

CANADIAN HUMAN RIGHTS TRIBUNAL /
TRIBUNAL CANADIAN DES DROITS DE LA PERSONNE

HEARING HELD AT Mississaugas of the Credit First Nation and
virtually JANUARY 9 2026 AT 9:30 A.M. LOCAL TIME.

CASE FOR HEARING / CAUSE DEVANT ETRE ENTENDUE

IN THE MATTER of the complaints filed under the *Canadian Human
Rights Act* by Mississaugas of New Credit First Nation

Appearances:

Mr. Kent Elson for the Complainant
Ms. Kate Siemiatycki

Ms. Ansumala Juyal for the Canadian Human Rights Commission
Ms. Christine Singh
Mr. Khizer Pervez

Mr. Daniel Luxat for the Respondent
Mr. Hasan Junaid
Ms. Madeline Torrie

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1 --- Upon resuming at 9:30 a.m.

2 REGISTRY OFFICER: We are back on record.
3 Today is Friday, January 9th, 2026, in the matter of the
4 Mississaugas of the Credit First Nations and the Attorney
5 General of Canada. Thank you.

6 MEMBER LUSTIG: Hey, Mr. Luxat.

7 MR. LUXAT: Yeah, thank you. We, we had
8 discussed that, Mr. Elson will be or may be objecting to
9 the admissibility of certain portions of Mr. Castonguay's
10 evidence in his closing submissions. One thing I had said
11 in my letter to the Tribunal is that one of the positions
12 Canada might take is that if a portion of Mr. Castonguay's
13 evidence is excluded then the reason for his evidence in
14 the first place should be excluded as well, which was the
15 evidence entered on the record with respect to the amount
16 of education-related funding that's been provided through
17 Jordan's Principle.

18 I just want to clarify that that position
19 will essentially be that if a portion of Mr. Castonguay's
20 evidence is excluded, we will likely be saying that all of
21 his evidence should be excluded because I might be
22 introducing -- just so it's not -- it doesn't we don't end
23 up with a cherry-picked record where there's a portion
24 that's excluded and then some straggling bits that paint a
25 misleading picture.

1 So I just wanted to put that on the
2 record to make sure everybody's aware that that may be one
3 of the positions the Attorney General of Canada is taking
4 for procedural fairness records, just so it's on the
5 record.

6 MEMBER LUSTIG: And that's, you know, not
7 to be determined until we get to the submissions, correct?
8 So we don't need to deal with it today?

9 MR. LUXAT: No.

10 MEMBER LUSTIG: Okay. All right, unless
11 there's anything from you, Mr. Elson, on that, I'm willing
12 to have the witness come back, and we can get on with the
13 examination and cross-examination.

14 MR. ELSON: No, I mean, on that broader
15 topic, I anticipate objecting to the documents, those two
16 documents being marked as exhibits, and we'll propose when
17 that takes place that the questions be asked on those
18 documents, and then a ruling be made as to whether they're
19 admissible or not. So they could be marked for
20 identification purposes. And that's just further to our
21 conversation at the end of the day yesterday about those
22 two documents and my concern that they'd be let in, willy-
23 nilly, for any use whatsoever.

24 I can address that when the time comes
25 but I just thought I would flag that, seeing as the

1 topic's up and Mr. Castonguay is already excluded.

2 MR. LUXAT: That's -- Member Lustig, if I
3 could, that's not consistent with my understanding of our
4 discussion yesterday. I'd understood it would be entered
5 as an exhibit, and that but the issue of admissibility
6 could be addressed in closing submissions. So I fully
7 understand that Mr. Elson will be making an argument that
8 it's not admissible and it should be excluded from the
9 record, and that's fine.

10 But I don't think there's -- I'd rather
11 leave that issue to the closing submissions rather than
12 asking the Tribunal to rule on its admissibility now. I'd
13 rather it go in as an exhibit, and I fully understand that
14 the Tribunal will later have to decide whether it should
15 be removed from the record.

16 MEMBER LUSTIG: Yeah, that was my
17 understanding, too, Mr. Elson, that we weren't going to
18 deal with this with respect to a ruling today. It was
19 going to be as a consequence of submissions.

20 You're free obviously to raise the issue,
21 and that's what I thought you were going to do when the
22 evidence is submitted, today presumably in the course of
23 the examination. But I wasn't expecting to get into a
24 ruling today on administration.

25 MR. ELSON: No, and that's fair, Member

1 Lustig, and that's certainly the case with respect to
2 testimony.

3 And with respect to the documents, at the
4 end of the day yesterday I indicated that I'm in a bit of
5 a bind because I won't know what to object to without
6 knowing what portions of the documents are going to be
7 replied on. And so that just puts me in a difficult
8 position, and so I was proposing that the documents be
9 marked for identification purpose, and at some point the
10 Respondent indicate what's being relied on so that we can
11 fairly object to it.

12 MR. LUXAT: What I would suggest there is
13 that it's going to be very clear what we're relying on in
14 the first place, but that if there's any additional
15 elements that are being relied upon, obviously Mr. Elson
16 could raise admissibility issues in reply after he
17 receives our closing written submissions. And so I don't
18 see the need for constructing an elaborate process.

19 MR. ELSON: Yeah, that's fine. I mean,
20 that works for me. And I guess we would be marking it as
21 an exhibit with a caveat because typically you would mark
22 it for identification purposes or something else if there
23 was a question around the admissibility, but I think it's
24 clear on the record now, the purposes and how it's being
25 marked. And so I think we're on the same page, and that's

1 I'm fine to proceed as such.

2 MR. LUXAT: The only thing I would add to
3 that is, to the extent there is any caveat on the ones
4 that Mr. Elson is objecting, I think there should be a
5 caveat with respect to the entirety of the evidence
6 because as I indicated, I will be making submissions that
7 to the extent a portion of Mr. Castonguay's evidence is
8 excluded ---

9 MR. ELSON: Right.

10 MR. LUXAT: --- the entirety of the
11 evidence with respect to education-related JP requests in
12 Ontario, so we can't take a portion of the evidence and
13 exclude the rest. That would create a partial record.

14 So I think we're just going to have to
15 leave the whole admissibility with respect to the entire
16 topic to be essentially decided in submissions.

17 MEMBER LUSTIG: Okay. So we will -- as
18 we proceed we will identify that there is a caveat with
19 respect to the admissibility that will be dealt with at a
20 later date, and that both of the positions that you've
21 just mentioned will be before the Tribunal for
22 consideration; okay?

23 All right. So let's get on with bringing
24 back Mr. Castonguay, and let's start with his evidence,
25 please.

1 (WITNESS ENTERS)

2 MEMBER LUSTIG: Okay, welcome back, Mr.
3 Castonguay. You're going to be sworn or affirmed now, so
4 if we could do that, please, Ms. Hannah.

5 REGISTRY OFFICER: Yeah, sure.
6 Please state your name in full for the
7 record.

8 MR. CASTONGUAY: Julien Castonguay.

9 REGISTRY OFFICER: Do you solemnly affirm
10 that the evidence you're about to give to the Tribunal is
11 the truth, the whole truth, and nothing but the truth?

12 MR. CASTONGUAY: I do...

13 REGISTRY OFFICER: Thank you.

14 --- JULIEN CASTONGUAY, Affirmed:

15 MEMBER LUSTIG: Well, Mr. Castonguay,
16 again, thank you for attending. Just quickly, the drill
17 is that you're going to be examined by Mr. Luxat first in-
18 Chief. And then you're going to be cross-examined by Mr.
19 Elson, and you may be re-examined by Mr. Luxat, depending
20 on what comes out of the cross-examination.

21 And during the time that you're under
22 oath or affirmation, you're not to discuss your evidence
23 with anyone if we break, for example, which we will during
24 the course of the day. Do you understand that.

25 MR. CASTONGUAY: I do.

1 MEMBER LUSTIG: Okay, thank you.

2 Then, if, you're ready, Mr. Luxat, if you
3 could start the examination, please.

4 MR. LUXAT: Thank you, Member Lustig.

5 --- DIRECT EXAMINATION BY DANIEL LUXAT:

6 MR. LUXAT: Good morning, Mr. Castonguay.

7 MR. CASTONGUAY: Good morning.

8 MR. LUXAT: And thank you for being with
9 us. I just have a few questions so I don't expect my
10 examination in-chief will be, overly lengthy.

11 First, can you tell us what your position
12 is with Indigenous Services Canada?

13 MR. CASTONGUAY: I'm the Interim
14 Assistant Deputy Minister for Jordan's Principle and the
15 Inuit Child First Initiative.

16 MR. LUXAT: Okay, and what are your
17 responsibilities in that role?

18 MR. CASTONGUAY: I'm responsible for the
19 national oversight of the implementation of Jordan's
20 Principle, Lending with Child First Initiative, and
21 managing the delivery in the context of the CHRT orders.
22 And I work closely with ADMS of regional operations who
23 are responsible for the regional teams who are doing the
24 delivery of all ISC programs and services in all the
25 regions across the country.

1 MR. LUXAT: Okay, and do you -- in your
2 role, do you review, assess, or decide individual,
3 Jordan's Principle applications?

4 MR. CASTONGUAY: It is part of my role.
5 It is part of the decision-making system of escalation,
6 that some exceptional cases or unique cases, depending on
7 the specificities and the case-by-case approach, and some
8 of the questions that might be coming up in the different
9 teams. But I am not involved in the decision-making for
10 the immense majority of Jordan's Principle and Inuit Child
11 First Initiative request.

12 MR. LUXAT: Okay, thank you, Mr.
13 Castonguay. Could you, I guess, just tell us a little bit
14 about, what Jordan's Principle is? I'm sure some people
15 know more about it than I do. For instance, Member
16 Lustig. But at least for my benefit, could you provide a
17 bit of a background to what Jordan's Principle is?

18 MR. CASTONGUAY: Yes, and to keep my
19 answer short, we'll first start by honouring, Jordan River
20 Anderson, who's a young boy from Norway House Cree Nation
21 that passed in an hospital after multiple years of the
22 provincial and federal government disputing who would be
23 responsible for the cost of his care in a medical home
24 context in Winnipeg.

25 And coming out of that, many years of

1 litigation and a series of CHRT orders that is intended to
2 make sure that First Nation children have access to the
3 same programs, services, and public service, and health
4 education and social in a way that upholds substantive
5 equality, best interest of the child, and culturally
6 relevant services.

7 And it's been delivered in the context of
8 the federal government since approximately 2016 in,
9 different way of organizing the teams and the departments
10 over time.

11 MR. LUXAT: Okay. And there was recently
12 an internal audit completed of the Jordan's Principle
13 Initiative; is that correct?

14 MR. CASTONGUAY: Yes.

15 MR. LUXAT: Yeah. And I'll share my
16 screen for a second.

17 Can you see my screen, Mr. Castonguay?

18 MR. CASTONGUAY: I do.

19 MR. LUXAT: And this says it's an audit
20 of Jordan's Principle, completed by the Internal Audit
21 Branch, or Internal Audit Report prepared by Audit and
22 Assurance Services Branch in May of 2025. Do you see
23 that?

24 MR. CASTONGUAY: I do.

25 MR. LUXAT: And are you familiar with

1 this document?

2 MR. CASTONGUAY: I am.

3 MR. LUXAT: Okay. May I have this marked
4 as the next exhibit, R-45?

5 MEMBER LUSTIG: Accepted.

6 --- EXHIBIT R-45: Internal Audit Report prepared by
7 Audit and Assurance Services Branch
8 in May of 2025

9 MR. LUXAT: I want to take you to a few
10 passages in the audit and ask you to provide a bit of a
11 background context or sort of your understanding of what's
12 being communicated. And first I want to take you to one
13 of the key findings on page 15. And the first paragraph
14 under Key Findings and Recommendations, states:

15 "The audit found that, given the increase
16 in requests and associated costs combined with limited
17 departmental human and financial resources, the
18 implementation of Jordan's Principle, in accordance with
19 the Back to Basics B2B approach observed during the audit
20 period, clearly demonstrates that the current state of
21 unclear eligibility of expenditures and evolving scope of
22 approved products and services is unsustainable."

23 (as read)

24 Do you see that?

25 MR. CASTONGUAY: I do.

1 MR. LUXAT: I just have a couple
2 questions about that. First, what is the Back to Basics
3 approach?

4 MR. CASTONGUAY: It's a complicated
5 space, but the Back to Basics came out of a negotiated
6 approach to frame the determination and the decision-
7 making, operationally within Indigenous Services Canada
8 teams around the 2022-2023, period that effectively
9 removes some of the standard operational procedure that
10 were starting to be in place before that time to replace
11 it with more of a common sense approach making
12 determination.

13 MR. LUXAT: Could you provide a bit of
14 what a common sense approach means?

15 MR. CASTONGUAY: Well, definitely all of
16 what needs to happen in the context of Jordan's Principle
17 need to be in line with the CHRT orders and its ruling and
18 so that is the fundamental source of how to make decisions
19 and how to go through the different concepts that are
20 relevant to decision making.

21 And so the common sense approach is to
22 really have the CH orders, the ruling, standing on their
23 own without some of the standard operating procedure that
24 were developed by Indigenous Services Canada teams in
25 order to facilitate their management in the federal

1 government context in a large, decentralized, high-volume,
2 complex operation, and leaving a lot of the determination
3 on the decision-making and the individual looking at the
4 case-by-case review of the different individual and group
5 requests and questions.

6 MR. LUXAT: So would it be fair to say
7 that funding requests were highly described based on
8 highly discretionary individual decisions?

9 MR. CASTONGUAY: Within the context of
10 the orders, within the context of an internal decision-
11 making framework, it really lended itself to being at the
12 discretionary decision-making of federal public servants
13 looking at the request.

14 MR. LUXAT: And this paragraph also
15 references that the current state of, to quote it,
16 "unclear eligibility of expenditures and evolving scope of
17 approved products and services"; can you provide us with a
18 bit of context, or understanding what's being referred to
19 here?

20 MR. CASTONGUAY: Yes. And so to talk
21 about, like, eligibility of expenditure, it's also maybe
22 important to contrast it with eligibility of the client.
23 Like, that does not speak. There's specific orders that
24 speak to the eligibility of the First Nation children, and
25 so what this speaks about is the unclear eligibility of

1 expenditures in terms of --upon the review of a case-by-
2 case, based on the specifics of any group of individual
3 requests, what are the controls in place that structure
4 decision-making related to the value of approval, related
5 to the duration of approval in a way that ensures that it
6 is done in a way that well ensures that they're the right
7 types of approval, for the right value of approval, for
8 the right types of products and services.

9 And also referring more broadly to the
10 usual set of government terms of condition, eligibility
11 criteria, policies, rules, fee structures that are in
12 place to support the management of public programs and
13 benefits that are of this scale.

14 And so in the context of Jordan's
15 Principle we do not have this suite of usual government
16 tools to support that decision-making with clearly
17 written-down directive that provides support, and so a lot
18 of it is carried and the result of the liberation of
19 individuals within teams and in the department that the
20 audit found wasn't clear to many of them.

21 And the involvement scope of approved
22 products and service is something that is also shown in
23 the ever-expansive number of types of item products and
24 supports and services that are being requested for true
25 Jordan's Principle that span, at least according to some

1 of the way that we categorize the data, multiple hundreds
2 of types of products, services, and support across
3 multiple fields that usually all each and have their own
4 program, their own terms and conditions, and their own
5 parameters, and their own expertise.

6 And so we're spanning multiple areas of
7 operation that all have their own complexities, their own
8 ramification from health, social, education, income
9 assistance. And I could go on and provide with a longer
10 list of sub-elements.

11 MR. LUXAT: All right. Maybe we'll
12 expand on it in a bit.

13 I want to take you to another section of
14 the audit. And this is -- am I not -- I'm not sure if I
15 was sharing my screen.

16 MR. CASTONGUAY: Yes, you are.

17 MR. LUXAT: I am sharing my screen, okay.
18 Oh. But am I sharing the right screen?

19 MR. CASTONGUAY: I believe so we see the
20 audit.

21 MR. LUXAT: You see the audit, okay, it's
22 fine. On my screen, it looks like it's coming up as the
23 Zoom message.

24 Let me stop and put it back on the audit
25 just to make sure there's no issue.

1 And is it still the audit that ---

2 MR. CASTONGUAY: On my screen it is.

3 MR. LUXAT: Okay. Something is going
4 wrong with my screen, but that's fine, as long as it's
5 working for everybody else.

6 So I'm going to take you to page 48. And
7 you see that there it's Annex D, Examples of Approved
8 Requests. Do you see that there, Mr. Castonguay?

9 MR. CASTONGUAY: Yes, I see that. Yes.

10 MR. LUXAT: I'm going to read you ---

11 MR. ELSON: Can we exclude the witness,
12 please?

13 MEMBER LUSTIG: Okay. Please exclude the
14 witness.

15 (WITNESS IS EXCUSED)

16 MR. ELSON: Member Lustig, this is the
17 exact kind of evidence where there's zero way for us to
18 test the validity of this. I have none of these approved
19 requests. I have none of these examples. I don't know if
20 they're in Ontario. It's an entirely inappropriate way to
21 suggest that Jordan's Principle is approving, you know,
22 improper requests.

23 To the extent that there are approvals of
24 improper requests --frankly, I don't know why Indigenous
25 Services would be approving improper requests. But

1 suggesting this without providing us any way to look at
2 the documentation behind this, you know, find out why this
3 happened. Why is someone approving these requests? This
4 is the kind of thing where it's completely unfair, and it
5 should not be admitted at all whatsoever.

6 I will make those submissions in more
7 detail at the submission stage. But I just want to flag,
8 as you're looking at this, I have no way to appropriately
9 test this with documents. You know, I can ask questions
10 to Mr. Castonguay in cross-examination but, you know, a
11 cardinal rule of cross-examination is that you need to
12 have some way to bring the witness to the truth. And I
13 can't do that, without knowing who made these requests,
14 what the requests say, you know, why they were approved,
15 whether there's some bad apples who are doing a terrible
16 job in Indigenous Services Canada.

17 So I'll leave that on the record for now
18 and bring it up again in submissions to the extent that my
19 friend wishes to rely on these points.

20 Thank you.

21 MEMBER LUSTIG: Okay, so that's the kind
22 of bringing to my attention, or bringing to the Tribunal's
23 attention, your concern, and that will be the, sort of way
24 in which we describe the admission of the document on the
25 basis of it having a caveat, caveats.

1 MR. LUXAT: Yeah, just to put out
2 obviously ---

3 MR. ELSON: And the testimony related
4 there, too.

5 MR. LUXAT: And just to put obviously,
6 we're going to just address this in fuller detail in our
7 submissions, but it's important to note that this evidence
8 would not have been introduced at all if Mr. Elson didn't
9 put forward aggregates, Jordan's Principle funding data at
10 the hearing, not an affidavit evidence, and argue that an
11 inference could be drawn from that aggregate data that
12 there's gaps.

13 So this evidence is only necessary in
14 response to that. One, we don't think, even with or
15 without this audit, you could you could look at aggregate
16 numbers and draw any inference. But this is this is
17 simply being introduced to highlight why that aggregate
18 evidence data that was introduced late, not in affidavit -
19 - why that's not reliable or relevant, and why you can't
20 reach any inferences.

21 So if you exclude evidence from an
22 internal government audit and then just draw an inference
23 from the aggregate data, we would say that's appropriate.
24 We're going to get into this in more detail. There's a
25 lot more, I would say, in response as well. And I know

1 Mr. Elson has his hand up.

2 I don't want to go back and forth in
3 terms of submissions. Mr. Elson had laid out the nature
4 of his objection and I put on the record one of the
5 reasons why we think it's appropriate. But I guess Mr.
6 Elson has a reply.

7 MEMBER LUSTIG: Okay, Mr. Elson...?

8 MR. ELSON: This is it's not new. The
9 suggestion that we're doing something new is just -- it's
10 just completely inaccurate. And my friend in his
11 responding submissions just completely disregarded the
12 evidence of Julia Candlish, which we mentioned in our
13 letter. And by ignoring it, hoping perhaps that the
14 Tribunal, you know, won't catch it.

15 But on January 31st, 2025, which is
16 approximately a year ago today, Julie Candlish's affidavit
17 said:

18 "The high uptake of Jordan's Principle
19 funding for educational needs is proof of the significant
20 gaps in the interim funding model. And the application-
21 based approach means that these gaps are being filled
22 unequally between those First Nations that are more and
23 less successful in navigating that system, leaving
24 children with unmet needs." (as read)

25 So that aspect is certainly not new, and

1 the affidavit and statement of particulars of the
2 Respondent first raised Jordan's Principle ages ago,
3 saying that it was a stopgap that could, you know, remedy
4 any deficiencies in the interim funding formula.

5 And that sort of, you know, the new
6 evidence -- I mean, we had put forward in advance of this
7 hearing, some documents on Jordan's Principle, which we
8 didn't end up submitting because they became old. They
9 became older than, you know, some of the newer materials
10 on Jordan's Principle.

11 You know, you cannot decline to disclose
12 your own document. And then when we finally get
13 disclosure of it, say, now this opens a door for us to
14 provide additional details in a way that is unfair,
15 because we don't have disclosure underlying that in a way
16 that we could contest it.

17 I mean, the new evidence is -- it's
18 really -- it's not our new evidence; it's just disclosure
19 which has been obtained through this hearing which the
20 Defendant -- which the Respondent already had.

21 So I just wanted to respond, Member
22 Lustig, to this idea that there's something new which
23 would allow, you know, some new open door. Even if that
24 were the case, you can't then open this door without
25 providing the actual underlying documentation in support

1 of the statements you're trying to make, which is what's
2 happening here.

3 I mean, this entire process is a new
4 witness, which is contrary to how this proceeding is
5 supposed to go forward. I wasn't allowed to ask one
6 question to Patty Barber.

7 MR. LUXAT: Can I ---

8 MR. ELSON: And this is an entire new
9 witness.

10 MEMBER LUSTIG: Let's -- I think we're
11 let me, let me, let me -- hang on, hang on.

12 I think we're getting beyond where we
13 were when you raised the issue that you've given us your
14 view on previously with respect to not having an
15 opportunity because of the lack of documents to properly
16 cross-examine this evidence. So you're going to do a
17 cross-examination, but your feeling is that it isn't as --
18 it's not going to be as fulsome because you didn't have
19 the documents.

20 That's kind of where we were, and why you
21 want to flag this, because you said you wouldn't be
22 flagging it, and we agreed that we would deal with this in
23 final submissions. And these documents would be admitted
24 with the caveat -- caveats of both sides.

25 So you know, I think we're getting in

1 this discussion here, and I appreciate your counsel, your
2 advocates. for your two positions. But we need to finish
3 this witness, and hopefully today. And I think I get the
4 point completely that Mr. Elson is making about alleging
5 that it's unfair, and I think that I understand the point
6 that Mr. Luxat is making, that it isn't unfair that, you
7 know, this witness came about as a result of information
8 that was provided, by the other side.

9 So I want to try to get keep going
10 without having this going back and forth. I think the
11 basics are that we're going to we're going to have the
12 submissions deal with this, and I'm going to be making a
13 ruling at that time. And you've given me your views on
14 the subject.

15 So Mr. Luxat, is there anything else that
16 you wish to say at this time?

17 MR. LUXAT: There is plenty, but in the
18 interest of efficiency, I'll wait for submissions.

19 MEMBER LUSTIG: Okay.

20 MR. LUXAT: Thank you, Member Lustig..

21 MEMBER LUSTIG: Okay,. So let's have the
22 witness come back and we'll continue with the examination.

23 I don't see the witness. Is the witness
24 back?

25 (WITNESS RETURNS)

1 MR. LUXAT: Yes, I see him.

2 MEMBER LUSTIG: Okay, he's not actually
3 where my Panel is.

4 Okay, thank you. Then continue, Mr.
5 Luxat, please.

6 MR. LUXAT: Thank you, Member Lustig.

7 And I apologize, Mr. Castonguay. So can
8 you still see on my screen the NXD examples?

9 MR. CASTONGUAY: I can.

10 MR. LUXAT: Okay. So I just want to get
11 your understanding of what's being communicated here. And
12 it's -- the audit states:

13 "Below are some examples of approved
14 requests noted by regional management where there was a
15 lack of clarity on what was admissible or not, based on
16 the information provided within the request against Back
17 to Basics B2B requirements. Management noted that there
18 were a variety of requests being approved under Jordan's
19 Principle. Based on this, it was noted that it was
20 difficult to see how the B2B policy could be applied to
21 deal with these complex cases using the common sense
22 approach. It was noted that there was limited required
23 evidence to demonstrate admissibility for the approved
24 requests below." (as read)

25 And then it lists the number of requests,

1 some of which you can see on the screen -- car loan
2 payments, monthly ongoing rent, number of requests. So
3 elite hockey training.

4 So in terms of what the audit is getting
5 at, can you provide your understanding of what's being
6 communicated here?

7 MR. CASTONGUAY: Well, it reads to me as
8 examples that the auditors wanted to provide of different
9 types of approval that they found through their work that
10 illustrated some of their findings related to some of the
11 consequences of not having some of these parameters around
12 expenditure eligibility in a way that would ensure
13 decision-making are not only made within the context of
14 the Tribunal orders, but also made in the context of
15 federal government operation and applicable management,
16 broader management and accountability framework in a
17 sustainable way.

18 MR. LUXAT: Okay. And some of the
19 examples listed, do they raise any concerns about
20 alignment with the purpose of Jordan's Principle?

21 MR. ELSON: Can we exclude the witness,
22 please?

23 MEMBER LUSTIG: Okay, we'll exclude the
24 witness.

25 (WITNESS IS EXCUSED)

1 MR. ELSON: One of Mr. Luxat's first
2 questions was quite leading, and so was this one. I'll
3 leave it where it is; I just want to flag that issue of
4 leading questions.

5 MEMBER LUSTIG: If you could try to
6 rephrase to the extent you can.

7 MR. LUXAT: I don't think it was leading.
8 I'm just trying to ---

9 MR. ELSON: For this question it's too
10 late, but I just wanted to flag it for going forward,
11 please.

12 MEMBER LUSTIG: Okay. Let's go back with
13 the witness.

14 (WITNESS RETURNS)

15 MEMBER LUSTIG: Okay, Mr. Luxat, please
16 continue.

17 MR. LUXAT: So Mr. Castonguay has asked,
18 do the examples, do they highlight or raise any concerns
19 about alignment with the purpose of Jordan's Principle?

20 Oh, sorry, you're on mute.

21 MR. CASTONGUAY: Apologies, it puts me
22 back automatically on mute. I forgot to unmute myself.
23 Yes.

24 MR. LUXAT: Okay, I'm going to take you
25 to another portion of the report, of the audit.

1 This is -- I'm taking you to page 36. And
2 I'm going to read you the first full sentence of the first
3 full paragraph starting, "Interviews held...". Do you see
4 that there, Mr. Castonguay?

5 MR. CASTONGUAY: I do.

6 MR. LUXAT: And it states:

7 "Interviews held across multiple regions
8 informed the audit that ISC is inadvertently incentivizing
9 workarounds of other ISC programs and/or provincial
10 territorial programs due to reduced administrative burden
11 and broader admissibility criteria under Jordan's
12 Principle." (as read)

13 Can you explain what the audit is
14 referring to here?

15 MR. CASTONGUAY: It's another complex
16 answer, so I'll try to summarize it as best as I can. And
17 I think, just as context of, like, there's a high volume
18 of requests. We're talking multiple thousands of requests
19 a month, hundreds of thousands a year. They are coming in
20 by individuals, communities. There is a complicated legal
21 landscape, a complex legal landscape around the decision
22 making. And there's intensive pressure on federal public
23 servants, individuals making those decisions in the form
24 of different types of drivers, starting with some of the
25 compliance timeline to be making decisions within -- in

1 urgent context 12hours; non-urgent, 48 hours.

2 And so all of this is a little bit of the
3 operational context in which some of those decisions are
4 made which creates an environment where our ability to
5 administratively case conference to ensure that Jordan's
6 Principle is not being used in a way that it wasn't
7 intended for.

8 There were some challenges in
9 establishing those management controls, those mechanisms,
10 those processes. And as a reaction to that, there is a
11 growing understanding from some requesters that are
12 looking at increasing products and services and support to
13 benefit the children, that they are able to access things
14 through Jordan's Principle, and that then becomes a
15 mechanism through which they can access Jordan's
16 Principle, rather than going through whatever process
17 might be in place to meet a certain need that is regulated
18 by its own program, terms and conditions, rules, fee
19 structure, in comparison with Jordan's Principle, that did
20 not have the same approach in managing this.

21 MR. LUXAT: Thank you, Mr. Castonguay.

22 I'm going to take you now to another
23 document. And ---

24 MEMBER LUSTIG: By the way, the last
25 document is -- that's a public document. It's on the

1 website, I presume?

2 MR. CASTONGUAY: It is.

3 MEMBER LUSTIG: And how long has it been
4 available to be viewed?

5 MR. CASTONGUAY: The spring of 2025.

6 MEMBER LUSTIG: Okay, thank you.

7 Okay, please proceed, Mr. Luxat.

8 MR. LUXAT: I'm showing you a document
9 here. This is proposed exhibit -- and I am I'm not
10 exactly sure which what the number is, but it says -- it's
11 Educational Success of Indigenous Students Performance
12 Audit.

13 Do you know what -- are you familiar with
14 this document?

15 MR. CASTONGUAY: Yes.

16 MR. LUXAT: Actually, Ms. Hannah, do you
17 know what the proposed exhibit is? Or I can ---

18 MR. ELSON: It's R-46.

19 MR. LUXAT: R-46? Okay.

20 And can you tell us what this document
21 is, Mr. Castonguay?

22 MR. CASTONGUAY: It's a performance audit
23 from the Auditor General of Quebec to look at the
24 educational success of Indigenous students within their
25 own provincial education system.

1 MR. LUXAT: Okay, can this document be
2 marked as the next exhibit?

3 MEMBER LUSTIG: Accepted.

4 --- EXHIBIT R-46: Performance audit from the Auditor
5 General of Quebec to look at the
6 educational success of Indigenous
7 students within their own provincial
8 education system

9 MR. LUXAT: I want to take you to a
10 portion of this document.

11 MEMBER LUSTIG: And let me just ask the
12 same question as I did before. This is a public document
13 that's been on the website, to your knowledge, Mr.
14 Castonguay?

15 MR. CASTONGUAY: Yes, sir.

16 MEMBER LUSTIG: Since about the time it
17 was issued, which says November of 2024?

18 MR. CASTONGUAY: Yes, that's -- I don't
19 know when, but I've learned about it in around December
20 2024, I believe, yes.

21 MR. LUXAT: Okay. And this is just to
22 note that it's obviously the Quebec government.

23 MR. CASTONGUAY: Yes.

24 MR. LUXAT: Okay. I'm going to take you
25 to -- it's page 36 of this document. I'll find it here.

1 And I'm going to read you a couple of
2 portions of the passages and get your response or take on
3 what's being communicated here. And I'm going to start
4 with paragraph 88.

5 Do you see that on your screen, Mr.
6 Castonguay?

7 MR. CASTONGUAY: I do.

8 MR. LUXAT: And paragraph 88 states:

9 "School bodies also apply to the federal
10 government for funding under Jordan's Principle. Some of
11 the school bodies we audited claim that they turned to the
12 federal government because of the long processing times at
13 the MEQ. (as read)

14 And is that just is that the Ministry of
15 Education for Quebec?

16 MR. CASTONGUAY: Yes.

17 MR. LUXAT: "The red tape and
18 insufficient funding. The federal amounts are paid out
19 quickly usually within 48 hours. In addition, 11 school
20 bodies have signed contribution agreements with the
21 federal government further facilitating their access to
22 funding." (as read)

23 So we had just been talking about the
24 audit and you remember the audit referenced the
25 incentivizing use of Jordan's Principle. Is this an

1 example of what the audit was getting at?

2 MR. ELSON: Could we exclude the witness,
3 please?

4 MEMBER LUSTIG: Yes, please excuse
5 exclude the witness.

6 (WITNESS IS EXCUSED)

7 MR. ELSON: Member Lustig, this is
8 another leading question, as indicated by the fact that
9 the witness is about to answer, "Yes"; but that's not my
10 main comment.

11 I would like to put on the record some of
12 our concerns with relying on this document at a very high
13 level, just so that they are in your mind
14 contemporaneously. I know, Member Lustig, that you have
15 flagged that this document is a public document. However,
16 my client did not have this document which is R-46 or R-45
17 until it was provided by the Respondent extremely recently
18 after the close of my client's evidence.

19 Secondly, this is about Quebec. And this
20 complaint is about Ontario. And so to the extent that
21 there are comparisons being made about the speed in which
22 requests are responded to as between the Quebec provincial
23 system and the Ontario -- and the federal system, it's
24 irrelevant to Ontario.

25 And another point is that my friends are

1 attempting to use a document prepared by the Quebec
2 government as a way to comment on how quickly federal
3 amounts are paid and how Jordan's Principle works. And
4 what they have at their fingertips is their own evidence
5 which hasn't been disclosed to us. And so this is
6 certainly not the best evidence of how well Jordan's
7 Principle is working.

8 You know, relying on a Quebec document
9 which says the federal amounts are paid out quickly,
10 usually within 48 hours, when what the federal government
11 has at its fingertips are statistics. And it is those
12 statistics that should be on the record, not some document
13 that they found online by another level of government
14 commenting at a very high level. It's -- when they have
15 the better evidence in their fingertips, it shouldn't be
16 admitted or used.

17 And then lastly, all my other comments
18 about this not being a new issue, and so on and so forth.
19 I'll leave it there, Member Lustig.

20 MEMBER LUSTIG: Okay, that's all of it is
21 noted, Mr. Luxat?.

22 MR. LUXAT: Yeah, I guess to clarify that
23 this isn't being relied upon in terms of the processing
24 times but more as an example of a provincial territorial
25 government using Jordan's Principle in a situation where

1 it should have been the provincial government funding the
2 service as a way to sort of supplement provincial bug
3 governments is an example of something noted in the audit
4 and addressed through the 2025 operational budget.

5 It wasn't -- to be honest, this was not
6 relevant until a late day. We would not have introduced
7 this into evidence or the audit of evidence until Mr.
8 Elson introduced evidence on, as I said before, the point
9 he raised. Again, all of this again is going to be raised
10 in submissions, but just to clarify the reason why we're
11 referring to this document.

12 MEMBER LUSTIG: So assuming for the
13 moment that in argument I hear the reasons for excluding
14 it, with respect to its admissibility, but if I do it,
15 then it will then go to weight. And so that's the way
16 it's going to end up. I'm going to hear your submissions,
17 going to determine whether it's admissible or not. I'm
18 aware of both of your points with respect to that. And
19 that's the way we're going to go.

20 And hopefully, Mr. Elson, I'm not here to
21 restrict you in any way. But I think that I understand,
22 you know, if you want to repeat, you can, but I think I
23 understand your position. You've made it very clear.
24 And, I think we can proceed with this witness.

25 Now, you raised the issue as a leading

1 witness objection, leading the witness objection, and
2 we've sort of strayed back to the same points that we've
3 been dealing with previously this morning. And it's just
4 going to delay the end of the day, I think. But anyways,
5 let's get back to the ---

6 MR. LUXAT: Just on the leading point,
7 I'm not sure if you made a decision there, but my point is
8 simply that in response to that issue, leading is entirely
9 fine on non-controversial matters. I'm pointing out an
10 obvious connection between two documents. If I was going
11 to -- any other way would take a very long time, so I --
12 anyways, I don't think this is a situation where it's
13 inappropriate in any way.

14 MEMBER LUSTIG: Okay. Well, I'm going to
15 let you continue, so let's get the witness back.

16 (WITNESS RETURNS)

17 MEMBER LUSTIG: Okay, please proceed,
18 Mr. Luxat.

19 MR. LUXAT: Thank you, Member Lustig.

20 So is this -- I was asking you, is this
21 an example of what was identified by the audit where
22 provincial or territorial government's been incentivized
23 to use Jordan's Principle?

24 MR. CASTONGUAY: It's an example in the
25 context of navigating multiple potential streams of funds

1 to support some of their work, some of the schools
2 presented requests to Jordan's Principle, rather than
3 presenting it to their own Ministry of Education that has
4 their jurisdictional responsibility and the subject matter
5 expertise for those matters.

6 MR. LUXAT: Okay. And I'm just going to
7 continue with paragraph 89; it states:

8 "Table 4 shows the amounts requested from
9 the MEQ by the school bodies audited and the amounts they
10 received from the MEQ and the federal government to
11 provide services to Indigenous students." (as read)

12 And Table 4 lists the amounts. And in
13 paragraph 90, the Auditor General report continues.

14 "Although the use of two separate funding
15 envelopes increases the amounts available to provide
16 services to Indigenous students, amounts granted under
17 Jordan's Principle are often used to fund activities
18 similar to those normally covered by MEQ budgetary
19 measures, such as the hiring of school support staff or a
20 liaison officer. Despite being aware of this practice,
21 the MEQ does not have an overall picture of the services
22 funded under Jordan's Principle that would normally be
23 covered by its budgetary measures." (as read)

24 So Mr. Castonguay, can you comment on
25 this practice and whether it's aligned with Jordan's --

1 with the purpose or reason of Jordan's Principle, or
2 whether it raises any concerns?

3 MR. CASTONGUAY: It raises question --
4 concerns related to not providing incentives for
5 provincial government to not uphold their responsibilities
6 of providing equal services to all their citizens,
7 inclusive of First Nation children. And it raises
8 concerns of sustainability of the Jordan's Principle
9 Initiative, if it is used for purposes like shoring up
10 responsibilities in such a way that doesn't even allow us
11 to clarify how one stream of fund versus the other,
12 supports what differences in the services and support.

13 So yes, an example of some of the
14 concerns tied to the audit that shows that the management
15 control framework around preventing duplication or
16 overlap, yes.

17 MEMBER LUSTIG: Can I just -- I just have
18 a question.

19 You use the word sustainability; you've
20 used it several times now, of the system in connection
21 with these audits, or the reports on the audits. What
22 does sustainability mean, as you use it, with respect to
23 the program, Jordan's Principle? What is that?

24 You've expressed it in terms, I believe,
25 of a concern about its continuance. But I want you to

1 explain what sustainability means in that context.

2 MR. CASTONGUAY: Well, there's an
3 operational sustainability that we know is very much under
4 pressure when we look at some of the volume of requests
5 and some of the backlog that are associated to it. And so
6 in being expected to do all things in all contexts, in all
7 of these fields, it is difficult for Jordan's Principle to
8 do what it needs to do for the children who need it the
9 most in the most compliant way possible. And so that is a
10 concern around sustainability of operation.

11 In the context of provincial and
12 territorial school boards, we also saw a financial
13 sustainability concern where the amounts that were
14 approved year over year grew from basically almost
15 nothing, around 2020 to closer to 200, 250 million in 2024
16 or 2025.

17 And so operational and financial
18 sustainability concerns, I think, would be the two main
19 areas to define and answer your question.

20 MEMBER LUSTIG: Thank you. Please
21 proceed, Mr. Luxat.

22 MR. LUXAT: Thank you, Member Lustig.

23 And I'm going to take you to the next
24 document here, which is Exhibit C-43, Jordan's Principle
25 Operational Bulletin. Do you see that on your screen, Mr.

1 Castonguay?

2 MR. CASTONGUAY: Yes, I do.

3 MR. LUXAT: Okay. Again, I want to read
4 you some passages from the document and get your response
5 or a clarification as to what's being referred to.

6 MEMBER LUSTIG: Is this an exhibit?

7 MR. LUXAT: Yes, it is an exhibit.

8 MEMBER LUSTIG: All right.

9 MR. LUXAT: Exhibit C-43, I believe.

10 MEMBER LUSTIG: Okay, thank you.

11 MR. LUXAT: So first, this was issued in
12 February of 2025; is that right?

13 MR. CASTONGUAY: Yes.

14 MR. LUXAT: And it states at paragraph --
15 the third paragraph:

16 "ISC is reviewing Jordan's Principle
17 processes and policies at regional and national levels
18 with long-term sustainability in mind. This will ensure
19 more consistent and clearer policies and communications
20 about the services First Nations children can access
21 through Jordan's Principle and the required documentation
22 to access those services and supports." (as read)

23 Do you see that?

24 MR. CASTONGUAY: I do.

25 MR. LUXAT: So and does the document, the

1 operational bulletin -- does it provide clarification with
2 respect to the types of services or requests that will be
3 approved?

4 MR. CASTONGUAY: It does address certain
5 categories of types of requests that would need to be
6 assessed differently than it was previously in order to be
7 more aligned with our understanding of the orders in a way
8 that would support decision-making for those categories.

9 And it also provides some additional
10 clarity on the supporting documentation that will support
11 the determination of the request.

12 MR. LUXAT: Okay. I want to take you to
13 another. This is page 2 of the bulletin. And it says,
14 "Information about requests, and what is being clarified."

15 And I want to take you to one item of
16 clarification it sets out. It states:

17 "Any request must show, one, how the
18 requested product, service, or support meets the distinct
19 needs of the First Nation child. And, two, how the child
20 either (a) experienced gaps or delays in accessing
21 government services, or (b) was denied an existing
22 government service because of their identity as a First
23 Nations child." (as read)

24 It continues:

25 "Requests need to include appropriate

1 supporting documentation from a professional as described
2 in Section 2, information to include with the request for
3 the child. This documentation must clearly link the
4 requested product, service, or support to the child's
5 specific needs." (as read)

6 Can you explain and provide some context
7 for why this clarification was required?

8 MR. CASTONGUAY: Yes> And it's a complex
9 environment in which this operates, and of course the
10 foundations are still the orders and the rulings. A lot
11 of what's in there related to the request needing to make
12 a link between the distinct needs and the requests were
13 always in place and come from the ruling, and we're
14 bringing them back in the forefront as a way of managing
15 some of the findings that more clarity would benefit the
16 Jordan's Principle Operational System, would benefit
17 requesters in preparing their request.

18 And so some of it was just bringing back
19 things that were already in place, bringing it back for
20 external and internal stakeholders so that there are more
21 clarity, and that we can reach more operational efficiency
22 in achieving the intention of the orders. And also
23 helping us have a clearer ability to make decisions in a
24 way that clarifies how Jordan's Principle supports
25 addressing and preventing discrimination in the access to

1 available public services, and so always trying to
2 navigate something that we call the administrative burden,
3 and trying to find the appropriate balance so that we are
4 not putting an overburden on families or those submitting
5 requests.

6 But that we do need more information to
7 help us contextualize how the request and the needs fit in
8 relationship to other existing programs and services that
9 the family have either tried and not been able to access
10 so that it can help support our assessment of -- and our
11 determination.

12 MR. LUXAT: And does ISC hope that this
13 clarification might help respond to some of the concerns
14 raised in the audit?

15 MR. CASTONGUAY: It's difficult work.
16 But yes, that's part of the continuous improvement of
17 managing Jordan's Principle. And as my government
18 context while continuing to be compliant and to the orders
19 and to make progress, and to have an ability to do this in
20 a way that will show continuous improvement.

21 MR. LUXAT: Thank you, Mr. Castonguay.

22 I want to take you to the next bit of
23 clarification that's offered in the operational bulletin.
24 And it starts with, "Additionally, ISC has determined..."

25 Do you see that on my screen?

1 MR. CASTONGUAY: Yes.

2 MR. LUXAT: "Additionally, ISC has
3 determined, based on its analysis of legal obligations
4 related to substantive equality under Jordan's Principle,
5 that funding for the following items will not be approved
6 unless such funding is required by substantive equality."
7 (as read)

8 Then it lists a number of sort of
9 categories of requests, I guess. And the one I wanted to
10 focus on is the -- it's on page 3, the first bullet on
11 page 3 -- school-related requests.

12 Do you see that on your screen?

13 MR. CASTONGUAY: Yes.

14 MR. LUXAT: It states:

15 "School-related requests, unless linked
16 to the specific health, social, or educational need of the
17 First Nations child."

18 Can you -- we'll move on to the second
19 sentence in a second, but just stopping there can you
20 provide a bit of an explanation for what this
21 clarification is about?

22 MR. CASTONGUAY: Yes. That is tied to
23 one of the important concepts of Jordan's Principle being
24 child-specific, and so clarifying that the request for
25 areas related to school need to be tied to specific

1 children, in a way that demonstrates how the request makes
2 a link between the needs of specific children and what is
3 being requested.

4 MR. LUXAT: Okay. Does this mean that
5 group requests are no longer eligible for First Nations
6 schools?

7 MR. CASTONGUAY: No. No, I ---

8 MR. LUXAT: Sorry, Mr. Castonguay, I
9 didn't mean to interrupt you.

10 MR. CASTONGUAY: No, we are still
11 treating group requests and receiving group requests. We
12 have not limited the eligibility of group requests coming
13 to the department from anybody especially not from First
14 Nation communities.

15 The second sentence that you're going to
16 take me to does do that. That's a little bit for
17 provincial and territorial school systems.

18 MR. LUXAT: Yeah, okay. Before we get to
19 that sentence, I just wanted to follow up on group
20 requests. There's later in the bulletin -- it provides
21 clarification for communities, and it says management of
22 group requests. And it says at the bottom of page 4:

23 "New group requests for Jordan's
24 Principle Funding and beyond one fiscal year, i.e. multi-
25 year requests, are no longer approved. Group requests

1 should clearly demonstrate how the proposed activity or
2 service will benefit each First Nations child, within the
3 request." (as read)

4 Can you provide some context to what this
5 is about?

6 MR. CASTONGUAY: Group requests are
7 funded through contribution agreements with recipients,
8 often First Nation communities, tribal councils, other
9 types of recipients. And so in the context of tying the
10 funding approval through Jordan's Principle to the
11 specific needs of the child, in some cases, the first is
12 the need to be able to have an ability to reassess where
13 that need is and so clarifying that, the approval
14 duration.

15 And as I said, some of this is work in
16 progress, as we are continuing to make refinements to some
17 of the applications of this. But this speaks of a request
18 being presented for fiscal year '24-25 being approved for
19 '24-25, and needing to have an update of the requests, and
20 of the need if a fiscal -- for a similar or different
21 requests for a different fiscal year.

22 MR. LUXAT: First, okay. And later on it
23 goes on to, talk more about specific -- identifying the
24 distinct, specific needs of children.

25 I'd like to move now to the second part

1 of the clarification. where it says -- I'm back at the top
2 of page 3.

3 "Supports to school boards off-reserve
4 and private schools will be redirected to provincial
5 school boards or other existing provincial and federally
6 funded programs." (as read)

7 I think Your evidence might already kind
8 of explain this, but can you provide some clarification
9 about or explanation for why this clarification was
10 needed?

11 MR. CASTONGUAY: Yes. Again, that's
12 complex, and if we tie it to another concept coming from
13 the orders of Government of First Contact, in the context
14 of a provincial government entity itself presenting a
15 request to Jordan's Principle, they are the government of
16 First Contact. And so clarifying that since there is no
17 confusion on the jurisdictional responsibility for the
18 provision of education off reserve, that provinces and
19 territories are expected to deliver in an equitable way
20 the same services to all children.

21 MR. LUXAT: Thank you, Mr. Castonguay.

22 I am, getting close to being done. I
23 just want to refer you now to some Jordan's Principle
24 funding data. But before I do, just to note for the
25 record, Member Lustig, I indicated that I might be asking,

1 depending on how the objection is ultimately handled -- I
2 might be asking for these exhibits, even though I'm
3 introducing them to be excluded, if anything else is
4 excluded as well, just to make sure we don't have a
5 partial, unfair record, just as I noted before.

6 MEMBER LUSTIG: And then I understand you
7 made that request.

8 MR. LUXAT: Yeah. So I apologize for
9 that.

10 Okay. So Mr. Castonguay, the first
11 document I'd like to share with you is a -- it's proposed
12 exhibit R-47. And I'll take you to the first page, the
13 summary. And that states:

14 "Jordan's Principle utilization patterns
15 for Ontario region prepared for Chiefs of Ontario and
16 Anishinaabe Aski Nation, data sources, Jordan's Principle
17 Case Management System, data extract date June 17, 2025."
18 (as read)

19 Are you familiar with this document, Mr.
20 Castonguay?

21 MR. CASTONGUAY: Yes.

22 MR. LUXAT: And there's some qualifiers
23 and limitations noted in the table, but as of the data
24 extract date is the information contained in this document
25 generally reliable?

1 MR. CASTONGUAY: The answer needs to be
2 caveated, like, I don't know the exact, like, process
3 through which this document might have been manipulated
4 for the time it was produced. It's not a static PDF, and
5 so like, I can't speak to every data field in there, or
6 what might have happened to it once it was produced by my
7 team. But to the extent that it's the same data, data
8 fields, and that in the context of the complicated live
9 operation of Jordan's Principle, yes, we do have within
10 the context of the methodology and caveat limitation,
11 that's valid data.

12 MR. LUXAT: So could this be subject to
13 the caveat I noted at the start, marked as the next
14 exhibit, Exhibit R-47? Member Lustig?

15 MEMBER LUSTIG: Yes, accepted.

16 --- EXHIBIT R-47: Jordan's Principle utilization
17 patterns for Ontario region prepared
18 for Chiefs of Ontario and
19 Anishinaabe Aski Nation, data
20 sources, Jordan's Principle Case
21 Management System, data extract
22 dated June 17, 2025

23 MR. LUXAT: So I'd like to take you to
24 Tab 13 of this Excel table. And this is Table 13. Do you
25 see that on your screen?

1 MR. CASTONGUAY: Yes, it's small, but I
2 do.

3 MR. LUXAT: Okay, let me -- maybe I can -
4 --

5 MR. CASTONGUAY: I am able to read the
6 numbers.

7 MR. LUXAT: You are, okay, great. It
8 says:

9 "Table 13 Approved Jordan's Principle
10 requests by category and ordinary place of residence,
11 Ontario region 2024-2025."

12 And you see here under the sixth row, it
13 lists Education. Do you see that?

14 MR. CASTONGUAY: Yes.

15 MR. LUXAT: And then it identifies the
16 number of requests based on whether they're on reserve,
17 off-reserve, both, unknown, and the total. And you see
18 here it says for on-reserve, Requests 726?

19 MR. CASTONGUAY: Yes.

20 MR. LUXAT: And off-reserve requests
21 1,995?

22 MR. CASTONGUAY: Yes.

23 MR. LUXAT: So fair to say most of the
24 requests were from First Nation children who lived off-
25 reserve?

1 MR. CASTONGUAY: In the way that the data
2 there shows, yes.

3 MR. LUXAT: And I'm going to take you to
4 Tab 14. It says:

5 "Approved, Jordan's Principle funds,
6 millions of dollars by category and ordinary place of
7 residence, Ontario region, 2024-2025."

8 Again, it lists education. And then the
9 amount approved for on-reserve, off-reserve, and the
10 total. And you see here it says for on-reserve, the
11 education amount is \$33.68 million.

12 MR. CASTONGUAY: Yes.

13 MR. LUXAT: And off-reserve \$82.55
14 million?

15 MR. CASTONGUAY: Yes.

16 MR. LUXAT: So again the majority of the
17 funding is to support First Nations children who live off-
18 reserve?

19 MR. CASTONGUAY: In '24-25, yes.

20 MR. LUXAT: Yes. Okay, the next I'm
21 going to take you to another data table.

22 So I've brought up on my screen another
23 Excel table, Mr. Castonguay, that's titled, "Submitted and
24 Approved Requests. associated funds, approval rates, and
25 processing times, statistics for Jordan's Principle

1 Education Request, Ontario region". And it says it was
2 prepared for MCFN. Data sources Jordan's Principle CMS,
3 data extract date November 21, 2025.

4 Are you familiar with this document, Mr.
5 Castonguay?

6 MR. CASTONGUAY: Yes.

7 MR. LUXAT: And again, the same question,
8 subject to the caveats and limitations noted in the table
9 is the information, from the case management system in
10 this table, generally accurate and reliable?

11 MR. CASTONGUAY: Based on this, yes, with
12 the same concerns and caveats.

13 MR. LUXAT: That's fine, yeah.

14 I want to take you to Table 2 of this
15 document. And you'll note it states:

16 "Table 2 submitted requests and requested
17 funds in millions of dollars for individual and group
18 requests through Jordan's Principle for Education
19 Requests, Ontario region, April 1, 2023 to September 30,
20 2025." (as read)

21 And you'll see the total; it provides
22 amounts for April 1 through September 30th in 2024, the
23 six-month period at the start of the fiscal in 2024, and
24 then the April 1 through September 30th, 2025, the same
25 six-month period in 2025.

1 Do you see that, Mr. Castonguay?

2 MR. CASTONGUAY: Yes.

3 MR. LUXAT: And it shows that the number
4 of submitted requests was in 2024, the first six months of
5 2024, 3,749. You see that?

6 MR. CASTONGUAY: Yes.

7 MR. LUXAT: And in the same six-month
8 period in 2025, the number of submitted requests was
9 1,031. Do you see that?

10 MR. CASTONGUAY: Yes.

11 MR. LUXAT: So would you agree there's a
12 fairly significant drop in requests?

13 MR. CASTONGUAY: Based on those numbers,
14 yes.

15 MR. LUXAT: And in terms of the requested
16 funds, in 2024, it was \$134.69 million requested. And in
17 2025, \$29.33 million. Do you see that, Mr. Castonguay?

18 MR. CASTONGUAY: Yes.

19 MR. LUXAT: So again, you'd agree a
20 pretty significant drop in the amount of requested funds?

21 MR. CASTONGUAY: Based on the data here,
22 yes.

23 MR. LUXAT: Okay. And I'm going to take
24 you to Table 4 of the workbook now. And could you see
25 Table 4 on the screen, Mr. Castonguay?

1 MR. CASTONGUAY: Yes.

2 MR. LUXAT: It says:

3 "Table 4 approved requests and approved
4 funds and millions of dollars for individual and group
5 requests through Jordan's Principle for education
6 requests, Ontario region, April 1, 2023 to September 30,
7 2025."

8 And then it lists the the same thing
9 under total for April 1 through September 30th, 2024, the
10 approved requests and the approved funds, and for April 1,
11 September 30th, 2025, the approved requests and approved
12 funds.

13 Do you see that information there, Mr.
14 Castonguay?

15 MR. CASTONGUAY: Yes.

16 MR. LUXAT: And again you'll note that it
17 shows a pretty significant drop in approved requests and
18 approved funds.

19 MR. CASTONGUAY: Yes.

20 MR. LUXAT: Can you shed some light or
21 give us some context, your understanding of why the number
22 of requests and requested funds and approved, approvals
23 and approved funds all would have reduced from 2024 to
24 2025?

25 MR. CASTONGUAY: Yes, it's also a complex

1 environment and there are different potential drivers that
2 would explain differences between submitted and approved.
3 So from the submitted category without wanting to overly
4 speculate on what would bring people, groups, individuals
5 to submit, there are multiple drivers that could explain
6 such a reduction, starting with the operational bulletin,
7 having the impact of clarifying what type of supporting
8 documentation and what type of requirements around what
9 the requests need to cover that we went over previously.

10 Also the impact of people knowing about
11 the backlog might also be a part of the drivers. And then
12 in the context of group requests, that brings another
13 driver that could be called, contribution agreement
14 management related where there are some provisions in
15 contribution agreement allowing for carry-forwards of
16 unspent amount at the end of fiscal year to the next
17 fiscal year which, in some cases explains why there might
18 be less financial requirement in the beginning of next
19 fiscal year, as recipients work with the regions to be
20 able to use resources, financial resources that are
21 already within their agreement from one fiscal year to the
22 other.

23 And in other circumstances, we talked
24 about multi-year approval. In some cases, there might be
25 less requirement to submit a request in the beginning of a

1 fiscal year if, in specific circumstances, they would have
2 received an approval for multiple fiscal years, and so
3 would not be in our data of a resubmitted request or
4 approved request, since it would have been captured in a
5 previous fiscal year data where the multi-year approval
6 would be done.

7 So multiple factors and so that would be
8 for the requests submitted in the context of requests
9 approved. The operational bulletin would still be a
10 factor. The backlog would also be a factor, and all of
11 the other contribution agreement elements that I mentioned
12 would also apply.

13 So it's a complex picture that speaks to
14 the challenges of the Jordan's Principle operations.

15 MR. LUXAT: And do you -- obviously, you
16 highlighted the operational bulletin specifically. How
17 about the exclusion of requests for provincial school
18 boards?

19 MR. CASTONGUAY: Yes, I would identify
20 that as being the primary factor that would have clarified
21 to provincial and territorial school boards that they are
22 to go through their own programs and processes to deliver
23 the equal amount, to deliver similar or non-discriminatory
24 services to all of the children no matter their identity
25 before looking for a Jordan's Principle request.

1 MR. LUXAT: Thank you, Mr. Castonguay.

2 One of the arguments the in the ---

3 MR. ELSON: Sorry, Mr. Luxat. Just
4 before we get too far, I kept meaning to interject.

5 That exhibit, you didn't note the exhibit
6 number or mark it, and I think it's already marked as
7 Exhibit C-160. But just for the record so that we know
8 what document we were referring to.

9 MR. LUXAT: Oh, is it? I was not sure
10 about that. I was going to enter it as Exhibit 40. Is it
11 already C-160? Let me just double check.

12 MR. ELSON: I believe so and I don't mean
13 to interrupt you, but I just thought it would be helpful
14 to have that on the record. We still have C-160 marked as
15 an exhibit, right? Did you say twice? Yeah.

16 MR. LUXAT: But I've seen -- maybe it's
17 my system. My C-160 is a document dated June 2013, ISC
18 cost drivers and pressures. So you know, I had looked
19 through; it might be my system, and I thought you had
20 introduced this. And but then when I looked at the
21 document I thought you had introduced, it was a different
22 document, so I don't know. We might need to clean up the
23 record on this.

24 MR. ELSON: We have two C-160s then Ms.
25 Hannah?

1 Okay. Well, let's call the, the C-160,
2 that's Jordan's Principle data, C-160.1. Does that work
3 for everybody?

4 MR. LUXAT: As long -- is it the document
5 that I brought up on the screen? That's the only concern.

6 MR. ELSON: Yeah, the Jordan's Principle
7 Data, C-160.

8 MR. LUXAT: Okay, and I'll confirm.
9 We'll take a look at it, double check, and let everybody
10 know if we see any issue, but yeah, I'm fine, however it's
11 worked.

12 MR. ELSON: That's good. So shall it be
13 C-160.1, the Jordan's Principle Data Spreadsheet?

14 MR. LUXAT: Sure, yeah, and subject to
15 the caveat I had mentioned before about the partial
16 record, and some of the evidence has concluded, but yes,
17 that's fine.

18 MEMBER LUSTIG: Okay, that's accepted.
19 --- EXHIBIT C-160.1: Jordan's Principle Data Spreadsheet

20 MR. LUXAT: So Mr. Castonguay, I was
21 about to put a -- one of the issues in this case the
22 Complainant has raised is that they've indicated they're
23 going to argue the significant amount of education-related
24 funding provided through Jordan's Principle in 2024, or
25 before the operational bulletin, demonstrates or

1 illustrates that the education program wasn't sufficient,
2 or that there were funding gaps. How do you interpret
3 that data? And how would you respond to that suggestion?

4 MR. CASTONGUAY: I am not an education
5 expert and so would not -- what I can say about the
6 Jordan's Principle operation and the data is that the
7 majority of the funding was for provincial and territorial
8 or students living on reserve which, from my limited
9 understanding, is it of the purview of the ISC Education
10 program?

11 MR. LUXAT: Sorry, just to interrupt.
12 You might have misspoke. I thought -- did you say
13 students on reserve?

14 MR. CASTONGUAY: No, the majority of the
15 funding was for students living, normally living off-
16 reserve.

17 MR. LUXAT: Oh, sorry.

18 MR. CASTONGUAY: And, the operational
19 bulletin is intended to help clarify that space of
20 provincial and territorial schools and school boards. And
21 the operational bulletin does not change the eligibility
22 of a Nation in submitting requests in health, social, and
23 education for on-reserve services.

24 MR. LUXAT: And how about the issues
25 identified in the audit? Could they have an impact on the

1 high level of funding delivered earlier?

2 MR. ELSON: Can we exclude the witness
3 again?

4 MEMBER LUSTIG: Yes. Exclude the
5 witness, please.

6 (WITNESS IS EXCUSED)

7 MR. ELSON: My friend is again asking a
8 leading question. The first question was perfect. How
9 would you respond to this?

10 The question of, what do you think about
11 the issues in the audit? Do you think that's one of the
12 reasons? That's a leading question.

13 You know, again it's already been said
14 and I think it goes to the weight of the response that the
15 answer's been suggested already, but I'll leave it there.
16 I don't want to take up more time and, you know, we can go
17 back to the witness.

18 MEMBER LUSTIG: Okay, thank you.

19 Okay, if we could bring the witness back.

20 (WITNESS RETURNS)

21 MEMBER LUSTIG: Okay, continue.

22 MR. LUXAT: Thank you.

23 Mr. Castonguay, you had mentioned one of
24 the reasons is the issue with respect to provincial,
25 territorial, school boards. What about some of the other

1 issues identified in the audit? Could they have an
2 impact?

3 MR. CASTONGUAY: Yes. There is a lot of
4 multiple public servants involved in decision-making in
5 the context of some of the challenges that were raised by
6 the audits and their findings. And it's a very difficult
7 environment to operate in, with a lot of complex legal
8 questions and definitions and all of this happening in a
9 context of high pressure and high volume. That makes it,
10 from my perspective, difficult to assess and attribute
11 correlation, causation, and such.

12 MR. LUXAT: Thank you, Mr. Castonguay.

13 Perhaps it might be a good time for a
14 break. I think I might be done, in which case Mr. Elson
15 could begin his cross-examination after the break, or I
16 might have a couple more questions. So I would suggest a
17 break would be ---

18 MEMBER LUSTIG: Okay, so we'll break to
19 11.20.

20 MR. LUXAT: Thank you.

21 --- Recess

22 --- Hearing is resumed

23 REGISTRY OFFICER: We are back on record;
24 the time is 11.20 a.m.

25 MEMBER LUSTIG: Thank you.

1 Mr. Luxat, do you have any further
2 questions of this witness?

3 MR. LUXAT: Well, just one, point, I
4 guess, quickly, is the will say we provided for the
5 witness R-44. I understand it's not evidence but if we
6 could have it marked for identification purposes, just so
7 the record is complete, like, the Complainant's opening
8 submissions was put on for identification purposes.

9 If Mr. Elson's okay with that, then I
10 would suggest we take a look.

11 MR. ELSON: It's certainly not evidence,
12 and it's unusual to have that be part of the record. And
13 I'm surprised by the request, and I wouldn't want it to
14 get confused.

15 Can I think about that, and we can
16 address it after?

17 MR. LUXAT: Well, yeah, it was identified
18 as a proposed exhibit. I would say the request is in line
19 with the fact that your opening submissions were entered
20 as an exhibit. I don't really care, but I thought for the
21 sake of consistency, we might as well take that approach.
22 Maybe we can discuss because yes, it's not evidence of Mr.
23 Castonguay's testimony and the exhibits are the evidence,
24 so okay.

25 MEMBER LUSTIG: Let me get -- you get

1 back to me then, after you've discussed it with Mr. Elson.

2 I can do either, obviously. Mr. Luxat, is that it then?

3 MR. LUXAT: I was just going to say, that
4 that those are all of my questions. So thank you very
5 much, Mr. Castonguay. I know you're very busy and I
6 really do appreciate you taking the time to appear here
7 today. So thank you very much.

8 MEMBER LUSTIG: Thanks, Mr. Luxat.

9 Okay, Mr. Elson, are you prepared to
10 start the cross-examination?

11 MR. ELSON: Yes and no. I think I can
12 start. I do need more time to look over a lot of things,
13 and so maybe because we have a shortened day today and
14 we're stopping at 3:00, I will go until around noon.

15 MEMBER LUSTIG: Okay.

16 MR. ELSON: And -- or even maybe before
17 then, and then I can try as best as I can to prepare my
18 questions during the lunch break.

19 MEMBER LUSTIG: Okay. Again, and I don't
20 want to take up time again on this, but you've already
21 made it clear that in certain respects with respect to
22 production of documents, that you feel that there is some
23 unfairness to the Complainant. I don't want to have that
24 feeling about not enough time to conclude a proper cross-
25 examination of the witness. And so I remind you that I am

1 available next week, and we have the dates in February,
2 and so I don't want to end up with the feeling on your
3 part, or anyone's, that you had to finish this cross-
4 examination, given all the all the circumstances, today.

5 And so just keep that in mind. That's
6 the way I look at things with respect to the cross-
7 examination of this witness.

8 So if you can continue, and tell me when
9 you want a break, and we'll have probably a shortened
10 lunch break so that we do as much as we can today.

11 MR. ELSON: Thank you, Member Lustig.

12 MEMBER LUSTIG: Okay, good.

13 --- CROSS-EXAMINATION BY MR. ELSON:

14 MR. ELSON: Mr. Castonguay, we met very
15 briefly before we were on the record, so good morning
16 again, and good to meet you a second time, I guess.

17 I would like to just jump into it and ask
18 you some questions around the operational bulletin which
19 is at Exhibit C-41. And I'm looking at some paragraphs
20 that my friend took you to as well. And in particular, at
21 the top of page 2, where it says "School-related requests,
22 unless linked to the specific health, social, or
23 educational need of the First Nations child..." And that is
24 a list of items where funding will not be approved unless
25 such funding is required by substantive equality.

1 And I'm actually -- I apologize. I was
2 looking at the top of page 3 before.

3 And so my question is this. Are school-
4 related requests to be rejected each and every time if
5 they're not linked to a specific health, social, or
6 educational need of the First Nations child?

7 I can't hear you.

8 MR. CASTONGUAY: Can you hear me now?
9 Apologies.

10 MR. ELSON: Yes, I can.

11 MR. CASTONGUAY: Every request is looked
12 at on a case-by-case basis, and so it really depends on
13 what we're talking about, if it is an individual, a group
14 request, or if it is a request coming from a community or
15 a provincial territorial school. All those factors would
16 influence the answer.

17 MR. ELSON: Okay. I've got to come back
18 to that in a moment but it's probably more efficient if I
19 sort of group these together.

20 The second sentence in the paragraph at
21 the top of page 3 says"

22 "Supports to school boards for off-
23 reserve and private schools will be redirected to
24 provincial school boards or other existing provincial and
25 federally funded programs." (as read)

1 Do you see that there?

2 MR. CASTONGUAY: Yes.

3 MR. ELSON: Is that the case each and
4 every time or not?

5 MR. CASTONGUAY: The practice has been
6 part of the transition of implementing the operational
7 bulletin, and so I would say that it is increasingly the
8 case since its release in February, and we're working
9 through the specifics on a case-by-case basis to make it
10 make sense as part of the context of each request.

11 MR. ELSON: If it's not a hard and fast
12 rule, how does this help you speed things up if there
13 still needs to be a case-by-case determination?

14 MR. CASTONGUAY: It's a work in progress,
15 and we will get to a place where as we get more clarity,
16 as there is clearer expectation, as there's a clearer set
17 of communication with regards to how and in what
18 circumstances and what supporting documentation is needed.
19 It will get to speeding up our ability to process
20 requests. But we also recognize that some of it is a
21 transition, and we want to work through those transitions.

22 MR. ELSON: So when I go back up to the
23 paragraph that prefaces this bulleted list, and that
24 paragraph's at the bottom of page 2, it says:

25 "Funding for the following items will not

1 be approved unless such funding is required by substantive
2 equality." (as read)

3 That's a pretty big caveat, isn't it?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: How do you expect people who
6 work in your department and in the regional versions of
7 your department figure that out? I mean, I don't see how
8 this gives them any more guidance.

9 MR. CASTONGUAY: No, that's the challenge
10 in operating this in a large operation that's
11 decentralized in many decision-making. And we're going to
12 continue making progress through the form of different
13 type of internal mechanism, external communication. But
14 we also want to make sure that we're not introducing any
15 approach that wouldn't be in line with the orders or
16 ensuring substantive equality.

17 MR. ELSON: You gave two examples there -
18 - internal mechanisms and external communication. And by
19 internal mechanisms, I assume you're talking about, you
20 know, guidelines or Q&As for your staff, that kind of
21 thing?

22 MR. CASTONGUAY: Yes, in part. Fuck yes.

23 MR. ELSON: When you say "in part", what
24 am I missing?

25 MR. CASTONGUAY: Management controls,

1 roles and responsibilities, delegation frameworks, and
2 such.

3 MR. ELSON: And in terms of external
4 communication, you're talking about telling people what is
5 and isn't eligible, right?

6 MR. CASTONGUAY: The operational bulletin
7 is part of it. The website, conversations with partners,
8 requesters, and any opportunity that we have to present to
9 chiefs and partners.

10 MR. ELSON: Okay. So now in terms of
11 guidelines and Q&As, I imagine that you generate some of
12 those in headquarters and some of those in the regions; is
13 that right?

14 MR. CASTONGUAY: Past practices might be
15 a bit more difficult to answer in terms of, yes, more in
16 regions, more in HQ, but the goal to get to more national
17 consistency is to as much as possible, given the large-
18 scale operation is to do so in HQ.

19 MR. ELSON: Got it. So the guidelines
20 and Q&As that you have now would be national?

21 MR. CASTONGUAY: Yes.

22 MR. ELSON: And what are those guidelines
23 and Q&As, for example, you know, to help someone who's
24 administering this program decide, unless such funding is
25 required by substantive equality? Is that like a like a

1 short Q&A? Is that a is a big, long sort of
2 administration document? Can you give me a sense of, you
3 know, what they're using?

4 MR. CASTONGUAY: It's something that we
5 need to do more of, and so right now we had an internal
6 guidance document that also summarizes some of the ways to
7 navigate our case management system. But some of what
8 you're speaking of speaks to work that we need to continue
9 doing to help clarify some of those concepts as they are
10 complex.

11 MR. ELSON: Okay. So you have an
12 internal guidance document, right?

13 MR. CASTONGUAY: We have an internal
14 guidance document.

15 MR. ELSON: Okay. Well, and I'm just
16 trying to there's going to be a lot of things, and I want
17 to make sure that I keep them straight. Is that what you
18 call it? Do you call it an -- what's the title on that
19 document?

20 MR. CASTONGUAY: Yes, we have a -- I
21 don't -- I'm not sure but, like, there is an internal
22 guidance document. And then depending on specific
23 questions, management questions, we have different
24 internal guidance documents on specific questions, like
25 contribution agreement management and such.

1 MR. ELSON: Which of the internal
2 guidance documents would be most relevant to the question
3 of eligibility and whether to approve an expense or not?

4 MR. CASTONGUAY: Whether to approve an
5 expense or not would be the operational bulletin itself,
6 which also serves as an internal guidance document. There
7 was a supporting internal guidance document that came in
8 the same timeline but, like, the actual clarity comes from
9 the operational bulletin. But the answer to some of this
10 is still to be grounded in the orders themselves.

11 MR. ELSON: You said there was a
12 supporting internal document that came out at the same
13 time as the operational bulletin. What do you mean by
14 that?

15 MR. CASTONGUAY: Well, to support some of
16 the processing and the transition internally.

17 MR. ELSON: Okay. Is that a long
18 document, a short document?

19 MR. CASTONGUAY: In between. It's not a
20 long document, it's a short document.

21 MR. ELSON: Like, it's five or ten pages
22 or ---

23 MR. CASTONGUAY: Yes, yes.

24 MR. ELSON: Okay. So you have the
25 operational bulletin which we have up on the screen. You

1 have the supporting internal document that's five or ten
2 pages. Do you have anything else to help the decision
3 makers decide, for example, when to have an exception,
4 when to apply an exception, and grant an approval based on
5 that approval being required by substantive equality, even
6 though it's in one of the sort of no-go areas listed in
7 these six bullets?

8 MR. CASTONGUAY: Not currently. It's not
9 currently something that's been rolled out to region, no.

10 MR. ELSON: Is something in development?

11 MR. CASTONGUAY: It's extremely
12 challenging. We've tried, yes.

13 MR. ELSON: Like, do you have a draft?

14 MR. CASTONGUAY: We've looked at
15 developing a framework and we have that in process of
16 getting some advice.

17 MR. ELSON: I think what you're saying is
18 we don't have a draft. It's hard, and so we haven't done
19 it yet; is that what you're saying?

20 MR. CASTONGUAY: We haven't have a draft
21 that we landed on approving it to operationalize it, as
22 we're working through different sources of advice,
23 including legal advice.

24 MR. ELSON: So the only thing that people
25 in the regions and in the headquarters have to decide, for

1 example, this kind of question about whether an approval
2 is required by substantive equality, even though the
3 expense is in one of the six no-go buckets, is the
4 operational bulletin itself and the supporting internal
5 document. There's nothing else; is that right?

6 MR. CASTONGUAY: There would be on
7 specific basis, availabilities to seek supports and
8 questions, and then we have decision-making mechanisms
9 that we haven't had in place historically related to
10 escalation of requests, delegation matrix for approvals
11 and denials. And all of the determinations are made
12 within that operational context.

13 MR. ELSON: So just to confirm, the
14 universe of supporting documents on those kinds of
15 eligibility questions are the operational bulletin itself
16 and that internal document. But you're saying, in
17 addition to that, they can escalate the request or ask
18 managers; is that right?

19 MR. CASTONGUAY: Yes, and there were
20 different types of presentations, like, questions, tools.
21 Like, I mean, it's a big piece that we've introduced and
22 so, like, it's been a significant -- it's been a
23 significant object of work.

24 MR. ELSON: When you say there were
25 different kinds of presentations, and I think you used the

1 word question tools, what kind of presentations are you
2 talking about?

3 MR. CASTONGUAY: Presentation to partners
4 that summarizes the operational bulletin. But we're being
5 very intentional in trying to be as closely tied to the
6 actual operational bulletin and the orders.

7 MR. ELSON: So I just wasn't sure if you
8 were talking about additional internal documents to help
9 your staff decide on requests, and I think you're not.
10 The only two documents are the operational bulletin and
11 that internal document; is that right?

12 MR. CASTONGUAY: From a more, yes,
13 general approach, yes.

14 MR. ELSON: And from a more specific
15 approach?

16 MR. CASTONGUAY: Back to the escalation,
17 the support system ---

18 MR. ELSON: I see.

19 MR. CASTONGUAY: --- the employees
20 talking to, and then if there's specific questions in a
21 specific region, we might be doing a specific approach to
22 trying to answer those questions given the diversity of
23 realities across the regions.

24 MR. ELSON: Okay. In terms of
25 documentation that is specific to Ontario, or specific

1 challenges in relation to education, is there any other
2 documentation to help decision makers make decisions in
3 terms of eligibility?

4 MR. CASTONGUAY: Not to my knowledge, and
5 I'm really thinking, trying to -- like, nothing that I
6 would have approved specific to those two things. I
7 believe, given that the diversity of specific
8 circumstances under which we need to implement this
9 operational bulletin is so numerous, it is difficult to
10 keep track of all of those scenarios, cases, and areas of
11 application.

12 MR. ELSON: Okay. So when this
13 operational bulletin was rolled out in February of 2025,
14 how did you train people on it without additional guidance
15 documents?

16 MR. CASTONGUAY: By answering questions,
17 by talking through specific requests, by having
18 discussions at all levels of management of the system of
19 Jordan's Principle, and trying to calibrate both
20 regionally and nationally, how decisions making are made.
21 That has been the work of the Jordan's Principle System
22 and teams for that year.

23 MR. ELSON: That internal supporting
24 document that you mentioned, how long would it take you to
25 find a copy of it?

1 MR. CASTONGUAY: Not very long.

2 MR. ELSON: Okay. We would ask that you
3 do that over your break and send it to your counsel, and
4 your counsel could send it to us, so I could take a look
5 at it over the lunch break.

6 MR. CASTONGUAY: Understood.

7 MR. ELSON: Thank you.

8 Let me move on to the next bullet in this
9 list which is the last bullet. It says:

10 "Automatic administrative fees within
11 group requests including salaries, service fees, and
12 overhead costs." (as read)

13 And what's the meaning of that bullet?

14 MR. CASTONGUAY: That's part of some of
15 the usual program management context, where oftentimes
16 there is a automatic 10 percent approved for a project to
17 support general administration. And so that seeks to
18 clarify that Jordan's Principle requires more than just a
19 line that says 10 percent of fund, that it needs to be
20 ventilated so that we can make the link between the
21 administrative functions that are supporting the delivery
22 of the program rather than a general 10 percent approach,
23 given, given the scale of the financial resources in
24 question.

25 MR. ELSON: So if a First Nation were to

1 say, we think this'll take our team 20 hours in admin, and
2 that's going to come out to X dollars, which does happen
3 to equal 10 percent -- but if a First Nation were to do
4 that, is that sufficient or do you need something more
5 than that?

6 MR. CASTONGUAY: I would want to see it
7 on a case-by-case basis but what you're describing is
8 already more than just a general 10 percent line in an
9 Excel document.

10 MR. ELSON: And administration fees for
11 group requests, have they been approved since the bulletin
12 was put in place?

13 MR. CASTONGUAY: Yes. It's also been the
14 object of continuous improvement and the need to
15 transition and to help clarify, but we have been
16 consistent in saying that they need to be better broken
17 down. And when they're not, they're either to be the
18 object of back and forth with the requester, or to be
19 escalated to be on track for denial.

20 MR. ELSON: And so I think what you're
21 saying is this is, in essence, a document issue, and an
22 application issue. Rather than just ask for a 10 percent
23 administration fee, you need supporting documentation.

24 MR. CASTONGUAY: Yes. Yes, broken down
25 details that divides the 10 percent into what it funds.

1 MR. ELSON: Where does it say that in
2 this document? Because all I saw in this document was
3 reference to automatic administration fees not being
4 allowed, and you can't just charge an automatic 10
5 percent. But I didn't see anywhere where it invited First
6 Nations to provide more information, and said, don't
7 worry, we'll cover administration fees; you just need to
8 be clear about what they are.

9 Does that say that somewhere? Did I miss
10 it?

11 MR. CASTONGUAY: I don't know if there is
12 in this document, like, under the contribution agreement
13 or the group request section, more details there. But it
14 is indeed an area of work that we've answered a lot of
15 questions, that we've supported regions through. And that
16 has been part of the things we have to transition and
17 manage.

18 MR. ELSON: Okay, I mean, you must know
19 this document fairly well. I couldn't see it in there.
20 I'll leave it to you. If you decide that I'm wrong -- I
21 don't know, maybe over the lunch break or whatever --
22 please let me know where that does appear in this
23 document. But I'll leave it here for now in the interest
24 of time.

25 Is there other written communication that

1 have gone out to all First Nations where you've said, in
2 essence, although we're not accepting automatic
3 administration fees and 10 percent, feel free to include
4 administrative requests; just provide sufficient
5 documentation?

6 MR. CASTONGUAY: Not to my knowledge.

7 MR. ELSON: I'm looking at page 4 now.
8 And it talks about management of group requests. And it
9 says:

10 "Funding should not be spent unless
11 approved first through Jordan's Principle."

12 Can you explain this?

13 MR. CASTONGUAY: It's just to support
14 recipients in not anticipating approval and incurring
15 expenditures that might not be the object of an approval.

16 MR. ELSON: And so this isn't saying if a
17 First Nation pays for the service before approval is
18 granted, that would jeopardize approval or payment. It's
19 not saying that.

20 MR. CASTONGUAY: No.

21 MR. ELSON: Okay. So a First Nation
22 doesn't have to wait for approval to provide the service?

23 MR. CASTONGUAY: Well, nations are self-
24 determined. They can make decisions within their
25 envelopes and their sources of funds and can make

1 decisions that are separate from anticipating a decision
2 from Jordan's Principle.

3 MR. ELSON: Well, it just seems odd to me
4 that you would say to a First Nation, funding should not
5 be spent unless approved first through Jordan's Principle,
6 because it's pretty unclear to me what that means. It
7 seems to me like you might be saying, if your First Nation
8 pays for it, you aren't going to get reimbursement from
9 the federal government.

10 But you're not saying that, right?

11 MR. CASTONGUAY: We're saying that
12 there's risk involved in making decisions that would
13 anticipate an approval by the federal government.

14 MR. ELSON: But there's nowhere I've seen
15 in this document where you say, First Nations may cover
16 the expense, in advance of an approval, and that won't
17 jeopardize the approval. But you're at your own risk.

18 You don't say that clearly to First
19 Nations in this document, do you?

20 MR. CASTONGUAY: That's the language we
21 have there.

22 MR. ELSON: And I'm not aware of any
23 other communication that went out to all First Nations to
24 make that clear; are you?

25 MR. CASTONGUAY: We have sent, in October

1 2025, a letter to all First Nations providing some
2 additional contribution agreement management information.

3 MR. ELSON: Is it in that letter?

4 MR. CASTONGUAY: It speaks to the
5 mechanism through which we would work together in
6 reconciling expenditures and approvals of group requests
7 in a way that would help them both structure some of their
8 financial reporting, and also reiterated how important it
9 is for ISC to have financial reporting in order to be able
10 to go through this proper decision-making in reconciling
11 those types of things.

12 MR. ELSON: How long would it take you to
13 pull up that October 2025 letter?

14 MR. CASTONGUAY: I could check with my
15 team.

16 MR. ELSON: Okay. That might be another
17 request we would have for you, if you can send us that
18 letter, over lunchtime.

19 The other line below this says:

20 "Previous year's expenditures or deficits
21 that have not previously been approved are not eligible
22 for reimbursement under Jordan's Principle." (as read)

23 What does that mean?

24 MR. CASTONGUAY: It's to help cover
25 multiple potential scenarios, depending on what the

1 specific nature of some of those deficits or expenditures,
2 to help further make the point that there should be an
3 approval first.

4 MR. ELSON: Well, now it seems to be
5 saying you have to have approval before you spend
6 something. What if -- let me ask you this question; let
7 me be more specific, Mr. Castonguay.

8 Let's say -- well, let me take one step
9 back. When you're talking about, in this bullet, previous
10 years, you're talking about fiscal years; is that right?

11 MR. CASTONGUAY: Yes.

12 MR. ELSON: And the fiscal year starts on
13 April 1st and ends on March 31st?

14 MR. CASTONGUAY: Yes.

15 MR. ELSON: And let's say an emergency
16 issue arises on March 1st. And a kid desperately needs
17 some sort of service and the First Nation is able to sort
18 of cash flow the issue and cover it on a temporary basis,
19 and isn't able to put together a Jordan's Principle
20 application until April.

21 That would seem to be caught by this. Is
22 it, or is it not?

23 MR. CASTONGUAY: It would depend on the
24 specific situation, depending on what that need is, what
25 is the source of that temporary cash flow. But it would

1 be the object of some of the reconciliation that I've
2 mentioned previously that needs to be done with financial
3 reporting.

4 MR. ELSON: But if I were to look at this
5 wording, it would make that request ineligible, right?

6 MR. CASTONGUAY: It would clarify that it
7 doesn't mean that it is eligible.

8 MR. ELSON: Well, that's not what it
9 says. It says;

10 "Previous year's expenditures or deficits
11 that have not previously been approved are not eligible
12 for reimbursement under Jordan's Principle." (as read)

13 Right?

14 MR. CASTONGUAY: Yes.

15 MR. ELSON: And that would apply to the
16 case that I just talked about, unless there's some sort of
17 escape hatch, right?

18 MR. CASTONGUAY: Well, that's part of the
19 transition and the implementation. That is part of the
20 work that we've been doing in looking at those specific.
21 If there's a deficit, we look at it. If there's no
22 deficit, then there's the no need for reimbursement. So
23 it really depends on the specific situation, and that's
24 why, like, it's hard work. It's a transition, it's lots
25 of change, and it's a lot of internal and external

1 stakeholders that need to be involved so that we can
2 introduce these change in a way that for the -- like,
3 ideally, that makes sense for all involved.

4 Like, we recognize that some of those
5 practices in place need to be transitioned from a certain
6 state to a new state.

7 MR. ELSON: Are you acknowledging that
8 this sentence needs to be amended?

9 MR. CASTONGUAY: I'm acknowledging that
10 there needs to be a lot of continuous improvement and
11 service improvement as part of the evolution of our
12 operations.

13 MR. ELSON: I know, but there's one thing
14 about evolving how you apply a bulletin, and there's
15 another issue where a bulletin seems to clearly say that
16 something is ineligible, with the words "not eligible",
17 even though you seem to be saying to me that sometimes it
18 should be eligible.

19 MR. CASTONGUAY: As we're talking, I'm
20 recalling too that we did release some language, after the
21 bulletin that also speaks to some of those nuances and
22 challenges. I don't forget -- I don't recall exactly the
23 language or when, but that was I think around March or
24 April 2025, where additional complementary language to
25 some of these questions was released.

1 MR. ELSON: You're talking about the Q&A?

2 MR. CASTONGUAY: No. I will answer -- I
3 will look into it and tell you exactly what it is.

4 MR. ELSON: Okay, that would be
5 appreciated if you could provide it during the lunch
6 break.

7 But if you have one document that says
8 previous year's expenditures are not eligible for
9 reimbursement, and another document that says, actually,
10 previous year's expenditures are generally not eligible
11 for reimbursement, but sometimes they will be. That would
12 be a conflict between two kinds of guidance documents,
13 wouldn't it?

14 MR. CASTONGUAY: And clarifying the
15 application.

16 MR. ELSON: You had said that if the
17 expenditure is covered by the First Nation without
18 creating a deficit, then it would not be eligible for
19 reimbursement. Is that what you were suggesting before?
20 I may have it wrong.

21 MR. CASTONGUAY: I -- can you repeat the
22 question?

23 MR. ELSON: I had asked you whether this
24 is a hard and fast rule, in essence, and you said, well,
25 we would have to look at it. And one of the things we

1 would look at is whether a deficit had been created by
2 covering the expense. And -- go ahead.

3 MR. CASTONGUAY: I just found the
4 document, the language that I was speaking about that
5 helps and, like, frame this is a statement by Minister
6 Hajdu on Jordan's Principle funding, dated March 22nd,
7 2025. That is on our website. I can provide a link in
8 this chat if relevant. But it does help clarify that we
9 would be looking into those, that if eligible expenditures
10 were incurred that we would be -- so I'm going to quote.

11 "I have asked Indigenous Services to
12 review First Nation recipient Contribution Agreement to
13 make sure eligible and documented expense that have been
14 incurred under Jordan's Principle in '24-25 will be
15 considered for funding. This review is intended to
16 support partners who are providing critical services to
17 First Nation children through the transition to the new
18 operating procedures relating to processing requests under
19 Jordan's Principle." (as read)

20 MR. ELSON: Great. And I just pulled
21 that up while you were talking, so you don't need to give
22 me the link. I'll look at it over the break.

23 Further down the page at the bottom of
24 page 4 it says:

25 "New group requests for Jordan's

1 Principle funding beyond one fiscal year, i.e. multi-year
2 requests, are no longer approved." (as read)

3 Do you see that there?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: Is that true?

6 MR. CASTONGUAY: The language should be
7 understood that multi-year approval will not be approved.
8 And so if at 25 -- if a request is submitted in '25-26,
9 and ask for a multiple years of funding, we would still be
10 looking at approving '25-26 and requiring a review for
11 future fiscal years.

12 MR. ELSON: So yes, the statement is
13 true. Multi-year requests are no longer approved.

14 MR. CASTONGUAY: But there's an approval
15 for the fiscal year in question.

16 MR. ELSON: For the one year. Got it.
17 So if you get a multi-year request, you're not going to
18 just say, you're out of luck 100 percent. You know, we
19 might fund you for one year, but the future years you'll
20 have to come back again.

21 MR. CASTONGUAY: Yes.

22 MR. ELSON: Okay, got it.

23 I'm looking now at the information to
24 include with group requests that I don't think you talked
25 about earlier with my friend. These are the new -- well,

1 maybe I shouldn't say "new"; I don't know whether it's
2 new. But these are the information and document items
3 that must be provided with group requests, right?

4 MR. CASTONGUAY: Yes, in the operational
5 bulletin, yes.

6 MR. ELSON: And it talks about all
7 requests being accompanied by a letter of support that
8 demonstrates how the requested product, service, or
9 support links directly to the child's or the children's
10 unmet health, social, or educational needs?

11 MR. CASTONGUAY: Yes.

12 MR. ELSON: And it talks about including
13 any relevant assessments and diagnoses?

14 MR. CASTONGUAY: Yes.

15 MR. ELSON: And then further down -- I'm
16 now on page 8 -- is a Q&A section that says what's
17 required for completing a group request. And so this is
18 providing, you know, elaboration on the kind of
19 information that's required?

20 MR. CASTONGUAY: Yes.

21 MR. ELSON: And one of the requirements
22 is that each child be identified, like, with an
23 identifier, either the name, or if you want to keep it
24 anonymous, then a student number or initial. That's a
25 requirement, right?

1 MR. CASTONGUAY: Yes.

2 MR. ELSON: And for each child that's
3 going to be supported under a group request the First
4 Nation is required to obtain consent from a parent or
5 legal guardian, and have that in writing on file.

6 MR. CASTONGUAY: Yes.

7 MR. ELSON: I'm back on page 5. And in
8 the supporting documentation section, there's a brief
9 sentence that says, "Top-up funding will not be provided."

10 What does that mean?

11 MR. CASTONGUAY: It means that in order
12 for new funding to be added it needs to have a new
13 request, and so it will -- like, top up of an existing
14 approval would require a reassessment of, like, a new
15 request.

16 MR. ELSON: So let's say a First Nation
17 is requesting -- I don't know, mental health supports to
18 support a number of students, and halfway through the year
19 they decide, actually, we need more. They would need to
20 submit a new request with brand new support letters and
21 assessments?

22 MR. CASTONGUAY: I think that would be
23 worked through in the region, specific on the knowledge of
24 the recipients and the requests, exactly what would need
25 to be the new request. But I think in some cases we would

1 want to make sure that the additional documentation that
2 would cover the justification for the new funding would be
3 submitted. I'm not sure that we would want everything to
4 be done from scratch but that we would want it to be more
5 than just a funding request for additional funding.

6 MR. ELSON: And what if it's between two
7 years? Is that the instance when you want, you know, a
8 new letter of support and new assessments?

9 MR. CASTONGUAY: On a case-by-case basis,
10 it may be the case.

11 MR. ELSON: And how do First Nations know
12 when they need entirely new support letters versus
13 something else?

14 MR. CASTONGUAY: It's part of the ongoing
15 work between regions and First Nations. It's part of the
16 specific nature of what's being requested, and is there
17 any expectation that the needs change, or need -- or
18 evolution, and what the requested products and services
19 would need to be in order to meet the evolution of that
20 need? So it's really more specific to the requests
21 themselves.

22 MR. ELSON: Well, I'm struggling. If a
23 First Nation is not sure what they need to put together,
24 where can they find a document? Or is there a document
25 that tells them when they need a new support letter and a

1 new set of assessments, and a new application, versus,
2 something different from that?

3 MR. CASTONGUAY: No, the operational
4 bulletin is the external-facing source of additional
5 operating clarity outside of the orders. And the rest is
6 being done in collaboration with regional offices.

7 MR. ELSON: Okay. Now, this requires a
8 letter of support from a health professional, an
9 educational professional, so on and so forth. Who's
10 supposed to pay for that before the provision of just
11 Jordan's Principle funding?

12 MR. CASTONGUAY: It depends. It's case
13 by case, individual or group. In some cases, it's for
14 individual requests it might be reimbursed under the same
15 application, but it really depends. And in some cases
16 there wouldn't be costs associated with it, but it really
17 is specific to the request.

18 MR. ELSON: But I think you'd acknowledge
19 that could be a barrier if there was a cost, and there was
20 no funding for that cost.

21 MR. CASTONGUAY: Then we would assess
22 that as part of a request.

23 MR. ELSON: So it might need to be a two-
24 part request process where we say, we would like Jordan's
25 Principle funding to assess and develop a Jordan's

1 Principle application?

2 MR. CASTONGUAY: Well, screening an
3 assessment request is something that we receive a lot of
4 too.

5 MR. ELSON: Okay. What's the current
6 Jordan's Principle backlog?

7 MR. CASTONGUAY: I haven't looked into
8 the data in a few days since the December, but I would say
9 around 130,000 based on the data set that we've been
10 tracking.

11 MR. ELSON: And the highest it -- pardon
12 me?

13 MR. CASTONGUAY: No, that's good.

14 MR. ELSON: The highest it's ever been is
15 roughly how much?

16 MR. CASTONGUAY: One hundred forty (140)
17 something thousand.

18 MR. ELSON: So we're pretty close to as
19 high as it's ever been?

20 MR. CASTONGUAY: Yes.

21 MR. ELSON: And for Ontario, what's
22 the education backlog?

23 MR. CASTONGUAY: I don't have that data
24 in my head right now.

25 MR. ELSON: Okay. That was one of the

1 things that we had requested that Indigenous Services
2 provide, but maybe I'll follow up on that after the lunch
3 break.

4 Member Lustig, I said that I would stop
5 at around 12:00; it's now 12:04. So I'd propose that we
6 take the lunch break now.

7 MEMBER LUSTIG: Okay, 1:15, does that
8 make sense to preserve as much time as we can before 3:00
9 but give you enough time to have lunch? Is that okay? At
10 1:15?

11 MR. ELSON: Yes.

12 MEMBER LUSTIG: Okay, so we're adjourned
13 until 1:15.

14 MR. ELSON: Thank you.

15 MR. CASTONGUAY: May I ask a question?

16 MEMBER LUSTIG: Oh, yes.

17 MR. CASTONGUAY: Dan, I sent you the
18 stuff that we -- like, my homework.

19 MR. LUXAT: Okay. I will pull up my
20 email. Thank you.

21 MR. ELSON: Thanks.

22 --- Recess for 1:10

23 --- Hearing resumed at 1:17

24 REGISTRY OFFICER: We are back on record.
25 The time is 1:17 p.m.. Thank you.

1 MEMBER LUSTIG: Thank you.

2 Okay, Mr. Elson, if you could resume.

3 I'm thinking that we go to about 10 to 3:00, so that if
4 there's anything to clean up at the last few minutes, we
5 can do it. So do it however you wish to proceed in terms
6 of time. Now, finish, or later is fine with the Tribunal.

7 MR. ELSON: Thank you, Member Lustig.

8 Mr. Castonguay, we had a bit of a
9 discussion about what Jordan's Principle covers. What are
10 the things that Jordan's Principle doesn't cover in the
11 educational context?

12 MR. CASTONGUAY: It's difficult to answer
13 any hypothetical question without the specific documents,
14 the needs of the child, the professional letters of
15 support. But Jordan's Principle is, from the orders, a
16 remedial child-specific, anti-discrimination principle,
17 and so it's not looking at broad programmatic approaches.

18 MR. ELSON: Can you explain what you mean
19 by that?

20 MEMBER LUSTIG: Specific information of
21 children is needed.

22 MR. ELSON: When you say it's not looking
23 at broad programmatic approaches, why aren't broad
24 programmatic approaches eligible?

25 MR. CASTONGUAY: Informed by the Tribunal

1 orders, we're looking at applying as the defining factors,
2 the criteria the best interest of their child, substantive
3 equality, and cultural relevant services tied to the
4 specific unmet needs of children.

5 MR. ELSON: Okay. And when you say that
6 broad programmatic approaches aren't eligible, what are
7 some examples of that?

8 MR. CASTONGUAY: A request that would be
9 presented as a broad approach to increasing programmatic
10 funding.

11 MR. ELSON: Can you give me an example of
12 what you mean by that?

13 MR. CASTONGUAY: That program A, B, or C
14 needs ongoing funding of X, Y, and Z without that meeting
15 the documentation requirement that we just spoke about.

16 MR. ELSON: Well, I mean, let's put the
17 documentation requirement sort of separate, because I
18 think we understand that. But in terms of eligible
19 expenditures, you mentioned a program with ongoing
20 funding. What do you mean by a program? Like an example
21 of an educational service? Like, I don't know, like a
22 special ongoing literacy program, or do you mean something
23 different than that?

24 MR. CASTONGUAY: I mean anything that
25 would be the development of program and services not

1 specifically tied and connected to children's needs.

2 MR. ELSON: Do you mean not specifically
3 tied to children's needs, or do you mean not tied to
4 specific children's needs?

5 MR. CASTONGUAY: Both.

6 MR. ELSON: In other words, it needs to
7 be both.

8 MR. CASTONGUAY: And it is a complex
9 assessment to review that by -- on a case-by-case basis.

10 MR. ELSON: And when you say specific
11 kids, you literally mean identifying specific kids by an
12 identifier or name, right?

13 MR. CASTONGUAY: Yes.

14 MR. ELSON: Okay. Do you have any other
15 examples of ineligible costs in the education context?
16 You know, I don't know, like, what would the three sort of
17 most common categories of ineligible costs be? And I want
18 to put aside all the other requirements. I'm just looking
19 at eligibility of, you know, eligible expenditures.

20 MR. CASTONGUAY: No, I don't have
21 examples in the education context, and all of our
22 decisions are a result of case-by-case assessments.

23 MR. ELSON: So you can't think of what
24 the top three denials might be in terms of eligible
25 expenditures?

1 MR. CASTONGUAY: No.

2 MR. ELSON: Okay. When were you first
3 aware of the Mississaugas of the Credit case?

4 MR. CASTONGUAY: It really came to light
5 in precise terms, when in, I believe, mid-November to
6 early December I think I had an awareness of it before
7 that, but as one among our list of litigation inventory.

8 MR. ELSON: Got it. So you were not
9 involved prior to mid-November; is that right?

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: Got it. And you have been
12 involved in the Jordan's Principle Branch at headquarters,
13 like, since it started, right?

14 MR. CASTONGUAY: In this role, since the
15 creation of this role in October 2024, and then I was, for
16 a year in 2020, the acting executive director for Jordan's
17 Principle and New at Child First Initiative. And in
18 between I was not in the Jordan's Principle team, but
19 still within the Indigenous Services Canada department.

20 MR. ELSON: Got it. Were you the one who
21 was tasked with searching through all of the Jordan's
22 Principle documents and collecting all of them that were
23 relevant to this proceeding whether they, you know, helped
24 or hurt the government?

25 MR. CASTONGUAY: No.

1 MR. ELSON: Who was?

2 MR. CASTONGUAY: Members of my team.

3 MR. ELSON: And who were they?

4 MR. CASTONGUAY: Members of my policy
5 team, working in collaboration with those in the education
6 team to try to understand the requirements.

7 MR. ELSON: When did that search take
8 place?

9 MR. CASTONGUAY: To the best of my
10 recollection, I would call it this fall.

11 MR. ELSON: Like, before November?

12 MR. CASTONGUAY: Potentially. I don't
13 know.

14 MR. ELSON: Okay, just because I thought
15 your involvement wasn't until mid-November.

16 MR. CASTONGUAY: Yes, when things became
17 to my attention, but the team might have been working on
18 elements without me being aware.

19 MR. ELSON: Well, let me put it this way.
20 I'm just trying to figure out who did what document
21 searches when. And I don't know if anybody did any
22 document searches at any time, so I'm not trying to
23 presuppose an answer to the to the questions. What
24 document searches are you -- you know, what document
25 searches occurred? Let me put it that way.

1 MR. CASTONGUAY: From my perspective, I
2 was receiving certain aspects that were already disclosed.
3 Like there were some questions about those data documents
4 that were identified. But I do not have a clear and
5 precise list or play-by-play of that document search.

6 MR. ELSON: Okay. So you're aware of the
7 data requests and that sort of search around the data
8 requests, right?

9 MR. CASTONGUAY: Yes.

10 MR. ELSON: And are you aware of any
11 other document requests, or sort of more generalized
12 document requests?

13 MR. CASTONGUAY: No, except the more
14 recent one that we are working on and that I believe are
15 this week or something.

16 MR. ELSON: Okay, so the only sort of --
17 the only document searches that you know of were the data
18 request and with a document request made very, very
19 recently. You're not aware of the sort of broader search
20 for any relevant Jordan's Principle documents to this
21 case?

22 MR. CASTONGUAY: No, like, the specific -
23 - like I -- no.

24 MR. ELSON: Okay. And you can't confirm
25 one way or the other whether all relevant documents have

1 been disclosed in relation to Jordan's Principle.

2 MR. LUXAT: Objection, this is ---

3 MR. ELSON: Sorry, if you want to exclude
4 the witness, you can go ahead, Dan, but let's just do
5 that.

6 MEMBER LUSTIG: Okay, we'll exclude the
7 witness.

8 (WITNESS IS EXCUSED)

9 MR. LUXAT: The question as to whether
10 all relevant documents have been produced is for me, and
11 they have been produced. There might be disagreement
12 about the scope of relevance but That's a legal question
13 and a matter for argument between counsel.

14 MEMBER LUSTIG: Mr. Elson...?

15 MR. ELSON: It's not a legal question as
16 to whether appropriate searches have taken place, and
17 typically, in other contexts that's done by way of an
18 affidavit of documents. And in proceedings without an
19 affidavit of documents a witness generally speaks to the
20 issue. No witnesses have spoken to the issue and I'm
21 asking this witness questions around what document
22 searches he's aware of taking place. It's a fully
23 legitimate line of questions. Mr. Luxat can't provide
24 evidence. And, you know, shouldn't be attempting to do
25 so.

1 MR. LUXAT: Yes, but the thing is, he's
2 answered the questions and he's the ADM who wouldn't be
3 involved in document searches.

4 MR. ELSON: Well, you're trying to
5 provide evidence again, Mr. Luxat, and that's
6 inappropriate.

7 MR. LUXAT: Well, okay, that's -- you've
8 provided evidence on a number of occasions, but the fact
9 is he's answered the question already.

10 MEMBER LUSTIG: Okay. So I am going to
11 sustain the objection to the extent that he should not be
12 put in a position where he's giving an opinion. It
13 involves proper disclosure within the -- I don't want him
14 to have to answer that question. I don't think he's in a
15 position that answer to that question. That's not the
16 right question as, to your knowledge, are the documents
17 are needed, were they searched, or something like that.
18 But I don't want him opining as to what is required
19 production.

20 MR. ELSON: Understood, Member Lustig.

21 MEMBER LUSTIG: Okay. So let's have him
22 come back.

23 REGISTRY OFFICER: Member Lustig ---.

24 MR. ELSON: Member Lustig -- go ahead,
25 Ms. Hannah.

1 REGISTRY OFFICER: I was just going to
2 say, it seems like there's a lag in your video and audio.
3 So I don't know if we'll fix that before we proceed just
4 so the recording is clear.

5 MEMBER LUSTIG: Okay. I don't know that
6 I'm doing anything different. Is it -- can you hear it
7 lag now?

8 REGISTRY OFFICER: The audio sounds fine
9 but your video is intimately frozen.

10 MEMBER LUSTIG: Okay. Let's continue,
11 because I don't want to waste time with going on and off.
12 As long as I can be heard, presumably the visual will come
13 back at some point, hopefully.

14 But for the record, I don't think it's
15 important, as important that I be seen as heard. In fact,
16 most people would say that I shouldn't be seen or heard,
17 but that's another story.

18 So let's bring the witness back.

19 (WITNESS RETURNS)

20 MR. ELSON: Mr. Castonguay, you are not
21 in a position to say that documents relating to the
22 efficacy of Jordan's Principle in meeting education needs,
23 all of those have been produced in this proceeding, are
24 you?

25 MR. CASTONGUAY: No.

1 MR. ELSON: And you don't know who was
2 responsible for searching for documents in this case: is
3 that right?

4 Sorry, I'm being imprecise because I
5 don't want to confuse the specific document requests and a
6 generalized search for documents regarding the efficacy of
7 Jordan's Principle. You don't know if or whether anyone
8 was tasked with a generalized search for documents?

9 MR. CASTONGUAY: I don't.

10 MR. ELSON: Okay. I'm going to turn back
11 to the bulletin. And I will put that on the screen.

12 This is Exhibit C-43. And it talks about
13 items sort of being presumptively unapproved, and we had
14 that list of six bullets. And I'm looking at the fifth
15 bullet here. Do you follow what I'm talking about?

16 MR. CASTONGUAY: Yes.

17 MR. ELSON: And the second half of this
18 bullet which we had discussed previously, says:

19 "Supports to school boards off-reserve
20 and private schools will be redirected to provincial
21 school boards or other existing provincial and federally
22 funded programs." (as read)

23 You see that there?

24 MR. CASTONGUAY: Yes.

25 MR. ELSON: And so this is talking about

1 any requests relating to kids in off-reserve, provincial,
2 and private schools for school-based supports; is that
3 right?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: And so this would include
6 requests to support Indigenous children that are living on
7 reserve who are attending an off-reserve school, right?

8 MR. CASTONGUAY: Potentially. It depends
9 on the specifics of the request, who would be the
10 recipient of the request, and such.

11 MR. ELSON: Okay. Well, let's try to
12 break that down. This includes requests from a school
13 board to support Indigenous children living on reserve,
14 but attending an off-reserve school in that school board,
15 right?

16 MR. CASTONGUAY: Could be, yes.

17 MR. ELSON: Well, I mean, it just -- I
18 struggle with the question -- could be. Does it or
19 doesn't it?

20 MR. CASTONGUAY: So what's your question?

21 MR. ELSON: I'm looking at the fifth
22 bullet under this list.

23 MR. CASTONGUAY: Yes.

24 MR. ELSON: And the sentence, you know,
25 supports to school boards, and trying to figure out what

1 this means and what's included and what's excluded from
2 this sentence. And my question was whether that includes
3 requests to support Indigenous children living on reserve,
4 attending an off-reserve school.

5 MR. CASTONGUAY: If presented by a
6 provincial or territorial school board, yes.

7 MR. ELSON: Got it. If the request comes
8 from a parent but it's for supports in the school, is it
9 included?

10 MR. CASTONGUAY: If it is to be provided
11 in a provincial or territorial school board, yes, but we
12 would look at the specifics, and assess it on a case-by-
13 case.

14 MR. ELSON: To determine whether it would
15 be provided in the school or, for example, outside of the
16 school, like in the kid's home?

17 MR. CASTONGUAY: Yes.

18 MR. ELSON: Okay. And if the service is
19 to be provided in a school by the school board, that is
20 included in the sentence even if the request comes from
21 the parent of an Indigenous kid living on reserve, right?

22 MR. CASTONGUAY: Yes.

23 MR. ELSON: Okay. I will turn now to
24 Exhibit 171. And this is the Government of Canada website
25 entitled, "Submit a Request Under Jordan's Principle"; do

1 you see that there?

2 MR. CASTONGUAY: Yes.

3 MR. ELSON: And I would ask that this be
4 marked as an exhibit.

5 MEMBER LUSTIG: Accepted.

6 --- EXHIBIT C-171: Government of Canada website
7 entitled, "Submit a Request Under
8 Jordan's Principle"

9 MR. ELSON: Thank you.

10 And you know, I don't need to take you
11 through this in the interest of time. I just want to have
12 on the record information that's gone to First Nations.
13 So I'll move on to another document.

14 I'm turning now to Exhibit C-173. And,
15 this is entitled, "Updated Operational Guideline and
16 Direction on the Implementation of the Jordan's Principle
17 and Inuit Child First Initiative"; see that there?

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: And could this be marked as
20 an exhibit, please?

21 MEMBER LUSTIG: Accepted.

22 --- EXHIBIT C-173: "Updated Operational Guideline and
23 Direction on the Implementation of
24 the Jordan's Principle and Inuit
25 Child First Initiative

1 MR. ELSON: And I take it, Mr.
2 Castonguay, that this is the document that we had
3 discussed earlier, the internal guidance document that was
4 implemented at the same time as -- or sent out internally
5 at the same time as the operational bulletin.

6 MR. CASTONGUAY: Yes.

7 MR. ELSON: And this document is not
8 public until now?

9 MR. CASTONGUAY: To my knowledge, that's
10 the case.

11 MR. ELSON: Okay. On page 3 it says:

12 "Funding spent without a documented
13 funding agreement will not be reimbursed by ISC."
14 (as read)

15 What does that mean?

16 MR. CASTONGUAY: It refers back to the
17 conversation earlier we were having and about the
18 contribution agreement management practices, sequencing of
19 approval, incurring expenditures, determining the
20 eligibility of those expenditures, and tied to the
21 statement we also discussed.

22 MR. ELSON: Does that mean that if you
23 spend money and you haven't had an agreement in place,
24 you're not going to receive reimbursement even later?

25 MR. CASTONGUAY: With the added clarity

1 of the statement that we discussed, we will look at the
2 eligibility and make the assessment if it's presented by a
3 -- through a request.

4 MR. ELSON: So in some cases, the fact
5 that you cover the expense yourself as the First Nation
6 could be a cause for non-reimbursement?

7 MR. CASTONGUAY: Not in itself, but upon
8 the basis of looking at the factors of eligibility if
9 presented as a request.

10 MR. ELSON: So that could be one of the
11 factors that could cause ineligibility in combination with
12 other factors?

13 MR. CASTONGUAY: Can you repeat that?
14 Can you clarify, please?

15 MR. ELSON: That that could be one of the
16 factors, in addition to other factors which contribute to
17 a decision not to reimburse the prepayment of an expense
18 by a First Nation.

19 MR. CASTONGUAY: Upon the review on a
20 case-by-case basis of eligibility and completeness of a
21 request, yes.

22 MR. ELSON: Okay. On the first page
23 there's a list of certain kinds of requests that must be
24 escalated to headquarters without exception. And I don't
25 actually want to go through the list, but I take it one of

1 the changes in Indigenous Services protocols is an
2 increase in the categories of requests that are escalated
3 to headquarters; is that fair to say?

4 MR. CASTONGUAY: It was always a
5 practice. There was an increase related to the escalation
6 for those categories. That would be fair to say.

7 MR. ELSON: I didn't catch the last
8 couple words there. I think your -- go ahead.

9 MR. CASTONGUAY: Escalation was always a
10 practice and there -- I think it would be fair to say that
11 this directive increased the escalation for those
12 categories.

13 MR. ELSON: Okay. And that's in an
14 attempt to increase consistency, amongst other things.

15 MR. CASTONGUAY: Yeah.

16 MR. ELSON: Okay. I'm looking now at
17 page 10 which confirms when a group request is complete.
18 Do you see that there?

19 MR. CASTONGUAY: Yes.

20 MR. ELSON: And it's complete when all
21 the above information is provided, there is a demonstrated
22 need or gap, and letters of support have been provided,
23 right?

24 MR. CASTONGUAY: I see it.

25 MR. ELSON: And well, is that accurate, I

1 guess I should say?

2 MR. CASTONGUAY: Yes. But operational
3 reality and practice, we work through those on a case-by-
4 case, and trying to also uphold the principle that I
5 discussed earlier about administrative burden.

6 MR. ELSON: So according to the
7 guideline, this is accurate but from an operational
8 perspective you may do something different?

9 MR. CASTONGUAY: the operation of
10 Jordan's Principle are wide, vast, complex, and so where
11 appropriate on a case-by-case, we look to transition the
12 implementation of the operational bulletin in a way that
13 makes most sense.

14 MR. ELSON: How does a regional office
15 make a decision as to whether to follow these rules about
16 when a request is complete versus take a different
17 approach?

18 MR. CASTONGUAY: Through the involvement
19 of management structures, collaboration between regions,
20 and the team in the national office.

21 MR. ELSON: But there's no documentation
22 instructing when to follow this or when not to follow
23 this; is that right?

24 MR. CASTONGUAY: No.

25 MR. ELSON: Okay. When this is referring

1 to all of the above information is provided, it's this
2 kind of information here, where you have a child
3 identifier, date of birth, confirmation of eligibility,
4 program or service the child will be accessing, the
5 recommender of the program or service, and the person who
6 provided the consent, right?

7 MR. CASTONGUAY: In part, but not in --
8 like, a group request consists of other pieces. This is
9 one of the examples related to information, and it's also
10 some of what is part of the transition, yes.

11 MR. ELSON: Got it. That's part of the
12 required information, but not all of it.

13 MR. CASTONGUAY: Yes.

14 MR. ELSON: Okay. And the second bullet
15 here is that there must be a demonstrated need or gap, and
16 so I take it that's demonstrated through some sort of
17 narrative portion in the application?

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: Okay. And if the person
20 reviewing the file says that the need or gap hasn't been
21 demonstrated, the request is treated as incomplete. Is
22 that correct?

23 MR. CASTONGUAY: Again, it's on a case-
24 by-case and subjective to the decision-making of the
25 assessor.

1 MR. ELSON: In terms of the guidance that
2 you have provided to the assessors, they don't have some
3 sort of document that says when they should or shouldn't
4 decide that there's a demonstrated need or gap, and
5 determine completeness thereon, fair?

6 MR. CASTONGUAY: In addition to that
7 there might have been specific guidance, or quite like I
8 mentioned earlier, that's our work; that's what our system
9 looks to clarifying and doing at live volume in varied
10 multiple areas and fields. So guidance is being provided
11 through multiple different ways.

12 MR. ELSON: But that's verbal as opposed
13 to some sort of document that can be referenced, right?

14 MR. CASTONGUAY: Emails, or the types of
15 work.

16 MR. ELSON: Interesting. So is there
17 some sort of email guidance that's been sent out to the
18 assessors on these kinds of matters?

19 MR. CASTONGUAY: Not to my knowledge.

20 MR. ELSON: Okay.

21 MR. CASTONGUAY: But we're a big system.

22 MR. ELSON: That's fair. I know that
23 your job is not easy, Mr. Castonguay, and I don't mean to
24 suggest otherwise -- 140,000 backlog and gosh knows how
25 many requests; it's not easy. So I don't want my

1 questions to suggest otherwise.

2 I'll turn now to a document that I was
3 sent over the lunch break by someone viewing this
4 proceeding. And it's an email from Liliana Gutierrez; do
5 you know who that is?

6 MR. CASTONGUAY: Yes.

7 MR. ELSON: Who is that?

8 MR. CASTONGUAY: Our -- my former
9 Director General of Operation and Service Delivery.

10 MR. ELSON: And it's dated February 24th,
11 2025?

12 MR. CASTONGUAY: Yes.

13 MR. ELSON: And it's to Katrina. Could
14 you say that name and tell me who that is?

15 MR. CASTONGUAY: Katrina Rukowicz. I
16 worked in Liliana's office at that time.

17 MR. ELSON: Okay. This is Exhibit 171.
18 Could this be marked, please?

19 MEMBER LUSTIG: Accepted.

20 --- EXHIBIT C-171: Email from Liliana Gutierrez dated
21 February 24th, 2025

22 REGISTRY OFFICER: Sorry, did you say
23 Exhibit 171?

24 MR. ELSON: I did, and that was
25 incorrect. It should be Exhibit C-174.

1 REGISTRY OFFICER: Okay, thank you.

2 --- EXHIBIT C-174: Email from Liliana Gutierrez dated
3 February 24th, 2025

4 MR. ELSON: And so attached to this is
5 Q&As.jpoc.doc. And this is the attachment, draft Q&As,
6 special Jordan's Principle Operations Committee Meeting
7 Conference Call. Do you see that there?

8 MR. CASTONGUAY: Yes.

9 MR. ELSON: What is the Special Jordan's
10 Principle Operations Committee?

11 MR. CASTONGUAY: Yeah, Jordan's Principle
12 Operations Committee is a committee with partners,
13 parties, external partners from different regions, and
14 Indigenous Services Canada.

15 MR. ELSON: Okay. And so this would be
16 internal and external.

17 MR. CASTONGUAY: Yes.

18 MR. ELSON: And do you know if this Q&A
19 was ever sent out?

20 MR. CASTONGUAY: I don't know. Maybe
21 not. I would have to follow up. It looks to be more prep
22 for responding to questions and to talking about the
23 subject of that meeting.

24 MR. ELSON: Got it. And, like a -- I
25 understand.

1 I'm looking now on page 3 of the PDF
2 which is page 2 of the attachment, and it says:

3 "Q. What about the back-to-basics
4 approach? Is that still being followed?"

5 And the answer is, "It is not."

6 Do you see that there?

7 MR. CASTONGUAY: I do.

8 MR. ELSON: Is that correct?

9 MR. CASTONGUAY: It's a nuanced answer
10 but from the way that it had been implemented previously,
11 it wasn't implemented the same way and so there were some
12 elements of Back-to-Basics that needed to be refined, some
13 elements that the Tribunal found were in alignment with
14 the orders. And so but the operational bulletin did
15 introduce a transition from the back-to-basics approach.

16 MR. ELSON: Got it. So I think what
17 you're saying is back to basics is not still being
18 followed, as is indicated here.

19 MR. CASTONGUAY: In its entirety.

20 MR. ELSON: Okay. Question number 2 on
21 page 2 of the attachment says:

22 "How are requesters expected to
23 demonstrate that the child has experienced gaps, delays,
24 or denials in government services? Doesn't this put the
25 burden on the requester?"

1 And the answer is:

2 "At this time, ISC has not developed a
3 specific requirement for how the requester needs to
4 demonstrate that the child has experienced gaps, delays,
5 or denials in government services. It is necessary,
6 however, that the requester show or explain that the child
7 experienced gaps or delays in accessing government
8 services, or was denied an existing government service
9 because of their identity as a First Nations child."

10 (as read)

11 Is that true, and was that true?

12 MR. CASTONGUAY: Yes. Like, it's nuanced
13 in its application in a large decentralized system that's
14 faced with a lot of volume and multiple scenarios.

15 MR. ELSON: And so there still is no
16 guidance for requesters on how to demonstrate that the
17 child has experienced gaps, delays, or denials in
18 government services?

19 MR. CASTONGUAY: No.

20 MR. ELSON: By "No", you mean there is,
21 there still is not, right?

22 MR. CASTONGUAY: Yes.

23 MR. ELSON: Okay, thank you. I asked you
24 a negative question, and a no can mean yes or no, so I
25 just needed to clarify.

1 I'm turning now to Exhibit, C-175. Do
2 you see that here? You won't; I have to hit resume.

3 Now, do you see it?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: And this is the letter that
6 you just sent to your counsel, and your counsel just sent
7 to me, correct?

8 MR. CASTONGUAY: Yes.

9 MR. ELSON: And this is a draft letter
10 that was attached to an email that you sent out to folks
11 in the regions and otherwise?

12 MR. CASTONGUAY: Yes, a template.

13 MR. ELSON: And you sent this out on
14 September 16th, 2025?

15 MR. CASTONGUAY: Yes.

16 MR. ELSON: And one of the things that is
17 discussed here are the 2024-2025 backlog requests?

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: And it indicates that if ISC
20 does not receive confirmation -- well, let me just take a
21 step back. This letter, this template letter, was to go
22 out to any requesters who had a backlogged 2024-2025
23 request?

24 MR. CASTONGUAY: All recipients of
25 contribution agreement funding, notwithstanding the status

1 of request and backlog or not.

2 MR. ELSON: Got it. And for those who
3 had a 2024-2025 backlogged requests, the letter said:

4 "If we do not receive confirmation of
5 eligible expenditures incurred or eligible products/
6 services still required by October 31st, 2025, we will
7 proceed with closing the request." (as read)

8 Right?

9 MR. CASTONGUAY: Yes.

10 MR. ELSON: And the gist of that is
11 either get back to us within this amount of time or the
12 request is closed and you won't hear about it again. Is
13 that right?

14 MR. CASTONGUAY: The gist is to make sure
15 that we are able to work on these elements with the
16 financial report and inviting them to work with us in
17 reconciling what might be expenditures connected to
18 Jordan's Principle. So looking at bringing this practice
19 of contribution agreement management in support of
20 Jordan's Principle, Jordan's Principle decision making.

21 MR. ELSON: At what time did Indigenous
22 Services Canada pause the processing on 2024-2025
23 requests?

24 MR. CASTONGUAY: We have not sent
25 direction to pause.

1 MR. LUXAT: Sorry, I'll -- I think that's
2 fine. Continue.

3 MR. ELSON: Why don't I clarify the
4 question? I understand that those requests are not paused
5 now but can you confirm that they were -- the processing
6 was paused previously, and Let me know when that occurred?

7 MR. LUXAT: I'll just interject. Sorry,
8 Mr. Castonguay, I didn't mean to interrupt you.

9 You know, I'm fine to let this go. I've
10 just been letting it go for a very long time, and I just
11 want to ---

12 MR. ELSON: Well, if you're going to make
13 a -- putting something on the record, I think the witness
14 should be excluded.

15 MR. LUXAT: Sure.

16 MEMBER LUSTIG: Okay, let's have the
17 witness excused.

18 (WITNESS IS EXCUSED)

19 MR. LUXAT: Just mainly to put on the
20 record an objection concerning relevance, given that this
21 complaint is about the interim regional funding formula
22 and Jordan's Principles of marginal relevance. And we're
23 going down many rabbit holes that seem -- I don't see any
24 connection to the case whatsoever. That said, I
25 understand. I'm more concerned with getting done as

1 quickly as possible than getting in an argument about
2 relevance, but I certainly do want to put my objection on
3 the record, with respect to most, if not all of this
4 evidence.

5 MEMBER LUSTIG: Okay. I'm not going to
6 stop this questioning. There is a time factor but that's
7 entirely up to Mr. Elson to sort of manage. I want him to
8 be treated, and his client to be treated fairly. This is,
9 you've mentioned, related. In your view, it isn't
10 obviously the key part of the case, but it is related, and
11 so he can ask these questions.

12 So I'm overruling your objection.

13 Please continue and bring the witness
14 back.

15 (WITNESS RETURNS)

16 MR. ELSON: Mr. Castonguay, can you
17 answer the question I asked before the brief break there?

18 MR. CASTONGUAY: Can you repeat that
19 question, please?

20 MR. ELSON: Sure. Can you confirm that
21 the 2024-2025 group request processing was paused at some
22 point, and let me know when that occurred?

23 MR. CASTONGUAY: There were no pause --
24 there were no national pauses on processing a request.

25 MR. ELSON: Okay. I'll have to pull up a

1 document and come back to that.

2 I don't know if I asked that Exhibit C-
3 175 be marked as an exhibit. If I didn't, could that be
4 marked now?

5 MEMBER LUSTIG: Accepted.

6 --- EXHIBIT C-175: Draft letter attached to an email
7 that you sent out to folks in the
8 regions, dated September 16, 2025

9 MR. ELSON: Thank you.

10 I'll turn now to Exhibit C-160.1. This
11 is the Jordan's Principle data. Do you see that on the
12 screen?

13 MR. CASTONGUAY: No, I don't.

14 MR. ELSON: Do you now?

15 MR. CASTONGUAY: Yes.

16 MR. ELSON: I'm looking at Table 9. Do
17 you see that?

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: And this is a tab that's
20 indicating the processing time. Do you see that there?

21 MR. CASTONGUAY: Yes.

22 MR. ELSON: And in the notes it says,
23 "Requests escalated to HQ are not
24 involved in the calculation of regional compliance."

25 You see that there?

1 MR. CASTONGUAY: Yes.

2 MR. ELSON: Roughly what percentage of
3 requests are escalated to HQ?

4 MR. CASTONGUAY: It varies greatly. I
5 don't have an answer off the top of my head.

6 MR. ELSON: Could you provide, by way of
7 an undertaking, an update to this table that includes the
8 escalated requests and the size of the backlog?

9 MR. LUXAT: I don't think an undertaking,
10 is appropriate if, Mrs. Elson's asking -- I'll take that
11 under advisement, and I can get back to Mr. Elson and the
12 Tribunal.

13 MR. ELSON: Mr. Castonguay, I'll walk you
14 through my question there. In this sheet. you can see I
15 have compiled some data from the other tables. And you'll
16 see Table 9 includes the number of determined requests.
17 And I've pulled this from up here in Table 9.

18 And then Table 2 includes the number of
19 submitted requests. And I've inserted this into row 6,
20 and it indicates the number of determined requests of the
21 number of submitted requests dropping from 73 to 22. And
22 I'm trying to understand what's going on here.

23 Can you comment on that at all?

24 MR. CASTONGUAY: Similar answer to
25 earlier around multiple factors, but backlog and

1 implementation of operational bulletin would be factors.

2 MR. ELSON: Okay. So you have seen a
3 decline in the ratio between -- or sorry, the percentage
4 of submitted requests that are being determined has
5 declined significantly since the operational bulletin?

6 MR. CASTONGUAY: Again, it fluctuates and
7 would, but, yes.

8 MR. ELSON: Okay. If I could turn now to
9 Exhibit C-176? Do you see that on the screen?

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: And I'll take you to the
12 summary here. This is the same document we were looking
13 at in terms of Jordan's Principle data, in C-160.1, but is
14 limited to on-reserve. Is that right?

15 MR. CASTONGUAY: I can't confirm, I'd
16 have to go through it.

17 MR. ELSON: Okay. Well, let's -- well,
18 first of all, if I could have this marked as an exhibit,
19 please, C-176.

20 MEMBER LUSTIG: Accepted.

21 --- EXHIBIT C-176: Jordan's Principle data, as in
22 C-160.1, but limited to on-reserve

23 MR. ELSON: Thank you. I'm looking at
24 Table 2 now. And Table 2 says:

25 "Submitted requests and requested funds

1 for individual and group requests through Jordan's
2 Principle for education requests on reserve Ontario
3 region..." (as read)

4 And then the relevant date range; do you
5 see that there?

6 MR. CASTONGUAY: Yes.

7 MR. ELSON: And turning to Table 4.
8 Table 4 is showing approved requests and approved funds in
9 millions of dollars for individual and group requests
10 through Jordan's Principle for education requests on
11 reserve, Ontario region, and then comparing the two six-
12 month periods. You see that there?

13 MR. CASTONGUAY: Yes.

14 MR. ELSON: And so this is the same data
15 you were looking at earlier, but focused on on-reserve
16 only, right?

17 MR. CASTONGUAY: Yes.

18 MR. ELSON: Okay. And so in the on-
19 reserve context, before the operational bulletin, in the
20 first six months approved requests were \$79 million. And
21 the first six months of the next fiscal period after the
22 operational bulletin, we have 0.8, so \$800,000, right?

23 MR. CASTONGUAY: Can you repeat that
24 again?

25 MR. ELSON: Sure. There's a highlighted

1 -- there's highlighted numbers on the screen. Do you see
2 that?

3 MR. CASTONGUAY: Yes.

4 MR. ELSON: And row 9 is showing April
5 1st to September 30th, 2024, and that's showing approved
6 funds of \$37 million?

7 MR. CASTONGUAY: Yes.

8 MR. ELSON: And line 10 is showing April
9 1st to September 30th, 2025, and that's \$800,000?

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: And the \$37 million is the
12 first six months in the fiscal year prior to the
13 operational bulletin?

14 MR. CASTONGUAY: Yes.

15 MR. ELSON: And line 10, the \$800,000,
16 that's the first six months in the fiscal year after the
17 operational bulletin?

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: And so this is showing a
20 decline in on-reserve Jordan's Principle funding approvals
21 in the Ontario region for before and after Jordan's
22 Principle operational bulletin, from \$37 million to \$.8?

23 MR. CASTONGUAY: At that point in time,
24 yes.

25 MR. ELSON: And the approval rate

1 focusing just on on-reserve Ontario region education
2 requests before and after the operational bulletin, it's
3 dropping from 96 percent to 37 percent, correct?

4 MR. CASTONGUAY: Yes, there's -- I think
5 that's presented a bit unusually. I would have to ask a
6 few questions to understand all the nuances and the
7 caveat, but yes, that's like -- based on what it is there,
8 yes.

9 MR. ELSON: What's your concern?

10 MR. CASTONGUAY: I would have to look
11 into it but I think it's approval rate of determined
12 requests. That would be, like, the nuance I would want to
13 clarify.

14 MR. ELSON: In other words, the backlog
15 is not included in here?

16 MR. CASTONGUAY: That's part of what I
17 would want to clarify, yes.

18 MR. ELSON: Got it. And this does say
19 "limited to original determinations", so would that
20 suggest to you that this is the approval rate for
21 determined requests?

22 MR. CASTONGUAY: Yes.

23 MR. ELSON: And to the extent that
24 there's a greater backlog, then would that show an even
25 lower approval rate following the operational bulletin?

1 MR. CASTONGUAY: I couldn't answer. It
2 would be a bit speculative. Things are being reviewed and
3 approved on a case-by-case.

4 MR. ELSON: Tables 9 to 10 show
5 compliance rate. Do you see that there?

6 MR. CASTONGUAY: Yes.

7 MR. ELSON: But the figures are blanked
8 out in Row C. What kind of sensitive information could
9 that be providing? I struggle to see how It would shed
10 information on an area that is, you know, truly personal
11 and private.

12 MR. CASTONGUAY: I don't know.

13 MR. ELSON: Does that-- nothing comes to
14 your mind?

15 MR. CASTONGUAY: To that question, no.

16 MR. ELSON: No. And even if the
17 suppressed value was 1, 1, and 2, that wouldn't be
18 shedding any light on any private information, as far as
19 you can tell, right?

20 MR. CASTONGUAY: As far as I can tell,
21 no.

22 MR. ELSON: Okay. We would ask that your
23 team provide those numbers. And we would also ask, as we
24 had previously, to include a row indicating the backlog
25 during this period. And include the requests that are

1 escalated to headquarters.

2 MR. LUXAT: So I'll take it under
3 advisement. I am sure there's probably no issue. I
4 would imagine the reason it's blanked out is just a
5 standard process with these Excel tables.

6 With respect to the backlog data, I had
7 emailed you, Mr. Elson. We had provided you in another
8 table. I'm not sure if there's overlap there, but you do
9 have -- we had provided you with the backlog information.

10 MR. ELSON: Yes, and the information that
11 you provided on backlog wasn't the full extent of the
12 information that we had indicated in our letter we were
13 requesting, and which I believe the Respondent indicated
14 it would provide, in that the data points that we were
15 requesting were not only on the backlog at one point in
16 time, which is, I believe, what you're referring to in R-
17 47. But the backlog before and after the operational
18 bulletin to determine whether it is successfully reducing
19 that backlog or increasing it or otherwise.

20 MR. LUXAT: Okay. I will obviously --
21 we'll take it under advisement and see if it's easy to
22 produce. I have my overarching objection with respect to
23 relevance, but we're going to try to -- we've been trying
24 to produce everything you're asking for, so to the extent
25 we can we can locate it and provide it, we probably will.

1 But I'll for now, I'll just take it under advisement.

2 MR. ELSON: Thank you.

3 And Mr. Castonguay, I will take you to R-
4 47, which I believe my friend had referred to. And this
5 is showing the backlogged funding by subcategory, by
6 request type in Ontario at Tab 27. And at Tab 26 it's
7 showing the backlog requests by subcategory and request
8 type in Ontario region. Do you see that there?

9 MR. CASTONGUAY: Yes.

10 MR. ELSON: And, this would include on-
11 reserve and off-reserve, right?

12 MR. CASTONGUAY: Yes.

13 MR. ELSON: Okay. And it's showing
14 backlogs that are in the hundreds of group requests,
15 right?

16 MR. CASTONGUAY: Yes.

17 MR. ELSON: So this is over 700 schools
18 worth of requests; would you put it that way?

19 MR. CASTONGUAY: No.

20 MR. ELSON: Okay. Can you explain?

21 MR. CASTONGUAY: It would be a technical
22 answer of how data is captured and collected, and the
23 methodology for group request data, and so I don't have
24 the clear answer. But I wouldn't be able to tie it to
25 individual -- to a number of schools.

1 MR. ELSON: Got it, so you're not sure?

2 Is that right?

3 MR. CASTONGUAY: No, I'm not sure.

4 MR. ELSON: Okay, so it could be more
5 than 700 schools; you just can't confirm that necessarily?

6 MR. CASTONGUAY: It would be more around
7 the number of requests than anything else.

8 MR. ELSON: But if it's a group request,
9 I mean, in terms of individual requests, we're in the
10 thousands, right? But if it's a group request you're not
11 certain. It may be that one school has put more than one
12 group request together?

13 MR. CASTONGUAY: That is a common
14 occurrence in group requests, where requesters submit
15 multiple requests.

16 MR. ELSON: Got it. Okay. I'm hoping
17 that we can provide or secure more details on the current
18 backlog including that would have the number for off-
19 reserve and on -- sorry, the number for on-reserve,
20 particularly in response to Mr. Castonguay's comment this
21 morning about on reserve being lower than the off-reserve
22 portion.

23 And where I'd like to go now, Member
24 Lustig, is actually to take a break. And I know that we
25 have a short amount of time, but I worked straight

1 entirely through the lunch period to try to figure out
2 what questions I was going to ask, and ran out of time and
3 haven't had a time to consult with anybody.

4 And so I would appreciate the opportunity
5 to take, frankly, at least 20 minutes until 2:30 to review
6 and confirm whether we have any more questions.

7 And I don't know if Mr. Luxat knows at
8 this stage whether he will have questions in redirect, but
9 that may help us from a schedule perspective.

10 MEMBER LUSTIG: Okay. Let's adjourn as
11 you requested, til 2:30. And we'll find out then.

12 MR. ELSON: Thank you.

13 --- Recess

14 --- Hearing resumed at 2:30 p.m.

15 REGISTRY OFFICER: We're back on record,
16 the time is 2:30 p.m. Thank you.

17 MEMBER LUSTIG: Okay. Mr. Elson, do you
18 wish to continue with your cross-examination, or are you
19 concluded?

20 Sorry, Mr. Luxat?

21 MR. LUXAT: Just before, I guess, Mr.
22 Elson, answers that, just -- he had asked me about the
23 divide between on-reserve and off-reserve with respect to
24 the backlog. And Exhibit R-47, Tabs 30 and 31 set out
25 that information.

1 MR. ELSON: Member Lustig and Mr. Luxat,
2 I don't believe that our request has been satisfied, but I
3 don't think it makes sense to address it verbally. I'll
4 follow up by email.

5 MEMBER LUSTIG: Okay.

6 MR. ELSON: But I, but I appreciate that
7 being flagged by Mr. Luxat. That's helpful. I'll take a
8 look. But I think it's better that we just deal with that
9 in writing seeing as we have webinar.

10 MEMBER LUSTIG: Good.

11 MR. ELSON: Can I reserve?

12 MEMBER LUSTIG: Do you wish to continue?

13 MR. ELSON: I do, yes, thank you.

14 MEMBER LUSTIG: Okay.

15 MR. ELSON: Mr. Castonguay, I neglected
16 to go back over some of the comments that were made in
17 your examination in-Chief. And there's a few that I'd
18 like to just have you elaborate on.

19 One of the things you were asked to shed
20 some light on why the number of requests has declined
21 since the operational bulletin was put into place. And
22 you listed a number of possible factors; I think that
23 would be a fair way to describe it. And one of them was
24 also the impact of people knowing about the backlog might
25 also be part of the drivers. Can you elaborate on that a

1 little bit?

2 MR. CASTONGUAY: If someone has a request
3 in backlog might not be resubmitting another one.

4 MR. ELSON: Got it. So you're saying if
5 there's a First Nation and they still haven't had a
6 response to their previous year's request, then they might
7 not submit another request because they feel like it's --
8 well, why don't you explain what you mean there?

9 MR. CASTONGUAY: Well, there's multiple
10 factors, multiple scenarios; that was what I indicated for
11 that one.

12 MR. ELSON: The idea that people with
13 backlogged requests may not submit another one.

14 MR. CASTONGUAY: It's a possibility as
15 part of those scenarios, yeah.

16 MR. ELSON: Got it, and I guess another
17 one would be First Nations administrators who know of
18 backlogs in other First Nations may also decide to not put
19 the effort into a Jordan's Principle application and
20 expense.

21 MR. CASTONGUAY: We do have a
22 relationship with First Nation in a way that allows us to
23 mitigate the impact of backlog through the relationship,
24 but yes, like, those are multiple factors.

25 MR. ELSON: I'm going to share a screen

1 here, again.

2 And I believe during some of your earlier
3 testimony you had referenced a statement by Minister Hajdu
4 on Jordan's Principle funding?

5 MR. CASTONGUAY: Yes.

6 MR. ELSON: And in the statement which
7 was made on March 22nd, 2025, then Minister Hajdu
8 indicates that the 2024-2025 requests will be considered.
9 That's right?

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: Do you know why the Minister
12 felt it necessary to clarify that?

13 MR. CASTONGUAY: I can't speak to the
14 minister but this is to support the transition and
15 ensuring that expenditures that are eligible are the
16 object of collaboration between the nations, the
17 recipients, and the department to determine eligibility.

18 MR. ELSON: Could Exhibit C-177, which is
19 on the screen, be marked as an exhibit?

20 MEMBER LUSTIG: Accepted.

21 --- EXHIBIT C-177: statement by Minister Hajdu on
22 Jordan's Principle funding

23 MR. ELSON: I'm not sure if I quite
24 understood, your answer. I'm not asking you to put
25 yourself in the mind of the minister. But I just struggle

1 why it would be necessary to say we're going to consider
2 your requests, because wouldn't that be obvious? Unless
3 there was a concern from First Nations expressed about
4 that issue.

5 MR. CASTONGUAY: Yeah, the introduction
6 of the bulletin raised multiple concerns. That was to
7 support the clarification on how we are to work with them
8 in looking at eligibility of expenditures for the fiscal
9 year.

10 MR. ELSON: I got it. So the part of the
11 concern was the wording of the bulletin, and whether that
12 implied that previous requests would or wouldn't be
13 considered.

14 MR. CASTONGUAY: Yes.

15 MR. ELSON: Got it. Okay, so this is
16 clarification saying we're not going to ignore your
17 previous requests; we're going to consider them.

18 MR. CASTONGUAY: Yes.

19 MR. ELSON: Got it, okay.

20 MR. CASTONGUAY: We'll work together on
21 getting to the bottom of those numbers.

22 MR. ELSON: Okay. I'll turn now to
23 Exhibit C-37. Do you see that on the screen?

24 MR. CASTONGUAY: Yes.

25 MR. ELSON: And this is a letter or an

1 email sent from Sandra Taylor who below appears to be in
2 the First Nations and Inuit Health Branch Ontario region.
3 See that?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: And this is sent to a mailing
6 list, so people with group requests in the queue, I guess.

7 MR. CASTONGUAY: I don't know.

8 MR. ELSON: And it's dated April 14th,
9 2025.

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: And it indicates:

12 "As communicated in the February 10th,
13 2025 operational bulletin, funding commitments are being
14 issued for the 2025-2026 fiscal year only at this
15 juncture." (as read)

16 You see that there?

17 MR. CASTONGUAY: I do see it.

18 MR. ELSON: So this is a message that's
19 being sent in the 2025-2026 fiscal year, right?

20 MR. CASTONGUAY: O-14, yes.

21 MR. ELSON: And it's confirming that
22 previous year -- well, that it's only that fiscal year's
23 decisions that are being issued at that time.

24 MR. CASTONGUAY: That's not how I read
25 it. I read it that it's connected to the multi-year

1 approval, that future fiscal year approval would not be
2 considered at that time.

3 MR. ELSON: Interesting. Okay. If I
4 could turn now to C-57. Actually, before I do, can you
5 speak to the longest group request that's been backlogged
6 from an education context?

7 MR. CASTONGUAY: No, I can't.

8 MR. ELSON: But I think you'd agree that
9 it's not uncommon for them to be backlogged to the extent
10 that a decision hasn't been made even by the end of the
11 fiscal period, the fiscal year?

12 MR. CASTONGUAY: Yes.

13 MR. ELSON: Okay. I'm looking now at
14 Exhibit C-57. And I assume you're, aware of this
15 document, "Status report on operational backlogs"?

16 MR. CASTONGUAY: It looks familiar, but I
17 haven't, read it in recent times.

18 MR. ELSON: That's fine. I won't be
19 asking you to repeat it from your memory. I just want to
20 refer to page 6. And on page 6, we have the estimated
21 request backlog by region as of February 20, 2025. Do you
22 see that there?

23 MR. CASTONGUAY: I do.

24 MR. ELSON: And it shows the total
25 backlog national as being 134,000. You see that?

1 MR. CASTONGUAY: Yes, I do.

2 MR. ELSON: And it shows the in progress
3 backlog being roughly 124,000. Right?

4 MR. CASTONGUAY: Yes.

5 MR. ELSON: And the intake pending
6 backlog being 10,339, right?

7 MR. CASTONGUAY: Yes.

8 MR. ELSON: And this is right around when
9 the operational bulletin was put in place, right?

10 MR. CASTONGUAY: Yes.

11 MR. ELSON: You said that the
12 existing backlog is around 130,000 cases, right?

13 MR. CASTONGUAY: Yes.

14 MR. ELSON: Does that account for the
15 cases that are in CMS, or also cases that have not gone
16 into CMS yet?.

17 MR. CASTONGUAY: Both.

18 MR. ELSON: Both? Okay. And is it 130,
19 or is it 131, 137? Are you rounding?

20 MR. CASTONGUAY: I'm rounding; it
21 changes every time I see a report. There's incoming,
22 there's outgoing.

23 MR. ELSON: Got it. What's the kind of
24 range that you're seeing in terms of numbers over the last
25 couple of months?

1 MR. CASTONGUAY: Through the late fall,
2 October, November, December a decline, in some cases, by a
3 few thousand a week. Then it, like, plateaued a little
4 bit in December. This is why I'm at around 130 in my mind
5 today, but I'm rounding.

6 MR. ELSON: And so you said that it has
7 declined a bit, so it's been around between 140 and 130;
8 is that fair?

9 MR. CASTONGUAY: Yes.

10 MR. ELSON: Okay. I'll turn now to C-38.
11 And this is "Analysis of Jordan's Principle administrative
12 data tables"; do you see that there?

13 MR. CASTONGUAY: I do.

14 MR. ELSON: I'll zoom in because it's a
15 large page. I don't believe this has been marked as an
16 exhibit, please. Could C3-8 be marked?

17 MEMBER LUSTIG: Accepted.

18 --- EXHIBIT C-38: "Analysis of Jordan's Principle
19 administrative data tables"

20 MR. ELSON: And if I turn to page 192,
21 it's showing the compliance rate by request type,
22 category, and quarter. You see that there?

23 MR. CASTONGUAY: Yes.

24 MR. ELSON: And do you know why Ontario
25 is by far the lowest?

1 MR. CASTONGUAY: Volume, complexity,
2 proportional number of remote and isolated communities,
3 challenging operational context. All this makes a
4 challenging operational context.

5 MR. ELSON: Is this still what you're
6 seeing, give or take?

7 MR. CASTONGUAY: I am still seeing a very
8 challenging operational context in Ontario and some
9 regions who are sharing similar characteristics.

10 MR. ELSON: Is Ontario still the worst?

11 MR. CASTONGUAY: I don't have the answer
12 offhand, but I would say Ontario and Manitoba are the ones
13 often sharing similar child and personal challenges.

14 MR. ELSON: So perhaps you'd say Ontario
15 is either the worst or among the worst; is that fair to
16 say?

17 MR. CASTONGUAY: In terms of compliance
18 timelines?

19 MR. ELSON: Yes.

20 MR. CASTONGUAY: Yes.

21 MR. ELSON: Okay. Thank you, Mr.
22 Castonguay. Those are my questions, although my notes are
23 a mess, so I hope that's actually all my questions. I
24 appreciate you coming here today, and I understand you've
25 got a tough job, so thank you.

1 MEMBER LUSTIG: Thank you.

2 Mr. Luxat, do you have any questions?

3 MR. LUXAT: I believe just one topic for
4 follow-up quickly.

5 --- REDIRECT EXAMINATION BY MR. LUXAT:

6 MR. LUXAT: So Mr. Elson asked you about
7 the request backlog with respect to group requests. Do
8 you recall that, Mr. Castonguay?

9 MR. CASTONGUAY: Yes.

10 MR. LUXAT: And I believe you responded
11 that the number of requests in the backlog is not
12 necessarily the number of request stores in the backlog.

13 MR. CASTONGUAY: Yes.

14 MR. LUXAT: That's correct? So it wasn't
15 the number of schools.

16 MR. CASTONGUAY: No.

17 MR. LUXAT: I'd like to maybe to get a
18 bit of a clarification on that, take you to a document.
19 This is C-56. I believe, "Status of Jordan's Principle
20 operational backlogs as of March 27, 2024."

21 Do you see that, Mr. Castonguay?

22 MR. CASTONGUAY: I do.

23 MR. LUXAT: And I will take you to one of
24 the notes, "Considerations" on page 4. And it says:

25 "The backlog volumes presented in this

1 report are at the request level, not at the cases or
2 requester level. For example, it is possible that one
3 requester might have three cases. And each case might
4 have three items requested. The backlog associated with
5 this requester would appear as nine requests, not the
6 three cases or the one requester." (as read)

7 Is that what, Mr. Castonguay, you were
8 referring to when you were responding to Mr. Elson's
9 question?

10 MR. CASTONGUAY: For individual requests,
11 yes. For group requests -- so for individual requests,
12 yes, that's the case. It shows it's the lowest
13 disaggregator. For group requests, it's different but
14 it's still a recipient or a requester could have submitted
15 multiple recipient requests.

16 MR. LUXAT: Okay. So if there was an
17 example from a particular community submitting a number of
18 requests, would the request with respect to a school --
19 would it be with the request backlog identify the number
20 of requests submitted?

21 MR. CASTONGUAY: That's a very,
22 challenging question that speaks to how the data is
23 entered in the case management system for GRU. It speaks
24 to the national consistency of how that data is captured,
25 at what level is it captured and aggregated, at what

1 subcategorization it is, and so it could be a little bit
2 difficult to provide a specific answer in the context of
3 specific data that we were looking at. But generally
4 speaking, there would be -- trying to -- some broken down
5 of one request into more than one data point. And so
6 like, depending on what's being requested, how the data's
7 being entered, that one request could become a higher
8 number than one.

9 MR. LUXAT: Okay. Thank you, Mr.
10 Castonguay. And thank you for taking the time to be here
11 and provide your evidence.

12 Those are my questions.

13 MEMBER LUSTIG: Mr. Castonguay, you can
14 imagine that I'm fully aware of the challenges that you
15 face in your job and I appreciate you being here today,
16 giving your evidence. And I wish you luck in trying to
17 resolve issues at your job.

18 So with that, you're released. Thank you
19 very much.

20 MR. CASTONGUAY: Thank you.

21 (WITNESS IS EXCUSED)

22 MEMBER LUSTIG: Okay. So we managed to
23 get here at just about exactly the time that I was
24 thinking about. From my perspective I have one matter
25 that I need to rule on before submissions, that is, the

1 main submissions in the case, and that has to do with the
2 Junaid affidavit, the objection.

3 And I believe it was agreed earlier today
4 that the parties would -- the counsel would advise me of
5 the process that they wish to proceed with, whether they
6 need to make further submissions. And if so whether they
7 wish to have written, oral, or both. And if oral
8 submissions, we have dates available still in February
9 which we set aside specifically to conclude the hearing,
10 aside from the final submission.

11 So if there needs to be oral submissions
12 made, then those dates are available. And I'm available
13 next week on Wednesday, Thursday, and Friday.

14 So those are the only matters that I'm
15 aware of that I need to rule on between now and when you
16 Leave this part of the hearing to start preparing your
17 submissions, your written submissions, and then ultimately
18 the oral submissions, later in the year.

19 So I'll start with you, Mr. Elson. Is
20 that -- do I have it right? Is there anything else that
21 we need to discuss today between now and three o'clock?

22 MR. ELSON: Between now and three
23 o'clock, no. My only thought in my mind was maybe we
24 should set up a case conference call and try to connect
25 again over the next couple of weeks. I would like to do

1 that next week, but I'm just a bit unsure about the timing
2 of my hearing from the 14th to the 16th. And then I
3 believe you're away at some point after the 16th for some
4 period of time, Member Lustig?

5 MEMBER LUSTIG: Well, I can give you my
6 schedule for -- so I am not available starting on the 30th
7 of January. And so before the 30th, but after the 13th,
8 I'm available subject to a couple of appointments I have,
9 but I can work around them.

10 So look at your schedules between the
11 13th, which I know, Mr. Elson, you've already mentioned
12 next week isn't going to work for you. But I'm not
13 available as of the 30th, which I think may be a -- I
14 forget what day of the week it is, but so I have a few
15 days there that I could do a case management conference.

16 And if you can let me know, maybe you can
17 discuss it amongst yourselves and come up with a date.
18 And Ms. Hannah will sort of coordinate it and get back to
19 me.

20 MR. ELSON: Okay.

21 MEMBER LUSTIG: That's acceptable to me.
22 Anything else, from you, Mr. Elson,
23 first?

24 MR. ELSON: Oh, and I mean, I was just
25 going to suggest the 19th -- but not that comes to my mind

1 this second.

2 MEMBER LUSTIG: Okay, Mr. Luxat?

3 MR. LUXAT: Just one housekeeping matter
4 that I neglected. I think I referred to C-56 and never
5 entered it as an exhibit. So we should probably do that.

6 MEMBER LUSTIG: Okay. Accepted.

7 --- EXHIBIT C-56: "Status of Jordan's Principle
8 operational backlogs as of March 27,
9 2024."

10 MR. LUXAT: Other than that -- sorry, I
11 lost the train there was the plan that Mr. Elson and I
12 should discuss. And then we can address the issue with
13 respect to the Junaid affidavit at the next case
14 management conference, whenever that may be.

15 MEMBER LUSTIG: Yeah, so the 19th is fine
16 with me, but you'll finalize that date or those dates and
17 give them to me and that's a good time to discuss anything
18 that's outstanding at that point, but in particular the
19 Junaid affidavit.

20 I don't know about the Commission. We
21 haven't really-- it's not that we weren't paying attention
22 to you but I think you wanted to be in the position that
23 you are now that you're on the case, but observing. Is
24 there anything that you need to advise us of?

25 MS. JUYAL: Just, I would add one thing

1 that came up earlier today, and it's carryover from
2 before, and I know there's been agreement reached with the
3 Tribunal and the parties on how to address it. But just
4 to put on the record the Commission's agreement with the
5 Complainant's concerns raised about not having all the
6 background, the data, the information behind the audit.
7 And some of the documents relied on will probably be in
8 the same predicament when we have to make submissions on
9 those documents not having all the context behind them.

10 So just raising that and as well our
11 shared concern about trying to -- I mean, we'll have to
12 address those documents without knowing.

13 I mean, as all of us know we are on these
14 other -- like, the Commission is also on the Caring
15 Society litigation and Jordan's Principle. I mean, it's a
16 vast matter. It goes well beyond Ontario certainly, and
17 there's many scenarios and that aren't contemplated, and
18 that evidence is not part of the record here. So we just
19 note that, those concerns equally.

20 MEMBER LUSTIG: Yeah, that's noted.

21 Okay, if there's nothing else, I want to
22 thank you all for your participation so far. We have
23 another case management meeting. We don't know exactly
24 when we're going to be able to resolve that outstanding
25 matter of the affidavit, but we are heading towards dates

1 that we've established for submissions and for ultimately
2 oral submissions. And then it's up to me to make a
3 decision.

4 So thank you all for your cooperation.

5 Mr. Elson...?

6 MR. ELSON: In terms of the next steps, I
7 mean, there's still the issue of complainant's reply which
8 we will get back to the parties on.

9 MEMBER LUSTIG: Of course. Thank you for
10 reminding me. I hadn't thought that that might arise, but
11 that's true. So we will wait to hear from you on that.

12 And I want to thank ---

13 MR. LUXAT: Just a note, Member Lustig,
14 on just whenever reply is mentioned, I get a little
15 concerned, and we will probably also have something to say
16 if Mr. Elson indicates he -- who wants to introduce
17 further reply evidence, just so it's clear.

18 MEMBER LUSTIG: I know that you corrected
19 me when I told you earlier that it was his right, and that
20 there are restrictions to that, but I guess we'll also
21 talk about that in the case management meeting. So the
22 earlier those dates, the better it is, to be honest with
23 you.

24 MR. ELSON: Ideally, Member Lustig, if
25 we're going to do it by way of affidavit, we would submit

1 that before the case conference so that we can discuss any
2 issues arising therefrom. But to be honest with you, I
3 have to turn my mind to all of this, and so I propose that
4 Mr. Luxat and Ms. Juyal and I talk in a breakout room
5 after the end of this, just to set a date for the case
6 conference.

7 MEMBER LUSTIG: Perfect.

8 MS. JUYAL: Is the is the 19th a
9 possibility? Is that what we were discussing?

10 MEMBER LUSTIG: Yes.

11 MR. LUXAT: It works for me.

12 MS. JUYAL: It works for me too, and I'm
13 heavily booked, actually, for ---

14 MR. LUXAT: The 19th through the 20th are
15 the only options that would work for me, so ---

16 MR. ELSON: Let's do the 19th.

17 MS. JUYAL: The 20th doesn't work for me.
18 I'm in a hearing.

19 MEMBER LUSTIG: Okay, so the 19th is the
20 date, right?

21 MS. JUYAL: Yes.

22 MEMBER LUSTIG: Okay, that works for me.
23 What time is best, 10 o'clock? Is that a good time for
24 everybody?

25 MR. ELSON: Sure.

1 MS. JUYAL: Yes.

2 MEMBER LUSTIG: Okay, so we're going to
3 have a case management meeting on January the 19th at 10
4 o'clock.

5 Okay, I was thanking everybody, and I
6 want to especially thank Ms. Hannah who's been very, very
7 excellent in her work and catching us all wherever we go
8 wrong. So thank you very much for your work, and we'll
9 see you as well as we proceed.

10 Okay. So have a good weekend, and we'll
11 see you soon.

12 MR. LUXAT: You too. Thank you.

13 REGISTRY OFFICER: Bye, everyone.

14 MR. ELSON: Thank you.

15 MR. LUXAT: Bye.

16

17 --- Hearing adjourned for the day at unknown time

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C E R T I F I C A T I O N

I Karen Noganosh hereby certify that I have transcribed
the foregoing and it is a true and accurate transcript of
the digital audio recorded in this matter.

A handwritten signature in dark ink, appearing to read 'Karen Noganosh', is written over a horizontal line.

Karen Noganosh