



INQUIRY RESPECTING THE TREATMENT, EXPERIENCES AND OUTCOMES OF INNU IN THE CHILD PROTECTION SYSTEM

English Transcript

Volume 60
(with video transcript)

*Commissioners: Retired Judge James Igloliorte, Dr. Mike Devine and
Anastasia Qupee*

Monday

08 September 2025

COMMISSIONER IGLOLIORTE: Good morning, ladies and gentlemen.

I'll be asking Anne to come forward now as our interpreter, and we'll be beginning the morning with a prayer from Elder Tshaukuesh Penashue – Elizabeth. So when you're ready, Elizabeth, we welcome you back again. It's so good to see you. It's good to see you in good health.

We know that Mr. Gregoire is going to be the first witness, but before he begins, we have our opening comments in any event. After that, we'll give the very anxious Inquiry counsel a chance to speak with their witness and put him on the stand in a few minutes' time. But we'll begin with some introductory prayers as well as our comments.

Anne, sorry about that.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

COMMISSIONER IGLOLIORTE: Elder Tshaukuesh Penashue has been a mentor for our Inquiry now for all three years. She has been here faithfully and leading us in a prayer each day that we started and ending our day in prayer as well. We're so happy that she's healthy and she's with us, and we'd like to ask her if she would start today's proceedings with a prayer.

INTERPRETER NUNA [Sheshatshiu-aimun spoken.]

ELDER PENASHUE: [Sheshatshiu-aimun spoken.]

COMMISSIONER IGLOLIORTE: Tshinashkumitin, Tshaukuesh.

Thank you very much, everyone and welcome to all of you, counsel for the three parties, province, Canada, as well as the Innu representative counsel, including the IRT and their counsel as well. Leadership of the Innu – they're here through their counsel. Welcome to the Inquiry staff and Inquiry counsel and everyone else who is in attendance today.

We have with us Heidi from CBC who's been faithfully working with us to spread, to the public, the way that the Inquiry is working. We're grateful for that.

Mr. Brian Harvey is there as our lead executive officer. He is ensuring that, as we do our work, he is guided by the attendance, guided by the mandate that we have and working closely with our counsel to make sure everything fits in place.

We're grateful for the welcome from the community, Sheshatshiu. Every time we've been here, we've been welcome and the leadership has been a part of the work that we've been doing.

Recall that this is an Inquiry respecting the treatment and outcomes and the experiences of Innu in the child protection system. In that regard, we have been working diligently to try and meet the requirements of our mandate and today, as will be explained to you, this is a formal hearing where we present witnesses who may have already spoken and the opportunity to hear them on the screen and then to have them cross-examined is the procedure we're taking today.

We're grateful for Anne Rich, our star interpreter for the Inquiry, and, as Elder Tshaukuesh Penashue has already said, for always being with us. We appreciate their presence, their support and their guidance.

You can see that, as Elizabeth has pointed out, I'm wearing my new Inquiry suit. It was a gift from a family, the Sylvester-Rich family, in Natuashish the last time we were there. Also, we were gifted with a replica of an Innu sled and our two Innu dolls are travelling on that Innu sled as you can see in front of us.

We appreciate the work of Eastern Audio, our staff, in preparing this facility for us today, and without their work, the pre-work that they do for us, this would be a very different situation.

I'll ask now the other Commissioners to make their opening remarks.

Yes, and we want to continue to let the Innu community know, in their language, where we are, what work the Inquiry has done, because there are people who watch these proceedings as they're being aired by Eastern Audio, and we want to make sure that we give a refresher each time we come here about what we've done, what we plan to do and where we are today. This is the message that Nashtash will be giving.

B. BROOKWELL: Sorry to interrupt, Commissioners, but are we gonna pause for some translation first or –

COMMISSIONER IGLOLIORTE: Sorry about that, Anne.

Do you want me to say it again?

INTERPRETER NUNA: No, I got it.

COMMISSIONER DEVINE: No, she's –

COMMISSIONER IGLOLIORTE: I knew you did.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

COMMISSIONER IGLOLIORTE: Thank you, Anne, for remembering all that, and thank you, Ben, for reminding me.

Commissioner Devine was frantically trying to let me know that I'd forgotten one of the main things that I

continue to remind counsel, and that is to give the interpreter space to do their job properly.

COMMISSIONER DEVINE: Yes, Jim, and thank you for that, because I would hope that you will help to remind me, too, because I've forgotten more than once, Anne, over this past three years now.

First of all, just briefly I'd like to say – add my thanks to the community for their welcome. Being back here at the Youth Centre for the Inquiry has become a very familiar place for us, and a very welcoming place.

We want to do something a little bit different this morning and so we're going to go right into providing now an Inquiry overview. We have done it before but now we're doing it again this morning, and we will have it available on Facebook also later for people to view and to hear.

So what I'm going to do now – Anne, it'll give you a little break – I'm going to provide the overview in English, of course. My Innu-aimun is not quite there yet. Then Anastasia will do it in Innu-aimun separately. So we'll have the full narrative on that, okay.

We've been asked to give an overview of the Inquiry, so I'll go over it in English and Qupee will do the same information also in Innu-aimun. Since it started in May of 2022, the Inquiry has heard from about 100 community members during our eight weeks of community meetings in both Sheshatshiu and Natuashish. We heard personal, heart-rendering and inspiring stories of the lived experience of Innu. We've learned about the Innu history, culture and connection to Nutshimit – the land.

In July, we concluded circle hearings for two of the six investigations into the lives of Innu young people who had died during or following their time in the child protection system. Two more hearings are now planned for November of this year. This week will be our sixth week of formal hearings. We've held five weeks already, gathering information or evidence on Innu history, the history of child protection in the province and in Innu communities.

This week, we'll hear more about Innu history and about the relationship between the Innu and the Government of Canada. During formal hearings, we will only hear from scheduled witnesses; however, we invite everyone to come and to listen.

The Commissioners will put together all of the information that we receive from this Inquiry and a report will be delivered no later than October 31, 2026.

Thank you.

COMMISSIONER QUPEE: Good morning.

[Sheshatshiu-aimun spoken.]

So I just gave a brief overview, as well, in what Mike just spoke about. As he said, we have spoken to 100 community members from both communities. We've begun our investigations, the death investigations, and we're doing two more in November and, this week, we're doing the formal hearings, as everybody knows, and to hear from the witnesses. And in October 31, we'll have our report done and submitted to both governments, Innu Nation, provincial and federal.

Again, thank you.

Tshinashkumitin.

COMMISSIONER IGLOLIORTE: Thank you very much.

I think it's appropriate, this time, to take a break before we continue with the formal hearing so that Inquiry counsel can make sure that their witness who is severely hearing challenged – and you can understand that it's not simple to try and decide how to make sure that he's given the chance to give his testimony with those issues, but we will see if we can proceed to the next step, which is hearing the testimony of George Gregoire.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

COMMISSIONER IGLOLIORTE: Thank you.

Counsel will let us know when they're ready to continue. We'll have a break now.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

Recess

COMMISSIONER IGLOLIORTE: The witness who was about to testify and to be cross-examined is unavailable, so we'll ask counsel for the Inquiry to let us know what we will do in the meantime.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

K. LOCKYER: Good morning, everybody.

I'm Kelsie Lockyer. I'm one of the counsel for the Commission. I'm very happy to be here this morning for our six week of hearings. It is my first time in Labrador, but I'm quite happy to be here and quite honoured to be here for this important work.

So as we have a bit of a modification to the schedule while we try to determine the best way for Mr. Gregoire to give his evidence, I'd first like to enter the proposed exhibits. I'd like to have them entered as exhibits. So that would be proposed Exhibit 377 to proposed Exhibit 423 to have entered as exhibits.

Now to move ahead with our schedule. While we hope to hear from Mr. Gregoire later, we'll move ahead now to what we were supposed to do on Wednesday afternoon, which is a prerecorded video by myself and

Molly Churchill. It will be reading some important case excerpts into the record.

The entirety of those cases are being entered for the consideration of the Commissioners, but there are specific excerpts that we would like to point out.

As well, the prerecording by Molly and myself was done in English, but it is available in Innu. And the headsets are just here behind me. The translation is available on channel 1 for anybody who would like to listen.

COMMISSIONER IGLOLIORTE: So where are the headsets?

K. LOCKYER: Just here by the door right there.

COMMISSIONER IGLOLIORTE: So, David and Edward, if anybody wants to use them, you can help them out, please. The headsets, right there.

And we want to explain that you're going to be seeing a witness testifying, and then there'll be a translation. So there'll be quite a long period after the person speaks that you will hear the Innu-aimun translation. So just remember it's going to take a while.

Okay, I think we're ready to proceed please, technicians, and we can turn down the lights.

[Video played.]

[Transcript of video starts.]

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1 August 7, 2025 2 3 Molly Churchill: 4 Hello. My name is Molly Churchill. I'm a lawyer 5 working for the inquiry. And I'm here today with 6 my colleague, Kelsie Lockyer. There are some 7 Canadian Human Rights Tribunal decisions 8 regarding on-reserve Child and Family Services 9 that have been and/or will be mentioned in 10 testimony. And a number of those decisions are 11 being proposed -- put forward as exhibits to this 12 inquiry. And we believed it would be helpful for 13 the commissioners and for the Innu public to hear 14 directly some of what the tribunal found and 15 ordered. 16 So we'll be taking some time today to read 17 from some of those decisions. I'm going to be 18 sharing my screen throughout, so that the 19 exhibits -- you can follow along in the exhibits. 20 Kelsie, over to you. 21 Kelsie Lockyer: 22 So to begin, we will first look at a decision. 23 The first decision of focus will be a decision 24 from January of 2016. And this decision is often	1 reserves across Canada have impacted and continue 2 to impact First Nations children, their families, 3 and their communities. 4 The tribunal found that Canada racially 5 discriminated against First Nations children on 6 reserve and in the Yukon in a systemic way, not 7 only by underfunding the FNCFS Program, but also 8 in the manner that it designed, managed and 9 controlled it. One of the worst harms found by 10 the tribunal was by the FNCFS Program creating 11 incentives to remove First Nations children from 12 their homes, families, and communities. 13 Another major harm to First Nations children 14 was that zero cases were approved under Jordan's 15 Principle, given the narrow interpretation and 16 restrictive eligibility criteria developed by 17 Canada. The tribunal found that more than just 18 funding, there is a need to refocus the policy of 19 the program to respect human rights principles 20 and sound social work practice in the best 21 interest of children. The tribunal ordered 22 Canada to cease the discriminatory practice, take 23 measures to address and prevent it from 24 reoccurring, and to reform the FNCFS Program and
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1 referred to as the Merits Decision. So these 2 excerpts are found in 2022 CHRT 8, which is 3 Exhibit P-428. And as you can see there, the 4 decision date was March 24th of 2022, between 5 First Nations Child and Family Caring Society of 6 Canada and the Assembly of First Nations as 7 Complainants and the Canadian Human Rights 8 Commission as the Commission and the Attorney 9 General of Canada representing the Minister of 10 Indigenous and Northern Affairs Canada as the 11 Respondent. And further, you can see some of the 12 interested parties there. 13 So before reading from the Merit Decision 14 itself, we'll start with the tribunal's own 15 summary of that decision, which is provided in 16 this decision here. 17 So to begin, reading from paragraph 2, in 18 2016, the tribunal released its First Nations 19 Child and Family Caring Society of Canada et al. 20 v. Attorney General of Canada for the Minister of 21 Indian and Northern Affairs Canada, 2016 CHRT 2, 22 the Merit Decision, and found that this case is 23 about children and how the past and current child 24 welfare practices in First Nations communities on	1 the 1965 agreement in Ontario to reflect the 2 findings in the Merits Decision. 3 The tribunal determined it would proceed in 4 phases for immediate, mid-term and long-term 5 relief so as to allow immediate change, followed 6 by adjustments, and finally, sustainable 7 long-term relief informed by data collection, new 8 studies, and best practices as identified by 9 First Nations experts, the specific needs of 10 First Nations communities, and of First Nations 11 agencies, the National Advisory Committee on 12 Child Family and Services reform, and the 13 parties. 14 The tribunal also ordered Canada to cease 15 applying its narrow definition of Jordan's 16 Principle and to take measures to immediately 17 implement the full meaning and scope of Jordan's 18 Principle. Jordan's Principle orders and the 19 substantive equality goal were further detailed 20 in subsequent rulings. 21 So next, we will move to key findings, orders 22 in 2016 CHRT 2, which is Exhibit P-431. So in 23 the Merit Decision, the tribunal provided an 24 acknowledgement and explained the Complaint

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1 before it. And this begins at paragraph 1. 2 So this decision concerns children. More 3 precisely, it is about how the past and current 4 child welfare practices in First Nations 5 communities on reserves, across Canada, have 6 impacted and continue to impact First Nations 7 children, their families, and their communities. 8 Continuing now at paragraph 5, at issue are 9 the activities of Indian and Northern Affairs 10 Canada (INAC), known at the time of the hearing 11 as Aboriginal Affairs and Northern Development 12 Canada (AANC), in managing First Nations Child 13 and Family Service (the FNCFS Program), its 14 corresponding funding formulas, and a handful of 15 other related provincial and territorial 16 agreements that provide for Child and Family 17 Services to First Nations living on reserves and 18 in the Yukon territory. 19 Pursuant to the FNCFS Program and other 20 agreements, Child and Family Services are 21 provided to First Nations on reserve and in the 22 Yukon by First Nations and family services 23 agreements are agencies (FNCFS agencies) or by 24 the province or territory in which the community	1 Molly Churchill: 2 In this decision, the tribunal discussed the 3 creation of Canada's First Nations Child and 4 Family Services program and discussed the 5 program's objectives and principles. I'll start 6 at paragraph 50. 7 In the 1970s and early 1980s, concerns began 8 being raised over the Child and Family Services 9 being provided to First Nations by the provinces. 10 Namely, the services were minimal, not culturally 11 appropriate, and there were an alarming number of 12 First Nations children being removed from their 13 communities. 14 This started a move towards the creation of 15 community-specific FNCFS agencies. AANC funded 16 these agencies through ad hoc arrangements. But 17 authorities for doing so were unclear, and 18 funding was inconsistent. 19 In 1986, AANC put a moratorium on the ad hoc 20 arrangements for the development of FNCFS 21 agencies. This moratorium remained in place 22 until 1990, when AANC implemented the FNCFS 23 Program. 24 At section 1.3 of the 2005 FNCFS National
Page 6	Page 8
1 is located. In either situation, the Child and 2 Family Services legislation of the province or 3 territory in which the First Nation is located 4 applies. AANC funds the Child and Family 5 Services provided to First Nations by FNCFS 6 agencies or the province or territory. 7 Continuing now, paragraph 6, pursuant to 8 section 5 of the Canadian Human Rights Act (the 9 CHRA), the Complainants, the First Nations Child 10 and Family Caring Society of Canada (the Caring 11 Society), and the Assembly of First Nations (the 12 ANF), alleged that AANC discriminates in 13 providing Child and Family Services to First 14 Nations on reserve and in the Yukon on the basis 15 of race and/or national or ethnic origin by 16 providing inequitable and insufficient funding 17 for those services (the Complaint.) On October 18 14th, 2008, the Canada Human Rights Commission 19 (the Commission) referred the Complaint to this 20 tribunal for an inquiry. 21 And then going ahead there to paragraph 11, 22 the present decision deals with the merits of 23 this Complaint. 24	1 Program Manual, the objective and principles of 2 the FNCFS Program are outlined and include, the 3 primary objective of the FNCFS Program is to 4 support culturally appropriate Child and Family 5 Services for Indian children and families, 6 resident on reserve, in the best interest of the 7 child in accordance with the legislation and 8 standards of the referenced province. 9 FNCFS will be managed and operated by 10 provincially mandated First Nations organizations 11 recipients, which provides services to First 12 Nations children and families, ordinarily 13 resident on reserve. FNCFS recipients will 14 manage the program in accordance with provincial 15 or territorial legislation and standards. INAC 16 will provide funding in accordance with its 17 authorities. 18 The Child and Family Services offered by FNCFS 19 on reserve are to be culturally relevant and 20 comparable but not necessarily identical to those 21 offered by the reference province or territory to 22 residents living off reserve in similar 23 circumstances. 24 Protecting children from neglect and abuse is

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1 the main objective of Child and Family Services. 2 FNCFS also provide services that increase the 3 ability and capacity of First Nations families to 4 remain together and to support the needs of First 5 Nations children in their parental homes and 6 communities. 7 Continuing at paragraph 53, in 2012, following 8 the filing of the Complaint, the wording of the 9 objective of the FNCFS Program was modified but 10 is still similarly described as follows. The 11 FNCFS Program provides funding to assist in 12 ensuring the safety and well-being of First 13 Nations children, ordinarily resident on reserve, 14 by supporting culturally appropriate prevention 15 and protection services for First Nations 16 children and families. These services are to be 17 provided in accordance with the legislation and 18 standards of the province or territory of 19 residence and in a manner that is reasonably 20 comparable to those available to other provincial 21 residents in similar circumstances. 22 The tribunal explained Canada's approach to 23 funding under the FNCFS Program. I'm going to 24 read starting from paragraph 121. AANC funds	1 the authorities and places them into a usable 2 context. Directive 20-1 is AANC's national 3 policy statement on FNCFS. 4 Going to paragraph 124, prior to 2007, around 5 the time of the Complaint, all provinces and the 6 Yukon, except Ontario, functioned under Directive 7 20-1. Currently, New Brunswick, British 8 Columbia, Newfoundland and Labrador, and the 9 Yukon are subject to the application of Directive 10 20-1. 11 In line with the FNCFS Program, the principles 12 of Directive 20-1 include a commitment to 13 expanding First Nations Child and Family Services 14 on reserve to a level comparable to the services 15 provided off reserve in similar circumstances in 16 accordance with the applicable provincial Child 17 and Family Services legislation. 18 Furthermore, Directive 20-1 supports the 19 creation of First Nations designed, controlled, 20 and managed services. Under Directive 20-1, 21 funding for FNCFS agencies is determined through 22 two separate categories, operations and 23 maintenance. 24 Operational funding is intended to cover
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1 Child and Family Services on reserves and in the 2 Yukon in various ways. At the time of the 3 Complaint, there were 105 FNCFS agencies in the 4 provinces across Canada, 104 at the time of the 5 hearing. 6 The FNCFS Program applies to most of the FNCFS 7 agencies in Canada, using two funding formulas, 8 Directive 20-1 and the Enhanced 9 Prevention-Focused Approach (the EPFA). In 10 Ontario, funding is provided through the 1965 11 agreement. In certain parts of Alberta and 12 British Columbia, funding is provided through the 13 Alberta Reform Agreements and the BC MOU and 14 since 2012, the BC Service Agreement. Finally, 15 in the Yukon, funding is allocated pursuant to 16 the Yukon Funding Agreement. 17 Moving ahead to paragraph 123, funding for 18 FNCFS agencies is determined in accordance with 19 AANC authorities. Those authorities are obtained 20 from the federal government through cabinet and 21 treasury board and are reflected in the program 22 directive. The program directive, also called 23 Directive 20-1 and found at Appendix A of the 24 2005 FNCFS National Program Manual, interprets	1 operations and administration costs for such 2 items as salaries and benefits for agency staff, 3 travel expenses, staff training, legal services, 4 family support services, and agency 5 administration, including rent and office 6 expenditures. It is calculated using a formula 7 based on the on-reserve population of children 8 aged 0 to 18, as reported annually by First 9 Nations bands across Canada. And here, the 10 tribunal reproduces and explains what that 11 formula is. And you can see there are various 12 adjustment factors, remoteness factors. 13 Paragraph 128, the amounts in the operational 14 funding formula are based on certain assumptions, 15 emanating from the time it was put in place in 16 the early 1990s. On average, 6 percent of the 17 on-reserve child population is in care. On 18 average, 20 percent of families on reserve 19 require Child and Family Services or are 20 classified as multi-problem families. One 21 childcare worker and one family support worker 22 for every twenty children in care. One 23 supervisor and one support staff for every five 24 workers. Wages based on average salaries in

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1 Ontario and Manitoba. 2 I'm jumping ahead to paragraph 131. That was 3 operations funding. Paragraph 131 says, 4 maintenance funding is intended to cover the 5 actual costs of eligible expenditures for 6 maintaining a First Nations child, ordinarily 7 resident on reserve, in alternate care out of the 8 parental home. 9 Children must be taken into care in accordance 10 with provincially or territorially approved 11 legislation, standards, and rates for foster 12 home, group home, and institutional care. FNCFS 13 agencies are required to submit monthly invoices 14 for children in care out of the parental home and 15 are to be reimbursed on the basis of actual 16 expenditures. That was Directive 20-1. 17 Starting at paragraph 136, the tribunal says, 18 since 2007, AANC has transitioned the funding 19 model for certain provinces under the FNCFS 20 Program from Directive 20-1 to the EPFA. An 21 agreement was reached to implement the EPFA in 22 Alberta and Saskatchewan in 2007, Nova Scotia in 23 2008, Quebec in 2009, Prince Edward Island in 24 2009, and Manitoba in 2010.	1 First Nations. Although the NPR pre-dates the 2 Complaint by about eight years, its study of the 3 impacts of Directive 20-1 is still relevant, 4 given that the funding formula still applies to 5 many FNCFS agencies and in the Yukon. The report 6 also outlines a rigorous methodology and 7 consultation in arriving at its conclusions. The 8 panel finds this early study of Directive 20-1 9 informative and a useful starting point in 10 understanding the impacts of AANC's funding 11 formula on First Nations children and families on 12 reserves. 13 Skipping ahead now to paragraph 152. 14 According to the NPR, program Directive 20-1 was 15 developed to provide equity, predictability, and 16 flexibility in funding of First Nations Child and 17 Family Services agencies. A principle of 18 Directive 20-1 is that AANC is committed to the 19 expansion of Child and Family Services on reserve 20 to a level comparable to the services off reserve 21 in similar circumstances. 22 Now, paragraph 153, however, the NPR found 23 that the funding formula under Directive 20-1 24 inhibited FNCFS agencies' ability to meet the
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1 Under EPFA, prevention is included as a third 2 funding stream to operations and maintenance. 3 Prevention services are designed to reduce the 4 incidence of family dysfunction and breakdown or 5 crisis and to reduce the need to take children 6 into alternate care or the amount of time a child 7 remains at alternate care. 8 Eligible expenditures under the prevention 9 funding stream include salaries and benefits for 10 prevention and resource workers, travel, 11 paraprofessional services, family support 12 services, mentoring services for children, home 13 management services, and non-medical counselling 14 services not covered by other funding sources. 15 Kelsie, I'll hand it over to you. 16 Kelsie Lockyer: 17 Thank you, Molly. So further ahead in the 18 decision, the tribunal considered various studies 19 and reports conducted between the year 2000 and 20 2012 on the FNCFS Program and its funding. So to 21 begin there, at paragraph 150, with the Joint 22 National Policy Review. 23 The NPR was published in 2000. It is a 24 collaborative report by AANC and the Assembly of	1 expectation of providing a comparable range of 2 Child and Family Services on reserve for a number 3 of reasons. The tribunal then goes on to list 4 those reasons and continued at paragraph 154 to 5 make 17 recommendations. 6 So continuing there, the NPR made 17 7 recommendations to address these areas of concern 8 with respect to Directive 20-1, including 9 investigating a new methodology for funding 10 operations. It was recommended that the new 11 funding methodology considers factors such as 12 workload, case analysis, demographic, national 13 demographics, and impact on large and small 14 agencies and (inaudible) of scale. 15 Molly Churchill: 16 The tribunal also considered reports called the 17 Wende Reports. So starting at paragraph 155, the 18 NPR, so that's the Joint National Policy Review, 19 led to the establishment of the Joint National 20 Policy Review, National Advisory Committee (the 21 NAC) in 2001. The NAC involved officials from 22 AANC, the AFN, and FNCFS agencies. 23 One of the tasks of the NAC was to explore how 24 to change parts of Directive 20-1 in line with

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1 the NPR recommendations. Funded by AANC, the NAC 2 commissioned further research in order to 3 establish that revisions of the FNCFS Program and 4 Directive 20-1 were warranted. Three reports 5 were produced on the subject, the Wende Reports. 6 Each of the three reports outlines clearly the 7 methodology used to arrive at its findings and 8 explains those findings in great detail. 9 I'm going to jump ahead to paragraph 159 now. 10 Wende Report 1 presents three options to address 11 its conclusion. One, redesign the existing 12 funding formula. Two, follow the funding model 13 of the province or territory in which the agency 14 is located, or three, a new First Nations-based 15 formula that funds agencies on the basis of 16 community needs and assets, along with the 17 particular socioeconomic and cultural 18 characteristics of the communities and Nations 19 which the agencies serve. 20 I'm jumping ahead to paragraph 162. Overall, 21 with regard to funding under the FNCFS Program, 22 Wende Report 2 found that First Nations Child and 23 Family Services agencies are inadequately funded 24 in almost every area of operation, ranging from	1 support for preventive early intervention and 2 least intrusive measures. This is because the 3 funding formula provides dollar-for-dollar 4 reimbursement of maintenance expenditures. And 5 prevention services are often not deemed to fall 6 under maintenance. As a result, prevention 7 funding was identified as being inadequate, in 8 spite of the fact that such services are mandated 9 under most provincial child welfare legislation. 10 Jumping ahead to 169. Wende Report 2 11 concludes option three, a new First Nations-based 12 funding formula that funds agencies based on 13 needs and assets, is the most promising way to 14 address these deficiencies because of the 15 possibility of reconceptualizing the pedagogy, 16 policy, and practice in First Nations child 17 welfare in a way that better supports sustained 18 positive outcomes for First Nations children. 19 Paragraph 170, the third Wende Report involved 20 the development and costing of the recommended 21 changes arising from the second report. 22 And paragraph 183, finally, Wende Report 3 23 found jurisdictional disputes between federal 24 government departments and between the federal
Page 18	Page 20
1 capital costs, prevention programs, standards and 2 evaluation, staff salaries, and child in-care 3 programs. The disproportionate need for services 4 among First Nations children and families, 5 coupled with the underfunding of the First 6 Nations Child and Family Services agencies that 7 serve them, has resulted in an untenable 8 situation. 9 Based on its research findings, the report 10 indicates that Directive 20-1 would need 11 substantial alteration in order to meet the 12 requirements of the FNCFS Program and to ensure 13 equitable child welfare services for First 14 Nations children resident on reserve. 15 Jumping ahead to paragraph 168. Of particular 16 note, funds for prevention and least disruptive 17 measures were identified as inadequate, along 18 with 84 percent of reporting FNCFS agencies 19 feeling that current funding levels were 20 insufficient to provide adequate culturally-based 21 services. 22 In this regard, the report found that the 23 present funding formula provides more incentives 24 for taking children into care than it provides	1 government and provinces over who should fund a 2 particular service took about 50.25 person hours 3 to resolve, resulting in a significant tax on the 4 limited resources of FNCFS agencies. As a 5 result, it recommends the immediate 6 implementation of Jordan's Principle for 7 jurisdictional dispute resolution and its 8 integration into any funding agreements between 9 AANC and the provinces. 10 Jordan's Principle asserts that the 11 government, federal or provincial or department 12 that first receives a request to pay for a 13 service must pay for the service and resolve 14 jurisdictional issues thereafter. 15 I'm going to jump ahead to paragraph 257 now. 16 The tribunal states, there are indications that 17 AANC relied on these reports in amending the 18 FNCFS Program. In its October 2006 fact sheet, 19 AANC acknowledged the impacts and findings of the 20 Wende Reports, along with the NPR, and committed 21 to refocusing the FNCFS Program to improve 22 outcomes for First Nations children and families 23 on reserve. 24 And this is a quote from that document now.

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1 "Currently, program funding is largely based on 2 protection services, which encourage agencies to 3 remove First Nation children from their parental 4 homes, rather than providing prevention services, 5 which could allow children to remain safely in 6 their homes." 7 I'm going to jump ahead to where the document 8 says "Current issues." First Nation children are 9 disproportionately represented in the child 10 welfare system. Placement rates on reserve 11 reflect a lack of available prevention services 12 to mitigate family crises. 13 And I'm going to jump ahead to where the 14 document says, "The future." A Joint National 15 Policy Review on First Nations Child and Family 16 Services, completed in 2007, recommended that the 17 federal government increase prevention services 18 for children at risk, services that must be 19 provided before considering the removal of the 20 child and placement in out-of-home care and that 21 it provide adequate funding for this purpose. 22 I'm going to jump to the second bullet here. 23 The Government of Canada is committed to working 24 with First Nations, provincial, territorial, and	1 intervention/prevention has become standard 2 practice in the provinces and territories, 3 numerous US states, and New Zealand. INAC CFS 4 has been unable to keep up with the provincial 5 changes. Where prevention supports are common 6 practice, results have demonstrated that rates of 7 children in care and costs are stabilized and/or 8 reduced. 9 I'll hand it back to you, Kelsie. 10 Kelsie Lockyer: 11 Thank you. To skip ahead now to a little later 12 in the decision, to the 2008 report of the 13 Auditor General of Canada. And that begins at 14 page -- or paragraph 186. So following a written 15 request from the Caring Society, the Auditor 16 General of Canada initiated a review of AANC's 17 FNCFS Program and reported the findings to the 18 House of Commons in 2008. 19 The purpose of the review was to examine the 20 management structure, the processes, and the 21 federal resources used to implement the federal 22 policy on reserves. 23 The 2008 report of the Auditor General of 24 Canada echoed the findings of the NPR and the
Page 22	Page 24
1 federal partners and agencies to implement a 2 modernized vision of the First Nations Child and 3 Family Services Program, a program that strives 4 for safe and strong children and youth supported 5 by healthy parents. The strategy is to refocus 6 the program from a protection-based approach 7 towards a preventive-based model, promote a 8 variety of care options to provide children and 9 youth with safe, nurturing, and permanent homes, 10 and build on partnerships and implement practical 11 solutions to improve child intervention services. 12 I'm going to jump ahead to paragraph 270. In 13 another presentation, AANC describes Directive 14 20-1 as broken. And the tribunal then reproduces 15 this document. The current system is broken, 16 i.e. piecemeal and fragmented. The current 17 system contributes to dysfunctional 18 relationships, i.e. jurisdictional issues at 19 federal and provincial levels, lack of 20 coordination, working at cross purposes, silo 21 mentality. 22 The current program focuses on protection, 23 taking children into care, rather than 24 prevention, supporting the family. Early	1 Wende Reports. Namely, that current funding 2 practices do not lead to equitable funding among 3 Aboriginal and First Nation communities. The 4 findings of the 2008 report of the Auditor 5 General of Canada include, the funding formula is 6 outdated and does not take into account any costs 7 associated with modifications to provincial 8 legislation or with the changes in the way the 9 services are provided. 10 AANC has limited assurance that child welfare 11 services delivered on reserves comply with 12 provincial legislation and standards. Funding 13 levels are pre-determined without regard to the 14 services the agency is bound to provide under 15 provincial legislation and standards. 16 There is no definition of what is meant by 17 reasonably comparable services or way of knowing 18 whether the services that the program supports 19 are, in fact, reasonably comparable. 20 Furthermore, the child welfare issues may be 21 complicated by other social problems or health 22 issues. Access to social and health services, 23 aside from child welfare services to help keep a 24 family together, differs not only on and off

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1 reserves but among First Nations, as well.

2 AANC has not determined what other social and
3 health services are available on reserves to
4 support child welfare services. On-reserve child
5 welfare services cannot be comparable if they
6 have to deal with problems that off-reserves
7 would be addressed by other social and health
8 services.

9 I'm just reading just a portion of this next
10 point. There are no standards for FNCFS agencies
11 to provide culturally appropriate child welfare
12 services that meet requirements of provincial
13 legislation. And the tribunal goes on to expand
14 on this.

15 And again, I'm skipping another point here to
16 go ahead to, the funding formula is not
17 responsive to factors that can cause wide
18 variations in operating costs, such as
19 differences in community needs or in support
20 services available in the child welfare services
21 provided to on-reserve First Nation children and
22 in the actual work performed by FNCFS agencies.

23 Just to read a brief point of the next bullet
24 point, the formula is not adapted to small

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1 In February of 2009, the House of Commons
2 Standing Committee on Public Accounts held a
3 hearing on the 2008 report of the Auditor General
4 of Canada. This hearing was held with officials
5 from the office of the Auditor General of Canada
6 and AANC, given the importance of the safety and
7 well-being of all Canadian children and these
8 disturbing findings of the audit.

9 Just skip ahead now to paragraph 197. With
10 regard to the continued application of Directive
11 20-1 in many provinces and in the Yukon, the
12 standing committee expressed concern. They said,
13 "The committee is quite concerned that the
14 majority of First Nations children on reserves
15 continue to live under a funding regime which
16 numerous studies have found is not working and
17 should be changed."

18 According to the Joint National Policy Review,
19 the funding formula, inherent in Directive 20-1,
20 is not flexible and is outdated. The 2005 Wende
21 Report, which undertook a comprehensive review of
22 funding formulae to support First Nations Child
23 and Family Services agencies, found that the
24 current funding formula drastically underfunds

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1 agencies.

2 And then skipping ahead to the next one. The
3 shortcomings of the funding formula had been
4 known to AANC for years.

5 Now, we're moving ahead to paragraph 191. The
6 Auditor General of Canada made six
7 recommendations to address the findings in its
8 report. AANC agreed with all of the
9 recommendations and indicated the actions it has
10 taken or will take to address the
11 recommendations.

12 AANC's response to the 2008 report of the
13 Auditor General of Canada demonstrates its full
14 awareness of the impacts of its FNCFS Program on
15 First Nations children and families on reserves,
16 including that its funding is not in line with
17 provincial legislation and standards.

18 And at paragraph 192, the flaws with Directive
19 20-1 and EPFA would subsequently be scrutinized
20 by the Standing Committee on Public Accounts.

21 Next, the tribunal goes on to discuss the 2009
22 report of the Standing Committee on Public
23 Accounts. And this begins there at paragraph
24 193.

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1 primary, secondary, and tertiary child
2 maltreatment intervention services, including
3 least disruptive measures.

4 The report writes, the lack of early
5 intervention services contributes to a large
6 number of First Nations children entering care
7 and staying in care. An evaluation prepared in
8 2007 by INAC's departmental audit and evaluation
9 branch recommended that INAC correct weaknesses
10 in the First Nations Child and Family Service
11 programs' funding formula.

12 The OAG concluded, as currently designed and
13 implemented, the formula does not treat First
14 Nations or provinces in a consistent or equitable
15 manner. One consequence of this situation is
16 that many on-reserve children and families do not
17 have access to child welfare services defined in
18 relevant provincial legislation and available to
19 those living off reserves. Yet, this funding
20 formula continues.

21 As the Auditor General puts it, quite frankly,
22 one has to ask why a program goes on for 20
23 years, the world changes around it, and yet the
24 formula stays the same. Preventative services

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1 aren't funding, and all these children are being 2 put into care. While the committee appreciates 3 the efforts of the department is making to 4 develop new agreements based on the enhanced 5 prevention model, the committee completely fails 6 to understand why the old funding formula is 7 still in place. 8 Moving to new agreements should in no way 9 preclude making improvements to the existing 10 formula, especially as it may take years to 11 develop agreements with provinces. In the 12 meantime, many First Nations children are taken 13 into care when other options are available. This 14 is unacceptable and clearly inequitable. 15 Now, to go ahead to paragraph 205. It then 16 discusses the 2011 Status Report of the Auditor 17 General. So at paragraph 205, in 2011, the 18 Auditor General of Canada assessed AANC's 19 progress in implementing the recommendations from 20 the 2008 report of the Auditor General of Canada 21 and the 2009 report of the Standing Committee on 22 Public Accounts. 23 At paragraph 206, with regard to the 24 comparability of the services, the Auditor	1 paragraph, the panel does not accept AANC's 2 argument that the reports on the FNCFS Program 3 have little or no weight and accepts the findings 4 in those reports, along with the corroborating 5 information and documents relied on above. 6 Kelsie Lockyer: 7 To go ahead there now, to paragraph 465, the 8 tribunal found the Complaint substantiated and 9 ordered the reform of the FNCFS Program. 10 So beginning now at paragraph 456, in light of 11 the above, the panel finds the complainants have 12 presented sufficient evidence to establish a 13 prima facie case of discrimination under section 14 5 of the CHRA. Specifically, the prima facie 15 established that First Nations children and 16 families living on reserve and in the Yukon are 17 denied section 5A, equal child and family 18 services and/or differentiated adversely at 19 section 5B in the provision of Child and Family 20 Services. 21 Going ahead now to paragraph 457, through the 22 FNCFS Program and other related provincial and 23 territorial agreements, AANC provides a service 24 intended to ensure, arrange, support, and/or make
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1 General noted that, while AANC had agreed to 2 define what is meant by services that are 3 reasonably comparable, it had not done so. The 4 Auditor General stated that, until it does, it is 5 unclear what is the service standard for which 6 department is providing funding and what level of 7 services First Nation communities can eventually 8 expect to receive. 9 In addition, the Auditor General found that 10 AANC had not conducted a review of social 11 services available in the provinces to assess 12 whether the services provided to children 13 on-reserve are the same as what is available to 14 children off-reserve. 15 I'll hand it over now to you, Molly. 16 Molly Churchill: 17 So at paragraph 305, the tribunal says the 18 following. Overall, on the issue of the 19 relevance and reliability of the reports on the 20 FNCFS Program, the panel finds that from the 21 years 2000 to 2012, many reliable sources have 22 identified the adverse effects of the funding 23 formulas and structure of the FNCFS Program. 24 And going to the last sentence of that	1 available Child and Family Services to First 2 Nations on reserve. With specific regard to 3 FNCFS Program, the objective is to ensure 4 culturally appropriate Child and Family Services 5 to First Nations children and families on reserve 6 and in the Yukon that are intended to be in 7 accordance with the provincial, territorial 8 legislation and standards and provided in a 9 reasonably comparable manner to those provided 10 off reserve in similar circumstances. 11 However, the evidence in this case 12 demonstrates that AANC does more than just ensure 13 the provision of Child and Family Services to 14 First Nations. It controls the provision of 15 those services through its funding mechanisms to 16 the point where it negatively impacts children 17 and families on reserve. 18 At paragraph 458, AANC's design, management, 19 and control of the FNCFS Program, along with its 20 corresponding funding formulas and other related 21 provincial and territorial agreements, have 22 resulted in denials of services and created 23 various adverse impacts for many First Nations 24 children and families living on reserves.

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1 Non-exhaustively, the main adverse impacts 2 found by the panel are, first, the design and 3 application of Directive 20-1 funding formula, 4 which provides funding based on flawed 5 assumptions about children in care and population 6 thresholds that do not accurately reflect the 7 service needs of many on-reserve communities. 8 This results in inadequate fixed funding for 9 operation (including capital costs, multiples 10 offices, costs of living adjustment, staff 11 salaries and benefits, training, legal, 12 remoteness, and travel) and prevention costs 13 (which include primary, secondary, and tertiary 14 services to maintain children safely in their 15 family homes) hindering the ability of FNCFS 16 agencies to provincially/territorial mandated 17 child welfare services, let alone culturally 18 appropriate services to First Nations children 19 and families, and providing an incentive to bring 20 children into care because eligible maintenance 21 expenditures are reimbursable at cost. 22 The current structure and implementation of 23 EPFA funding formula, which perpetuates the 24 incentives to remove children from their homes	1 by Aboriginal people, and in particular, as a 2 result of the residential school system. 3 At paragraph 460, AANC's evidence and the 4 arguments challenging the complainant's 5 allegations of discrimination have been addressed 6 throughout this decision. Overall, the panel 7 finds AANC's position unreasonable, unconvincing, 8 and not supported by the preponderance of 9 evidence in this case. Otherwise, as mentioned 10 earlier, AANC did not raise a statutory exception 11 under sections 15 or 16 under the CHRA. 12 Going ahead now to paragraph 466, as a result 13 and having weighed all of the evidence -- 14 Molly Churchill: 15 Kelsie. 16 Kelsie Lockyer: 17 Apologies. 18 Molly Churchill: 19 That's okay. I'm going to step in for a moment, 20 if that's all right. 21 Kelsie Lockyer: 22 Oh, yes. Sorry about that. 23 Molly Churchill: 24 That's okay. I'm just going to jump back up
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1 and incorporates the flawed assumptions of 2 Directive 20-1 in determining funding for 3 operations and prevention and perpetuating 4 adverse impacts of Directive 20-1 in many 5 on-reserve communities. 6 The failure to adjust Directive 20-1 funding 7 levels since 1995, along with funding levels 8 under the EPFA since its implementation, to 9 account for inflation and the cost of living. 10 Going ahead there now, the application of the 11 1965 agreement in Ontario has not been updated to 12 ensure on-reserve communities comply fully with 13 Ontario's Child and Family Services Act. 14 Going ahead now to paragraph 459, the FNCFS 15 Program, corresponding funding formulas, and 16 other related provincial and territorial 17 agreements only apply to First Nations people 18 living on reserve and in the Yukon. It is only 19 because of their race and/or national or ethnic 20 origin that they suffer the adverse impacts 21 outlined above in the provision of Child and 22 Family Services. 23 Furthermore, these adverse impacts perpetuate 24 the historical disadvantage and trauma suffered	1 really quickly to paragraph 458 and the main 2 adverse impacts found by the panel. We just 3 accidentally skipped over two bullets here, which 4 I think should be read out loud. 5 So the failure to coordinate the FNCFS Program 6 and other related provincial, territorial 7 agreements with other federal departments and 8 government programs and services for First 9 Nations on reserve resulting in services gaps, 10 delays, and denials for First Nations children 11 and families. 12 And finally, the narrow definition and 13 inadequate implementation of Jordan's Principle, 14 resulting in service gaps, delays, and denials 15 for First Nations children. 16 I'm going to pick up now at paragraph 461. 17 Despite being aware of the adverse impacts 18 resulting from the FNCFS Program for many years, 19 AANC has not significantly modified the program 20 since its inception in 1990. Notwithstanding 21 numerous reports and recommendations to address 22 the adverse impacts outlined above, including its 23 own internal analysis and evaluations, AANC has 24 sparingly implemented the findings of those

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1 reports. 2 While efforts have been made to improve the 3 FNCFS Program, including through the EPFA and 4 other additional funding, those improvements 5 still fall short of addressing the service gaps, 6 denials, and adverse impacts outlined above, and 7 ultimately, failed to meet the goal of providing 8 culturally appropriate Child and Family Services 9 to First Nations children and families living on 10 reserve that are reasonably comparable to those 11 provided off reserve. 12 This concept of reasonable comparability is 13 one of the issues at the heart of the problem. 14 AANC has difficulty defining what it means and 15 putting it into practice. Mainly, because its 16 funding authorities and interpretation thereof 17 are not in line with provincial, territorial 18 legislation and standards. Despite not being 19 experts in the area of child welfare and knowing 20 that funding according to its authorities is 21 often insufficient to meet provincial, 22 territorial legislation and standards, AANC 23 insists that FNCFS agencies somehow abide by 24 these standards and provide reasonably comparable	1 comparable funding and comparable services. 2 Namely, this methodology does not account for the 3 higher service needs of many First Nations 4 children and families living on reserve, along 5 with the higher costs to deliver those services 6 in many situations. And it highlights the 7 inherent problem with the assumptions and 8 population levels built into the FNCFS Program. 9 AANC's reasonable comparability standard does 10 not ensure substantive equality in the provision 11 of Child and Family Services for First Nations 12 people living on reserve. 13 In this regard, it's worth repeating the 14 Supreme Court's statement in Withler at paragraph 15 59, that finding a mirror group may be 16 impossible, as the essence of an individual's or 17 group's equality claim may be that, in light of 18 their distinct needs and circumstances, no one is 19 like them for the purposes of comparison. 20 The statement fits the context of this 21 Complaint quite appropriately. That is, human 22 rights principles, both domestically and 23 internationally, require AANC to consider the 24 distinct needs and circumstances of First Nations
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1 Child and Family Services. 2 Instead of assessing the needs of First 3 Nations children and families and using 4 provincial legislation and standards as a 5 reference to design an adequate program to 6 address those needs, AANC adopts an ad hoc 7 approach to addressing needed changes to its 8 program. 9 And I'm going to jump ahead to the last 10 sentence of paragraph 463. The tribunal states, 11 a reform of the FNCFS Program is needed in order 12 to build a solid foundation for the program to 13 address the real needs of First Nations children 14 and families living on reserve. 15 Not being experts in child welfare, AANC's 16 authorities are concerned with comparable funding 17 levels. Whereas provincial, territorial Child 18 and Family Services legislation and standards are 19 concerned with ensuring service levels that are 20 in line with sound social work practice and that 21 meet the best interest of children. 22 It is difficult, if not impossible, to ensure 23 reasonably comparable Child and Family Services, 24 whereas there is this dichotomy between	1 children and families living on reserve, 2 including their cultural, historical, and 3 geographical needs and circumstances, in order to 4 ensure equality in the provision of Child and 5 Family Services to them. 6 A strategy premised on comparable funding 7 levels based on the application of standard 8 funding formulas is not sufficient to ensure 9 substantive equality in the provision of Child 10 and Family Services to First Nations children and 11 families living on reserve. 12 Kelsie Lockyer: 13 As a result, and having weighed all the evidence 14 and argument in this case on a balance of 15 probabilities, the panel finds the Complaint 16 substantiated. The panel acknowledges the 17 suffering of those First Nations children and the 18 families who are or have been denied an equitable 19 opportunity to remain together or to be reunited 20 in a timely manner. 21 We also recognize those First Nations children 22 and families who are or have been adversely 23 impacted by the Government of Canada's past and 24 current child welfare practices on reserve.

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1 Skipping ahead to paragraph 481, AANC's 2 ordered to cease its discriminatory practices and 3 reform the FNCFS Program and 1965 agreement to 4 reflect the findings in this decision. AANC is 5 also ordered to cease applying its narrow 6 definition of Jordan's Principle and to take 7 measures to immediately implement the full 8 meaning and scope of Jordan's Principle. 9 More than just funding, there is a need to 10 refocus the policy of the program to respect 11 human rights principles and sound social work 12 practice. 13 In the best interest of the child, all First 14 Nations children and families living on reserve 15 should have an opportunity, equal with other 16 individuals, to make for themselves the lives 17 they are able and wish to have and to have their 18 needs accommodated, consistent with their duties 19 and obligations as members of society. 20 And that concludes the excerpts from that 21 decision. 22 Molly Churchill: 23 The next decision that we are going to read from 24 is a decision from February of 2018. It's	1 orders in 2016 CHRT 2. Canada and the Canadian 2 Human Rights Commission filed submissions in 3 response to the motions. The motions were heard 4 from March 22nd to 24th, 2017, in Ottawa. This 5 ruling deals specifically with allegations of 6 non-compliance and related requests for further 7 orders with respect to immediate relief. 8 Now, if we go to paragraph 222, the tribunal 9 described its previous order. It considered 10 Canada's response to it, and it determined that 11 further orders were needed. So paragraph 222, 12 the panel ordered Canada to cease its 13 discriminatory practices immediately, knowing 14 that reform of the program would take time. 15 Accordingly, it ordered both immediate and 16 long-term remedies. The point of the immediate 17 order was to eliminate Canada's discriminatory 18 practices, including by ensuring that sufficient 19 funding was provided by Canada to First Nations 20 agencies at the next reasonable occasion, in 21 accordance with sections of the Canadian Human 22 Rights Act. 23 Budget 2016 and other efforts described above, 24 while certainly helpful, have only partially
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1 Exhibit P-424. And you can see the citation is 2 2018 CHRT 4. The date is February 1st, 2018. 3 It's a decision of the Canadian Human Rights 4 Tribunal in the same case we were just reading 5 from, where the complainants are the First 6 Nations Child and Family Caring Society of Canada 7 and the Assembly of First Nations. And the 8 respondent is the Attorney General of Canada. 9 In this decision, at paragraph 174, the 10 tribunal explained that Canada accepted the 2016 11 ruling. So the ruling that we just read out 12 loud. So paragraph 174, on March 1st, 2016, 13 Minister Bennett responded in writing to National 14 Chief Bellegarde, confirming that INAC accepted 15 the tribunal's decision, its findings, and 16 conclusion regarding the inadequacy of the FNCFS 17 Program and would not be filing for judicial 18 review. 19 And if we go back up to paragraph 1 of this 20 decision, the tribunal sort of introduces what 21 this decision is about. The complainants and 22 interested parties have each brought motions 23 challenging, among other things, Canada's 24 implementation of this panel's decision and	1 addressed the continuation of the discriminatory 2 practice. The evidence establishes that the 3 additional amounts provided for child welfare 4 prevention in budget 2016, based on data 5 collected before the decision was rendered, are 6 not yet at sufficient levels to meet actual needs 7 of First Nations children on reserves and provide 8 substantive equality in a culturally appropriate 9 manner. 10 Moreover, Canada has not yet addressed funding 11 of the rest of the services, the provision of a 12 slush fund for legal expenses and small capital 13 improvements on an ad hoc basis, which may not 14 even be known by the agencies, does not address 15 these needs. 16 And going to paragraph 230, Canada currently 17 funds payments of actual costs for maintenance 18 expenses when children are apprehended and 19 removed from their homes and families and has 20 developed a methodology to pay for these 21 expenses. Proceeding this way and not doing the 22 same for prevention perpetuates the historical 23 disadvantage and the legacy of residential 24 schools, already explained in the decision and

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1 rulings. It incentivizes the removal of 2 children, rather than assisting communities to 3 stay together. 4 Based on the findings and reasons in the 5 decision and subsequent rulings and the 6 additional information provided to the panel's 7 questions, the panel finds there is a need for 8 further orders to eliminate the discriminatory 9 practices explained above. 10 The tribunal made several orders, including 11 the following. At paragraph 233, the panel 12 orders Canada, pending long-term reform of its 13 national FNCFS Program funding formulas and 14 models, to eliminate that aspect of its funding 15 formulas and models that creates an incentive, 16 resulting in the unnecessary apprehension of 17 First Nations children from their families and/or 18 communities. 19 The panel orders Canada to develop an 20 alternative system for funding prevention/least 21 disruptive measures, intake and investigation, 22 legal fees, and building repair services for 23 First Nations children and families on reserves 24 and in the Yukon.	1 this was decided in October 8th of 2020, between 2 First Nations Child and Family Caring Society of 3 Canada and Assembly of First Nations as 4 complainants and the Attorney General of Canada, 5 representing the minister of Indigenous and 6 Northern Affairs Canada as the respondent. 7 So to begin at paragraph 1, the tribunal 8 explained the context of its decision. In saying 9 that, they said, this ruling addresses the Innu 10 Nation's request to make a limited intervention 11 in this matter as an interested party. In 12 particular, Innu Nation seeks to participate in a 13 motion with respect to First Nations children and 14 families receiving services from provincial or 15 territorial agencies and service providers funded 16 by Indigenous Services Canada, ISC, on reserve 17 and in the Yukon. 18 Skipping ahead now to paragraph 8. This 19 specific motion in which the Innu Nation wishes 20 to intervene is a motion brought by the Caring 21 Society for a determination that the First 22 Nations children and families living on reserve 23 and in the Yukon, who are served by a provincial 24 or territorial agency or service provider are
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1 The system is to be based on actual needs and 2 operate on the same basis as Canada's current 3 funding practice for funding child welfare 4 maintenance costs, that is, by fully reimbursing 5 actual costs for these services, as determined by 6 the FNCFS agencies to be in the best interests of 7 the child. 8 In paragraph 234, the panel orders Canada to 9 cease its discriminatory funding practice of not 10 fully funding the costs of prevention/least 11 disruptive measures, building repairs, intake and 12 investigations, and legal fees. In order to 13 ensure proper data collection and to be 14 responsive to the real needs of First Nations 15 children, the panel orders Canada to provide 16 funding on actual costs for least disruptive 17 measures/prevention, building repairs, intake and 18 investigations, and legal fees in child welfare 19 to be reimbursed retroactive to January 26, 2016. 20 And that concludes our excerpts from 2018 CHRT 21 4, which is P-424. 22 Kelsie Lockyer: 23 The next decision we'll be reading excerpts from 24 is 2020 CHRT 31. And that is Exhibit P-426. So	1 within the scope of the tribunal's current 2 remedial orders, known as the Caring Society 3 motions. These are First Nations that are not 4 served by First Nations Child and Family Services 5 agencies, FNCFS agencies. The Caring Society's 6 motion also seeks to corresponding orders that 7 Canada be directed to remedy this deficiency. 8 In the Notice of Motion, the Caring Society 9 asserts that Canada has taken the position that 10 the tribunal's remedial orders in this matter 11 only apply to FNCFS agencies and do not apply to 12 First Nations children and families who receive 13 services from a provincial or territorial agency 14 or service provider through the First Nations 15 Family and Child Services program (FNCFS 16 Program). 17 The tribunal then explained and considered the 18 Innu Nation's request to intervene at paragraph 19 12. At paragraph 12, they said, the Innu Nation 20 seeks to intervene in this matter for the limited 21 purpose of participating in the Caring Society's 22 motion. 23 And then skipping ahead to paragraph 36, on 24 this question, the panel finds the Innu Nation is

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1 impacted by these proceedings, both as a First 2 Nation government seeking to provide prevention 3 services through an agency and as a complainant 4 in a human rights matter seeking similar relief. 5 The Innu Nation submits it has experience 6 establishing an agency that provides prevention 7 services to First Nation children, the IRT 8 Secretariat. 9 The Innu Nation also alleges it was informed 10 by Canada that the IRT Secretariat is not 11 eligible for funding because the agency does not 12 fit within Canada's eligibility policies. While 13 it appears that the Innu Nation could potentially 14 be covered by the tribunal's orders, different 15 views between the Innu Nation and Canada may 16 result in excluding the Innu Nation from the 17 purview of the tribunal's orders. 18 The Innu Nation submits that it has specific 19 evidence to support its position. This evidence 20 would potentially bring expertise and a different 21 legal position than the legal positions advanced 22 by other parties. 23 Moreover, in June 2020, the Innu Nation filed 24 a complaint with the commission on the matter	1 Molly Churchill: 2 Thanks, Kelsie. 3 Kelsie Lockyer: 4 Thank you. 5 Molly Churchill: 6 The next decision in this case that we'll be 7 reading excerpts from is Exhibit P-427. The 8 citation is 2021 CHRT 12. And you can see the 9 date is March 17th, 2021, the same file number as 10 all the previous decisions and against Canadian 11 Human Rights Tribunal decision, in this case, 12 where the complainants were the Caring Society 13 and the AFN. And the respondents is the Attorney 14 General of Canada. And this is the decision on 15 the motion that the Innu Nation intervened in. 16 So starting at paragraph 1, the tribunal 17 explained what the motion is about. So this 18 ruling is a consent order addressing a motion by 19 the First Nations Child and Family Caring Society 20 of Canada, the Caring Society, for a 21 determination that First Nations children and 22 families living on reserve and in the Yukon, who 23 are served by a provincial or territorial agency 24 or service provider are within the scope of the
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1 that is a live issue before this panel and 2 involving similar questions of fact and law, 3 concerning the impacts of this panel's previous 4 rulings and orders on the Innu Nation and their 5 agency, the IRT Secretariat. 6 The panel believes that, given the procedural 7 history in this case and given that children are 8 central in this matter, there is also a public 9 interest for efficiency and expeditiousness to 10 resolve this issue. Therefore, allowing the Innu 11 Nation to participate in this motion would 12 effectively account for this public interest. 13 Again, the subject matter raised in the Caring 14 Society's motion also addressed implementation 15 and compliance to the panel's previous orders, 16 especially the panel's 2018 CHRT 4 ruling and 17 orders on the interpretation of its related 18 orders. 19 Finally then, skipping ahead, the tribunal 20 granted the Innu Nation's request to intervene at 21 paragraph 51. The panel grants the Innu Nation's 22 motion for a limited interested party status with 23 the parameters indicated above. 24	1 tribunal's current remedial orders. 2 Jump ahead to paragraph 4. In the Merit 3 Decision, the tribunal outlined some of the 4 different funding models used to deliver Child 5 and Family Services to First Nations. A large 6 number of communities received services from a 7 delegated First Nations Child and Family Services 8 agency (FNCFS agency). These are agencies that 9 have an agreement with the province or territory 10 in which they are located to deliver Child and 11 Family Services to one or more First Nations 12 communities. 13 Once this agreement is in place, Indigenous 14 Services Canada (ISC) funds the FNCFS agency in 15 accordance with ISC's funding directives. In 16 other instances, the province or the Yukon is 17 more involved in the delivery of Child and Family 18 Services. In general, the province or the Yukon 19 pays for Child and Family Services in the First 20 Nations communities covered by these agreements. 21 And then Canada reimburses the province or the 22 Yukon in accordance with the provisions of the 23 agreement. 24 The Caring Society's motion requests a

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1 determination that First Nations children and 2 families living on reserve and in the Yukon, who 3 are served by a provincial or territorial agency 4 or service provider are within the scope of the 5 tribunal's current remedial orders. 6 I'm going to jump ahead to paragraph 13, where 7 the tribunal provides its summary of the order 8 that it was issuing. Paragraph 13, the operative 9 provisions of the order, as approved by the 10 panel, are included in the order section of this 11 decision. A brief summary is provided here. The 12 draft order briefly reviews the panel's previous 13 orders in the Merit Decision, 2016 CHRT 10, 2016 14 CHRT 16, and 2018 CHRT 4, directing Canada to 15 remedy the discrimination identified in this 16 case. 17 The draft order would require Indigenous 18 Services Canada, in consultation with the AFN and 19 the Caring Society, to promptly develop an 20 interim funding model for First Nations 21 communities that receive services under the FNCFS 22 Program but not through an FNCFS agency. Funding 23 would be retroactive to January 26th, 2016. 24 Further consultation would follow to ensure the	1 Caring Society and the AFN. And respondents is 2 Attorney General of Canada. 3 So at paragraph 1, the tribunal explains what 4 this motion is about. This ruling concerns a 5 March 4th, 2022, consent order request made by 6 the parties to these proceedings to expand 7 Jordan's Principle services orders to youth from 8 18 to 25 years of age and for the application of 9 the FNCFS Program to youth ages 18 to 25 that age 10 out of care. The consent order also provides for 11 increased funding for prevention services for 12 children, youth, and families. 13 And I'm going to stop there and jump ahead to 14 the tribunal's order regarding prevention 15 services. So at paragraph 172 is where the order 16 is. So the tribunal issues the following orders. 17 I'm jumping ahead to paragraph 8. So the 18 tribunal orders that Canada shall, as of April 19 1st, 2022, fund prevention/least disruptive 20 measures for non-agency First Nations, as defined 21 in 2021 CHRT 12, at \$2500 per person, resident on 22 reserve, on the same terms as outlined in 2018 23 CHRT 4, at paragraph 421.1, with respect to FNCFS 24 agencies.
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1 funding meets the First Nations' needs until a 2 long-term reform is implemented. Funding would 3 ensure substantive equality, the best interest of 4 the child, and ensure inflation, population 5 growth, remoteness, and governance capacity are 6 accounted for. 7 The interim funding model would apply until 8 one of the following occurs, a nation-to-nation 9 agreement respecting self-government, 10 encompassing Child and Family Services is 11 established, a nation-specific agreement is 12 reached that is more advantageous to the First 13 Nation, program reform is completed in accordance 14 with best practices, or unforeseen circumstances 15 require other adjustments. There will be a needs 16 assessment to support long-term reform. 17 So that completes the excerpts from P-427, 18 which is 2021 CHRT 12. 19 I'm going to very briefly go to a final 20 decision that we're going to be reading from 21 today. This is Exhibit P-428. The citation is 22 2022 CHRT 8. The date of it was March 24th, 23 2022, same file. Again, decision of the Canadian 24 Human Rights Tribunal. Complainants is the	1 And that concludes our reading of excerpts 2 from these Canadian Human Rights Tribunal 3 decisions. Thank you. 4 5 (Reading excerpts from CHRT decisions concludes.)

[Transcript of video ends.]

COMMISSIONER IGLOLIORTE: I'll ask Anne to step back again now, and have the lights turned up, please.

Thank you for respecting Elizabeth's opportunity to listen to the translation, even though we had to wait quite a bit after it was finished. She appreciates that.

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

COMMISSIONER IGLOLIORTE: For people who are not lawyers, I'll explain that the Inquiry lawyers – two here, and others in St. John's – have figured out a way for us to listen to the witnesses by doing a video tape.

So you can see that our counsel, Ms. Lockyer, was questioning an expert witness about the law in Canada regarding child protection and child welfare.

For anyone who is not a lawyer or not used to practices, it's quite difficult to follow what was being said, but lawyers actually enjoy doing that kind of work. Naturally, the Inquiry is not making decisions about the evidence that we've heard at this stage of the Inquiry; that's for later on.

Of course, like in court, the witness Ms. Churchill, who was being questioned, we will allow the parties to cross-examine her afterwards.

Correct me on that, Kelsie.

K. LOCKYER: Yes, my apologies, Commissioner.

I think what you're discussing about pre-speaking to a witness, that will be later this week, but for what we just watched that was just case excerpts read by myself and Molly Churchill.

Those are just cases that we wanted to bring to the attention of the Commissioners and those specific excerpts. Molly won't be

– she wasn't a witness per se, it was just to read that in, but we will have some pre-recorded direct examinations from some witnesses later this week.

COMMISSIONER IGLOLIORTE: Thank you for clarifying that.

So we gather information for the Inquiry in many different ways. We get it from hearing from Innu people directly, we get it from Innu workers in the community who tell us about their work experience and, in the background, lawyers are gathering information for the Inquiry to consider.

I want to make one correction about an opening statement that I made earlier that Heidi was working with CBC. She's actually an independent reporter gathering information for the paper called *The Independent*. As she did before with CBC, she is still gathering information for a wider audience than simply the community and the people in this room.

So I thank you very much, Heidi.

We know that George was supposed to be on the stand today and there've been some complications with getting him in here so I'll ask Kelsie or Michael what the plan is for this afternoon; if there's any contingency or are we start up again tomorrow morning?

K. LOCKYER: So, after –

INTERPRETER NUNA: [Sheshatshiu-aimun spoken.]

K. LOCKYER: Sorry about that.

While we do have some further prerecorded things, they do match up better with things later in the week. For this afternoon, we'll just break and we'll reconvene tomorrow morning, and we hope to hear from Ben Andrew at that time.

COMMISSIONER IGLOLIORTE: From whom?

K. LOCKYER: Ben Andrew.

COMMISSIONER IGLOLIORTE: Thank you.

Thank you very much.

With apologies to counsel who have to travel back and forth from Goose Bay, we request that you consider the Inquiry will continue tomorrow morning – at 9?

COMMISSIONER QUPEE: Mm-hmm.

COMMISSIONER IGLOLIORTE: At 9 a.m.

Thank you.

A prayer please, again, from Elizabeth.

ELDER PENASHUE: [Sheshatshiu-aimun spoken.]