.  
2    I would need to confirm the exact dates of Margaret  
3    Buist's tenure as Director General of my branch, of  
4    my current branch.

5                   Q.    Are you aware of anybody else  
6    who has held the role since January 2016 besides  
7    Ms. Buist and Ms. Johnston?

8                   A.    Since 2016? Well --

9                   Q.    Again, not a memory test, so  
10   if you're not sure, that's fine.

11                  A.    Yeah, I'm not sure. I could  
12   say that, for example, if I am away on holidays,  
13   somebody will act on my behalf in the short-term.

14                  Q.    Of course. No, and I was  
15   referring more to, you know, someone who would  
16   either be, you know, occupying the box as their  
17   substantive position or on a more kind of ongoing  
18   acting basis like Ms. Johnston did for a period of  
19   some time before you took the role in June 2019.

20                  A.    No, I'm not aware of anybody  
21   else except for Odette when I joined, and then  
22   prior to that, Margaret Buist as the substantive  
23   Director General of the branch.

24                  Q.    Now, just in terms of  
25   reporting, you report to the Assistant Deputy

1 Minister for Child and Family Services Reform  
2 sector; is that correct?

3 A. Yes, that's correct.

4 Q. And my understanding is that  
5 the current ADM for CFS Reform is James Sutherland?

6 A. Yes, he has been appointed as  
7 the acting ADM of the sector until the position is  
8 filled on a permanent basis.

9 Q. And he took that position on  
10 an acting basis in November 2020; is that right?

11 A. No. Actually, if I'm not  
12 mistaken, it was in December. But I can definitely  
13 confirm that if you want to, but I would say more  
14 December if my memory serves me correct.

15 Q. We can say late last year and  
16 that would be in the --

17 A. Exactly. Yes, I'm  
18 comfortable with that. You are correct.

19 Q. And he was taking over from  
20 Joanne Wilkinson; is that correct?

21 A. Yes, that's correct.

22 Q. And my understanding is she  
23 assumed this position in October of 2018?

24 A. I can't say with certainty,  
25 but I believe she was there close to two years, if

1 not more.

2 Q. And she was taking over from  
3 Paula Isaac, who was ADM before her?

4 A. Yes, that's my understanding.

5 Q. And my understanding was that  
6 Ms. Isaac was the ADM at the time the Tribunal gave  
7 its ruling in January 2016; is that yours as well?

8 A. I believe so, yes. I can  
9 confirm the dates of Paula's tenure, but it is my  
10 understanding.

11 Q. Certainly and similarly to  
12 Ms. Buist and Ms. Johnston, you're not aware of  
13 someone who would have substantively held that role  
14 besides Ms. Isaac and Ms. Wilkinson before Mr.  
15 Sutherland?

16 A. Not to my knowledge.

17 Q. Thank you. That's my, kind  
18 of, org chart (inaudible) so I will move on to your  
19 background if that's all right.

20 You note in your affidavit that  
21 you have a common law degree and a bachelor's of  
22 history. Is that right?

23 A. Exactly. Yes.

24 Q. Did any part of your formal  
25 education focus on First Nations child and family

1 services?

2 A. No.

3 Q. I understand that you're  
4 called to the bar of Ontario; is that right?

5 A. Yes.

6 Q. But you're a non-practicing  
7 member?

8 A. I am non-practising.

9 Q. Now, in your affidavit you  
10 state you joined INAC -- or I guess it would have  
11 been Indian Northern Affairs at the time -- in  
12 1998?

13 A. Yes, on an indeterminate  
14 basis.

15 Q. And you held a number of  
16 roles in the department. In your affidavit, you  
17 describe those as providing policy advice,  
18 overseeing administration of programs and working  
19 on legislative reforms.

20 Were any of those roles involved  
21 in child and family services for First Nations  
22 children?

23 A. No.

24 Q. My understanding is before  
25 becoming DG of the Child and Family Services

1 branch, you were the Indian registrar and executive  
2 director of Indian registration as CIRNAC; is that  
3 right?

4 A. Yes, that's correct.

5 Q. And CIRNAC -- I should spell  
6 it. That is Crown-Indigenous Relations and  
7 Northern Affairs Canada; that's correct?

8 A. Yes.

9 Q. Thank you. And prior to  
10 that, you were the Director of Governance Policy  
11 and Implementation at Aboriginal Affairs and  
12 Northern Development Canada; is that correct?

13 A. Exactly.

14 Q. Now, did you receive any  
15 training in child and family services before taking  
16 on your role as DG in June 2019?

17 A. No.

18 Q. Now, I understand as part of  
19 your duties, you attend the Consultation Committee  
20 on Child Welfare; is that correct?

21 A. Yes.

22 Q. I'm just going to refer to  
23 that as the CCCW, just to try and save a little  
24 time.

25 A. Yes.

1 Q. Now, you came in in June of  
2 2019, and my understanding is, at least my  
3 recollection, and help me by confirming, is that  
4 you hadn't attended any meetings prior to June of  
5 2019. Is that right?

6 A. I attended the one in May  
7 when I was in my previous position. Just help me  
8 situate myself if I have got the date right.

9 Q. Right. So that would have  
10 been -- at the time you would have known you were  
11 coming into the new role as DG, so --

12 A. Exactly.

13 Q. Preparatory. I understand.  
14 But in terms of -- as Indian registrar, you haven't  
15 attended the CCCW?

16 A. No.

17 Q. Did you review the records of  
18 decision -- well, I guess -- sorry, I will take a  
19 step back. So there are records of decision from  
20 the CCCW meetings that are produced after the fact.  
21 You're aware of that?

22 A. Yes, I am.

23 Q. And did you review the  
24 records of decision for the meetings prior to May  
25 or June of 2019 when you took the role of DG?

1 A. No. No, I started fresh.

2 Q. Okay. Have you gone back and  
3 looked at the 2018, 2019 records of decision since  
4 taking on the role of DG?

5 A. No, I have only been moving  
6 forward based upon information that has been  
7 provided to me and based upon the discussions at  
8 CCCW. However, I can say that I have understood  
9 many of the issues that have been brought forward  
10 to me are -- some of which are outstanding from  
11 prior to my arrival.

12 Q. Some of them have a history  
13 prior to June 2019. Would that be fair?

14 A. Yes.

15 Q. Now, as part of your duties,  
16 you attend the National Advisory Council. And for  
17 the same purposes of brevity, I'm going to call  
18 that the NAC.

19 A. Yes.

20 Q. Did you -- does the NAC keep  
21 -- the NAC keeps minutes of its meetings, is my  
22 understanding; is that right?

23 A. Yes.

24 Q. So, similarly, after becoming  
25 DG for the CFS branch, did you undertake an

1 exercise of going back to look at past minutes? Or  
2 was it the same go-forward (indiscernible) CCCW?

3 A. It was the same go-forward.

4 Q. Okay. Now, you noted in your  
5 affidavit that you have read the Tribunal's January  
6 2016, April 2016, September 2016, and February 2018  
7 orders. Can you just let me know, when did your  
8 first read those decisions?

9 A. I was provided the orders  
10 prior to my arrival upon having accepted an offer  
11 for the position.

12 Q. Okay. So that would have  
13 been in April, May, June of 2019, then?

14 A. I would say it was probably  
15 two weeks before I started, maybe three. So, yes,  
16 mid-May.

17 Q. So your review of those would  
18 have been similar to your attendance at that first  
19 meeting you mentioned, getting oriented for your  
20 new role?

21 A. Exactly.

22 Q. Moving on to some questions  
23 that are a bit more specific to your affidavit --  
24 and I guess I should just pause here for a moment.  
25 I understand you have got a binder with you?



1 A. Yes.

2 Q. And that that binder has your  
3 affidavit in it, as well as the affidavits of Grand  
4 Chief Abram, Grand Chief Johnston, Germaine Benuen,  
5 Dr. Cindy Blackstock. Is that correct?

6 A. Yes, and as well as the  
7 information that was provided to me yesterday,  
8 which includes the January 29th, 2019, documents,  
9 the supplementary record of documents, as well as  
10 documents provided by Ms. Rae this morning, as well  
11 as the information regarding notices and requests  
12 related to an Act respecting First Nations, Inuit  
13 and Métis children, youth and families, as well as  
14 your letter dated June 15th to Mr. Frater, as well  
15 as an email that you provided from Paula Isaac to a  
16 group of individuals which include yourself, Ms.  
17 Wente, Dr. Blackstock, Mr. Thompson (ph) from the  
18 AFN, as well as Mr. Wuttke, and a couple of other  
19 individuals such as members of the Tribunal.

20 Q. And then I think you should  
21 also have a short document from the Public Accounts  
22 Committee --

23 A. Yeah --

24 Q. -- October (inaudible) --

25 A. Yes. It was in the back.

1 Apologies.

2 Q. No, no, no, that's -- there's  
3 actually -- in the context of this proceeding, this  
4 is not a lot of paper, but objectively, it's still  
5 a bit of paper.

6 A. And I should say,  
7 unfortunately, in reviewing my materials, I have  
8 just noticed that the affidavits referred to in Ms.  
9 Benuen's affidavit, unfortunately, I don't seem to  
10 have them before me.

11 Q. I will leave that for my  
12 friend, Ms. Rae. I won't, at least in my  
13 questioning, be referring to those materials.

14 Other than those materials, do you  
15 have anything else before you on the boardroom  
16 table?

17 A. I have a notebook to note  
18 questions and that's (inaudible).

19 Q. Is there anyone else in the  
20 room with you besides Mr. Frater?

21 A. No, just Mr. Frater and I.

22 Q. Thanks very much. Now, Madam  
23 Chair and Member Lustig, I am in your hands of  
24 terms of how you would like to proceed with screen  
25 sharing. I have the materials before me. The

1 witness has them before her as well. If you would  
2 like to screen share as I go through the questions,  
3 that's fine by me. But at least for my purposes  
4 and questioning, it's fine for me given that the  
5 witness has the materials before her. But I'm in  
6 your hands on that one.

7 THE CHAIR: We will screen share.  
8 However, would you like to control the documents  
9 while you're asking your questions? Or do you want  
10 Ms. Dubois to control the documents?

11 MR. TAYLOR: It may go a little  
12 bit faster if I can control, but again, I'm in your  
13 hands on how you prefer to manage this.

14 THE CHAIR: No, either way is fine  
15 for us.

16 MR. TAYLOR: Okay.

17 THE CHAIR: So you can control the  
18 documents. Ms. Dubois --

19 MS. DUBOIS: Yes, I will start the  
20 share and then provide control to Mr. Taylor.

21 THE CHAIR: Thank you.

22 BY MR. TAYLOR:

23 Q. Okay. Great. So I'm going  
24 to go to paragraph 8 of your affidavit, Ms. Nepton.

25 In this paragraph, you describe

1 Dr. Blackstock having raised the issue of First  
2 Nations communities not served by First Nations  
3 child and family services agencies. And again,  
4 just for the sake of brevity, I'm going to refer to  
5 those kind of generically as non-agency communities  
6 or non-agency nations if that's helpful.

7 Did your staff raise a need for  
8 greater action regarding non-agency communities  
9 prior to Dr. Blackstock raising this issue?

10 A. I would say they briefed me  
11 on the issue, yes. I was briefed on the issue. As  
12 well, I would add that Dr. Blackstock raised it  
13 several times over the course, I would say, of the  
14 CCW meetings that I participated at.

15 Q. So would you agree it was one  
16 of these issues that had some history prior to your  
17 involvement and that was being raised by the Caring  
18 Society going forward?

19 A. Yes, I would agree with that,  
20 that it predates my arrival, yes.

21 Q. And had your staff come up  
22 with an action plan for dealing with this issue  
23 prior to the Caring Society bringing its motion?

24 A. No. No action plan was  
25 presented to me. I was presented with briefings

1 about how the CWJI was -- came into being. But in  
2 regards to an action plan, not that I can recall.

3 Q. Now, at paragraph 9 -- this  
4 is moving to the next section that is titled  
5 "Delivery of Child and Family Services to On-  
6 reserve --"

7 A. Yes.

8 Q. You note two vehicles or two  
9 ways that child and family services are delivered  
10 on-reserve. One is provincially-delegated  
11 agencies, the FNCFS agencies, and the second is  
12 directly by a province or territory.

13 A. Yes.

14 Q. Would you agree with me that  
15 there is at least one exception to this dichotomy  
16 that's kind of either agency or mainstream  
17 provincial or territorial provider, which would be  
18 the Mi'kmaq Confederacy of P.E.I., which I  
19 understand is not delegated by the province of  
20 Prince Edward Island but nonetheless provides some  
21 CFS services to First Nations on-reserve in P.E.I.?

22 A. Could you clarify your  
23 question for me, please?

24 Q. Sure. So my question is  
25 there's -- your affidavits presents the two

1 streams. There's the agencies and then the ones  
2 that receive -- you know, via essentially the  
3 provinces and territories. And the agencies are  
4 delegated by the provinces to provide services.

5 So I will start with -- my  
6 understanding is that the Mi'kmaq Confederacy of  
7 P.E.I. is not delegated by the province of Prince  
8 Edward Island. Am I right about that?

9 A. In regards to Prince Edward  
10 Island, if I could draw your attention to paragraph  
11 31 of my affidavit.

12 "...all FNCFS program  
13 funding, including CHRT  
14 actual claims and CWJI, flows  
15 to the Mi'kmaq Confederacy of  
16 Prince Edward Island, which  
17 operates according to an  
18 agency model and delivers  
19 prevention services to the  
20 province's on-reserve First  
21 Nations."

22 And services are purchased in  
23 regards to protection from the province.

24 Q. Right. So I guess the crux  
25 of my question is -- my understanding was that the

1 MCPEI, which is what I will call the Mi'kmaq  
2 Confederacy of Prince Edward Island, they don't  
3 have provincial delegation for the prevention  
4 services that they deliver on-reserve; is that  
5 right?

6 A. I would say that it is a  
7 partially delegated agency.

8 Q. What is the basis for calling  
9 it partially delegated?

10 A. Because it does not  
11 (inaudible) protection services. Those are  
12 purchased from the province.

13 Q. Right. But my understanding  
14 was that the prevention, which is the activity it  
15 does carry out, that there is not a formal  
16 delegation from the province of Prince Edward  
17 Island to do those activities.

18 A. I'm not certain. I  
19 understand your question or your comment; however,  
20 I will say that prevention services or prevention  
21 activities are carried out by the MCPEI or M --  
22 yes, M -- sorry. I'm trying to find it. MCPEI --  
23 because the legislation doesn't provide for  
24 prevention services.

25 Q. I see. So in that case, it's

1 a -- and I won't debate the wording of the  
2 legislation. We don't have it before us in any  
3 event. We can do that in another forum. But it  
4 would be -- in that case, if the legislation is not  
5 provided for, it would be an example of a non-  
6 delegated activity because there is no delegation  
7 to give from the province. Am I right about that?

8 A. I would not phrase it that  
9 way. We refer to partially delegated agency. But  
10 I think we're saying the same thing.

11 Q. That it would be an instance  
12 in which a First Nations entity, not necessarily  
13 the First Nations community itself, is providing  
14 some of these services to communities as opposed to  
15 either the provincial or territorial government or  
16 the FNCFS agency. Is that fair?

17 A. Again, I don't know if it's  
18 because I'm interpreting it differently. What I am  
19 saying is that the prevention activities are  
20 provided for -- or provided to the on-reserve  
21 members.

22 Q. Via the vehicle of the MCPEI,  
23 which is neither an FNCFS agency nor a  
24 provincial/territorial entity, if that makes sense.

25 A. Okay --



1 Q. I'm just trying to identify  
2 if there is a third way here, that the first way  
3 being a First Nations child and family services  
4 agency with formal delegation, the other being  
5 provincial/territorial government providing the  
6 services, and then the third being a First Nations  
7 entity that is not an agency providing the services  
8 on-reserve.

9 A. And again, I don't want to  
10 appear difficult. I see it as being partially  
11 delegated. So I don't know the difference in  
12 (audio distortion) -- mainstream child and family  
13 services agencies, than there are, as you  
14 indicated, the delegated First Nations child and  
15 family service.

16 Then we have those communities or  
17 those entities that have a partial delegation,  
18 which, if the legislation is (indiscernible),  
19 provincially or territory in way, and we will say  
20 the Yukon, then the prevention activities are  
21 performed by the (inaudible). So in this case, it  
22 would be the MCPEI.

23 Q. If I can maybe just take a  
24 step back, and on that, what I kind of qualify it  
25 as the first way when we're talking about

1 delegation, do you know how delegation happens? Is  
2 there a formal document from the province that  
3 gives that delegation to the agency?

4 A. The provinces formally  
5 delegate through an agreement, as I understand, and  
6 it -- yes, I would say yes, there is a formal  
7 document.

8 Q. Have you seen such a formal  
9 document between the MCPEI and the government of  
10 Prince Edward Island?

11 A. I cannot say that's -- no, I  
12 do not recall seeing that.

13 Q. My next question is about  
14 paragraph 11, so if you just give me a moment here  
15 to make my way back. To the fans in the stands,  
16 I'm screen sharing here, and of course for the  
17 panel members and my friends. Paragraph 11 here is  
18 up on the screen. You have it before you as well.

19 So you note cases where the  
20 services are provided by provinces or Yukon -- and  
21 I should specify it's Yukon. Northwest Territories  
22 and Nunavut have different arrangements which you  
23 spelled out in your affidavit.

24 A. Yeah.

25 Q. These services are funded

1 through federal-provincial or federal-territorial  
2 agreements. That's right?

3 A. Yes.

4 Q. Would you agree with me that  
5 these agreements were not updated to account for  
6 the Tribunal's 2016 decision in terms of the  
7 parameters for child and family services being  
8 provided on-reserve?

9 A. Yes, I would agree.

10 Q. Now, at paragraph 10 of your  
11 affidavit -- I will just go back and try and  
12 straddle the page here on the screen -- you note  
13 that the FNCFS agencies must comply with the FNCFS  
14 program terms and conditions --

15 A. Mm-hmm.

16 Q. -- in order to receive  
17 funding from Canada. That's right?

18 A. Yes.

19 Q. And you're, of course, aware  
20 the Caring Society takes the view that the terms  
21 conditions aren't in full compliance with the  
22 Tribunal's rulings?

23 A. Yeah, I am aware of that.

24 Q. Now, do all of the sections  
25 of the terms and conditions also apply to provinces

1 and territories providing services directly on-  
2 reserve?

3                   A.    The provinces and territories  
4 administering the provincial schemes are  
5 responsible for their part of it. In regards --  
6 and if I -- I'm not too certain I understand your  
7 question, but if you're saying that the terms and  
8 conditions, do they apply to the provinces? No,  
9 they apply in regards to -- well, there are the  
10 agreements in place that determine the funding  
11 amounts and what services are to be accounted for.  
12 When you look at the terms and conditions, however,  
13 they're really for recipients and who we enter into  
14 contribution agreements with for other types of  
15 arrangements in order for the administration of the  
16 funds that are provided to them.

17                   So, for example, if you look at  
18 the terms and conditions, we say which recipients  
19 are eligible for what type of funding, as well as  
20 they outline criteria for the terms and conditions  
21 with respect to CWJI. And I will leave it at that.

22                   Q.    So if I can try and summarize  
23 -- and please tell me if I'm summarizing unfairly.  
24 If you're a First Nations child and family services  
25 agency, your funding is governed by the terms and

1 conditions, and if you're a provincial or  
2 territorial government, if would be the applicable  
3 provincial -- federal-provincial or federal-  
4 territorial agreement that would be setting out the  
5 conditions for that funding?

6 A. Yes. Because -- yes.

7 Q. So I'm right, then, that as a  
8 result, the obligations are different on FNCFS  
9 agencies as opposed to provincial/territorial  
10 governments because they're set out in different  
11 documents, or at least -- maybe I should step back  
12 and ask the question. The terms and conditions  
13 aren't replicated in the provincial/territorial  
14 agreements? Those stand on their own?

15 A. Without going through  
16 (indiscernible) without -- through each agreement,  
17 I can't confirm.

18 Q. That's fair enough. But I  
19 think we can agree they're separate documents?  
20 They're --

21 A. Yes, we can agree they're  
22 separate documents.

23 Q. Now, your impression as  
24 Director General, the reporting obligations on  
25 provincial or territorial government, they would be

1 different than those on a First Nations child and  
2 family services agency?

3 A. I would say in certain ways  
4 they're the same in terms of accountability, but in  
5 other ways they're different, yes.

6 Q. So in terms of  
7 accountability, that the money was spent on  
8 eligible purposes, both recipients would have to  
9 confirm that through their reporting obligations;  
10 is that right?

11 A. Yes. I would say that, for  
12 example, where the province/territory is reimbursed  
13 on actuals for services rendered, they would have  
14 to account for the amount billed.

15 Q. When you say reimbursed on  
16 actuals, that would be the services that they  
17 determined in terms of -- my understanding is that  
18 would apply mainly for maintenance; is that right?

19 A. I would say that whichever --  
20 I would say that they are responsible or that they  
21 would need to report to the extent that they are  
22 providing protective and preventive services to  
23 First Nation families and children on-reserve.

24 Q. And they work within the  
25 context of the funding envelope that is set out in

1 their agreement; is that right?

2 A. To a certain extent, yes.  
3 However, for some provinces, for example, like  
4 Alberta, they bill us for actuals. And so while  
5 there may be an envelope, we may get an invoice or  
6 a summary of items that weren't -- that are  
7 reimbursable.

8 Q. Do you know, is that driven  
9 by maintenance, what would cause it to go up and  
10 down, the number of children in care?

11 A. Yes, I would say that's  
12 definitely one of the factors.

13 Q. Would you say there are  
14 others or is that the primary factor?

15 A. I would say that that is one  
16 of the primary factors. However, if you look at  
17 prevention, where we are -- where the focus is not  
18 trying to avoid or trying to mitigate against  
19 bringing a child into care, so we're talking about  
20 least disruptive measures, for example, they would  
21 be included in there as well.

22 Q. The reporting between, for  
23 instance, Alberta, which is, in this case, the  
24 province we're talking about, would they be  
25 accounting for the kinds of prevention activities

1 that they're doing, then, or is that something that  
2 they send you an invoice and that is what it is?

3 A. I can affirm that I know of  
4 the process that happens; however, the invoice does  
5 not come to my office. It remains within region.

6 Q. Now, do provincial and  
7 territorial governments have access to the actuals  
8 reimbursement process that First Nations child and  
9 family services agencies do?

10 A. I would say that if a First  
11 Nation does not receive services from a First  
12 Nations CFS-delegated agency, the province would be  
13 reimbursed or funded at cost for the services  
14 rendered.

15 Q. So that would be the  
16 provincial or territorial government's decision in  
17 terms of the level and kind of services to provide?

18 A. Exactly. Exactly. It's my  
19 understanding that that would be the case, yes.

20 What I would say is that, if I  
21 could add something, is that it is different for  
22 every region, and as well as for the Yukon, so it  
23 has to be taken -- the comments that we exchange  
24 today, this dialogue, is that what may apply, let's  
25 say, in Alberta, might not apply elsewhere. Each



1 region and each payment is individual.

2 Q. We will call that the beauty  
3 of federalism.

4 A. Yes, we can call that the  
5 beauty of federalism.

6 Q. So the provincial/territorial  
7 in general, provincial and territorial governments,  
8 they will be deciding how they're going to be  
9 providing their services and then their funding is  
10 dictated according to the agreements.

11 Now, with respect to what they're  
12 doing -- my understanding is that, for instance, a  
13 First Nations child and family services agency has  
14 to submit a business plan to -- I don't know if  
15 it's to the region or to headquarters, but at least  
16 to ISC a business plan has to be submitted; is that  
17 right?

18 A. That is my understanding,  
19 yes.

20 Q. And there are -- my  
21 understanding is there are other long-term or more  
22 long-term planning documents that are being worked  
23 on. I'm not sure if they're implemented in terms  
24 of community plans, the longer-term plan for  
25 addressing the needs and circumstances of First

1 Nations children and families who are coming into  
2 contact with the system, for lack of a more  
3 specific term. Is that right?

4 A. Are you referring to CWJI  
5 funding and how plans can go up to five years?

6 Q. You know, I'm being a little  
7 inexact. I apologize. I don't have the precise  
8 term. My understanding was that in addition to the  
9 business plan, there was a more overarching plan  
10 that agencies had to submit.

11 I guess the way I will phrase it  
12 is, regardless of what we call the vehicle, there  
13 is some interaction between the agency and ISC in  
14 terms of the anticipated goals and activities of  
15 the agency.

16 A. I would agree with that and  
17 that, you know, when plans are submitted,  
18 regardless of which sector you're talking about,  
19 yes, they're a plan; however, things happen and  
20 sometimes plans need to be revised.

21 Q. Right. But there is at least  
22 -- there's some communication between the agency  
23 and ISC with respect to the situation on the ground  
24 and what the agency is going to be doing in a given  
25 year going forward?

1                   A.    Yes, I would agree with that.  
2   And also to add is that, for example, you mentioned  
3   community planning, broader community planning. So  
4   if we're talking about a community-centered  
5   approach, some regions have specific regional  
6   initiatives where you look not only at child and  
7   family services and needs, let's say, for  
8   infrastructure, but you will get it more  
9   comprehensively and more wholly as to what the  
10  community needs in terms of --

11                   Q.    So -- I'm sorry, I missed the  
12  end of your answer there. I spoke too quickly.

13                   A.    Okay. Oh, the end of my  
14  answer. I'm sorry, I didn't hear that.

15                   So, for example, you mentioned  
16  community planning. And in some regions, some  
17  regions have certain initiatives. So for example,  
18  in Ontario, they have a community-focused approach  
19  to a variety of areas.

20                   So, for example, in regards to  
21  infrastructure especially, if a request comes in  
22  for a school or some other building for a specific  
23  purpose, it has to be part of a broader community  
24  plan idea, right, in order to build that  
25  sustainable foundation and sustainable accessible

1 infrastructure so that it can be used -- it's  
2 available and used over the years.

3 Q. That planning process, that  
4 is between the community and Indigenous services;  
5 that's right?

6 A. Exactly, at the regional  
7 level.

8 Q. Now, with respect to  
9 provincial and territorial governments, do they  
10 submit business plans to ISC?

11 A. I'm sorry, can you repeat  
12 that?

13 Q. No problem. So the  
14 provincial and territorial governments, where they  
15 are providing services as opposed to an agency, are  
16 they submitting business plans or at least similar,  
17 I think you called it, comprehensive community  
18 planning, you know, exercises, is that dialogue or  
19 communication going on between the province and  
20 territory and ISC?

21 A. I am unable to confirm that  
22 but would be happy to look into it and provide you  
23 with an accurate response.

24 Q. At least from your  
25 perspective as Director General at headquarters,

1 that is not something you're aware of, that process  
2 between the provincial/territorial governments and  
3 ISC?

4 A. Again, I think we get a lot  
5 of information, as does everybody who is here  
6 today. I would like to --

7 Q. "I don't know" is a fine  
8 answer if that's the case.

9 A. Yeah.

10 Q. It's just a question I had.

11 A. No, I -- yeah, and so I would  
12 like to go back and confirm to make sure that I  
13 provide you with the most accurate response.

14 Q. Now, a further question I  
15 have got is -- I guess one follow-up. So you  
16 wouldn't have seen anything like a business plan  
17 from a province or a community plan from a province  
18 doing these -- it may go without saying given your  
19 answer, but I just wanted to confirm, you haven't  
20 seen -- the kinds of documentation you might have  
21 seen from agencies about business plans, et cetera,  
22 you wouldn't have seen those from provincial and  
23 territorial governments?

24 A. No, I would not.

25 Q. Now, in terms of the work

1 that the provincial and territorial governments  
2 were doing, do you know if the First Nations who  
3 received those services, are they consulted by  
4 Canada about what their needs are and whether  
5 they're being met through those agreements? Or is  
6 that left between the nation in question and the  
7 provincial/territorial government?

8 A. I would say it depends. For  
9 example, and if I'm -- you know, based upon my  
10 interpretation of your question is that in some  
11 instances, yes, we would be aware because we are  
12 cc'd in a letter from a First Nation to a  
13 provincial counterpart. So we could be aware via  
14 that route. We could also be aware from a region  
15 reaching out or actually an agency or an advocate  
16 such as, you know, Dr. Blackstock, for example, or  
17 Madame -- Ms. Wente or Ms. Clarke or yourself or --  
18 of course, you know, I think of our colleagues in  
19 NAN as well. They would bring it to our attention  
20 or to the attention of who they worked with at the  
21 regional level.

22 Q. But when the agreements are  
23 revised or when the agreements between -- between  
24 the federal government or provincial government or  
25 territorial government, there is not a step in that

1 process that involves consulting the nation or  
2 nations in question?

3 A. I cannot say with certainty.  
4 I would love to go back and look into it to provide  
5 you with the accurate response.

6 Q. Now, at paragraph 12 -- I'll  
7 move the screen down here. Give me one moment. At  
8 paragraph 12, you state that there are 149 FNCFS  
9 delegated agencies in Canada serving approximately  
10 500 First Nations communities, and that the  
11 estimate in November of 2020 was that there were  
12 138 First Nations not currently served by a First  
13 Nations delegated agency but who received services  
14 directly from the provinces or the Yukon  
15 government.

16 Now, earlier in the paragraph, you  
17 note the number of FNCFS agencies varies through  
18 time. The corollary of that then would be that the  
19 number of communities not served by agencies would  
20 vary by time as well; is that right?

21 A. I would say that is a fair  
22 (indiscernible), yes.

23 Q. Does ISC keep data on the  
24 number of First Nations by region that weren't  
25 served by First Nations agencies by fiscal year?

1                   A.    I am uncertain as to how it  
2 is broken down, but in regions, yes, that  
3 information is available.

4                   Q.    Would it be possible -- and I  
5 guess, Mr. Frater, this is partially addressed to  
6 yourself as well. We have got the number here of  
7 138 for November 2020, which I will take that as  
8 the 2020/2021 number. Would it be possible to get  
9 that number broken down by region and then also to  
10 have it for fiscal '16/'17 through to '19/'20?

11                  MR. FRATER: Yes, to the extent we  
12 have (indiscernible).

13                  MR. TAYLOR: I'm sorry, Mr.  
14 Frater, you're -- I heard "Yes, to the extent" and  
15 then that was all I got.

16                  MR. FRATER: Yes, to the extent we  
17 have the information, we are happy to provide it to  
18 you. So we will look into what we have and give it  
19 to you if we have it.

20                  MR. TAYLOR: Okay. Thank you very  
21 much.

22                  BY MR. TAYLOR:

23                  Q.    Now moving on to the next  
24 section, Ms. Nepton. This is "C", "Improving  
25 Funding to the FNCFS Program Funding to First



1 Nations Communities".

2                               So in paragraph 13, you're  
3 addressing what you term as engagement. This is  
4 actually -- sorry, on the next page, the last  
5 sentence:

6   "A key point heard through  
7 this engagement process was  
8 the need for additional  
9 investments directly to First  
10 Nations for prevention and  
11 early intervention."

12                               So when you're saying  
13 "engagement", can you help me understand what is  
14 meant for the program by the word "engagement"?

15   A. "Engagement", it means  
16 soliciting points of view of, of course, the  
17 parties to the CHRT, motions, and other  
18 stakeholders such as, you know, the First Nations  
19 themselves, other representative groups, for  
20 example, First Nation children advocates and family  
21 advocates, in order to inform further -- so it's  
22 the dialogue to inform further change down the  
23 road.

24   Q. So if I can just ask, is that  
25 -- in your view, is that any different from

1 consultation?

2                           A.    I would say that from my  
3 perspective, we often use "engagement" and  
4 "consultation" -- sorry, I'm trying to think of the  
5 word in English -- interchangeably. And so for me,  
6 you know, when we engage in a dialogue, we engage,  
7 and then the consultation is something concrete to  
8 further dialogue about, right? But I think it's  
9 very situation-based.

10                          Q.    What would be the differences  
11 that would, I guess, drive -- I guess if you see  
12 them as different terms, "consultation" and  
13 "engagement", what would be the situational  
14 differences that would be driving that?

15                           A.    For example, engagement on  
16 issue around CFS, okay? So we would have this  
17 discussion, much like we do at CCCW meetings or NAC  
18 about issues. And then if, for example, we have a  
19 document that's already established and in place  
20 that needs to be worked on and that we need to work  
21 on policy changes or on directive changes, whatever  
22 the case may be, implementation of (indiscernible),  
23 we would work from that. And then once whatever  
24 document has been circulated amongst interested  
25 parties or the parties to the motions, we would

1 then use that document and then we would further  
2 consult on it.

3                   So we would -- you know, for me,  
4 consultation requires something concrete.  
5 Engagement is that discussion. It's that  
6 preliminary discussion and that builds into  
7 something, the consultation aspect.

8                   Q. So, if it's fair, engagement  
9 might be a first step and then consultation would  
10 follow on that?

11                  A. Exactly. Depending, again, I  
12 can say, on a situation, but from my personal  
13 experience is that, you know, if there's an issue,  
14 we discussed it and we have something concrete to  
15 talk about, be it a discussion paper, be it a  
16 potential, you know, policy change, a directive  
17 change. So it doesn't form the consultation to a  
18 certain extent.

19                  But I don't -- I realize that some  
20 would say that one -- they're one and the same and  
21 that one doesn't necessarily inform or that they  
22 both happen at the same time, which is also  
23 possible. So there are a few scenarios. So I  
24 hope, you know, that is --

25                  Q. No, no, that is helpful, and

1 I haven't worked in government, so it's helpful to  
2 have, you know, some of the explanation of what  
3 might be behind some of these points. That was an  
4 editorial comment.

5 My question is -- so when you look  
6 at something like, for instance -- I guess I should  
7 ask first: Have you read the consultation protocol  
8 that was signed between all the parties following  
9 the February 2018 order?

10 A. Yes.

11 Q. So when you read that  
12 consultation protocol, then, to your mind, would  
13 you agree that there is an obligation when there is  
14 something concrete, an action that Canada is going  
15 to take, that the parties to that protocol have to  
16 be looped in, at least on the point that falls  
17 within the scope of what needs to be consulted on?

18 A. I would say, yes, that  
19 discussion needs to happen, but I would like to put  
20 on the record that in regards to my preparation for  
21 this discussion, I don't have the protocol in front  
22 of me, so --

23 Q. That's fine. I don't either,  
24 but it's one of the many bricks in the wall of this  
25 matter. Tiles in the mosaic would be a better -- a

1 more evocative way of putting it, so I just wanted  
2 to touch on it.

3                                 Before I ask my next question, I  
4 just want to say if there's any point where you  
5 feel more comfortable responding in French, please  
6 feel free.

7                                 A.    Okay.

8                                 Q.    I am fluent both directions  
9 and, you know, this is a federal proceeding, so the  
10 Official Languages Act applies. Don't feel for my  
11 benefit that you need to respond in English if you  
12 would be more comfortable responding in French.

13                                A.    Thank you. Sometimes the  
14 expression comes in French a little bit quick --  
15 more quickly than sometimes in English, so some --  
16 I will stay to English, but if I can't figure out  
17 the wording in French, I appreciate your offer.

18                                Q.    And I should just say for my  
19 friends, not all other counsel may speak French  
20 like myself, so if there is an instance where we do  
21 pass into French, I will endeavour to provide a  
22 summary. But if there's any issue from any other  
23 party, please don't hold back, because I would like  
24 to try and keep this on the rails. But I just want  
25 the witness, in fairness to her, to have her full

1 opportunity to respond.

2                                 Now, a question I have about this  
3 consultation in 2016 -- this is from paragraph 13.  
4 This is -- sorry, engagement. This is engagement  
5 that happened in 2016, so I appreciate you may not  
6 know the answer to this question, but was the  
7 engagement described here, is that the vehicle by  
8 which provinces and territories were informed about  
9 the 2016 orders and the obligations flowing from  
10 them?

11                                 A. I am unable to confirm that.  
12 That predates my arrival.

13                                 Q. That's fine. Now in terms of  
14 where services are provided pursuant to a  
15 provincial or territorial agreement -- and again,  
16 I'm going to try and use that as a short form for  
17 these federal-provincial, federal-territorial  
18 agreements. So those weren't amended after the  
19 January 2016 decision; that's right?

20                                 A. I would have to look for each  
21 agreement because each agreement has a set date.  
22 So I would have to really look at each one and see  
23 when it came into force, what the amendments were,  
24 in order to answer that with accuracy. So --

25                                 Q. You're not aware of any

1 effort to -- not effort -- any initiative. You're  
2 not aware of any initiative to go through the  
3 agreements and say what needs to change in order to  
4 render us in compliance or ensure that they are in  
5 compliance with the orders?

6 A. I think if I understand your  
7 question correctly, there have been discussions.  
8 However, the agreements that are in place are in  
9 place and are the documents that we use for our  
10 relationships with the provinces and the Yukon, the  
11 territories -- the territory --

12 Q. Does ISC take -- I'm sorry.  
13 If you're not finished, please --

14 A. No, I was going to say -- so,  
15 have there been discussions? Yes, I have discussed  
16 this issue because I have had conversations with  
17 Dr. Blackstock, and also, it has been raised at  
18 CCCW. It doesn't mean that the discussions haven't  
19 happened in my office. The issue for me is just  
20 the implementation aspect of that and how that  
21 timing works out. But I know that for now, I have  
22 -- in terms of changing wording, that sort of  
23 thing, no, I have not done that. My office, ISC,  
24 has not done that.

25 Q. Now, beyond the wording of

1 the agreements, does ISC take any steps to ensure  
2 that the services that are provided on the ground  
3 by provinces and territories through these  
4 agreements are substantively equal to those -- or  
5 provide substantive equality?

6 A. I am not certain I understand  
7 your question. Could you ask it a different way if  
8 you don't mind?

9 Q. Sure. So where a community,  
10 a non-agency community, is receiving services from  
11 the provincial or territorial government --

12 A. Yes.

13 Q. -- beyond the wording of the  
14 agreement that is governing the funding, does ISC  
15 undertake any, you know, essentially, quality  
16 evaluation of what kinds of services are being  
17 provided? You know, in the Tribunal ruling it  
18 talks about reflecting the historical, cultural and  
19 geographical needs and circumstances of  
20 communities. Is there any exercise undertaken by  
21 ISC to ensure that that is happening in those  
22 communities that don't have agencies?

23 A. I cannot say with certainty.  
24 I would be happy to go back to see -- to get the  
25 full picture of my regional counterparts in terms



1 of those discussions. I can say that I am aware of  
2 some discussions that have happened between ISC and  
3 provinces about the services and the cost of those  
4 services based on needs with respect to First  
5 Nations that are not served by a delegated agency.

6 Q. And then one last question  
7 about this engagement from 2016. You may not be --  
8 well, actually, no, I will just confirm.

9 Based on your not having knowledge  
10 of those engagement at the time, you can't confirm  
11 either way whether non-agency First Nations were  
12 included in the engagement process at that time?

13 A. No, I am not able to confirm  
14 that information at this point in time.

15 Q. So in paragraph 15, so just  
16 moving a couple down, you note the budget 2016 and  
17 budget 2018 supports for the FNCFPS program. Are  
18 you aware that the allocations that were made in  
19 budget 2016 were developed prior to the Tribunal's  
20 ruling in January 2016?

21 A. I am not aware and therefore  
22 unable to confirm the question.

23 Q. No, no, I appreciate it. I'm  
24 just looking at my next question here.

25 Now, in terms of Ontario, are you

1 aware about how the prevention funding from budget  
2 2016 was dealt with for Ontario, that it was  
3 provided to nations and not to agencies?

4 A. With respect to how that was  
5 developed? Is that what the question is?

6 Q. It's more of an allocation  
7 question. So my -- again, if you're not aware,  
8 just stop me. My understanding was that the  
9 additional prevention monies provided in budget  
10 2016, a decision was made for Ontario to provide  
11 those, as opposed to providing them to agencies to  
12 provide them to nations. I am just wondering if  
13 you're aware of that.

14 A. I cannot confirm that. What  
15 I can confirm are the funding amounts that are  
16 found in -- I believe it's tab 3 of my affidavit,  
17 the document entitled -- it's NN-3, CFS provinces  
18 and territory expenditures, and as well as the  
19 allocations that are provided for how the program  
20 is delivered across the country. So there are no  
21 figures in that one, but in the expenditures by  
22 region and type, that is what I can attest to. So  
23 I --

24 Q. That's fine. That's okay. I  
25 will move on.

1 I would just like to move on to  
2 the CWJI, and you're (inaudible) --

3 MS. DUBOIS: Member Marchildon is  
4 having problems with her screen view. Member  
5 Marchildon, are you able to speak? Member  
6 Marchildon, are you there? Just a moment. I'm  
7 just going to stop the share for a moment. She has  
8 told me that she is able to hear everyone. She  
9 just can't see. Just a moment. Okay. It looks  
10 like she's disconnected, actually.

11 I'm just speaking with Member  
12 Marchildon on the telephone, and I'm just walking  
13 her through the sign-in process. Ms. Nepton, I  
14 will ask her about a health break as well.

15 THE WITNESS: Yes, Madam Dubois, I  
16 was wondering if it would be possible to have a  
17 health break after I respond to Mr. Taylor's next  
18 question or maybe given the technical issues that  
19 we're currently experiencing with one of  
20 participants. I leave it up to others' opinions or  
21 views.

22 MS. DUBOIS: Go ahead, Member  
23 Marchildon. We can see you now and Ms. Nepton has  
24 asked for a break.

25 THE CHAIR: Sorry about that.

1 There was a notification that my internet was  
2 unstable. However, I'm plugged into the main so I  
3 don't know what's going on.

4 Yes, let's take a break. Let's  
5 take 20 minutes and come back after that. Thank  
6 you.

7 MR. TAYLOR: Thank you very much.

8 THE CHAIR: Ms. Dubois, can you  
9 bring Member Lustig and I in the breakout room,  
10 please?

11 MS. DUBOIS: I will put everyone  
12 in their breakout room. And members of the  
13 gallery, I will put you back into the waiting room.  
14 So, 20 minutes, that would be approximately 11:15?

15 THE CHAIR: Yes. Correct.

16 MS. DUBOIS: Great.

17 THE CHAIR: Thank you.

18 --- (Recess taken)

19 MS. DUBOIS: Please go ahead, Mr.  
20 Taylor. Let me know if you would like me to screen  
21 share again and to give --

22 MR. TAYLOR: If you wouldn't mind,  
23 Ms. Dubois.

24 MS. DUBOIS: Excellent. I will.

25 THE CHAIR: Mr. Taylor?

1 MR. TAYLOR: Yes.

2 THE CHAIR: Could you repeat your  
3 last question? I didn't hear it.

4 MR. TAYLOR: I will do my best.  
5 Madam Chair, I believe my questions were about the  
6 Ontario prevention amounts in budget 2016. Was  
7 that where we were when you lost your connection?

8 THE CHAIR: Yes.

9 BY MR. TAYLOR:

10 Q. Okay. Ms. Nepton, just to, I  
11 guess, try and summarize where we left off, I had  
12 asked you about your awareness of how the budget  
13 2016 additional prevention money was dealt with for  
14 Ontario in terms of being provided to agencies or  
15 just to nations, and I believe your response was  
16 generally that you weren't aware of it, but then  
17 you directed me to Exhibit 3 of your affidavit,  
18 which is this one-page chart of the allocations  
19 from fiscal '15/'16 through to '18/'19. Is that  
20 right?

21 A. Yes, that's correct, Mr.  
22 Taylor.

23 MR. TAYLOR: Okay. I didn't have  
24 anything to add over that. To be transparent, I  
25 was moving on because I think budget 2016 was in

1 the rear-view mirror. My characterization, not the  
2 witness'. So, Madam Chair, if you're content with  
3 that summary, I would move on to my next topic.

4 THE CHAIR: Yes, please move on.

5 MR. TAYLOR: Okay. Thanks very  
6 much. I was going to ask about the CWJI next.  
7 Just for road-mapping purposes, to just try and  
8 keep everybody informed, I think I will likely be  
9 until the lunch break, maybe shortly after that,  
10 but I don't expect to go too, too much longer.  
11 Just in terms of, I guess, landmarking and time  
12 management, Madam Chair, what time would you like  
13 to take a lunch break at?

14 THE CHAIR: Well, I was thinking  
15 we could go on for another hour, but at the most,  
16 if that helps people. And then we'll break for  
17 lunch. Is it okay, Ms. Nepton? Do you feel okay  
18 for an hour?

19 THE WITNESS: Yes, that's fine.

20 THE CHAIR: Okay.

21 THE WITNESS: Thank you.

22 THE CHAIR: If there's any issue,  
23 just let us know. That's perfect.

24 THE WITNESS: Okay. Thank you.

25 MR. TAYLOR: I should have

1 included Ms. Nepton in my housekeeping. If you  
2 need a break at any time, don't be shy. I won't  
3 say no. And even if I did, Madam Chair --

4 THE WITNESS: Thank you.

5 MR. TAYLOR: -- makes the call.

6 BY MR. TAYLOR:

7 Q. Okay. Moving on to paragraph  
8 17 -- I'm sorry. Paragraph 18 and following.  
9 That's where you're speaking of the Community Well-  
10 being and Jurisdiction Initiative. Again, I will  
11 just refer to that as CWJI.

12 Now, the CWJI, as I understand it,  
13 that was created following budget 2018. Am I  
14 right?

15 A. Yes.

16 Q. My understanding -- and just  
17 let me know if I'm right, but my understanding is  
18 the CWJI itself, it wasn't created in response to a  
19 specific Tribunal order; is that right?

20 A. That is my understanding as  
21 well.

22 Q. Am I right that it is aimed  
23 at providing prevention funding to all First  
24 Nations communities whether or not they have a  
25 First Nations agency or not? Sorry, the goal isn't

1 to provide to the 600-and-some First Nations  
2 communities, each and every one of them, but the  
3 CWJI funding doesn't make a distinction in terms of  
4 eligibility of the nation having an agency or not.  
5 The goal is to provide it to nations and not  
6 agencies; is that right?

7                   A. It's my understanding that  
8 based upon the engagement sessions with a  
9 ministerial special representative that had been  
10 appointed is that the CWJI stream was developed in  
11 response to a First Nation expressing the need for  
12 money to come directly to the community for  
13 prevention, pilot projects and jurisdiction  
14 initiative.

15                   Q. And that need would be  
16 regardless of their service provider, regardless of  
17 whether their service provider was a delegated  
18 First Nations agency or a provincial or territorial  
19 government?

20                   A. It's my understanding that  
21 the funding is allocated based upon tripartite  
22 tables that are established regionally and that the  
23 allocation comes from those tripartite tables about  
24 how to distribute it. So it may include First  
25 Nations that are not serviced by an FNCFS



1 initiative -- sorry, an FNCFS agency, as well as a  
2 non -- a CFS-serviced First Nation.

3 Q. Thank you. Now you're aware  
4 that the Caring Society and others at the CCCW  
5 raised concerns about the size of the CWJI  
6 allocation in roughly June 2018?

7 A. Not particular -- in terms of  
8 the materials that you provided, I wasn't able to  
9 go over them in depth, but I did notice that their  
10 issue was raised. I can't remember which CCW  
11 minutes I looked at, but I can affirm that I did  
12 note it in the most recent documents that you had  
13 sent.

14 Q. Maybe we can take a look at  
15 those. Now, I have got -- for me, I have done them  
16 like the old days and I have print it off and put  
17 it in a book.

18 A. Yes.

19 MR. TAYLOR: Madam Chair and  
20 Member Lustig, I don't know if you have access  
21 easily to the supplementary documents I sent late  
22 yesterday evening. The way I sent it was the PDF  
23 with four bookmarks in it.

24 THE CHAIR: I believe that Ms.  
25 Dubois has them on the record and you can access

1 them. Is that correct, Ms. Dubois?

2 MS. DUBOIS: Mr. Taylor, they're  
3 the last two tabs of the document.

4 MR. TAYLOR: Excellent. Thank  
5 you. Thank you. Let's see if I can pull this off.  
6 That's the supplementary record. This is the  
7 exhibit book, I believe. Okay. Perfect. Thank  
8 you.

9 BY MR. TAYLOR:

10 Q. So we will take a quick look  
11 at tab 1, Ms. Nepton. This is an email. You it  
12 mentioned it earlier when you were kind of  
13 describing what you had before you. This is from  
14 Ms. Isaac. She would have been Assistant Deputy  
15 Minister at that time responsible for your group?

16 A. Yes, sorry, I was looking at  
17 the wrong document. I referred to -- yes, I have  
18 it in front of me now.

19 Q. Okay. It's also up on the  
20 screen if that's helpful.

21 A. Thank you.

22 Q. The subject is "Ramp-up  
23 approach in Community Well-being and Jurisdiction  
24 Initiative". Turning over to the next page. The  
25 second-last paragraph is for the Community Well-

1 being and Jurisdiction Initiatives documents in  
2 response to feedback from the Caring Society and  
3 COO, being Chiefs of Ontario. We have developed a  
4 new option, D-1. This option builds on the  
5 previous option D, titled D-2, and includes  
6 "Ontario would be happy to further discuss this  
7 document."

8                                   And then moving a few pages down  
9 in the document -- if you have got it in print, Ms.  
10 Nepton, it has a small number 2 at the bottom of  
11 the page.

12                                   A.    Okay.

13                                   Q.    And Table 1 is option D-1 and  
14 Table 2 is D-2. Just give me a moment to put it on  
15 the screen for the benefit of others.

16                                   A.    Okay.

17                                   Q.    If you will follow along with  
18 me, Table 2, the Ontario line says "See Annex A for  
19 additional information regarding Ontario's  
20 allocations", which Annex A is included, but I  
21 don't need to go there for now. And then D-1 has  
22 an amount of 17.6 million for Ontario.

23                                   A.    Yes.

24                                   Q.    Were you aware, then, of this  
25 issue prior to preparing for today that the total

1 envelope here, which is listed as 80 million in  
2 both tables, D-1 and D-2, that there were some  
3 issue or concern at the CCCW about Ontario having  
4 been added an amount of 17.6 million without  
5 adjusting that 80 million envelope upwards? Were  
6 you aware of that concern?

7                   A. No. The concern that I  
8 understood from CCCW since joining the sector are  
9 concerns about the fixed pot in general and also  
10 potentially insufficient funding. But nothing in  
11 regards to the specific 80 million and the  
12 allocation except what I have read in the minutes  
13 that you provided.

14                   Q. And then the next document is  
15 just over the tab. It's tab 2. This is a letter  
16 from myself to Mr. Frater. Part of our lengthy  
17 correspondence over the years. The first paragraph  
18 is describing the concern and then the -- sorry,  
19 the second paragraph, I should say, and then there  
20 is a table that is characterizing the shortfall.  
21 The Caring Society categorizes the shortfall due to  
22 D-1, i.e. the reductions in allocations for other  
23 provinces occasioned by Ontario being included.

24                   So you wouldn't have been aware of  
25 this issue either, the concerns about the 17.6

1 million and the lesser amounts of funding for the  
2 other jurisdictions as a result?

3                   A.    No.  And I can say when I  
4 read briefly last night the documents as well as  
5 the CCCW minutes, some of the items, especially  
6 this issue about the options and the funding, I  
7 didn't understand what the issue was.  And so  
8 without the benefit of having attended the meetings  
9 or participated in the discussions, my context  
10 wasn't sufficient for me to really seize the issue  
11 for what it is.

12                   Q.    But you are aware, though,  
13 that there have been concerned about the fixed or  
14 the set pot, the total amount of funding available  
15 for CWJI, at least in -- in the tables I have seen  
16 it was 80 million plus the amounts that were  
17 settled on in that Minister's special  
18 representative process, and that there was no  
19 mechanism within the CWJI to increase the pot in  
20 the event that other needs arose or the needs were  
21 greater than the funding provided for.

22                   A.    Exactly.  As I have stated in  
23 CCCW is that it is a fixed pot and that is the  
24 envelope within which ISC works.

25                   Q.    So it's not a needs-based

1 amount, then?

2 A. No, it's a fixed pot.

3 Q. Now, in terms of the  
4 initiatives that CWJI covers -- and I guess I  
5 should just -- I will go back to your affidavit. I  
6 don't have the specific wording point, but just to  
7 make life a bit easier when I do.

8 Now, in terms of the CWJI, my  
9 understanding is that there are prevention  
10 activities that can be funded for nations under the  
11 CWJI; is that right?

12 A. Yes.

13 Q. But in terms of the other  
14 child and family services activities like intake  
15 and investigations or legal fees associated with  
16 child welfare proceedings or repair for buildings  
17 that have child and family services function, those  
18 aren't eligible amounts under the CWJI, is my  
19 understanding.

20 A. Yes, they would be accessible  
21 for agencies that have access to the actuals  
22 (inaudible) and actuals (inaudible).

23 Q. But not under the CWJI?

24 A. No.

25 Q. And so ISC's position would

1 be, then, that those kinds of matters, intake,  
2 investigation, legal fees for child welfare  
3 proceedings or building repairs, that those would  
4 be matters for the provinces and territories to  
5 provide under the applicable agreement?

6 A. Yes. Could I ask you to  
7 repeat that?

8 Q. Sure. So the CWJI funds  
9 prevention, we're agreed on that, I think. And  
10 then the CWJI does not fund intake and  
11 investigation legal fees for child welfare  
12 proceedings and building repairs for facilities  
13 involved in child welfare activities or child and  
14 family services activities. So for a nation that  
15 doesn't have an agency, those kinds of functions  
16 would have to be funded by the province and  
17 territory under their agreement with (inaudible)?

18 A. I'm sorry, for a community  
19 that isn't serviced by an agency?

20 Q. That's what I'm asking about.

21 A. I would agree with that  
22 statement.

23 Q. Now, at paragraph 21 of your  
24 affidavit, which I will put up on the screen here,  
25 we note the estimated 138 First Nations -- you note

1 124 since 2018 received direct funding from an  
2 FNCFS program through CWJI. Did all of those  
3 nations receive funding in all years? Or is that a  
4 total number for fiscals? I guess it would be,  
5 '18/'19, '19/'20 and '20/'21.

6 A. I'm sorry, can you rephrase  
7 the question to make sure I understood it  
8 correctly?

9 Q. Sure. I will take a step  
10 back. That may assist.

11 So CWJI came in in 2018/'19.

12 A. Mm-hmm.

13 Q. Then we then had '19/'20 and  
14 '20/'21.

15 A. Mm-hmm.

16 Q. I should say 2020/2021 for  
17 the purposes of the record. And so what I take  
18 your evidence in paragraph 21 to be is that 124  
19 nations have received CWJI funding since it was  
20 introduced. So my question would be if those 124  
21 nations had been funded in each of the three  
22 fiscals since it was introduced or is that a total  
23 number of the nations funded over that time?

24 A. (Inaudible) broken down  
25 Exhibit NN-3, so --



1 Q. If you give me a moment, Ms.  
2 Nepton, I will put up NN-3 on the screen for the  
3 benefit of others or anyone who doesn't have the  
4 paper.

5 A. I'm looking at my tab 3, NN-  
6 3. I would have to -- in order to provide the most  
7 accurate response and without speculation, I would  
8 need to go back and confirm to accurately respond  
9 to your question.

10 MR. TAYLOR: Mr. Frater, I'm  
11 wondering if we could have a -- if I can make a  
12 request, then, that we get the number of nations  
13 funded by fiscal year for '18/'19, '19/'20 and  
14 '20/'21. And that would just be the non-agencies.  
15 So of that 124 nations, how many were funded in  
16 each year?

17 MR. FRATER: We will endeavour to  
18 get that information for you.

19 MR. TAYLOR: Thank you.

20 BY MR. TAYLOR:

21 Q. So in terms of the purposes,  
22 Ms. Nepton, to which CWJI funding can be put, one  
23 is prevention?

24 A. Mm-hmm.

25 Q. Another is what's titled

1 jurisdiction initiatives? I understand these are  
2 efforts by nations to take a greater control or  
3 governance over child and family services?

4 A. Yes, I agree.

5 Q. And then another, I  
6 understand, is expenses related to the COVID-19  
7 pandemic?

8 A. With respect to that aspect  
9 of the question, it's not -- there's flexibility  
10 within the terms and conditions. So within this  
11 fiscal year, given that some projects, some pilot  
12 projects, ongoing projects, could not move on  
13 because of confinement, because of its impacts, we  
14 did indicate -- "we" being the department --  
15 provided First Nations that were accessing or that  
16 had received CWJI funding with flexibility to  
17 redistribute that money in order to meet whatever  
18 prevention needs that may be required. If PPP --  
19 oh, that is one P too many -- PPE was required,  
20 that would be one thing. And I would say also  
21 flexibility around other types of tools necessary  
22 to help in terms of prevention within communities  
23 directly.

24 Q. And then the other purpose or  
25 use of CWJI funding would be those projects that

1 were agreed to or flowed out of the ministerial  
2 special -- Minister's special representative  
3 process prior to 2018?

4 A. If I have understood your  
5 question correctly, I would say that the projects  
6 that were underway or that were going to be  
7 underway come out of the First Nations' discretion  
8 in terms of what prevention activities they need or  
9 which activities they wish to undertake.

10 Q. Right. So I think I  
11 understand that with respect to prevention in terms  
12 of their scope selection, but the other kind of  
13 initiative that happens under the CWJI, I was just  
14 trying to confirm that there would be those -- the  
15 number of projects that were agreed to -- my  
16 understanding is the first envelope was about 105  
17 million, 80 million of which was distributed  
18 according to the option D-2 that we looked at, and  
19 then the other 20-something million, 25 million,  
20 had been projects arising from this Minister's  
21 special representative tour -- "tour" is the wrong  
22 word -- engagement process. So just to confirm  
23 that that is the other stream within the CWJI.

24 A. All right. Again, what I am  
25 hearing, what I understand is that the second

1 stream that you're referring to is really the  
2 jurisdiction initiatives.

3 Q. Yes.

4 A. Is that what you're getting  
5 to? I can't confirm how the ministerial  
6 representative, how that worked out or how that was  
7 developed, but I can say, yes, there are two  
8 streams, one of which is about prevention  
9 activities, and the other being about jurisdiction  
10 and exercising jurisdiction in the area of First  
11 Nation or Indigenous child and family services.

12 Q. Now, in terms of those two  
13 streams, when we're talking about the 124 nations  
14 that have received funding --

15 A. Yep.

16 Q. -- do you know if all of  
17 those nations received prevention funding?

18 A. No, I do not. Well, the 124  
19 First Nations, I can confirm that number. I would  
20 rather not speculate and come back and provide you  
21 with an accurate response.

22 Q. It's possible, then, that of  
23 the 124 First Nations, some may have only received  
24 jurisdiction funding as opposed to prevention  
25 funding?

1                   A.    I would say that that could  
2 possibly be.

3                   Q.    My understanding is that at  
4 least until June or July of last year, there wasn't  
5 really, like, a national register of data on the  
6 projects that were being funded in terms of being  
7 able to know, you know, of the 80 million going out  
8 to the provinces and territories, which were  
9 prevention and which were jurisdiction. Is that  
10 right?

11                  A.    Yes. I have to go back to  
12 each regional counterpart, my counterpart, and ask  
13 what the projects are that were agreed to from the  
14 tripartite table, let's say, hypothetically, or  
15 through whatever other mechanism possibly that the  
16 decisions are made, and I have to ask the regions  
17 to provide me with that information.

18                  Q.    Is that still the case?

19                  A.    Yes, it's still the case.

20                  Q.    Is there a category under the  
21 CWJI called "Pilot projects with assorted goals"?

22                  A.    Pilot project with -- I'm  
23 sorry, I didn't hear.

24                  Q.    "Pilot projects with assorted  
25 goals". Is there a basket -- an envelope --

1 "basket" is my term.

2 A. With assorted goals? It's  
3 the first time I have heard it described or put to  
4 me that way, so I would rather -- either if you  
5 could define "assorted goals" for me --

6 Q. That's fine, Ms. Nepton. I  
7 will move on.

8 A. All right.

9 Q. The term might be just "pilot  
10 project". Is it possible there's prevention  
11 jurisdiction initiatives and then pilot projects?  
12 Is that a --

13 A. I could say at any given  
14 time, you know, there could be a jurisdictional  
15 initiative, there could be a prevention initiative.  
16 There could be -- I'm sorry, what was the third one  
17 you said?

18 Q. A pilot project, just the  
19 term.

20 A. A pilot project to define or  
21 work within those two streams, right?

22 Q. Okay.

23 A. Yeah.

24 Q. Okay. Moving on to paragraph  
25 23, an example that you provide about Alberta, or

1 at least -- sorry, there are two examples in the  
2 paragraph. One is B.C. and one is Alberta.

3 For Alberta, it's specific. This  
4 is unaffiliated and affiliated First Nations. So  
5 the way I read what you're referring to is that an  
6 affiliated First Nation would be one that has an  
7 agency and then an unaffiliated First Nation would  
8 be one that does not. That's right?

9 A. Yeah.

10 Q. And I think that's a term or  
11 a phrasing that arises from the IFSD report?

12 A. Yes, I would agree.

13 Q. So they are provided a base  
14 amount of \$150,000. That would be a decision that  
15 was made at this tripartite table for Alberta; is  
16 that right?

17 A. Exactly. That is my  
18 understanding.

19 Q. And then over and above the  
20 \$150,000, there's amounts provided that are based  
21 on the on-reserve child population age. That's  
22 what the next sentence says.

23 A. Yes, that's what I have been  
24 advised.

25 Q. So do you agree that this

1 isn't a needs-based allocation?

2 A. I cannot confirm that  
3 affirmation or that question because it would  
4 require going into and seeing what the discussions  
5 were at the tripartite tables about those  
6 allocations.

7 Q. At least you would agree with  
8 me that the allocation is driven by, number one,  
9 being the nation in order to be eligible for the  
10 base 150?

11 A. Yes.

12 Q. And number two, by child  
13 population?

14 A. Yes. At minimum, yes.

15 Q. So that wouldn't be  
16 accounting for historical, cultural or geographical  
17 needs and circumstances?

18 A. Again, because I haven't been  
19 privy to the discussions that happened at the  
20 tripartite tables about the distribution and I  
21 don't want to speculate on that. It would be  
22 unfair to provide you with this information on that  
23 one.

24 Q. Would it be fair to say that  
25 in terms of the CWJI amounts that are allocated, it



1 would require some further initiative at the  
2 regional level between the province, the federal  
3 government and the nations involved for those  
4 historical, cultural and geographical needs and  
5 circumstances to be taken into the account?

6 A. Again, I think it depends on  
7 what pilot projects or what initiatives have been  
8 discussed and approved. And so it would be unfair  
9 to speculate, but I would say, you know, I would be  
10 happy to inform -- to get that information from my  
11 regional colleagues to confirm.

12 Q. That is fine. I don't want  
13 to call for speculation here.

14 Just going back to paragraph 22,  
15 here you note that the pilot projects are projects  
16 that were brought forward during the ministerial  
17 special representative's engagement process in 2016  
18 and 2017.

19 A. Mm-hmm.

20 Q. Do you know if at the time it  
21 was made clear to nations participating in that  
22 process that there was a funding opportunity  
23 associated with it?

24 A. I cannot confirm that but  
25 would be happy to go back and confirm, going

1 through our documents to see what that -- what the  
2 expectation or what was communicated to First  
3 Nations and agencies and other stakeholders about  
4 that.

5 Q. Just moving down to paragraph  
6 25. Here you have some more specific examples.

7 A. Exactly.

8 Q. Paragraph 25(a) and 25(b),  
9 you're providing some examples of projects funded  
10 in Manitoba?

11 A. Yes.

12 Q. The Manitoba First Nations  
13 Family Advocate Office --

14 A. Mm-hmm.

15 Q. -- and then the Assembly of  
16 Manitoba Chiefs' Grandmothers Council. Are you  
17 aware that all the First Nations in Manitoba are  
18 served by FNCFS agencies?

19 A. I can't confirm all of them,  
20 but I would be happy to confirm it when I get back  
21 to the office.

22 Q. I think we can confirm now if  
23 we go to paragraph 37 of your affidavit.

24 A. Yeah.

25 Q. I will just click forward to

1 it here on the screen.

2 A. No, you're correct. Yeah.  
3 They're all -- "As a result, communities have  
4 access to the CHRT actuals claims process," yeah.

5 Q. And then "in addition to  
6 CWJI".

7 A. Yes.

8 Q. So with respect to Manitoba,  
9 at least, those examples wouldn't be (inaudible)  
10 non-agency communities because they're all agency  
11 communities in Manitoba?

12 A. Yes.

13 Q. My understanding -- sorry.  
14 Do you know if the child advocate office -- or the  
15 Manitoba First Nations Family Advocate Office, if  
16 that's an off-reserve or on-reserve agency or  
17 entity?

18 A. I do not know if it's off-  
19 reserve or on-reserve. I can confirm that for you  
20 later.

21 Q. Yes. That's fine. And then  
22 just on the same theme of Manitoba, paragraph 26,  
23 you mention Misipawistik and Opaskwayak --

24 A. Yes.

25 Q. -- Cree Nation -- sorry,

1    yeah, both of them Cree Nation. My understanding  
2    is that those are both located in Manitoba as well;  
3    is that correct?

4                            A.    Yes.

5                            Q.    My understanding is that some  
6    of the projects or some of the initiatives funded  
7    under CWJI, those may take place off-reserve; is  
8    that right?

9                            A.    Where the entities are  
10   located themselves?

11                           Q.    Is there a restriction to on-  
12   reserve funding with CWJI or could it be spent both  
13   on and off-reserve?

14                           A.    If you could give me a second  
15   just to look through -- because the CWJI prevention  
16   and jurisdictional initiatives would be for the  
17   entity and generally exercise -- at least based on  
18   recent experiences, would be an on-reserve  
19   community. However -- or a non-reserve entity.

20                            I can confirm that they are  
21   designated for on-reserve child and family -- child  
22   and family -- I don't want to say recipients --  
23   "les gens ciblés sont" --

24                            Q.    "Targeted" is the wrong word.  
25   The synonym I was thinking was "visé" but that

1 doesn't help because it's French as well.

2 A. No --

3 Q. The bodies --

4 A. No, go ahead. I'm sorry.

5 Q. No, just that the audience is  
6 the on-reserve population. I was just wondering if  
7 it was eligible to provide funding off-reserve as  
8 well, but we can move on. That is not a big deal.

9 My next questions are about some  
10 of the particular provinces that you note in  
11 paragraph 31 and following.

12 A. Yes.

13 Q. So in paragraph 38 -- I will  
14 give my mouse a chance to catch up here. So you  
15 note here that there is a prevention protocol with  
16 the Saskatchewan Ministry of Social Services that  
17 governs some of these provision or prevention  
18 services to First Nations communities. I was  
19 wondering, Mr. Frater, if we would be able to get a  
20 copy of that protocol?

21 MR. FRATER: The one mentioned in  
22 38?

23 MR. TAYLOR: Yes.

24 MR. FRATER: Yes, we will try and  
25 get that for you.

1 MR. TAYLOR: Thank you.

2 BY MR. TAYLOR:

3 Q. Now, in paragraph 44 of your  
4 affidavit, Ms. Nepton, you mentioned Yukon. Here,  
5 you note that they introduced -- Canada introduced  
6 the five-year EPFA funding stream. In reading  
7 EPFA, am I to take that as the Enhanced Prevention  
8 Focused Approach?

9 A. Yes.

10 Q. Is this the same EPFA  
11 methodology that was introduced in the mid-2000s  
12 after the Wen:de reports?

13 A. I'm sorry, which reports?

14 Q. The Wen:de reports.

15 A. What I have been advised is  
16 that since the prevention, the flowing of the  
17 enhanced prevention funding approach and -- I think  
18 if I understand what you're getting at is that  
19 directive 20-1, whether or not it's still used, and  
20 the answer would be no. It is no longer being  
21 applied with respect to the allocation of CWJI.

22 Q. I think we may be blending a  
23 number of concepts right now --

24 A. Okay. Sorry.

25 Q. No, no, that's okay. So my

1 question was about paragraph 44.

2 A. Yes.

3 Q. So there is a five-year EPFA  
4 funding stream introduced --

5 A. Yes.

6 Q. -- in 44, or at least the  
7 acronym is the same as the approach that was in  
8 place in a handful of provinces -- or I think a  
9 bunch -- I think it was about half the provinces,  
10 Alberta, Saskatchewan and a few others.

11 So what I was wondering is, the  
12 funding methodology that was being referred to here  
13 is the five-year EPFA funding stream. Is that the  
14 same methodology that was used in the past for  
15 Alberta, Saskatchewan and others to reach this  
16 amount for Yukon?

17 A. I cannot confirm the response  
18 to your question. I would rather take it back and  
19 make sure that I provide you with the most accurate  
20 response.

21 Q. But you are aware that the  
22 EPFA was found discriminatory in January 2016?

23 A. Yes.

24 Q. Just in fairness to you, you  
25 mentioned directive 20-1 and it no longer being

1 used. Was that specific to Yukon? Was that with  
2 reference to CWJI in terms of prevention amounts  
3 being calculated? Just help me understand where  
4 you were going with 20-1.

5 A. I was just -- I thought you  
6 were -- the question was whether that directive was  
7 still in play or in use, and it is not.

8 Q. Okay. Now at paragraph 45,  
9 which is just over the page, you mentioned a  
10 tripartite table -- sorry, a trilateral table at  
11 which child and family services matters are  
12 discussed in Yukon.

13 Now, am I right in reading this  
14 paragraph that the trilateral table, that's really  
15 dealing with service delivery as opposed to the  
16 underlying funding amounts? Is that right?

17 A. I would agree with that.

18 Q. And at paragraph 46, you're  
19 noting that there's 11 million in unexpended funds  
20 and that work is ongoing at the trilateral table  
21 pending some decision-making about how those  
22 services can be provided.

23 So my understanding, based on that  
24 paragraph -- let me know if this is a fair  
25 characterization -- is that the funding is not



1 expended because of a process issue but not because  
2 it's greater than the needs in communities?

3 A. Can you repeat the last part?  
4 If it's a process issue (indiscernible) that is  
5 indicated is not based on --

6 Q. It's not a surplus resulting  
7 from there being less need in communities?

8 A. No, I would agree with that.

9 Q. So you don't -- do you  
10 disagree with Grand Chief Johnston when he says  
11 that the needs in Yukon outstrip the funding that  
12 is available in his affidavit?

13 A. I would say that it would be  
14 inappropriate to speculate without having had the  
15 benefit of being in discussions and hearing and  
16 engaging in that discussion with the Yukon Council  
17 of First Nations and the Grand Chief.

18 Q. Are you aware that the  
19 Council of Yukon First Nations desires increased  
20 involvement in the territories' activities on  
21 intake and investigation, placements and case  
22 planning?

23 A. I have not -- I cannot  
24 recall, and so I would like to go back and check  
25 with my emails from regions to see if they have

1 flagged it for me.

2 Q. It's not really much benefit  
3 for me to simply state that the matter is addressed  
4 in -- maybe I should -- okay. Here is Chief  
5 Johnston's affidavit. Just give me a moment.

6 THE CHAIR: Mr. Taylor?

7 MR. TAYLOR: Yes.

8 THE CHAIR: While you're looking,  
9 I would like to interject and just ask Ms. Nepton.

10 In your affidavit, you speak about  
11 the EPFA. So in your view, in your own words, what  
12 did you mean when you wrote your affidavit? What  
13 does EPFA stand for for you?

14 THE WITNESS: It's the enhanced  
15 prevention funding that was provided or fed as a  
16 result of budget -- hold on -- either -- yeah, I  
17 believe it was in response to budget or with  
18 respect to budget 2016. If you don't mind, I will  
19 double-check.

20 THE CHAIR: Sure.

21 THE WITNESS: Yeah. Yeah, the  
22 agency funding that went directly to -- or the  
23 prevention funding that went directly to agencies  
24 or -- yes, for services on-reserve provided to  
25 child and family services delivered on-reserve.

1 THE CHAIR: Okay. Thank you. Mr.  
2 Taylor?

3 MR. TAYLOR: Thank you, Madam  
4 Chair, for the moment. I have been able to locate  
5 the paragraph in Grand Chief Johnston's affidavit  
6 which I will attempt to arrive at shortly on the  
7 screen share.

8 BY MR. TAYLOR:

9 Q. Paragraph 20, Ms. Nepton. I  
10 think you have his affidavit in your binder under  
11 tab 2.

12 A. Yes.

13 Q. In this paragraph, Grand  
14 Chief Johnston is saying that:

15 "The CYFN and Yukon First  
16 Nations wish to establish a  
17 process for collaborative  
18 planning with the Yukon  
19 government relating to the  
20 operation, administration and  
21 management of child welfare,  
22 including intake and  
23 investigation, placements and  
24 case planning, in the Yukon  
25 with respect to First Nation

1 children."

2 That's the concept that I was  
3 referring to.

4 A. Okay.

5 Q. So the prevention funding  
6 that is available either through this EPFA amount  
7 from 2016 or through CWJI, that wouldn't address  
8 these other initiatives like intake and  
9 investigation, placement and case planning?

10 A. To the best of my knowledge,  
11 no, because they would be delivered at the Yukon  
12 government level.

13 Q. And in any event, they fall  
14 outside the ambit of prevention because they're  
15 protection (inaudible) --

16 A. Yes.

17 Q. Now I have got some questions  
18 about some of your comments in the affidavit about  
19 policy -- I will call it policy in the legislative  
20 context.

21 Just in terms of the -- I will  
22 qualify it potentially as background reading. Have  
23 you read all of the provincial and territorial  
24 legislation on child and family services?

25 A. I have read most of them, I

1 can say, and I read them as issues arising in  
2 region in order to address, you know, any issues  
3 that come up, as well as in discussions. For  
4 example, at CCCW when -- for example, Ontario, when  
5 issues arise as to legislative obligation.

6 Q. So when you say in paragraph  
7 51 here that each jurisdiction places a different  
8 emphasis on prevention and early intervention, is  
9 the basis for that statement your review of the  
10 legislation?

11 A. It is based on, if not my  
12 review of the exact legislation, based on  
13 discussions with regional colleagues in terms of if  
14 legislation does not provide for prevention, then  
15 we provide prevention funding to the First Nation  
16 because the province or the territory or the  
17 province doesn't have it in its legislation, so  
18 there's no authority to exercise those activities.

19 Q. Now in paragraph -- moving  
20 down a couple to paragraph 53, (indiscernible) the  
21 page.

22 A. Yes.

23 Q. You note that there have been  
24 65 Indigenous groups who have given notice of  
25 intent to exercise jurisdiction or requests -- and

1 requests to enter into a coordination agreement  
2 under 20(2) of the Act. And of course, the Act,  
3 that's the Act respecting First Nations, Inuit and  
4 Métis children, youth and families?

5 A. Yes.

6 Q. I may refer to that for short  
7 as Bill C-92. I know that that's -- it's now a  
8 statute, so it's not a bill anymore, but if it's  
9 all right with you, I may use that shorthand from  
10 time to time.

11 A. (Inaudible).

12 Q. Sorry?

13 A. No, that's fine. I said I  
14 will refer to it the same way.

15 Q. Okay. I'm clicking over to  
16 the tab here of the documents that I had sent.  
17 This is a web page under tab 3. If you, like me,  
18 are doing it the old way with paper, it's in  
19 landscape, and that's just in order to get the last  
20 two columns on the second table.

21 But have you seen this website  
22 before? It's titled "Notice and requests related  
23 to an Act respecting First Nations, Inuit and Métis  
24 children, youth and families".

25 A. It has been shared with me by

1 my colleague -- by my colleague's branch and my  
2 colleague with respect to her function in the  
3 context of Bill C-92 or the Act.

4 Q. On the last page, it notes  
5 date modified, December 23, 2020. My  
6 understanding, this is actually quite a new  
7 website. It has just been recently posted. Is  
8 that right?

9 A. Based on that date, yes, and  
10 also confirmed by discussions about, you know --  
11 for example, at management meetings, the website  
12 has been (indiscernible).

13 Q. So that was something, to  
14 your knowledge, that was a recent initiative that  
15 was being launched?

16 A. Initiative or a recent  
17 publication, yes, made accessible on the internet,  
18 on the departmental website.

19 Q. Now, looking at the table,  
20 there's a number of First Nations that are listed.  
21 Do you know if any of these nations -- I haven't  
22 counted, so we will use the number in your  
23 affidavit that there's 65. Do you know if any of  
24 these are some of the non-agency nations or do they  
25 all have their own agencies?

1                   A.    I can confirm.  I do not know  
2 the distinction between some of them, as to whether  
3 or not they're serviced by an agency or not, but  
4 would be happy to go back and confirm that for you.

5                   MR. TAYLOR:  Mr. Frater, I wonder  
6 if we might be able to have that, just a  
7 confirmation -- or I suppose a confirmation of the  
8 number within these two tables that would be non-  
9 agency -- if any that would be non-agency nations.

10                  MR. FRATER:  Yes, we will endeavor  
11 (inaudible).

12                  MR. TAYLOR:  Thank you.

13                  BY MR. TAYLOR:

14                  Q.    Now, paragraph 54 of your  
15 affidavit.  I will just click back to it.  That's  
16 just a little further down the page.

17                  Now, you wrote that -- this is the  
18 second sentence:

19                                "As these reform efforts  
20                                continue and more Indigenous  
21                                groups exercise their  
22                                jurisdiction over the  
23                                delivery of child and family  
24                                services in their respective  
25                                communities, the FNCFS



1 program will continue to  
2 respect provincial and  
3 territorial legislative  
4 frameworks and fund  
5 recipients that provide  
6 services in accordance with  
7 them."

8 So I guess what I would like to  
9 ask is -- my understanding, just if you can help me  
10 with this, is that the only delegation model funded  
11 under the program is for FNCFS agencies with  
12 provincial delegation, not First Nations  
13 delegation; is that right?

14 A. I can confirm from my program  
15 perspective with respect to funding for --

16 Q. Yes.

17 A. -- First Nations child and  
18 family services, yes, my branch fund solely -- not  
19 solely, but it's responsible for the funding of  
20 those agencies.

21 Q. So if a nation either that  
22 has its own agency or it does not have its own  
23 agency but creates one pursuant to a First Nations  
24 law that is given the force of federal law under  
25 Bill C-92, so whether it's an existing or a new

1 agency, that agency's activities, those wouldn't be  
2 eligible for funding under your program; is that  
3 right?

4 A. Again, I work with agency --  
5 with respect to funding from my branch and my  
6 responsibility, it must be a First Nation delegated  
7 agency.

8 Q. Right. I guess the -- I want  
9 to try and make sure I have got this clear. So if  
10 a First Nations agency came to you and wanted to  
11 set up a contribution agreement to provide the  
12 services and they said I'm operating -- taking an  
13 example from the first line of the table we were  
14 just looking at is Fort William First Nation.

15 A. Yeah.

16 Q. Their notice went out in  
17 January of 2020, so let's say they have got a First  
18 Nations law that is in force, and they said, "I'm  
19 providing these services but pursuant to delegation  
20 under the Fort William First Nations child and  
21 family services law and not the Ontario  
22 legislation." You would not be able to fund that  
23 agency; is that right?

24 A. I would like to go back, and  
25 instead of provide you with misinformation, to

1 confirm what the source of funding would be for an  
2 agency that exercises or will ultimately exercise  
3 their jurisdiction under the Act.

4 Q. So you, as the Director  
5 General of the program, don't know how these  
6 (inaudible) agencies or current agencies with new  
7 delegation, how they're going to be funded?

8 A. I will say that with respect  
9 to my area, I will be funding or ISC will be  
10 funding -- in my branch, we are responsible for the  
11 program with respect to First Nation child and  
12 family services.

13 With respect to my sector  
14 colleague, I would like to confirm with her with  
15 respect to how the agencies will be funded in order  
16 to make sure that I do not mislead you with the  
17 incorrect information, if that is okay.

18 MR. TAYLOR: Mr. Frater, I'm  
19 wondering if we can get a response on that. For my  
20 purposes, at least, a "yes" or "no" would be  
21 sufficient in terms of whether they're eligible for  
22 funding under the FNCFS program or not.

23 THE WITNESS: Mr. Taylor, can I  
24 ask just a question? So you are talking about --

25 MR. TAYLOR: Sorry, Ms. Nepton,

1 just before that, I just wanted to know if Mr.  
2 Frater is fine to give that request for  
3 information.

4 MR. FRATER: Yes, I will try and  
5 get that information for you.

6 BY MR. TAYLOR:

7 Q. I'm sorry, Ms. Nepton, I just  
8 wanted to put a pin on that before moving on.

9 A. No, I'm sorry I interrupted.  
10 It was rude of me.

11 Q. That's fine.

12 A. In regards to your question,  
13 just to make sure I understand it when I'm  
14 communicating with follow-up information, you are  
15 looking for once the -- okay, once that exercise of  
16 jurisdiction happens, so let's say, you know, the  
17 notice has been given, there's a coordination  
18 agreement, or it just comes into effect, where the  
19 funding comes from?

20 Q. That's -- well, where the  
21 funding comes from is part of it, but my more  
22 particular question is if it would be funded  
23 through your program. So your program has the --  
24 there's the terms and conditions. There's the  
25 orders that are applicable, there's the actuals

1 process, and whether a new agency or a current  
2 agency that is now operating pursuant to a First  
3 Nations law instead of provincial or territorial  
4 law --

5 A. Yes.

6 Q. -- can come to you for  
7 funding. If there is information to provide on  
8 what that would look like -- I don't want to get  
9 into a debate on the Act and what it provides for  
10 for funding.

11 A. No.

12 Q. That would certainly be  
13 helpful to know. This actually leads me to a  
14 follow-up question, which is whether you know if  
15 the federal government has a plan for ensuring that  
16 the CHRT orders are upheld when new agencies are  
17 providing services pursuant to First Nations laws.

18 A. Yeah, I would like to take  
19 that back to my colleague, my sector colleague's  
20 branch, to confirm and ensure that I provide you  
21 with the most accurate information and not mislead  
22 you.

23 MR. TAYLOR: Mr. Frater, just for  
24 the purposes of that request, the request would be  
25 whether Canada has a plan for ensuring the CHRT

1 orders are upheld by entities or agencies receiving  
2 federal funding to provide services under First  
3 Nations delegation under the Act respecting First  
4 Nations, Inuit, Métis children, youth and families.

5 MR. FRATER: Well, Mr. Taylor,  
6 with respect to (inaudible) built into the question  
7 is how funding should occur after jurisdiction has  
8 been exercised. And implicit in that, you say, is  
9 the idea that funding should continue under the  
10 orders, as I understand it -- can and should, which  
11 is argument, really, in my mind --

12 MR. TAYLOR: It's not so much a  
13 matter of funding continuing under the orders. The  
14 question is -- I agree there is a premise in the  
15 question which is that the federal government is  
16 continuing to provide funding. So if it's the case  
17 that the federal government won't be providing  
18 funding, then that would be, I suppose, also good  
19 to know.

20 But the question, more  
21 particularly, is where the federal government will  
22 provide funding, what its plan is to ensure the  
23 CHRT orders are followed. Because the CHRT orders  
24 aren't just about funding. It's a broader question  
25 of how the services are to be delivered when

1 federal funding is provided for them.

2 MR. FRATER: I would say we're  
3 happy to provide you information about how funding  
4 will continue after jurisdiction has been exercised  
5 by the First Nation. But if you're going to say,  
6 you know, have we got a plan to see that the orders  
7 are maintained, there's a legal argument implicit  
8 in that that jurisdiction -- after jurisdiction has  
9 been exercised, that the CHRT orders continue to  
10 apply, which might be a matter of argument.

11 So we're certainly happy to give  
12 you information on how the funding is going to take  
13 place, but if you want to argue about that, I think  
14 that's a matter for argument.

15 MR. TAYLOR: We can -- I can  
16 certainly follow up on that outside the context of  
17 the cross-examination. I appreciate your point.

18 BY MR. TAYLOR:

19 Q. Ms. Nepton, just to confirm  
20 your evidence on the point, you personally, as the  
21 Director General of the CFS branch, aren't aware of  
22 a plan to ensure that the orders are respected  
23 under new funding arrangements that might happen  
24 outside of your program?

25 A. Again, I cannot speak in an

1 accurate manner on it, and I would like to consult  
2 with my sector colleague to make sure that I  
3 provide you, as well as the others, with the most  
4 accurate information so that I don't mislead  
5 anybody.

6 Q. That's all right. I think I  
7 have Mr. Frater's position on that consultation, so  
8 I will leave it there for now and we'll have to  
9 follow up elsewhere.

10 A. Thank you.

11 Q. Now, at paragraph 55 of your  
12 affidavit, here you say in the first sentence that:

13 "Canada is at the forefront  
14 of prevention funding as most  
15 provincial and territorial  
16 jurisdictions have not yet  
17 revised legislation to  
18 account for a significant  
19 shift towards prevention."

20 Would you agree with me you  
21 haven't provided any financial figures to  
22 substantiate this?

23 A. I would say that tab NN-3 of  
24 the exhibit provides the funding that has been  
25 provided in terms of CWJI. In order to accurately



1 respond to the issue of prevention, again, I would  
2 have to go back and look at projects and also look  
3 at agencies and their prevention services, those  
4 that are fully delegated versus those that are  
5 partially delegated versus those that aren't  
6 serviced by a First Nation child and family  
7 services agency.

8 Q. Right, but you have used the  
9 word "forefront" which is an inherent comparative  
10 term that, you know, Canada is ahead of a group of  
11 some others. My reading of Exhibit NN-3 is that  
12 this is only federal funding, so you haven't  
13 provided any basis in comparison with federal  
14 versus provincial funding to support your statement  
15 that it is at the forefront.

16 A. I would agree.

17 Q. And has ISC undertaken any  
18 financial analysis to support this statement that  
19 it's at the forefront?

20 A. Personally, I would say that  
21 we have looked at existing studies, so most  
22 recently the IFSD report, as well as other studies  
23 that have come in over the years. And I would say  
24 that, for example, the Chiefs of Ontario special  
25 study, as well as the NAN remote quotient report.

1 MR. TAYLOR: Mr. Frater, if there  
2 is an analysis that has been made on the basis of  
3 these studies that shows Canada at the forefront,  
4 could that be provided? Or if there's no concrete  
5 analysis that has been done, just a "There is none"  
6 would be fine as well.

7 MR. FRATER: Yes, I will endeavour  
8 into get the information (inaudible).

9 MR. TAYLOR: Thanks very much.

10 BY MR. TAYLOR:

11 Q. I just have a few more  
12 questions on this topic, Ms. Nepton, and then it  
13 might be an appropriate time for lunch. Are you  
14 okay to go for about another five or ten minutes?

15 A. Yes. Thank you for asking.

16 MR. TAYLOR: Madam Chair, that is  
17 fine with you?

18 THE CHAIR: Yes.

19 MR. TAYLOR: Thank you very much.

20 BY MR. TAYLOR:

21 Q. Just in terms of levels of  
22 funding, would you agree with me, Ms. Nepton, that  
23 the amount of funding asked for, received or spent,  
24 that can be driven by need, in terms of how much  
25 need underlies the funding. Is that right?

1                   A.    I would agree with that  
2 statement in general.

3                   Q.    In terms of the funding that  
4 has been provided, particularly since 2018/'19,  
5 would you agree that it would potentially be higher  
6 because it is now being based on actual needs as  
7 ordered by the Tribunal?

8                   A.    I would agree with that.

9                   Q.    Would you agree that if the  
10 federal government is providing services to  
11 communities with greater needs, it makes sense that  
12 their expenditures would be higher?

13                  A.    I think that's a fair  
14 statement.

15                  Q.    So the raw dollars that's  
16 spent on prevention, that may not be a measure of  
17 commitment.  It's also a measure of need.  Is that  
18 right?

19                  A.    Would you mind repeating that  
20 in a different way?  I'm sorry.

21                  Q.    Sure.  So the way I read your  
22 statement in 55 -- and you will have to give me a  
23 moment to get back to it.  I'm as fast at clicking  
24 the mouse as I am at turning pages.

25                  A.    I'm sorry.

1 Q. No, no. I was the one who  
2 went to Exhibit 3, so it's fine. So, 55, you make  
3 the statement:

4 "Canada is at the forefront  
5 of prevention funding as most  
6 provincial and territorial  
7 jurisdictions have not yet  
8 revised legislation to  
9 account for a significant  
10 shift towards prevention."

11 I mean, I read a certain, you  
12 know, relativity in that statement of, you know,  
13 Canada is leading the way. But would you also  
14 agree with me that it's also a reflection that  
15 Canada is serving communities that have the  
16 greatest need? It's true, I mean, we don't have  
17 numbers underlying the comparisons --

18 A. I would say that that is  
19 fair.

20 Q. Would you agree with me, just  
21 in terms of your statement here, about whether  
22 legislation has been revised or not to account for  
23 a significant shift towards prevention, would you  
24 agree with me that whether that's the case, that's  
25 going to be assessed based on the wording of the

1 legislation in question?

2 A. Yes, I would agree.

3 MR. TAYLOR: It turns out that was  
4 less than ten minutes. Those are my questions on  
5 this topic. I have, just for purposes of  
6 reference, I think, another, you know, possibly ten  
7 minutes after the break, but I am close to being  
8 done.

9 THE CHAIR: Okay. Thank you. Is  
10 an hour and five minutes -- if we come back by  
11 1:30, is that sufficient for everybody?

12 THE WITNESS: Sure.

13 MR. FRATER: That is fine for us.  
14 Thank you --

15 THE CHAIR: Yes?

16 MR. TAYLOR: Yes, that is fine.  
17 Thank you very much.

18 THE CHAIR: I see people nodding.  
19 Some people are not doing anything. I will take it  
20 as a yes.

21 UNIDENTIFIED FEMALE: That's fine.  
22 Thank you.

23 THE CHAIR: Okay. And some people  
24 I don't see all at once, but I will take it as a  
25 yes and we will come back at 1:30, so have a good

1 lunch.

2 UNIDENTIFIED FEMALE: Thank you.

3 MR. TAYLOR: Thank you very much.

4 UNIDENTIFIED FEMALE 2: Ms.

5 Dubois, I'm wondering if we can be put back in our  
6 break out rooms for the lunch break.

7 MS. DUBOIS: Yes, I will do that.

8 And Ms. Rae, I have a break out room assigned for  
9 you as well.

10 MS. RAE: Thank you.

11 --- (Luncheon recess)

12 MS. DUBOIS: We're on the record  
13 now, Member Marchildon. Please go ahead.

14 THE CHAIR: Thank you. Good  
15 afternoon, everyone. I hope you had a good lunch  
16 and this was sufficient time for all of you to have  
17 a little bit of rest or to prepare, depending on  
18 who is going to speak next.

19 Ms. Nepton, do you feel ready to  
20 continue? I'm sorry, you're muted.

21 THE WITNESS: Yes, I'm ready as I  
22 can be.

23 THE CHAIR: Okay. Let me know if  
24 you need a break at any time.

25 THE WITNESS: Thank you.

1 THE CHAIR: Mr. Taylor, you had  
2 more questions, so --

3 MR. TAYLOR: Yes.

4 THE CHAIR: -- please go ahead.

5 MR. TAYLOR: Okay. Thank you very  
6 much, Madam Chair. Ms. Dubois, I wonder if we  
7 could have the affidavit back up. Perfect. Thank  
8 you.

9 BY MR. TAYLOR:

10 Q. I just had one more question,  
11 Ms. Nepton, about paragraph 55 here. I'm just  
12 reading in the last sentence. You're noting:

13 "...while the province of  
14 Nova Scotia made considerable  
15 changes to its legislation,  
16 prevention is still not a  
17 focus of or funded by the  
18 Province..."

19 So that is a statement that is  
20 based on your reading of that legislation; is that  
21 right?

22 A. Yes. My last reading of it  
23 at the time of my affidavit.

24 Q. Okay. Thank you. I had my  
25 last set of questions on long-term reform, but just

1 before I go there, I just have a couple of one-off  
2 questions. We'll see. Hopefully one-off  
3 questions. Time will tell.

4                   One question is whether you read  
5 the orders of Jordan's Principle. There would be  
6 one that was made in May of 2017, and then another  
7 in November 2017, and then a further one in  
8 February of 2019 and then two more in June and  
9 August of last year -- sorry, June and November of  
10 last year.

11                   A. For the purposes of  
12 preparation for this, I specifically reread the  
13 rulings of January 26, 2016; April 26, 2016;  
14 September 16, 2016; and of course, February 1,  
15 2018. But I have read them in the past, and of  
16 course I read the one about the definition of First  
17 Nation child that was most recently issued.

18                   Q. So you have read the Jordan's  
19 Principle orders but just in the past and not  
20 specifically in the context of preparing for this?

21                   A. Exactly.

22                   Q. And I didn't have any  
23 questions on the orders. I just wanted to confirm  
24 whether you've read them.

25                   The next question I had was with



1 respect to the folks on your team, and I think you  
2 mentioned there are about 30 people who report to  
3 you?

4 A. Yes.

5 Q. Do you have a sense of how  
6 many of those folks would have been in place since  
7 January of 2016?

8 A. Oh, my goodness. I would say  
9 no greater than potentially five.

10 Q. Thank you. And then my last  
11 one-off question is, just with respect to  
12 engagement and consultation, we kind of discussed  
13 them as being kind of two phases. Is there a point  
14 or a way in which your team, when doing engagement,  
15 would be advising another entity, whether it's a  
16 First Nation or parties of the CCCW, that you're  
17 moving from the engagement phase, where it's more  
18 general discussion, to the consultation phase where  
19 it's something more concrete? Or does that just  
20 organically happen in the process?

21 A. Based upon my experience, it  
22 could be both. In regards to my experience here  
23 and CFS, although it seems long but it's actually  
24 quite short and still learning a lot from everyone,  
25 I would say that the engagement phase and the

1 consultation phase often blend, but I would --  
2 based upon my experience over this since starting  
3 in June 2019, I would say that one informs the  
4 other but there's some -- it's not a grey zone but  
5 a melting zone, for lack of --

6 Q. So it's not necessarily the  
7 case that there's a clear, you know, statement that  
8 we have moved from engagement to consultation at  
9 this point?

10 A. I would say it depends, too,  
11 on the subject itself.

12 Q. Now, my last set of questions  
13 is about long-term reform, going from paragraph 56  
14 of your affidavit, moving on here.

15 Now, in paragraph 56, you mention  
16 the Institute of Fiscal Studies and Democracy's  
17 report. I will just refer to that as IFSD or the  
18 IFSD report.

19 Has Canada formally accepted the  
20 findings and recommendations in the IFSD report?

21 A. In regards to the IFSD report  
22 that was shared with us in early or mid-September,  
23 if I'm not mistaken, we have been reviewing it, and  
24 as most of the people participating in this process  
25 know, it has been discussed at CCCW, and as well, I



1 57. You note here that C-92 -- actually, I will  
2 read it from the screen here. One moment. The  
3 first sentence here:

4 "The Act addresses long-term  
5 reform and provides a  
6 foundation for comprehensive  
7 FNCFS program reform."

8 So in terms of a program reform  
9 and Bill C-92, my understanding is that Bill C-92  
10 doesn't actually set out a funding obligation or a  
11 funding approach. Is that correct?

12 A. You are correct in that the  
13 bill does not speak to funding.

14 Q. Does Bill C-92 have a  
15 foundation -- provide the same foundation for  
16 comprehensive reform with Jordan's Principle or is  
17 it just limited to CFS, in your view?

18 A. In regards to the question, I  
19 can say I don't think I have a view on it because,  
20 technically speaking, as I have mentioned before, I  
21 -- and I don't want to appear, you know, repetitive  
22 or evasive, but my area is the existing program and  
23 program reform.

24 C-92 provides an alternative to  
25 the existing program and enables First Nations or

1 other Indigenous entities to exercise jurisdiction  
2 in regards to child and family services.

3 I don't know if -- I'm hoping that  
4 answers your question.

5 Q. It does in a way, and I guess  
6 I would like to follow up, then, with what exactly  
7 you mean, then, in the first sentence of paragraph  
8 57. Because I had read it as the Act, C-92, will  
9 address long-term reform and provide a foundation  
10 for comprehensive FNCFS program reforms, so the Act  
11 would be the foundation of reforming the program.  
12 But what I'm hearing is you have qualified it now  
13 as an alternative, so it would be something  
14 different than the program.

15 A. Well, I would say that if  
16 First Nations want to exercise jurisdiction, they  
17 have the Act to rely on. However, for those  
18 wishing to continue within the existing program,  
19 there's long-term reform, you know, that we need to  
20 look at for that.

21 Q. But that would not be under  
22 the aegis of the Act. That would be under whatever  
23 new reform comes forward through this process?

24 A. Exactly. So there is a C-92  
25 process and then there's my branch that deals with

1 the current program for those that are not  
2 exercising C-92.

3 Q. Now, if you have got the  
4 little book -- actually, I don't know if it's a  
5 book for you, but the four documents that came  
6 yesterday evening. I will put it up on the screen  
7 here as well.

8 So tab 4 of that is the -- it's  
9 just a one-page excerpt from the proceedings of the  
10 House of Commons Standing Committee of Public  
11 Accounts back in October 2011.

12 A. Yes.

13 Q. You're aware that the Auditor  
14 General made a report on your program --

15 A. Yes.

16 Q. -- in 2011?

17 A. Yes, I was advised of that.

18 Q. And are you aware that the  
19 Standing Committee on Public Accounts then  
20 considered the subject matter of that report as  
21 part of their proceedings?

22 A. Based upon the information  
23 that you had sent last night, yes, I was, at that  
24 moment, seized of it.

25 Q. So it wasn't something you

1 had been aware of prior to last night?

2 A. No.

3 Q. Okay. I would just like to  
4 point to you -- it's on right-hand side of the  
5 page. Mr. Kramp is asking some questions of John  
6 Wiersema, who is the interim Auditor General, is  
7 what the transcript notes, and then Mr. Michael  
8 Wernick. You would be aware that Mr. Wernick at  
9 the time was Deputy Minister of -- I believe it was  
10 AANDC in those days?

11 A. Yes, I believe so.

12 Q. And Mr. Wernick -- so Mr.  
13 Kramp's question is at the last paragraph. He  
14 says:

15 "In terms of the road map  
16 forward, should it be  
17 legislatively addressed or  
18 can it be done through  
19 initiatives from the  
20 department? Which way should  
21 it be done -- either, or, or  
22 both?"

23 And this is in terms of -- my  
24 characterization of Mr. Kramp's questions progress  
25 on the Auditor General's overall recommendations.

1 But I want to focus on Mr. Wernick's response. So  
2 he says:

3 "One of the really important  
4 parts of the Auditor's  
5 General's report is that it  
6 shows there are four winning  
7 conditions or missing  
8 conditions. The combination  
9 of those is what's likely to  
10 result in enduring change.  
11 You could pick any one of  
12 them, such as legislation  
13 without funding, or funding  
14 without legislation, and so  
15 on. They would have some  
16 results, but they would  
17 probably be temporary, in our  
18 view. If you want enduring  
19 structural change, it's the  
20 combination of these tools."

21 So I would just like to see -- do  
22 you agree with Mr. Wernick that it's the  
23 combination of legislation and funding, the  
24 combination of those tools that's going to lead to  
25 ensuring structural change?



1                   A.    Not having the full context  
2 of the Deputy's comments at the time, I see it  
3 differently in that the two -- and I don't know if  
4 I'm understanding your point correctly, so please  
5 correct me if I'm wrong.  What I hear is that  
6 perhaps you're saying that program reform, the  
7 existing program, and C-92 or legislative reform  
8 are mutually exclusive, in that one -- you have to  
9 sacrifice, perhaps, the program for the  
10 legislation.  Can you confirm that that is what  
11 you're saying?

12                   Q.    I don't want you to focus too  
13 much on what you think my agenda behind the  
14 questions might be --

15                   A.    No.  No, it's really not an  
16 agenda question.

17                   Q.    No -- again (indiscernible)  
18 pejorative.  I will try and be transparent here.  
19 There is no trick.

20                   I understand what you're saying to  
21 be -- and some of this goes back to some of the  
22 comments with your counsel when we were discussing  
23 requests for information.  But the answer I  
24 understand you to have been giving is that the  
25 long-term reform of the FNCFS program is one thing,

1 and then the Bill C-92 and the systems that's going  
2 to happen under that Act -- First Nations  
3 (indiscernible) their own jurisdiction -- is  
4 something different. Maybe I can stop there. Have  
5 I got that right, that they're two separate  
6 streams?

7 A. Yes, I would say that they're  
8 two different items in that you have -- and I  
9 apologize if I'm not expressing it correctly -- is  
10 that the program is there for those who won't be  
11 exercising jurisdiction. And we know that we need  
12 to do the broader policy work and we know that we  
13 have to do the funding methodology work. That is  
14 clear. So that work falls, as we know, under my  
15 area.

16 The C-92 work is the legislative  
17 process or is the legislation within which people  
18 can exercise jurisdiction. I think we all know  
19 that. And I don't think that one is at the  
20 detriment to the other. I think they co-exist and  
21 it could be like other areas, for example, of  
22 jurisdiction where it's been exercised, is that,  
23 you know, not all communities or all Indigenous  
24 entities are going to, you know, all write a notice  
25 letter to say that they plan to exercise authority

1 within the time frame provided in the Act.

2 Obviously, it's going to be a  
3 staged process or a staged -- it's not staged, the  
4 word I'm looking at. Not everybody is going to be  
5 doing it at the same time on a simultaneous date  
6 and a simultaneous coming into force. Everyone is  
7 moving differently based upon their capacity, you  
8 know, and also based upon the work they have  
9 already undertaken. So, some it could possibly go  
10 faster.

11 I could double-check with my  
12 colleague in the branch in regards to that, but for  
13 me, they're two that co-exist and in some ways  
14 couldn't -- you know, definitely program and  
15 program objectives could -- or programs for --  
16 could maybe inform those that choose to exercise  
17 jurisdiction. But to me, they're two different  
18 items but they're not mutually exclusive,  
19 necessarily.

20 So, I don't know. I have  
21 presented that the best that I could --

22 Q. No, no, and certainly I  
23 appreciate your -- you know, I have had a lot of  
24 time to think about my questions and you're  
25 presenting your answers as we go, so I appreciate

1 that.

2 I guess if I can try and  
3 summarize, they are separate matters that could  
4 potentially have some links between them. But from  
5 your perspective, long-term program reform within  
6 the program and whatever system or systems operate  
7 under the legislation are different.

8 A. Exactly.

9 Q. I just have a couple or more  
10 questions about -- I will go back to your affidavit  
11 here.

12 Do you agree with me in terms of  
13 the ultimate objective of reform spoken to by the -  
14 - I'm sorry, I put the wrong affidavit on the  
15 screen. The objective of reform that is spoken to  
16 in the January 2016 decision, having a system that  
17 meets the needs and circumstances of First Nations  
18 children and families, Bill C-92 by itself, that  
19 won't be enough to address the discrimination.  
20 It's more than just conferring jurisdiction that is  
21 required to solve a problem. Would you agree with  
22 that?

23 A. I would say that as you  
24 stated, the Act is meant to address long-term  
25 reform and provides, you know, the foundation for

1 the exercise of jurisdiction, from, you know,  
2 whichever perspective, being an Indigenous agency,  
3 perhaps an Indigenous entity, or an agency that  
4 exists today, as you previously mentioned, going  
5 under and being created under C-92. I think when  
6 we look at it, again, the funding is one aspect and  
7 then there's the legislation that provides or is  
8 part of the foundation.

9                               So if I understand you correctly  
10 is that you're saying there is -- you know, the Act  
11 provides for the foundation, but there is also the  
12 funding which is inequitable. And for that I would  
13 say I can't say if I agree or disagree because in  
14 terms of that foundation, financial, and the  
15 establishment of the entity, I would need to go  
16 back and work with my colleague and come back to  
17 you with a response to that question in order to be  
18 fair to everybody and to give -- provide the most  
19 accurate information I can.

20                               Q. Well, I guess one point I  
21 would make is you have been put forward as the  
22 affiant on this and you have made the statements  
23 you have made about long-term reform on behalf of  
24 the respondent or the Attorney General of Canada  
25 representing the Minister of Indigenous Services,

1 so I am approaching my questions on that basis. I  
2 appreciate your answers, and when you don't know,  
3 you should say so.

4 A. Yes.

5 Q. But unfortunately, this is a  
6 cross-examination. It's not an iterative process  
7 for reaching out. And I appreciate the limits that  
8 have kind of put on your knowledge of this, but  
9 just at a conceptual level, if jurisdiction is part  
10 of the foundation for (indiscernible) substantive  
11 equality for First Nations children, would you  
12 agree it's not the only part of the foundation,  
13 that there are other pieces required, one of which  
14 is adequate funding?

15 A. Yes, I would agree with that.

16 Q. Thank you. Now, my next  
17 question is about paragraph 59.

18 A. Yes.

19 Q. In this paragraph you refer  
20 to Indigenous partners?

21 A. Yes.

22 Q. What organizations would you  
23 include in that definition of Indigenous partners?

24 A. In regards to Indigenous  
25 partners, it can mean, of course, the parties to

1 the CHRT motions that are currently before the  
2 Tribunal, as well as CCCW and NAC, as well as First  
3 Nations and First Nation entities or Indigenous  
4 entities.

5 I would say that there's no one  
6 party. However, that being said, I know from  
7 having heard my colleagues speak at CCCW and that  
8 when we talk about C-92 and exercising  
9 jurisdiction, we do talk about First Nations being  
10 rights-holders and the Indigenous entities  
11 themselves being potential rights-holders.

12 Q. Now, in terms of when you're  
13 using the next words in the paragraph which is  
14 "work towards exercising jurisdiction", when you're  
15 referring to working towards, is that that  
16 engagement and consultation process that we have  
17 been discussing at a few other points today? Is  
18 that what you're referring to?

19 A. Yes. Yeah. And I would say  
20 that, you know, when I say this in my affidavit or  
21 as you quoted, ISC has been engaging, for example,  
22 with a list of individual First Nations and  
23 entities that have come forward as being interested  
24 or having made concrete actions or taken them to  
25 exercise jurisdiction.

1 Q. Now, in terms of that work  
2 and the engagement and consultation, would you  
3 agree with me that doing that work and the  
4 engagement or consultation itself, that by itself  
5 won't end the discrimination or it won't result in  
6 substantive equality for First Nations children?  
7 There's actually going to need to be a result that  
8 flows from that work in order to bring about  
9 substantive equality.

10 A. Yes, I would say that I would  
11 agree with your statement.

12 MR. TAYLOR: Madam Chair, I  
13 normally at this stage would be turning to whisper  
14 to Ms. Clarke and Ms. Thomas and Dr. Blackstock to  
15 see if anything else -- I wonder if the four of us  
16 might be put in a breakout room for a moment. I  
17 don't think we need a full break. But if it would  
18 be possible just to have a few moments and then I  
19 can confirm whether those are, in fact, all of my  
20 questions.

21 THE CHAIR: Yes. How long did you  
22 have in mind?

23 MR. TAYLOR: I think just a few  
24 minutes is likely fine.

25 THE CHAIR: Okay. Madam Dubois?



1 Ms. Dubois?

2 MS. DUBOIS: I am just trying to  
3 figure out if I -- what I'm going to do is open up  
4 all of the rooms so that the Caring Society can go  
5 in the room. If you get an invite to go into your  
6 meeting room, if you want to, that's fine. But you  
7 can also ignore that message and just stay in the  
8 main room.

9 MR. TAYLOR: Ms. Dubois, if I  
10 understand Zoom correctly, I think I can leave our  
11 room --

12 MS. DUBOIS: When you're ready.

13 MR. TAYLOR: -- when I want to  
14 come back here, so that's how I propose to do it if  
15 that's fine with everyone.

16 MS. DUBOIS: Member Marchildon,  
17 I'm just going to pause the recording for now. I  
18 will pause the recording.

19 --- (Recess taken)

20 THE CHAIR: Mr. Taylor, did you  
21 have sufficient time?

22 MR. TAYLOR: That was sufficient.  
23 Thank you very much, Madam Chair.

24 Ms. Nepton, thanks very much.  
25 Those are all of my questions.

1 I wonder, Madam Chair, before I  
2 mute myself, if we could mark the -- for me it's a  
3 book, but the PDF with four bookmarked tabs as the  
4 Caring Society's exhibit to this cross-examination.

5 THE CHAIR: Yes, certainly. Ms.  
6 Dubois?

7 MS. DUBOIS: I will mark the  
8 Caring Society's exhibit of four tabs for the  
9 purposes of this hearing Exhibit C-1.

10 EXHIBIT C-1: PDF with four  
11 tabs.

12 MR. TAYLOR: Thank you very much.

13 THE CHAIR: Thank you. Okay. I  
14 am mindful of the time and I just wanted to do an  
15 overview of who will be asking questions and in  
16 what order. So can someone inform me on this? Who  
17 is going next and let's go from there. Who is  
18 supposed to go next? Whoever I pick or --

19 MR. WUTKE: On behalf of Assembly  
20 of First Nations, we just have one follow-up  
21 question that we can go to, and then we would be  
22 done.

23 THE CHAIR: Okay. Right before  
24 that, let's just do a roundtable.

25 MS. WENTE: For my part, for

1 Chiefs of Ontario, we do have some questions, but I  
2 don't expect it will be any more than a half hour.

3 THE CHAIR: Okay. Thank you. Ms.  
4 Rae?

5 MS. RAE: Thank you. I have, I  
6 think, about a half hour of questions as well.

7 THE CHAIR: Okay. Thank you. Mr.  
8 Smith?

9 MR. SMITH: Good afternoon. Right  
10 now I don't anticipate having any questions. We  
11 would like to reserve an opportunity maybe to ask a  
12 point of clarification after everyone else, but  
13 right now, my sense is that we should go last and  
14 we likely won't have any questions.

15 THE CHAIR: Okay. From what I  
16 heard, it's about an hour and 15 minutes. We need  
17 a break. And we need to leave some time for Canada  
18 to re-examine Ms. Nepton. So we will try to finish  
19 in time. I would really like to avoid having to  
20 reconvene, especially for a director of a program.  
21 Remaining under oath can be an issue here, so that  
22 would lead us into procedural questions and all of  
23 that. So let's try to -- I don't want to refrain  
24 you from asking questions, but we will see how it  
25 goes.

1                   The next person will be the AFN  
2 with Mr. Wuttke, so please go ahead.

3                   MR. WUTKE: Thank you, Madam  
4 Chair.

5 CROSS-EXAMINATION BY MR. WUTTKE:

6                   Q. Good afternoon, Ms. Nepton.  
7 Stuart Wuttke from the Assembly of First Nations.  
8 I just have one follow-up question for you stemming  
9 from the questions asked by my colleague, Mr.  
10 Taylor.

11                   At paragraphs 53 and 54 of your  
12 affidavit and additions 57 and 58, you speak about  
13 Bill C-92, the Act. You talked about funding  
14 streams, that type of thing. Just one point of  
15 clarification.

16                   For First Nations that choose to  
17 exercise their inherit right and jurisdiction under  
18 the Act, there will be a funding stream for First  
19 Nations to provide those services to First Nations  
20 communities -- I mean to the First Nations citizens  
21 in their community. Is that correct?

22                   THE CHAIR: She's on mute.

23                   THE WITNESS: As I indicated, I  
24 know that we have existing programs, and the  
25 funding stream with respect to the exercise of

1 jurisdiction under the Act is currently being  
2 examined and discussed with my colleague in the  
3 other areas with other partners, including the AFN,  
4 including First Nations. And as well, also subject  
5 to discussions that are ongoing with CCCW.

6 It's a good question. And I'm not  
7 saying that it's not a fair question. It's just  
8 with respect to the funding stream, I would rather  
9 go back and provide you with the correct  
10 information in terms to the funding stream that  
11 will be available for the exercise of jurisdiction.

12 MR. WUTKE: All right. Thank you.  
13 We look forward to receiving that information. The  
14 AFN has no further questions. Thank you.

15 THE CHAIR: Thank you. Ms. Wente?

16 MS. WENTE: Thanks, Member  
17 Marchildon. I don't actually think that I will be  
18 an entire half hour, so I am hoping that I can be  
19 as succinct as possible. Luckily for me, as usual,  
20 Mr. Taylor has been fairly exhaustive in the kinds  
21 of questions that he asked.

22 CROSS-EXAMINATION BY MS. WENTE:

23 Q. Ms. Nepton, I'm just going to  
24 ask some questions about the Ontario contacts  
25 specifically. And I'm not going to ask you to pull

1 up your affidavit now because I think that they're  
2 probably just more general, but if you would like  
3 Ms. Dubois to pull it up so that you can look at it  
4 again, please let us know so we can pull it up on  
5 the screen.

6                               So I just wanted to sort of --  
7 it's been a long time since we have all been  
8 together in front of the panel members, so I just  
9 wanted to kind of lay the scene out for the Ontario  
10 situation so that everybody can be refreshed  
11 because the Ontario situation is a little bit  
12 different, as we have noted.

13                              So for those communities that are  
14 served by a First Nations child and family services  
15 agency, I just want to go through the sources of  
16 prevention funding that they might be able to  
17 access, just to confirm that we're all on the same  
18 page.

19                              You will agree that the first one  
20 would be access and prevention services through  
21 their agency, which is funded at actuals. Is that  
22 correct?

23                              A. Yes.

24                              Q. Yes. And then the second one  
25 would be prevention services that may be funded

1 through ramp-up money or the budget 2016 money;  
2 correct?

3 A. Yes, that specifically.

4 Q. Right. And then the third  
5 funding stream is that prevention services that may  
6 be funded through the Community Well-being and  
7 Jurisdiction Initiatives funding; correct?

8 A. Yes.

9 Q. Okay. And just to confirm,  
10 the CWJI money, the Community Well-being and  
11 Jurisdiction Initiatives money, doesn't have to be  
12 towards prevention? It might get funded -- used by  
13 a First Nation for something else; that is correct?

14 A. Yes, I agree.

15 Q. Okay. And those two, the  
16 budget 2016 or what people called the ramp-up now  
17 and the CWJI, that's funded directly to First  
18 Nations in Ontario; correct?

19 A. I believe, yes, the  
20 prevention dollars -- unless the delegated agency  
21 is providing, you know, the full delegation of  
22 prevention and protective services. But generally,  
23 yes, at the First Nation level.

24 Q. Right. Because Chiefs of  
25 Ontario has asked for those two pots of money to go

1 directly to the First Nation, which is a little bit  
2 different than how it works in other provinces;  
3 correct?

4 A. Yes.

5 Q. Okay. All right. And are  
6 there any other sources of money that are available  
7 to fund prevention services that could be accessed  
8 by First Nations who have a First Nations child and  
9 family services agency?

10 A. I would say that in regards  
11 to funding streams and accessing, are you -- is  
12 your question -- for example, if prevention funding  
13 was provided and distributed in accordance with the  
14 OFLP, would there be additional money available or  
15 funds if those funds were not -- if there was  
16 additional pressure?

17 Q. No, I think you're  
18 misunderstanding my question. My question is just  
19 that there's those three different funding streams  
20 that are available; is that correct?

21 A. Yes.

22 Q. Not whether or not those are  
23 capped.

24 A. Okay. All right. No, would  
25 be the primary ones to the best of my knowledge.



1 Q. Right. And there's no  
2 prevention funding available under the band  
3 representative services program and order from the  
4 Tribunal; that's correct?

5 A. I believe so. You're  
6 correct.

7 Q. And so we did talk about  
8 earlier, and now that you have mentioned it, let's  
9 just go back for completeness, that the ramp-up  
10 funding and the CWJI funding, those have a hard  
11 ceiling, whereas prevention at actuals is at  
12 actuals?

13 A. Exactly. It's a fixed pot of  
14 money.

15 Q. Okay. For those communities  
16 that are not served by a First Nations child and  
17 family services agency, I just want to run through  
18 there.

19 Again, it's available to them to  
20 access the ramp-up and the CWJI money that is  
21 allocated according to a formula that Chiefs of  
22 Ontario has asked for; correct?

23 A. Exactly.

24 Q. Right. And the non-agency  
25 communities would be accessing all of their

1 prevention services through their mainstream  
2 agency, let's call it, the non-Aboriginal CIS;  
3 correct?

4 A. Yes, to the best of my  
5 knowledge.

6 Q. Okay. Those prevention  
7 services are funded -- to the extent that they are  
8 funded at all, they're funded by Ontario, not by  
9 Canada; correct?

10 A. Yes, through the operation of  
11 the 1965 agreement.

12 Q. Have you looked at the 1965  
13 agreement lately, I guess is my question. I mean,  
14 I don't -- I think it's a matter of fact --

15 A. Not --

16 Q. Yeah. I think it's a matter  
17 --

18 A. (Simultaneous speaking).

19 Q. -- on the record. Okay.

20 Fair.

21 A. Yeah.

22 Q. So prevention is not  
23 something that is funded by the federal government  
24 --

25 A. No.

1 Q. -- through 1965; correct?

2 A. No --

3 Q. And the agencies aren't  
4 eligible to access prevention money through 1965;  
5 correct?

6 A. No. I believe so. I'm  
7 looking at my tab 2 of how the FNCFS programs are  
8 delivered across Canada.

9 Q. Right.

10 A. And that would be page 13, 14  
11 and 15 for Ontario.

12 Q. There's no band rep funding  
13 that's available to these communities either, the  
14 non-agency communities, as we'll call them?

15 A. No. Band rep funding --

16 Q. Not for prevention services,  
17 sorry. In general, yes, but not for prevention.

18 A. Yes.

19 Q. Okay. So that's helpful, I  
20 think, hopefully, for the panel to sort of just  
21 have a sense of those sort of two different sets of  
22 communities in the way that they might access  
23 funding. Thank you for that.

24 So I guess -- and so with respect  
25 to the Ontario non-agency communities, the ones who

1 were working with mainstream CISs, are you familiar  
2 at all with how that funding formula works?

3 A. To the extent of our  
4 discussions that we had over the past year about  
5 how the funds are distributed in accordance with  
6 the Ontario OFNLP.

7 Q. Sorry, I'm not talking about,  
8 though, FNLP. I'm talking about the funding  
9 formula for mainstream child welfare agencies in  
10 Ontario. Are you familiar with that formula?

11 A. No. That one, I would say  
12 no.

13 Q. Do you anything about it?  
14 For instance, do you know whether or not prevention  
15 is funded at actuals under those kinds of programs?

16 A. Hold on. Let me refer to my  
17 affidavit because I think I saw it. It is -- no,  
18 it is not -- for children in care for -- no, I  
19 believe not.

20 Q. I won't ask you questions,  
21 because to be perfectly frank, I also do not have  
22 the Ontario funding formula memorized.

23 A. Okay. All right.

24 Q. And by not memorized, I mean  
25 not at all, so let's stop talking about it. Okay.

1                   I just want to go back because you  
2 had mentioned the OFNLP formula a few times, and  
3 again, there were some affidavits about this in  
4 earlier proceedings, but I just want to be clear  
5 for the panel what that means.

6                   By OFNLP, do you mean the Ontario  
7 First Nations Limited Partnership formula?

8                   A. Yes.

9                   Q. And that's a formula that  
10 Chiefs of Ontario has used in the past to guide the  
11 distribution of ramp-up and CWJI funds within  
12 Ontario; correct?

13                  A. Yes, I agree.

14                  Q. And it's not -- it's a  
15 formula that they have used in other contexts?  
16 It's not devised specially for child welfare; is  
17 that correct?

18                  A. Yes, I agree.

19                  Q. Okay. And then just to close  
20 the loop on that, I suppose, they have -- Chiefs of  
21 Ontario has recently declined to take a position  
22 about the distribution of CWJI and ramp-up funding  
23 within First Nations. Do you recall that?

24                  A. Yes, I recall it.

25                  Q. Okay. And so you're

1 distributing it in whatever -- according to ISC's  
2 own judgment?

3 A. Exactly.

4 Q. All right. Given that, I  
5 don't have too, too many other questions.

6 Mr. Taylor had asked you several  
7 times or asked you quite a bit about how the CWJI  
8 formulas and the ramp-up monies -- how the gross  
9 amounts to be distributed over Canada, how you came  
10 to those.

11 Did I hear you -- can you just  
12 clarify for me, do you agree that those weren't  
13 based on any kind of assessment of First Nations  
14 needs at the time?

15 A. Based upon my understanding,  
16 yes.

17 Q. All right. Okay. So I'm  
18 just going to -- I didn't put the Ontario special  
19 study into the document book because I'm not going  
20 to draw you to any particular part of it, but --  
21 and I note you didn't say that you had read it in  
22 preparation, so can you just let me know when the  
23 last time you read it was?

24 A. Oh, my goodness. It's a good  
25 question, Ms. Wente. I would say probably a good

1 nine months ago.

2 Q. Okay.

3 A. Prior to or about the same  
4 time that the IFSD was starting its study that was  
5 released earlier in September, early October.

6 Q. Do you recall, though, from  
7 the Ontario special study that there was a  
8 recommendation in there that the funding formula  
9 for Ontario First Nations would be such that there  
10 was a community-directed prevention approach?  
11 Meaning that the communities -- the First Nations  
12 themselves would prefer to deliver prevention  
13 services?

14 A. I do not recall at this point  
15 in time having seen it, but I seem to recall in  
16 many of our informative discussions that you may  
17 have mentioned it to me.

18 Q. Okay. That's fair. So  
19 you're in the position now twice of having to take  
20 my word for it.

21 A. I know.

22 Q. And just to go with the  
23 Ontario special study, can you just, for  
24 everybody's sake and for the panel's sake, let us  
25 know where Canada is? It's my understanding that

1 you have not yet said that Canada agrees to  
2 implement the recommendations of the special study.

3 A. I would agree with that  
4 statement. In terms of where we are with it, I  
5 think it's an important piece of the puzzle as we  
6 move forward or an important piece of the  
7 foundation as we embark on work around funding  
8 methodologies.

9 Q. Okay. Do you know when you  
10 might have a position about whether or not the  
11 recommendations of the special study will be  
12 implemented?

13 A. No, I do not have any type of  
14 time frame. Again, I think as we move forward,  
15 looking at, you know, at the orders that are  
16 already being implemented in terms to actuals, work  
17 that's being done on capital, and as well as the  
18 orders pending on capital, I think, you know, it's  
19 all, again, part of a comprehensive process, and  
20 COO is one important piece and source of  
21 information of that overall funding methodology and  
22 what we -- where we go with that report.

23 When I say "we", it's ISC but also  
24 in partnership with you -- excuse me, with the  
25 Chiefs of --



1 Q. Not me personally.

2 A. Sorry. So --

3 Q. Okay. All right. And then I  
4 have asked this question of one of your colleagues  
5 before and I guess I will ask you as well.

6 Does ISC have an idea of what it  
7 might do if it decides not to adopt the  
8 recommendations of the Ontario special study?

9 A. No, and I wouldn't want to  
10 speculate on that. You know, I'm -- yeah, I think  
11 that's a broader discussion in terms of ISC and the  
12 government of Canada accepting it. So I would be  
13 speaking a little -- I would obviously be speaking  
14 outside my program role.

15 Q. Sure. Understood. And with  
16 respect to the 1965 agreement, I noted that you did  
17 refer to it in your affidavit.

18 A. Yes.

19 Q. And the renegotiation of it.  
20 You will agree that the renegotiation of the 1965  
21 agreement has not yet commenced?

22 A. No, I would agree with that,  
23 that it is definitely work that needs to be  
24 undertaken or restarted.

25 Q. Right.

1                   A.    Am I aware that the province  
2    has indicates its desire to look at the agreement  
3    as well, and I will leave it at that.

4                   Q.    So internally or even amongst  
5    the parties, there's no timeline by which the 1965  
6    agreement will be renegotiated?

7                   A.    To the best of my knowledge,  
8    a fixed timeline has not been established.

9                   Q.    Okay. Thank you. And I  
10   believe, if you will just give me one moment, that  
11   those are probably all of my questions. I think  
12   that's everything. Thank you, Ms. Nepton.

13                  A.    Thank you.

14                  THE CHAIR: Ms. Wente?

15                  MS. WENTE: Yes.

16                  THE CHAIR: We're not rushing you,  
17   so are you sure?

18                  MS. WENTE: No, I'm quite  
19   confident I'm done. Thank you. No, I wouldn't  
20   leave something behind. You know me. I'm not one  
21   to spare words. Thank you.

22                  THE CHAIR: I didn't want to  
23   convey the message that everybody has to rush. I  
24   was just trying to figure out how long we needed to  
25   --

1 MS. WENTE: No. Understood. I  
2 will --

3 THE CHAIR: There is no negative,  
4 you know, things that are cast on the Caring  
5 Society or Mr. Taylor, who did a great job. It's  
6 just that I wanted to make sure that we are right  
7 on time, because I believe we have to end by 4:30.

8 MS. WENTE: Yes. I was lucky in  
9 that Mr. Taylor did most of my work for me, as  
10 usual, so thank you very much.

11 THE CHAIR: Okay. Thank you. I  
12 believe -- how are you, Ms. Nepton? I don't see --  
13 there you are. Are you okay to continue for about  
14 a half an hour with another set of questions?

15 THE WITNESS: That would be Ms.  
16 Rae?

17 THE CHAIR: I'm wondering, Ms.  
18 Nepton, if you're okay if we continue for about a  
19 half an hour. Do you feel comfortable --

20 THE WITNESS: If we could have a  
21 five-minute break, if you don't mind.

22 THE CHAIR: Sure.

23 THE WITNESS: Okay. Thank you.

24 THE CHAIR: Okay.

25 MS. DUBOIS: I will pause the

1 recording and resume when we're back.

2 --- (Recess taken)

3 THE CHAIR: I know you've said you  
4 needed about 30 minutes, but if you need more time,  
5 just let us know.

6 MS. RAE: Okay. Thank you. I'm  
7 just adjusting the screen. Perfect. Thank you.

8 CROSS-EXAMINATION BY MS. RAE:

9 Q. Good afternoon, Ms. Nepton.  
10 Good afternoon, panel and friends. Ms. Nepton, I  
11 recognize that it is a long day for you, of course.  
12 Feel free to, of course, pause as needed or ask me  
13 to re-clarify.

14 Just to introduce myself briefly  
15 because, of course, I am new here, my client is  
16 Innu Nation, and this is the Innu Nation in  
17 Labrador.

18 Ms. Nepton, in introducing  
19 yourself, you mentioned that you are a member of  
20 the Innu Nation in Quebec and a First Nation  
21 community in Quebec. If I refer to Innu Nation, I  
22 of course mean in Labrador.

23 A. Yes.

24 Q. Thank you. For everyone's  
25 benefit, Innu Nation in Labrador is composed of two

1 First Nations, which is Sheshatsiu Innu First  
2 Nation and Mushuau Innu Nation.

3 Ms. Nepton, I think you would  
4 agree with me that those would be two of the First  
5 Nations among the 138 that you have indicated in  
6 your First Nation that Canada would consider as not  
7 being served by an agency?

8 A. Exactly, by a First Nations  
9 agency.

10 Q. Right. Ms. Nepton, you  
11 mentioned earlier just -- sorry, preliminary  
12 matters, but you had mentioned earlier that you  
13 don't have in front of you the exhibits to Ms.  
14 Germaine Benuen's affidavit, which is fine. I  
15 actually think that we won't need them. If we do,  
16 we can refer to them electronically, but I suspect  
17 we won't.

18 A. Okay. Thank you.

19 Q. The last thing I just wanted  
20 to say by way of introduction is, of course, Innu  
21 Nation is here, you know, bringing forward its  
22 experience as, you know -- its experience as one  
23 local example among the nations that aren't being  
24 served by an agency that Canada recognizes in its  
25 agency program.

1 I'm then taking it now to the most  
2 local level of our evidence, and I respect that  
3 you, Ms. Nepton, are not going to necessarily have  
4 in your mind and at your fingertips information at  
5 that level of specificity, and of course just be  
6 honest about those challenges and we will just work  
7 through the best that we can.

8 A. Thank you. Thank you very  
9 much.

10 Q. Yes, I'm mindful of that.  
11 Okay. I want to turn to -- maybe we could screen  
12 share, Ms. Dubois, Ms. Nepton's affidavit.

13 MS. DUBOIS: Just a moment. I'm  
14 not sure why it's not -- just a moment. I'm having  
15 myself some technical difficulties.

16 MS. RAE: Not a problem.

17 MS. DUBOIS: I will just call it  
18 up again.

19 MS. RAE: There we go.

20 MS. DUBOIS: No, that's the  
21 whiteboard. I'm sorry, I don't know why I can't  
22 call it up. Of course it was just working. I will  
23 try one more thing.

24 MR. FRATER: Madam Chair, I'm just  
25 wondering whether we could ask whether there is

1 anyone who doesn't have a copy before them so that  
2 if it's not the case that we can't all follow  
3 along, I don't know that we should trouble Ms.  
4 Dubois to get to the technological bottom of this.

5 MS. RAE: That would work fine for  
6 me to just proceed that way.

7 MS. DUBOIS: Okay. Now, Ms. Rae,  
8 do you have the document?

9 MS. RAE: Oh, yeah.

10 MS. DUBOIS: Okay. I can give you  
11 screen sharing rights. Let's do that.

12 MS. RAE: Okay. Let's do that.  
13 Okay. Let me just make sure that everything I have  
14 got up here is correct.

15 MS. DUBOIS: You should have it.

16 MS. RAE: Okay. So if I have  
17 screen sharing rights now -- yes, this should work  
18 and I can share the PDF. Good. Okay. So this is  
19 the affidavit. Okay. Good. Now, the only thing  
20 this does for me is -- sorry, I have a technical --  
21 I'm sorry, I have a technical question. The  
22 trouble I have, and I have had this problem before,  
23 is if I'm screen sharing, I don't know how to  
24 minimize it so I can get access to my own notes.  
25 Does anyone else understand what I'm talking about?

1 THE WITNESS: You have to select  
2 your screen. So if you press -- I don't know what  
3 kind -- if you have a Windows type of machine, you  
4 can press the Windows key and the left -- to the  
5 left arrow, and it will split your screen in two.

6 MS. RAE: Okay. All right. Let  
7 me see here. What do I need to do? Sorry, this is  
8 just --

9 MS. DUBOIS: I really apologize  
10 for this. I'm not sure why this is happening.  
11 Someone else has it up, they could screen share it  
12 but then the give controls over to Ms. Rae. We  
13 could try that. I'm still trying. I'm not sure  
14 why I can't call it up.

15 MS. RAE: I'm going to try --  
16 let's try proceeding without the screen share. I  
17 think that may work fine. And if Ms. Nepton or if  
18 anyone else has a concern at any point, just stop  
19 me, please.

20 THE CHAIR: Just a moment, please.  
21 Member Lustig, do you have the document --

22 MR. LUSTIG: Yes.

23 THE CHAIR: Okay. Great. I  
24 wanted to check that first. Okay. Yes, you can  
25 proceed. I think everybody has the document;



1 correct?

2 MS. RAE: Okay. I will proceed.

3 THE CHAIR: Okay.

4 BY MS. RAE:

5 Q. Okay. So we are turning,  
6 then, to paragraph 27 of Ms. Nepton's affidavit  
7 which speaks to services in Newfoundland and  
8 Labrador. And I'm just going to start on my  
9 questions, just focusing on the protections side  
10 and just clarifying a few pieces of information.

11 So the first piece of information  
12 that I wanted to clarify on the protections side  
13 was the statement in this paragraph that:

14 "According to ISC data --"

15 Of course meaning Indigenous  
16 Services Canada

17 "-- on March 31, 2019, there  
18 were approximately 82 on-  
19 reserve First Nations  
20 children in care from these  
21 communities."

22 Meaning Natuashish and  
23 Sheshatshiu, the two Innu communities.

24 With respect to that figure, my  
25 question is: Are you aware that -- that figure was

1 surprising to me and I do have some questions about  
2 it. That's less than half of the provincially  
3 recorded numbers of Innu children in care at the  
4 time. Is that something you're familiar with?

5                   A. I was made aware of it  
6 recently, and given the discrepancy between the  
7 numbers that we reported and the numbers that I  
8 believe have been reported at 162, perhaps, if I  
9 remember correctly, I would be happy to look again  
10 at our system, our information management system to  
11 see where that discrepancy could come from, and I  
12 would be happy to get back to you or to work  
13 through Mr. Frater on any questions that you have  
14 about how we got to these numbers, knowing that  
15 they're a snapshot in time. Our figures are based  
16 upon, of course, what the province reports back to  
17 us, as well as what we have in terms of our  
18 information management. So I think that that is  
19 possible and would be happy to work on that with  
20 you.

21                   Q. Okay. I will accept that as  
22 a take-back. I will just point out, then, in  
23 relation to that, that Ms. Benuen's affidavit does  
24 have the number of -- it was 165 in her affidavit,  
25 which is a provincially-derived figure, which would

1 be from 2020. So the numbers which are in the  
2 meeting minutes, which I don't think we need to go  
3 to now, given your commitment, they are from 2019  
4 and are in the 170s.

5 I just want to point to one other  
6 figure in relation to your search on this, which is  
7 in your own affidavit in Exhibit 2. So for those  
8 of you -- so then in the portion there where it  
9 says -- which I believe is the first one in Exhibit  
10 2, Newfoundland and Labrador.

11 A. Yes.

12 Q. And if you go to the kind of  
13 second page of it, on the left, it says children  
14 and care, all ages, FNCFS data as of March, and  
15 then that's 2018. But the number there is 235.

16 What I have been told from my end  
17 is that typically the federal government numbers  
18 are higher than the provincial numbers in  
19 Newfoundland and Labrador because they include the  
20 federal government's reimbursement of children in  
21 kinship care who aren't considered by the province  
22 to be formally in care. So I was quite surprised  
23 to see the number of 82. It doesn't accord with  
24 the information we have, so I thank you for your  
25 commitment to take that back and check it out.

1                   A.    No, I have made note of it on  
2 page 4 of the Newfoundland/Labrador tab 2 and the  
3 discrepancy of 235 as of March 31st, 2018. And  
4 then, of course, the 85.

5                   Q.    Okay. So just to wrap that  
6 issue up, then, you're not aware of -- you're not  
7 personally aware of any dramatic fluctuations in  
8 the number of Innu children in care, Labrador Innu  
9 children in care at that time?

10                  A.    No. No, I am not aware of  
11 anything.

12                  Q.    Okay. Thank you. So we will  
13 just leave that piece, then, with that commitment  
14 if that's okay with you. Do we still have Rob?  
15 Sorry, Mr. Frater --

16                  MR. FRATER: Yes. We will get you  
17 that information.

18                  MS. RAE: Thank you, Mr. Frater.

19                  BY MS. RAE:

20                  Q.    Good. Okay. I will then  
21 move to -- I'm just flipping, then, in my notes.  
22 Continuing in your affidavit, then -- continuing on  
23 the issue of protection -- and I'm just now going  
24 to go back out of the exhibit and back up to  
25 paragraph 27 where we were prior.

1 A. Yes.

2 Q. There's a comment at the end  
3 of that paragraph 27 around the funding that Canada  
4 has provided to the province through its bilateral  
5 agreement with the province.

6 I just want to first confirm,  
7 we're talking about protection funding there, then,  
8 not prevention funding?

9 A. That is correct. I will  
10 double-check my table at NN-3.

11 Q. I think what you will --

12 A. Yes.

13 Q. Yes. Okay. Thank you.

14 What's also in your paragraph 27, at the top of  
15 that paragraph, is that the provincial government  
16 of Newfoundland and Labrador provides protection  
17 services. Later in that same paragraph, you say  
18 prevention is not part of the legislation.

19 So just to confirm, the province  
20 of Newfoundland and Labrador, it is not providing  
21 prevention services?

22 A. Yes. I agree with that.

23 Q. Okay. So in terms of the  
24 funding then referenced that is going to the  
25 province for protection, this 10.8 million and then

1 up to 19.1 million, do you know how that is broken  
2 down between the maintenance and operations?

3 A. No, I cannot confirm that at  
4 this moment, how it's broken down.

5 Q. That's fine. Do you know, is  
6 the growth there, is that reflecting a larger  
7 number of Innu children in care or is it reflecting  
8 more expensive services generally or anything else,  
9 or is that something that you're not able to speak  
10 to?

11 A. I am not able to speak to it  
12 with certainty, but I could say that it may be due  
13 to increases of children in care. I could also say  
14 that it may be due to fluctuations in population,  
15 and so I can leave it as those two as an example.

16 Q. Okay. That's fine. The last  
17 -- the end of paragraph 27 of your affidavit, it  
18 refers there to the 76.9 increase in that  
19 protection funding going to the province between  
20 the 10.8 in 2015/'16 to 19.1 in 2018/'19.

21 A. Yes.

22 Q. I just want to raise with you  
23 something that I have been told from Indigenous  
24 Services Canada at the regional level, which is  
25 that the 19.1 figure included a sizable amount in

1 the range of 1.8 million or such that actually  
2 related to a previous year.

3 Is that -- I raise it only because  
4 that would then affect that statement about 76.9  
5 percent as an amount of increase. It would then  
6 make that percentage lower if the amount that  
7 really related to 2018/'19 was lower. It's just  
8 for the sake of clarity. Is that something that  
9 you are aware of or (inaudible)?

10 A. I am not available -- I am  
11 not aware of that level of detail but would agree  
12 that, yes, it would decrease the percentage of the  
13 increase over four years, yes.

14 Q. Okay. Could I ask -- this is  
15 a small point, then, but just for the sake of  
16 accuracy, is that something that could be taken  
17 back?

18 A. Yes. Yes, I could take it  
19 back.

20 Q. Okay. Thank you. So those  
21 are some just clarification points in relation to  
22 protection. I'm going to move, then -- I'm going  
23 to circle back in a minute to some other -- I'm  
24 going to move, then, to funding for Innu  
25 representatives, which is in paragraph 28, the next

1 paragraph.

2 A. Yes.

3 Q. What I was saying is I'm  
4 going to circle back at the end to prevention, but  
5 I want to just first stay kind of within  
6 protection. And we will go to paragraph 28, which  
7 references band representative funding.

8 So just for context, what is set  
9 out in a bit more detail in Ms. Germaine Benuen's  
10 affidavit is that the province introduced a  
11 legislative role of band representatives, what its  
12 legislation called Indigenous representatives.  
13 That was introduced in 2019. And what you have  
14 here in paragraph 28 is that since then, that  
15 funding has been through Jordan's Principle.

16 A. Mm-hmm.

17 Q. Okay. So that's where we  
18 are. Okay. Also in Ms. Benuen's affidavit -- we  
19 could go to it if need be -- which is that they  
20 turn to Jordan's Principle having been unable to  
21 get ISC proper, shall we say, to fund the band  
22 representative program in the 2019/'20 year or the  
23 2020/'21 year. And that's where kind of that story  
24 leaves off in her affidavit.

25 Does that fit with your



1 understanding?

2                           A.    With respect to the provision  
3 of band rep services funding through the Jordan's  
4 Principle funding stream, I am aware that it  
5 happened that way or that's how the money was  
6 flowed.  However, I am uncertain, because I think  
7 it speaks to before I joined perhaps, this sector,  
8 as to how or why it was funded through Jordan's  
9 Principle as opposed to through child and family  
10 services.

11                           With respect to band rep services  
12 and options for band rep (inaudible).

13                           Q.    Thank you.  And we're  
14 probably both under some limitation about what we  
15 can say about those discussions.  We will do what  
16 we can.  I just wanted to clarify a little.

17                           What you said in the affidavit  
18 there is funding will be made available in 2020/'21  
19 for band representatives under the CWJI funding  
20 stream.  Would it surprise you to say that that was  
21 the first that Innu Nation or the Innu roundtable  
22 secretariat had heard about the extension of CWJI  
23 funding for Innu band representatives?

24                           A.    Would you mind repeating the  
25 question?  I'm sorry.

1                   Q.    I will put to you that your  
2 affidavit was the first that my clients had heard  
3 about CWJI funding being potentially extended for  
4 Innu band representatives. Does that fit with your  
5 knowledge or do you have contrary knowledge?

6                   A.    I think that based on  
7 discussions with ISC and about the issue of band  
8 representative services, we were seized of the  
9 issue, seized of the fact that it had been under  
10 Jordan's Principle the previous year, and looking  
11 at it again with a view of potentially resolving it  
12 through either ongoing discussions or through some  
13 other means.

14                  Q.    Okay. The year referred to  
15 here in your affidavit is 2020/'21. That is this  
16 current fiscal year. I just want to confirm, ISC  
17 has not extended CWJI funding to the Innu Nation  
18 for band representative services for this fiscal  
19 year, to my knowledge. Does that fit -- is the  
20 reference to the year here intentional or are you  
21 intending to say that there is funding being  
22 offered this fiscal year?

23                  A.    Without wanting to compromise  
24 other ongoing discussions, at the time that my  
25 affidavit was made, we were looking to resolve this

1 issue and providing some sort of certainty with  
2 respect to the possibility of funding for 2021.

3 Q. 2021/'22?

4 A. Yeah. And --

5 Q. Okay.

6 A. Yeah.

7 Q. So that may refer, then -- be  
8 intended to refer to next fiscal year?

9 A. Yes.

10 Q. Okay. And I do not want to  
11 compromise -- I recognize that there are  
12 discussions --

13 A. Yes.

14 Q. -- but I do want the panel to  
15 have some clarity of information. I'm going to put  
16 to you that Indigenous Services Canada has not, in  
17 fact, confirmed any CWJI funding for Innu band  
18 representatives for any year. And I'm saying  
19 confirmed -- has not confirmed. Is that correct,  
20 to your knowledge, Ms. Nepton?

21 A. I would say yes, besides what  
22 has been provided by Jordan's Principle. However,  
23 as mentioned before, there are ongoing discussion  
24 that are looking at other options and accommodating  
25 needs.

1 Q. Okay. So there's been an  
2 outreach to discuss and there has been no funding  
3 confirmed yet outside of the current year Jordan's  
4 Principle? Like, nothing further has been  
5 confirmed?

6 A. As far as I understand. I  
7 can go back to my original colleagues and confirm  
8 with certainty, but as I understand, I do not think  
9 that that has been conveyed or communicated  
10 formally for the Innu to consider.

11 Q. Thank you. And one last  
12 question about that. Just to confirm, it has been  
13 the position of Indigenous Services Canada, then,  
14 that those First Nations outside of Ontario are not  
15 eligible for any actual cost reimbursement of band  
16 representative-type services?

17 A. First Nations are not  
18 eligible for actuals. The actuals process is --  
19 the actuals process and the reimbursement of  
20 actuals is agencies.

21 Q. But for band representative  
22 services --

23 A. Oh, yeah, no --

24 Q. -- it's limited to Ontario?

25 A. Yes.

1 Q. The actuals process is  
2 limited to Ontario?

3 A. Exactly. Ontario is the only  
4 one that provides, to the best of my knowledge,  
5 band rep services. Band representative services.  
6 Sorry.

7 Q. Sorry, that Ontario is the  
8 only jurisdiction to have that service in its  
9 legislation? Or that Ontario is the only  
10 jurisdiction that Canada will reimburse at actuals?

11 A. In the legislation. Provided  
12 for in legislation.

13 Q. Okay. That doesn't fit with  
14 my knowledge, so that's something I may ask you to  
15 take back, then, to confirm.

16 A. Yeah.

17 Q. Maybe I will just pose it as  
18 a question as to which jurisdictions -- I know the  
19 answer to this question, but it's not one that  
20 obviously I can put in evidence. But I will pose  
21 it as a question as to which jurisdictions have in  
22 their legislation band representative services and  
23 how does Indigenous Services Canada fund them.

24 A. Okay.

25 Q. Is that acceptable to take

1 back?

2 MR. FRATER: Yes, that's fine.  
3 Madam Chair, though, I have to say I'm concerned  
4 about the entire line of questioning because, as my  
5 friend knows, discussions are ongoing and it sort  
6 of left the impression that it's not a resolution  
7 at the moment so we're not paying. And it puts us  
8 in a very difficult position to answer candidly  
9 because we're both under requirements of  
10 confidentiality about this. And so, you know,  
11 leaving the impression that at a point in time,  
12 namely today -- I'm not sure my friend is  
13 establishing anything other than that the  
14 discussions haven't been concluded.

15 So I am concerned that this whole  
16 line has left the witness in a very difficult  
17 position and the Tribunal in a less than fully  
18 informed way. So I just want to -- I don't know  
19 whether my friend is moving on at this point but --

20 MS. RAE: Yes. I mean, I am  
21 moving on to the next question. The main question  
22 I had there, which is just that actuals are not  
23 available for band representative services outside  
24 Ontario, but the fact is -- and I don't think it's  
25 controversial. There are several other

1 jurisdictions that do have band representative  
2 functions in the legislation to varying degrees.  
3 British Columbia is one, Yukon is one. And then in  
4 terms of partial roles, I mean, Newfoundland and  
5 Labrador, Nova Scotia -- there's others.

6 I don't think I'm asking anything  
7 controversial just in trying to confirm.

8 MR. FRATER: No, I don't think  
9 that part is controversial, but the entire lead-up  
10 to that is potentially misleading.

11 MS. RAE: The concern I have, Mr.  
12 Frater, is that Ms. Nepton put in her affidavit  
13 that ISC has or will make available CWJI funding  
14 this year, and I put to her that they have not.  
15 So, I mean, I have to address what is in her  
16 affidavit on this point.

17 MR. FRATER: Well, if the  
18 impression is going to be left that the funding was  
19 given in 2019 and has not been given thereafter,  
20 that's my concern. So anyway, we can maybe deal  
21 with this at a later time.

22 THE CHAIR: Mr. Frater, I note  
23 your objection. The only difficulty here is now we  
24 have context, and thank you for that, but I  
25 appreciate you were giving them some leeway before

1 objecting and you were trying to figure out where  
2 she was going with this. But now the questions  
3 have been asked, so how do you propose that we move  
4 forward with this? We have your context. We have  
5 your objection.

6 MR. FRATER: Yes. I guess what we  
7 would like is if we get to a place where we can  
8 give the Tribunal more clarity on this issue, I  
9 would appreciate the opportunity to do so.

10 THE CHAIR: Perfect. Thank you.  
11 Ms. Rae?

12 MS. RAE: Okay. Thank you. Okay.  
13 I think we can move on from that piece.

14 BY MS. RAE:

15 Q. I'm going to move to an issue  
16 that Mr. Taylor raised around this issue of, as you  
17 put it, Ms. Nepton, partially delegated agencies.

18 A. Yes.

19 Q. Or as he put it, a kind of  
20 third way. There does seem to be a bit of a  
21 category there in terms of how Indigenous Services  
22 Canada is operating, and I'm going to try to just  
23 ask a few further follow-up questions on there. I  
24 don't know if I'll serve to clarify anything or  
25 perhaps muddy the waters further, but we can try.



1                   So I would like to just turn to  
2 paragraph 29 of your affidavit, around the  
3 Miawpukek First Nation, which is in Newfoundland  
4 and Labrador. So this is the third reserve  
5 community, third and last reserve community in  
6 Newfoundland and Labrador.

7                   As you indicate, Indigenous  
8 Services Canada provides direct funding to the  
9 First Nation which is based on actuals and that  
10 they then have a service agreement with the  
11 province of Newfoundland and Labrador for  
12 protection services. The salary of a provincial  
13 social worker is paid for.

14                   My understanding is that they have  
15 a very small -- a very tiny number of children in  
16 care, so one social worker on duty is quite  
17 sufficient, so it's a pretty simple service  
18 agreement.

19                   I'm just trying to characterize  
20 this. It is still the province of Newfoundland and  
21 Labrador that delivers the protection service in  
22 this model; yes?

23                   A. Yes. Yes. As I understand  
24 it.

25                   Q. Thank you. So they haven't

1 delegated protection to the Miawpukek First Nation?

2 A. That's right. It's subject  
3 to a service agreement between the province and  
4 Miawpukek.

5 Q. Right. So what's different  
6 from Indigenous Services Canada's perspective is  
7 that there is a -- it has one funding agreement,  
8 which is with Miawpukek, and then they kind of flow  
9 through the protection funds to the province?

10 A. Yes.

11 Q. Okay. But it's not that the  
12 province has delegated anything to the First  
13 Nation.

14 A. I would have to double-check  
15 what the arrangement is to confirm how the funding  
16 flows. And I would be happy to get back to you to  
17 confirm how the funding flows with respect to  
18 protection services and prevention.

19 Q. Okay. The suggestion I put  
20 to you is that the category here is really about  
21 the flow of funding from Indigenous Services  
22 Canada's perspective rather than any type of  
23 delegation.

24 A. Okay.

25 Q. Does that fit -- would you

1 agree with that, Ms. Nepton?

2 A. Yes, that you would like  
3 confirmation of how the funds are flowed with  
4 respect to protection services to the First Nation  
5 --

6 Q. Yes, and whether there's any  
7 actual delegation.

8 A. Mm-hmm.

9 Q. Or is it just a second level  
10 of the flow of funding? They're an intermediary in  
11 the flow of funding.

12 A. Okay.

13 Q. And I have the same question  
14 in relation to paragraph 31 of your affidavit,  
15 which Mr. Taylor was asking about in relation to  
16 Prince Edward Island and the Mi'kmaq Confederacy.

17 A. Mm-hmm.

18 Q. Which, again, it says here  
19 they purchased the protection services from the  
20 province. And I put to you: Is there an actual  
21 delegation from the province to the Mi'kmaq  
22 Confederacy? Or does the province retain  
23 jurisdiction and deliver the services but rather  
24 they're just purchased? The same way that Canada  
25 would purchase the services from the province with

1 respect to the Innu, but instead it flows through  
2 in this case.

3 A. Yep, and I am happy to take  
4 that back and confirm and provide accurate  
5 information as opposed to speculating about how the  
6 funding flows.

7 Q. Okay.

8 A. And the formal delegation  
9 instrument, whether it is formal or -- and I think  
10 what you are getting at is whether there is a  
11 formal arrangement that sets out the roles of each  
12 party, but also, you know, is it beyond just flow-  
13 through?

14 Q. Well, what I'm getting at is  
15 that "delegation" may not be the right word here --

16 A. Okay.

17 Q. -- because if the body here,  
18 be it the Mi'kmaq Confederacy of P.E.I. or be it  
19 Miawpukek First Nation, they're not being delegated  
20 protection from the province. And at least in the  
21 Newfoundland and Labrador context, we know that  
22 they're not being delegated prevention from the  
23 province because we know from your affidavit that  
24 they don't have prevention in the legislation.  
25 They can't delegate prevention.

1 A. M'hmm.

2 Q. So my suggestion is that  
3 nothing is, in fact, delegated. It's a different  
4 funding model but not a delegation difference.

5 A. All right. Thank you for  
6 that clarification.

7 Q. Okay. And I take it you're  
8 not necessarily agreeing with that right now? It's  
9 something you're going to take back?

10 A. Exactly.

11 Q. Thank you. Okay. And then  
12 further to that, you would agree with me, Ms.  
13 Nepton, that in both of those cases, P.E.I. and  
14 Miawpukek, they have a very small number of  
15 children in care?

16 A. Yes.

17 Q. Thank you. So, further to  
18 that, if they have a service agreement where  
19 they're purchasing protection services from the  
20 province, we can anticipate that there is a level  
21 of complexity that is much simpler if we're talking  
22 about, say, one social worker, as your affidavit  
23 indicates in the case of Miawpukek, versus, say,  
24 hundreds of children in care and multiple social  
25 workers.

1 A. Yes.

2 Q. There's a difference there in  
3 complexity.

4 A. Yes, I would agree with that.

5 Q. Thank you. Okay. I think,  
6 then, I can move on from the discussion, then, of  
7 child protection, the child protection side of  
8 services. And I just have a few questions, then,  
9 on the prevention side.

10 We will just confirm a few points  
11 here. I think, actually, your evidence and Ms.  
12 Germaine Benuen's evidence has been quite  
13 consistent on the prevention point. So just going  
14 back up to paragraph 27 of your affidavit. I think  
15 we actually confirmed earlier that you have been  
16 kind of -- based on what you've had here already,  
17 the province of Newfoundland and Labrador, it does  
18 protection, it doesn't do prevention, and that's  
19 not part of it, the legislation?

20 A. Exactly. It's not entrenched  
21 in the legislation.

22 Q. Okay. Thank you. We covered  
23 that the 10 million going up to 19 million or  
24 whether it goes up to 17 or 18, whatever the number  
25 is confirmed to be, that money is for protection.

1 That's not money for prevention. I think we did  
2 cover that.

3 A. Yes, and when I respond to  
4 the question, I will make sure to confirm the type  
5 of funding with respect to the protection versus,  
6 let's say, CWJI for prevention --

7 Q. But that is not the CWJI  
8 money?

9 A. No.

10 Q. That's the bilateral  
11 agreement?

12 A. Yeah. Exactly.

13 Q. Thank you. So as you say in  
14 your paragraph 27, following budget 2016, that's  
15 when Indigenous Services Canada started funding the  
16 Innu communities to provide their own prevention  
17 services; is that correct?

18 A. Yes.

19 Q. Okay. And before the  
20 implementation of budget 2016, then, in the  
21 Labrador Innu communities, no one was funding child  
22 welfare prevention services?

23 A. Because it predates my  
24 arrival to the sector, I can confirm and follow up  
25 on that point gladly, because as I stated, 2016 is

1 a good three years before my arrival and I would  
2 like to make sure that I accurately provide you  
3 with that information.

4 Q. Okay. That's fine. So not  
5 to your knowledge, but that's something you can  
6 take back?

7 A. Yes.

8 Q. Okay. Canada has not  
9 required Newfoundland and Labrador to provide  
10 prevention under their bilateral funding agreement?

11 A. I would have to go over the  
12 bilateral agreements in great detail and review  
13 them from when I originally reviewed them. But I  
14 can again look at the agreements and confirm that  
15 that is either true or incorrect.

16 Q. Okay. So we know that  
17 Newfoundland and Labrador is not providing  
18 prevention, so --

19 A. No.

20 Q. So it's not that they have  
21 been in default of Canada's requirement that they  
22 provide it, I don't think. That's not something  
23 that Canada has. Canada has funded them for  
24 protection but it hasn't required them to provide  
25 them to provide for --



1 A. No. Not that I am aware of.

2 Q. Not to your knowledge. Okay.

3 A. Yes. Sorry, I had  
4 misunderstood the question.

5 Q. That's okay. Okay. I think  
6 we have got that clarified.

7 So you have put in your affidavit  
8 that the prevention funding now for the current  
9 fiscal is now up to nearly 3 million and that that  
10 is CWJI funding.

11 As to the timing of when that  
12 amount was confirmed, there is a bit of information  
13 on that in Ms. Benuen's affidavit which we could  
14 turn to at paragraph 78.

15 So what she says is that later in  
16 2020, which was following their human rights  
17 complaint filed, their funding appeal, it was in  
18 September or October of 2020 that there were  
19 additional funds that came forward. So it's not  
20 that there was no funding before that, but there  
21 was an increase in funding that was confirmed  
22 around September/October of last year.

23 A. Yes, based upon what is  
24 written here. But again, I think because of the  
25 discussion around the human rights complaint that

1 is currently before the Tribunal, and again, not to  
2 compromise the discussions that we have been having  
3 -- and when I say "we", it's of course ISC and the  
4 Innu Nation -- I'm a little uncomfortable in  
5 commenting further on that point.

6 Q. And I don't want to make you  
7 uncomfortable --

8 A. Okay.

9 Q. -- but what it's worth it to  
10 say -- I mean, you don't have different information  
11 on timing about that that you're bringing forward?

12 A. I can say to the best of my  
13 knowledge, I do not have any different information.

14 Q. Okay. So the funding for  
15 prevention in the Labrador Innu community, then,  
16 you have it in your affidavit that it's through  
17 CWJI; correct?

18 A. Yes, for prevention funding.  
19 Yes.

20 Q. Okay. It's not going through  
21 the actuals claims process?

22 A. No.

23 Q. Okay. And on the province's  
24 side, they cannot be eligible for prevention at  
25 actuals, not being a First Nations agency, first of

1 all, and also not having -- not doing prevention,  
2 they're not eligible on the province's side to  
3 apply for prevention at actuals?

4 A. As far as -- to the best of  
5 my knowledge, no. Yes. Yeah.

6 Q. Right. Is any province able  
7 to apply for a prevention at actuals?

8 A. No, not that I'm aware of.  
9 The prevention on actuals -- the prevention is the  
10 CWJI stream that is provided directly to First  
11 Nations. And again, CWJI can be prevention or it  
12 can be jurisdictional initiatives.

13 Q. Okay. But Newfoundland and  
14 Labrador can't claim through the actuals process?

15 A. Yes, for prevention --

16 Q. For prevention --

17 A. Not that I am aware of. I am  
18 not aware that they have been submitting --

19 Q. Right.

20 A. -- claims and being  
21 reimbursed on --

22 Q. Right. We have already  
23 covered that they don't do prevention.

24 A. Yeah.

25 Q. We don't need to rehash.

1 Okay.

2 A. Yeah.

3 Q. You have confirmed that the  
4 Innu funding is through CWJI. The Innu that are  
5 not eligible for a prevention at actuals, at least  
6 in Indigenous Services Canada's view, that's --

7 A. Correct. Yes.

8 Q. Okay. So just to confirm,  
9 then, no one, no entity, is eligible for prevention  
10 funding on an actual cost basis at this time in  
11 order to provide prevention services to the  
12 Labrador Innu First Nations?

13 A. As far as I know, I agree  
14 with that statement. I do not know.

15 Q. Sorry, you agree?

16 A. Yes.

17 Q. Thank you.

18 A. (Inaudible).

19 Q. Okay. And please -- okay.  
20 Thank you. Please confirm for me the basis on  
21 which Indigenous Services Canada reimburses the  
22 province of Newfoundland and Labrador for  
23 maintenance to put Labrador Innu children into care  
24 if they are removed from their families of origin,  
25 the cost of (indiscernible) care, the maintenance

1 cost. That cost remains an actual cost  
2 reimbursement; correct?

3 A. I would say in principle I  
4 would agree. However, based on uncertainty, I  
5 could take that one back and relook at the service  
6 agreement to see what is covered in the agreement.

7 Q. Okay. Those are all my  
8 questions. Thank you, Ms. Nepton.

9 A. Thank you.

10 THE CHAIR: Thank you. We will  
11 take a 15-minute break. Is that sufficient for  
12 everyone? Yes? No?

13 UNIDENTIFIED FEMALE: Yes.

14 MR. SMITH: Chair Marchildon, it's  
15 Brian Smith speaking from the Human Rights  
16 Commission. It may be helpful, just before we go  
17 into that break, for me to let you know what my  
18 intentions are. And I can say that to the extent I  
19 had a few questions, Ms. Rae has actually touched  
20 on them and I don't have any questions that I will  
21 be asking of the witness. So as we go into the  
22 break, it may be helpful for Mr. Frater and Ms.  
23 Nepton to know that unless I'm forgetting someone,  
24 the next opportunity may be to do some reply  
25 examination.

1 THE CHAIR: Okay. Thank you. I  
2 was actually giving you some time to figure out if  
3 you had questions or not, but thank you for that.

4 MR. SMITH: Yes, I'm good. Thank  
5 you.

6 THE CHAIR: All right. Okay. So  
7 we will take 15 minutes and be back at 3:35.

8 MR. FRATER: Chair, could I just  
9 say that I probably only have five minutes in  
10 reply. So if you want to do that now, I think  
11 we're done.

12 THE CHAIR: Well, do you need a  
13 break or you're good?

14 MR. FRATER: I'm happy to take 15  
15 minutes now if you want.

16 THE CHAIR: Let's just ask Ms.  
17 Nepton. Ms. Nepton, are you okay to continue?

18 THE WITNESS: Sure, I am okay to  
19 continue. Thank you.

20 THE CHAIR: Okay. Let's continue,  
21 then. Thank you.

22 Before you start, Mr. Frater, I  
23 just wanted to confirm that we've received a letter  
24 and I believe that everybody received the letter  
25 that the NAN is observing today but are not asking

1 questions. Okay. Thank you. Please go ahead.

2 RE-EXAMINATION BY MR. FRATER:

3 Q. Thank you. Ms. Nepton, you  
4 were asked about paragraph 59 of your affidavit --

5 A. Yes.

6 Q. -- and the phrase in the  
7 first sentence, "working towards exercising  
8 jurisdiction".

9 A. Yes.

10 Q. To your knowledge, is ISC  
11 funding First Nations to help them work towards  
12 exercising jurisdiction?

13 A. To the best of my knowledge,  
14 what I can say is that as part of the CWJI, much of  
15 the work that was undertaking or work that is  
16 undertaken by an entity of First Nation would be  
17 funded for that capacity portion up to the time of  
18 exercising jurisdiction. So the preliminary work  
19 would have been funded through an ongoing work, of  
20 course, through CWJI.

21 Q. All right. So the answer to  
22 my question is "yes"?

23 A. Yes. Sorry. Yes.

24 Q. So the second question is you  
25 were asked a lot of questions about C-92. Who does

1 that work within ISC?

2 A. Within ISC it is my sector,  
3 so definitely the First Nation Child and Reform --  
4 Child and Family Services Reform sector. It falls  
5 under two individuals. There is Isa Gros-Louis,  
6 who is their Reform branch, and also the addition  
7 of a new branch with respect to the negotiation of  
8 those agreements, and that's done -- it continues  
9 to be under James Sutherland, who is currently  
10 acting as our Assistant Deputy Minister but  
11 retaining a role on those tables.

12 Q. All right. And when you say  
13 negotiation of those agreements, are you talking  
14 about coordination agreements?

15 A. Yes.

16 Q. To your understanding, do  
17 those discussions involve discussions about  
18 funding?

19 A. Yes, to the best of my  
20 knowledge, that is the appropriate form to be  
21 raising them.

22 Q. All right. And the third  
23 question I have is, you have used the terms  
24 "tripartite" and "trilateral" in giving your  
25 evidence here this afternoon. Do those terms mean



1 anything different?

2 A. From my perspective, no.

3 It's three parties, be it the province, the  
4 federal, and whatever Indigenous entity, agency or  
5 other representative organization.

6 Q. All right. And my last  
7 question, Ms. Nepton. Mr. Taylor asked you several  
8 questions about your qualifications. Apart from  
9 your legal training, what in your experience,  
10 either your life experience or your formal  
11 training, prepared you for the job you have?

12 A. I think when you look at what  
13 is written in my affidavit, yes, you know, I have a  
14 law degree. But really what compelled me to come  
15 here was the subject matter itself. And as I get -  
16 - I think anybody who has been raised in a First  
17 Nation family definitely knows and is related to  
18 children who are in the family who have been in the  
19 care system or, in fact, have friends who were  
20 raised in the foster system or, you know, captured  
21 or fall in the victims of Sixties Scoop and  
22 residential schools.

23 And so these are really complex,  
24 but for me, from the human perspective, very  
25 compelling and very real issues that play out in my

1 family, in others' families. And it also, I think,  
2 allows me to learn a lot from others and learn from  
3 -- you know, besides just ISC, I like what I learn  
4 from others -- others being partners,  
5 organizations, First Nations leadership and also,  
6 you know, just from the news.

7                   Like I said, for me, from my  
8 perspective, the work with leadership and  
9 organizations is something that I have always  
10 really enjoyed. It keeps me grounded and I never  
11 cease to learn and appreciate the elders that  
12 attend a lot of the meetings, especially being far  
13 away from home.

14                   So while I'm far, I can be close  
15 or at least feel close to who I am as a person.

16                   MR. FRATER: Thank you. Those are  
17 all the questions I have in re-examination, Madam  
18 Chair.

19                   THE CHAIR: Thank you. Thank you  
20 everyone. Thank you, Ms. Nepton. This was a long  
21 day for you.

22                   THE WITNESS: It was a long day  
23 for everyone.

24                   THE CHAIR: Yes. Is there any  
25 benefit -- will any party ask for a case management

1 after this? If the answer is no -- I see some  
2 people saying -- so we will adjourn and thank you  
3 very much. Have a good day.

4 THE WITNESS: Have a good weekend.  
5 Thank you.

6 UNIDENTIFIED FEMALE: Take care,  
7 everyone. Bye-bye.

8 UNIDENTIFIED MALE: Thank you very  
9 much.

10 UNIDENTIFIED FEMALE 2: Thank you.  
11 --- Whereupon the proceeding adjourned.