

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

and

CHIEFS OF ONTARIO and AMNESTY INTERNATIONAL CANADA

Interested Parties

**RESPONDENT'S SUBMISSIONS IN RESPONSE TO THE
TRIBUNAL'S APRIL 26, 2016 RULING**

Jonathan Tarlton, Melissa Chan & Patricia MacPhee
JUSTICE CANADA
Atlantic Regional Office
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Halifax, NS B3J 1P3

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1. In its April 26, 2016 Ruling¹, the Tribunal ordered INAC to provide the following:
 - i) Information on how INAC is addressing the findings in paragraphs 384 to 389 of the Tribunal's January 26, 2016 Decision² ("the Decision") in the short term;
 - ii) INAC's response to the immediate-relief items sought by the Complainants that have not already been addressed; and
 - iii) Information on budget allocations for each First Nations Child and Family Services ("FNCFS") agency and timelines for the roll out of these allocations.
2. INAC is pleased to provide the following information in response to the Tribunal's Ruling.

Part 1: Information on how INAC is addressing the findings in paragraphs 384 to 389 of the Tribunal's Decision in the short term

3. In response to the Tribunal's direction, INAC provides the below responses to the Tribunal's findings in paragraphs 384-389 of the Decision. These paragraphs outline the Tribunal's findings on the need to reform and redesign the First Nations Child and Family Services Program ("FNCFS Program"). Specifically, they deal with the identified shortcomings in funding under Directive 20-1 and the Enhanced Prevention Focused Approach ("EPFA").
 - a) *Immediate investments to FNCFS Program funding under Budget 2016*
4. Under Budget 2016, the FNCFS Program will receive \$634.8 million in additional investments over the next five years. The investments are: \$71.1 million in 2016-17; \$98.6 million in 2017-18; \$126.3 million in 2018-19; \$162.0 million in 2019-20; and \$176.8 million in 2020-21.

¹ 2016 CHRT 10.

² 2016 CHRT 2.

5. The tables below provide a breakdown of Budget 2016 investments by region and outline existing program funding. New investments remain subject to Parliamentary and Treasury Board approvals.

Table 1: FNCFS New and Existing Program Funding

(\$ millions)	16-17	17-18	18-19	19-20	20-21	Total	Ongoing
New FNCFS Program Funding	71.1	98.6	126.3	162	176.8	634.8	176.8
Existing FNCFS Program Funding	679.0	689.9	701.2	712.5	724.1	3,506.7	724.1
GRAND TOTAL	750.1	788.5	827.5	874.5	900.9	4,141.5	900.9

Table 2: FNCFS New Investments - Regional Funding Profile

FNCFS New Investments - Regional Funding Profile

	Funding Year 1	Funding Year 2	Funding Year 3	Funding Year 4	Funding Year 5	5 Year Total
Program Integrity	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	
Quebec	\$ 9,961,819.28	\$ 11,625,622.49	\$ 13,286,425.70	\$ 16,608,032.13	\$ 16,608,032.13	\$ 68,092,931.71
Alberta	\$ 17,680,738.15	\$ 20,627,527.84	\$ 23,574,317.54	\$ 29,467,896.92	\$ 29,467,896.92	\$ 120,818,377.37
Saskatchewan	\$ 7,470,685.85	\$ 8,715,800.68	\$ 9,960,915.16	\$ 12,451,143.95	\$ 12,451,143.95	\$ 51,049,689.59
Prince Edward Island	\$ 165,233.64	\$ 192,772.58	\$ 220,311.52	\$ 275,389.40	\$ 275,389.40	\$ 1,129,096.54
Manitoba	\$ 7,494,747.60	\$ 8,743,872.20	\$ 9,992,996.80	\$ 12,491,246.00	\$ 12,491,246.00	\$ 51,214,108.60
Nova Scotia	\$ 470,373.95	\$ 548,769.61	\$ 627,165.26	\$ 783,956.58	\$ 783,956.58	\$ 3,214,221.98
Sub-total	\$ 43,246,598.46	\$ 50,454,365.39	\$ 57,662,131.98	\$ 72,077,664.98	\$ 72,077,664.98	\$ 295,518,425.79
Prevention						
New Brunswick	\$ 2,254,477.25	\$ 3,381,715.87	\$ 4,508,954.50	\$ 5,636,193.12	\$ 5,636,193.12	\$ 21,417,533.86
British Columbia	\$ 5,390,010.32	\$ 8,085,015.48	\$ 10,780,020.64	\$ 13,475,025.80	\$ 13,475,025.80	\$ 51,205,098.04
Newfoundland	\$ 1,060,132.58	\$ 1,590,198.88	\$ 2,120,265.17	\$ 2,650,331.46	\$ 2,650,331.46	\$ 10,071,259.55
Yukon	\$ 924,696.70	\$ 1,387,045.06	\$ 1,849,393.41	\$ 2,311,741.76	\$ 2,311,741.76	\$ 8,784,618.69
Ontario	\$ 8,041,829.12	\$ 11,326,642.09	\$ 14,611,455.05	\$ 18,264,318.81	\$ 18,264,318.81	\$ 70,508,563.88
Sub-total	\$ 17,671,145.98	\$ 25,770,617.37	\$ 33,870,088.76	\$ 42,337,610.95	\$ 42,337,610.95	\$ 161,987,074.01
Total	\$ 60,917,744.44	\$ 76,224,982.76	\$ 91,532,220.74	\$ 114,415,275.93	\$ 114,415,275.93	\$ 457,505,499.80
Additional Funding	Funding Year 1	Funding Year 2	Funding Year 3	Funding Year 4	Funding Year 5	5 Year Total
Growth and Cost Drivers	\$ 7,368,819.49	\$ 18,857,475.68	\$ 31,046,131.87	\$ 43,857,664.84	\$ 58,657,664.84	\$ 159,787,756.73
Case Management	\$ 2,100,000.00	\$ 2,200,000.00	\$ 2,300,000.00	\$ 2,300,000.00	\$ 2,300,000.00	\$ 11,200,000.00
O & M	\$ 700,000.00	\$ 1,300,000.00	\$ 1,400,000.00	\$ 1,400,000.00	\$ 1,400,000.00	\$ 6,200,000.00
Sub-total	\$ 10,168,819.49	\$ 22,357,475.68	\$ 34,746,131.87	\$ 47,557,664.84	\$ 62,357,664.84	\$ 177,187,756.73
Grand Total	\$ 71,086,563.94	\$ 98,582,458.45	\$ 126,278,352.62	\$ 161,972,940.77	\$ 176,772,940.77	\$ 634,693,256.53

Total amount of funds to address Growth and Cost Drivers in Year 1 is \$10M, but a portion has already been allocated to agencies for Program Integrity and Prevention.

6. The Budget 2016 investments provide increased funding to a range of existing and new budget items for Directive 20-1 and EPFA jurisdictions, including, but not limited to:
- a) a \$64.7 million upward adjustment for agencies with a child in care count above 6% over the next five years;

- b) increases for prevention-based services for all jurisdictions;
 - c) upward adjustments to staff salaries to ensure comparability with current provincial rates;
 - d) adjustments to case-worker ratios;
 - e) additional funding for off-hour emergency services;
 - f) increased investments to service purchase per child, providing approximately \$39.9 million over the next five years to all FNCFS service providers; and
 - g) additional funding over the next five years of approximately \$45 million, for intake and investigation services, which were previously managed and administered by the provinces.
7. The Budget 2016 investments also include an annual adjustment to address growth and future cost drivers (see Table 2). The cost drivers that account for average yearly growth include:
- a) child maintenance costs;
 - b) agency operating costs, including rent, transportation, IT, etc.;
 - c) salaries; and
 - d) the ratio of children in care.
8. The new investments also include funding to support the extension of provincially-managed systems to on-reserve FNCFS agencies, where opportunities exist. Investments in provincial case management systems on-reserve would support improved service delivery for FNCFS agencies and offer better opportunities for front line workers to plan and manage children in care and those at risk.

b) *INAC's response to the findings on Directive 20-1 (paragraphs 384 to 385 of the Decision)*

9. Through increased investment to the FNCFS Program, INAC is eliminating the use of Directive 20-1 in British Columbia, New Brunswick, the Yukon and Newfoundland and Labrador. Service providers will be provided funding through existing mechanisms this fiscal year; but with increased funding levels determined using the updated and improved EPFA costing model.
10. In 2016-17, INAC is investing over \$17.5 million in funding for prevention services and programs in British Columbia, New Brunswick, the Yukon and Newfoundland and Labrador (as well as in Ontario which is under the 1965 Agreement) as immediate relief.
11. The new investments effectively eliminate the Directive 20-1 funding formula, as jurisdictions will receive program funding enhancements and additional dedicated funding for prevention. This will enable service providers to recruit and retain qualified and experienced staff, including social workers and other child-welfare practitioners, to adopt more community based service structures and have the required resources to provide prevention activities that respond to their specific priorities and community needs.
12. This approach ensures that FNCFS service providers will have access to funding for prevention programs and services.

c) *INAC's response to the findings on EPFA (paragraphs 386 to 387 of the Decision)*

13. The EPFA funding model has been updated to include adjustments to expenditures that the FNCFS Program was able to address within existing policy and funding authorities. While these changes vary by jurisdiction, overall updates include:
 - a) Additional funding to address population increases by using updated 0-18 registered population levels;

- b) Allowing upward adjustments to be made for agencies with more than 6% of children in care. While FNCFS agencies are funded on an assumed base of 6% of children in care (7% in Manitoba), upward adjustments will be made for agencies with more than 6% of children in care;
 - c) Adjustments to staff salaries to ensure comparability with provincial rates;
 - d) Updates to reflect changes in provincial standards (e.g. caseload ratios for social workers or other front line workers) and to support intake and investigation services, which were previously managed and administered by provinces;
 - e) Updates to service delivery standards, such as increasing the percentage used to calculate off-hour emergency services and increased funding for staff travel;
 - f) Increased funding for agency audit, insurance and legal services; and
 - g) Increased amounts for the service purchase per child (i.e. service providers will receive \$175 per 0-18 child served, regardless of jurisdiction).
- d) *INAC's response to the findings on provincial/territorial standards (paragraphs 388 to 389 of the Decision)***
14. In response to the Tribunal's findings at paragraphs 388 to 389, Budget 2016 investments provide immediate relief by dedicating funding for: prevention services, salaries and benefits, training, growth and cost drivers, legal costs, insurance premiums and travel.
 15. Other issues raised in paragraphs 388 and 389 of the Decision will need to be addressed in the longer-term. They cannot be addressed unilaterally by INAC but will require engagement and discussion with First Nations, front-line service agencies and provincial/territorial governments. For example, fully aligning federal funding authorities with respective provincial/territorial legislation will require engagement, commitment and collaboration from provinces, territories

and First Nations.

16. More specific issues, including the issue of remoteness, multiple offices, capital infrastructure, band representatives and culturally appropriate programs and services, will also be addressed as part of future reform discussions with relevant partners and stakeholders.

Part 2: Response to the immediate relief items sought by the Complainants that had not previously been addressed in INAC's submissions

a) INAC's response to the submissions of the Caring Society

Caring Society's request: for INAC to provide funding to FNCFS agencies to develop culturally-based child and family services, programs and evaluation mechanisms.³

17. INAC recognizes the importance of culturally-based and community-supported First Nation child and family services and programming. The Department welcomes the opportunity to discuss this issue further as part of future reform options.

Caring Society's request: for INAC to provide training to its staff on the Truth and Reconciliation Commissions' report, the FNCFS Program, the Decision and Jordan's Principle.⁴

18. As noted in its submission of March 10, 2016, INAC looks forward to further discussions on improving the cultural sensitivity of its employees.

Caring Society's request: for INAC to reimburse the actual costs associated with legal fees.⁵

19. The development of a comprehensive approach to administering legal fees will require engagement, both within the federal government and with provincial and

³ February 18, 2016 (Schedule A, para. 2) and March 31, 2016 (para. 16(b)) submissions.

⁴ February 18, 2016 (Schedule A, para. 3) and March 31, 2016 (para. 19) submissions.

⁵ February 18, 2016 Submission (Schedule A, para. 4(a)) submissions.

territorial jurisdictions, as well as with First Nations partners. INAC views this as an important topic for discussion as part of reform efforts that may include, among other approaches, review of the FNCFS and other relevant program funding and policy authorities. If funding pressures associated with legal fees for a child occur within a fiscal year, INAC Regional Offices submit requests to be considered by INAC Headquarters for additional funds to cover these requirements.

*Caring Society's request: for INAC to reimburse costs related to the receipt, assessment and investigation of child protection reports.*⁶

20. Budget 2016 investments will provide approximately \$45.0 million over the next five years in additional funding to support intake and investigation services, which include activities such as the receipt, assessment and investigation of child reports. These services were previously managed and administered by provinces but currently fall within the range of FNCFS agency responsibilities.

*Caring Society's request: for INAC to pay for building repairs for FNCFS agencies.*⁷

21. INAC will pursue discussions on the broader issues of infrastructure related to FNCFS as part of future long-term reform efforts.

*Caring Society's request: for INAC to cease the practice of requiring FNCFS agencies to recover cost overruns for maintenance from prevention or operations funding streams.*⁸

22. INAC currently reimburses all eligible maintenance expenditures. A FNCFS agency's budget forecast for maintenance is based on the previous year's expenditures. If maintenance funding pressures occur within a fiscal year, INAC Regional Offices submit requests to INAC Headquarters to receive additional funds to cover these requirements. Budget 2016 investments took into account cost drivers and growth considerations, including those impacting maintenance

⁶ February 18, 2016 submissions (Schedule A, para. 4(b)) submissions.

⁷ February 18, 2016 (Schedule A, para. 4(c)) and March 31, 2016 (para. 16(c)) submissions.

⁸ February 18, 2016 (Schedule A, para. 5) and March 31, 2016 (para. 16(d)) submissions.

expenditures. It is providing \$159.0 million in additional funding over the next five years to address these issues. Should pressures exceed the allocated budget, additional resources would be secured through the above-mentioned process.

*Caring Society's request: for INAC to address funding for smaller agencies.*⁹

23. In order to fully address this matter, INAC will need to engage with First Nations and provincial partners. INAC will continue funding existing small FNCFS agencies; future approaches to funding small agencies will be part of the longer term engagement and work on reforming child and family services.

*Caring Society's request: for INAC to fund the Aboriginal Peoples Television Network.*¹⁰

24. The Aboriginal Peoples Television Network was not a party to the complaint. As a non-party, the Tribunal should not grant it relief as part of the remedies. However, INAC is willing to further consider this undertaking.

*Caring Society's request: for INAC to review decisions with respect to funding new agencies.*¹¹

25. INAC believes this to be an important topic to be addressed through partner engagement on the FNCFS Program reform. Given the provincial/territorial legislative authority, this will require engagement and agreement with provincial and territorial governments, as well as First Nations partners.

*Caring Society's request: for INAC to cease the practice of reallocating funds from other programs to cover shortfalls in FNCFS, education, social assistance and other programs.*¹²

26. Budget 2016 investments will contribute to a more stable and predictable funding environment within INAC, reducing the need for reallocations from other critical programs such as infrastructure and housing. Additionally, the amounts to address

⁹ February 18, 2016 (Schedule A, paras. 6(c) & (d)) and March 31, 2016 (para. 16(e)) submissions.

¹⁰ February 18, 2016 (Schedule A, para. 8) submissions.

¹¹ February 18, 2016 (Schedule A, para. 9) and March 31, 2016 (para. 16(f)) submissions.

¹² February 18, 2016 (Schedule A, para. 13) and March 31, 2016 (para. 16(g)) submissions.

cost drivers and growth are anticipated to reflect greater alignment with provincial and territorial growth trends and costs going forward. Any commitment relating to funding for programs other than the FNCFS Program is beyond the scope of this complaint.

*Caring Society's request: to address the issue of inflation.*¹³

27. The investments in Budget 2016 include an annual adjustment to address future cost drivers and growth. The cost drivers that account for average yearly growth include: maintenance growth; agency operating costs, excluding salaries (e.g. rent, transportation, supplies and equipment); salaries; and increases in ratios of children in care.

b) INAC's response to the submissions of the Assembly of First Nations (AFN)

*AFN request: for INAC to address the issue of performance evaluations and assessments.*¹⁴

28. The performance evaluation of specific federal civil service employees was not at issue in this complaint, nor were there allegations made against specific employees. This request goes beyond the scope of the complaint and, as such, it would not be appropriate for the Tribunal to make an order that impacts the employee-employer relationship of individuals who were not parties to the complaint. However, as noted in paragraph 18, INAC looks forward to further discussions on improving the cultural sensitivity of its employees.

*AFN request: for INAC to address intercultural competency programming.*¹⁵

29. As the relief requested in paragraph 28 is beyond the scope of this complaint, so is this request, as it is also related to the performance evaluation of federal civil service employees. However, as noted in paragraph 18, INAC looks forward to further discussions on improving the cultural sensitivity of its employees.

¹³ February 18, 2016 (Schedule A, para. 6(f)) and March 31, 2016 (para. 16(h)) submissions.

¹⁴ March 3, 2016 submissions (para. 12(b)).

¹⁵ March 3, 2016 submissions (para. 12(c)).

*AFN request: for INAC to address funding for research and scholarships for ten years and funding for conferences to present research and scholarships, which INAC representatives must attend.*¹⁶

30. This request falls outside the scope of the FNCFS Program; however, as noted in its submission of March 10, 2016, INAC is open to further discussions on support for research.

c) *INAC's response to the submissions of the Chiefs of Ontario (COO)*

*COO request: the Tribunal should order the 1965 Agreement be updated to reflect the full suite of services provided by other Ontario agencies.*¹⁷

31. Canada will actively work with the Province of Ontario and stakeholders such as First Nations organizations, leadership, communities, agencies and front-line service providers to achieve the necessary reforms. A meeting was held between officials at INAC and the Ontario Ministry of Aboriginal Affairs to discuss issues, including child welfare in Ontario. Subsequently, on March 11, 2016, the Minister of INAC met with the Ontario Minister of Aboriginal Affairs to discuss key priority areas, including FNCFS in Ontario and the need to review the 1965 Agreement. These meetings have set the stage for further and more substantive discussions that will take place with First Nations, including the COO and other interested parties.

*COO request: for the Tribunal to order INAC to provide funding for Band Representatives to Ontario First Nations outside of immediate relief program investments.*¹⁸

32. On May 10, 2016, INAC's Ontario regional office sent a letter to the Regional Chief Isadore Day and Provincial Deputy Minister Deborah Richardson advising them of immediate-relief investments coming to Ontario for child and family

¹⁶ March 3, 2016 submissions (paras. 12(d)(e)(f)).

¹⁷ February 18, 2016 (paras. 8-9) and March 31, 2016 (para. 10) submissions.

¹⁸ February 18, 2016 submission (paras 10-13).

services. This letter states that funding for Band Representatives will be considered as part of the FNCFS Program reform process.

*COO request: for INAC to fund the COO and Ontario child and family services agencies' participation in future studies on reforming the 1965 Agreement.*¹⁹

33. INAC is currently considering the options for engagement on reforming the 1965 Agreement, all of which involve the COO as partners. Specifics will be determined as the engagement process moves forward.

Part 3: Information on budget allocations for each FNCFS agency and timelines for the roll out of these allocations

34. The annexes listed below and attached to this report contain the information requested by the Tribunal at paragraph 23 of its April 26, 2016 Ruling with respect to the budget allocations for each FNCFS agency and timelines for when the allocations will be rolled-out.

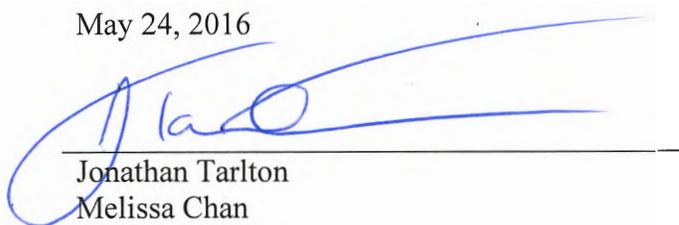
Annex A: First Nations Child and Family Services Program Service Provider Allocations - Information on Budget 2016 allocations for all FNCFS service providers, detailed information on the 15/16 and 16/17 allocations

Annex B: Information on the costing models used to make these calculations

Annex C: Information on Immediate Relief Funds

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

May 24, 2016



Jonathan Tarlton
Melissa Chan
Patricia MacPhee

¹⁹ February 18, 2016 (paras. 14-22) and March 31, 2016 (paras. 6, 10, & 14) submissions.