

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2016 CHRT 16
Date: September 14, 2016
File No.: T1340/7008

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 Aboriginal Affairs and Northern Development Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Amnesty International

- and -

Nishnawbe Aski Nation

Interested Parties

Ruling

Members: Sophie Marchildon and Edward Lustig

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I. Update to remedial order

[1] This Panel continues to supervise Indigenous and Northern Affairs Canada's (INAC's) implementation and actions in response to findings that First Nations children and families living on reserve and in the Yukon are denied equal child and family services, and/or are differentiated adversely in the provision of child and family services, pursuant to section 5 of the *Canadian Human Rights Act* (the *CHRA*) [see *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (the *Decision*)].

[2] Generally, INAC was ordered to cease its discriminatory practices and reform the First Nations Child and Family Services (FNCFS) Program and the *Memorandum of Agreement Respecting Welfare Programs for Indians applicable in Ontario* (the *1965 Agreement*) to reflect the Panel's findings in the *Decision*. INAC was also ordered to cease applying a narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of the principle. The order and findings in the *Decision* are the main reference points from which the Panel bases any further orders.

[3] Following up on the general order in the *Decision*, in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 10, the Panel reiterated and emphasized certain findings and adverse impacts from the *Decision* and ordered INAC to take measures to address those findings and adverse impacts immediately. To assist the Panel in assessing the implementation of the *Decision* and subsequent order, INAC was directed to provide a comprehensive report indicating how the findings in the *Decision* were being addressed to provide immediate relief for First Nations children.

[4] In response to INAC's reporting requirements and following further submissions from the parties thereon, this ruling updates the Panel's order in addressing the findings of the *Decision* in the short term. Other short, mid and long-term reforms of the FNCFS Program and the *1965 Agreement*, along with other requests for compensation under sections 53(2)(e) and 53(3) of the *CHRA*, will be dealt with at a later point.

[5] In general, the Complainants, the First Nations Child and Family Caring Society (the Caring Society) and the Assembly of First Nations (the AFN), along with the Commission and the Interested Parties participating at this stage of the proceedings, the Chiefs of Ontario (the COO) and the Nishnawbe Aski Nation (the NAN), are in agreement about the orders requested of the Panel to address the findings of the *Decision* in the short-term. Their submissions and requested orders are collectively referred to as those of the 'Complainants, Commission and Interested Parties' or 'CCI Parties' in this ruling. Where the submissions of the Complainants, Commission or Interested Parties may differ, those submissions are specifically outlined.

II. Preliminary remarks

[6] The Panel thanks the parties and interested parties for their most recent submissions. It has carefully considered them and found them to be very helpful. The Panel recognizes the time, effort and resources dedicated by the parties to complete them. Generally, the Panel is supportive of the majority of the orders requested made by the CCI Parties.

[7] The Panel is pleased to learn that the federal government has accepted to do a number of important things in response to the *Decision* and has made some progress in implementing the findings and orders from the *Decision*. Overall, the Panel believes the federal government is working towards reforming its approach to First Nations child and family services and implementing meaningful change for First Nations children and families.

[8] That said, and as addressed in this ruling, more progress still needs to be made in the immediate and long-term to ensure the discrimination identified in the *Decision* is remedied. In this regard, as emphasized in its last ruling (2016 CHRT 10), the Panel believes the dissemination of relevant and timely information continues to be of the utmost importance in rebuilding trust between the parties and avoiding conflicts and delays going forward.

[9] Generally, the Panel fails to understand why much of the information provided in INAC's most recent submissions could not have been delivered earlier, especially if this information formed part of the rationale for determining the budget for the FNCFS Program back in March 2016. INAC ought to have known this information was and remains important in responding to the Panel's information requests and reporting orders. Indeed, the Panel and the CCI Parties have been requesting this type of information for months now. It rests on INAC and the federal government to implement the Panel's findings and orders, and to clearly communicate how it is doing so, including providing a rationale for their actions and any supporting data and/or documentation, ensures the Panel and the parties that this is indeed the case.

[10] INAC has also recognized the CCI Parties as partners in the reform process and identified a need to consult Indigenous peoples across Canada to obtain their input on reforms. While this is necessary and consistent with the federal government's duty to consult Indigenous peoples, again, improved communication surrounding such endeavours would greatly assist the Panel in understanding INAC's strategy to address the *Decision* and would help build the trust necessary to establish a partnership between the parties. It is also unclear if or who has been consulted among the Indigenous community at this point, including if any social workers or other experts in the field of child welfare have been consulted. On this last point, INAC has previously acknowledged that it does not have expertise in the provision of child and family services to First Nations. Therefore, the need to consult with experts in the field, including the Caring Society, should be a priority.

[11] Likewise, the Panel has made a number of comments since the *Decision* on the importance of the parties meeting to discuss reform of the FNCFS Program and the *1965 Agreement* in the immediate and long term. In this regard, the Panel notes the Caring Society, the AFN and INAC did not even acknowledge until their most recent submissions that they had met several times to discuss reforms and the reestablishment of the National Advisory Committee (the NAC). This is important information because the ability of the parties to work together at this immediate relief stage is a good way to test if the reinstatement of the NAC will yield success in reforming the provision of First Nations child

and family services in the long term. INAC needs to improve its communication and information sharing with the other parties and the Panel, while continuing to build the partnership it has acknowledged. In addition, the Panel requests that it be kept informed of any relevant memorandums of understanding and/or agreements reached between the parties and/or important meetings discussing the subject matter of this case.

[12] As always, the Panel continues to encourage the parties to communicate effectively and work together. It also remains willing to assist the parties in reaching that goal. While the Panel is committed to eradicating discrimination and seeing the provision of First Nations child and family services reformed, and will continue to supervise the implementation of its orders in this regard; it also steadfastly believes that collaboration amongst the parties outside the four walls of the Tribunal is the best way to ensure reconciliation and effective reforms now and into the future. All parties are clearly dedicated to reconciliation and should continue to attempt to work together towards that goal.

[13] That said, the Panel will make further orders if need be to ensure discrimination is eliminated. In this vein, the Panel will rule on some immediate relief measures in this ruling and will leave others to be discussed at a future in-person case management meeting. The Panel appreciates that some parties wish this remedial process would proceed more quickly. While the Panel shares this sentiment, remedying the discrimination found in the *Decision* is a complex matter and depends greatly on the way in which information is provided to the Panel. In fact, some CCI Parties have cautioned the Panel to be careful in how it crafts its orders in terms of adequacy and impacts. Consequently, the Panel wishes to ensure all parties have a full and ample opportunity to present their points of view and that it has all necessary information to make informed orders. Nonetheless, the Panel hopes to see change materialize at the earliest opportunity. It believes some of that change can happen immediately while INAC's First Nations child welfare system is being reformed through consultations with Indigenous peoples and the parties involved in this case. The Panel makes the following ruling in this regard.

III. The FNCFS Program

[14] INAC's report in response to the Panel's ruling in 2016 CHRT 10 provided some information on how it is immediately dealing with the shortcomings of the FNCFS Program identified in the *Decision*. INAC submits that it is addressing these shortcomings through new financial investments in the FNCFS Program, along with modifications to its existing funding formulas, until a full reform of the FNCFS Program can be completed. Hence, INAC is of the view that many of the immediate relief measures proposed by the CCI Parties need to be addressed as part of mid to long-term reform of the FNCFS Program, after thorough engagement with key partners.

[15] In its most recent report, INAC outlines the new financial investments in the FNCFS Program allocated by the federal government in Budget 2016 over the next five years, along with the budget allocation of each FNCFS agency for this fiscal year and the funding models used to generate those budgets.

[16] Generally, the CCI Parties submit that INAC has not shown whether or how new investments in the FNCFS Program will be sufficient to address the findings in the *Decision*, especially in the short term.

[17] For the reasons that follow, the Panel is of the view that further orders, including additional information and reporting by INAC, are required to ensure the findings in the *Decision* with respect to the FNCFS Program have been or will be addressed in the short term.

A. Adjustments to funding formula assumptions and flaws

[18] One of the main findings in the *Decision* is that INAC's FNCFS Program, which flows funding through formulas, Directive 20-1 and the Enhanced Prevention Focused Approach (EPFA), provides funding based on flawed assumptions about the number of children in care, the number of families in need of services, and population levels that do not accurately reflect the real service needs of many on-reserve communities. This results in inadequate fixed funding for operation costs (capital costs, multiple offices, cost of living

adjustment, staff salaries and benefits, training, legal, remoteness and travel) and prevention costs (primary, secondary and tertiary services to maintain children safely in their family homes), hindering the ability of FNCFS Agencies to provide provincially/territorially mandated child welfare services, let alone culturally appropriate services. Most importantly, inadequate funding for operation and prevention costs provides an incentive to bring children into care because eligible maintenance expenditures to maintain a child in care are reimbursable at cost (see the *Decision* at paras. 384-389 and 458).

[19] In 2016 CHRT 10, the Panel ordered INAC to immediately take measures to address the assumptions and flaws in its funding formulas, including all the underlined items at paragraphs 20 and 23 of that ruling. INAC was to provide a comprehensive report explaining how those flaws and assumptions are being addressed in the short term to provide immediate relief to First Nations on reserve. The Panel's order also required INAC to provide detailed information on budget allocations for each FNCFS Agency and timelines for when those allocations will be rolled-out, including detailed calculations of the amounts received by each agency in 2015-2016; the data relied upon to make those calculations; and, the amounts each has or will receive in 2016-2017, along with a detailed calculation of any adjustments made as a result of immediate action taken to address the findings in the *Decision* (see 2016 CHRT 10 at paras. 20-25).

[20] Since 2016 CHRT 10, INAC submits Canada's immediate relief investments will address and help to remediate the discrimination identified by the Tribunal and will improve outcomes for First Nations children and families. The investments will provide greater prevention services to families and support critically needed FNCFS Program stability, while ensuring that no disruption of services occurs during work to reform the FNCFS Program.

[21] Through increased investment in the FNCFS Program, INAC submits it is eliminating the use of Directive 20-1. Where Directive 20-1 applies, FNCFS Agencies will be provided funding through existing mechanisms this fiscal year, but with increased funding levels determined using the more updated EPFA costing model. In 2016-17, INAC

is investing \$17.5 million for prevention services and programs as immediate relief for FNCFS Agencies still under the Directive 20-1 regime.

[22] For jurisdictions under the EPFA funding model, INAC indicates that updates include: additional funding to address population increases; allowing upward adjustments to be made for 26 agencies with more than 6% of children in care; adjustments to staff salaries to ensure comparability with provincial rates; 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; updates to service delivery standards, such as increasing the percentage used to calculate off-hour emergency services and increased funding for staff travel; increased funding for agency audit, insurance and legal services; and, increased amounts for the service purchase per child (i.e. service providers will receive \$175 per 0-18 child served, regardless of jurisdiction).

[23] INAC submits that Budget 2016 amounts to address the flaws in Directive 20-1 and the EPFA are higher than what was identified by INAC in its 2012 *Way Forward Presentation* (see the *Decision* at paras. 295-298). Over five years, the *Way Forward Presentation* estimated \$108 million to, among other things, expand the EPFA to the jurisdictions still under Directive 20-1, while topping-up existing EPFA jurisdictions. While the CCI Parties focus on Budget 2016's year 1 investment in stating that new funding falls short of the estimated five-year totals in the *Way Forward Presentation*, INAC submits the proper comparison is Budget 2016's year 5 investments. That is, Budget 2016 proposes \$176.8 million in year 5 to, among other things, expand prevention based services in Directive 20-1 jurisdictions and top-up jurisdictions operating under the EPFA.

[24] With regard to small FNCFS Agencies, INAC indicates that agencies with less than 800 children in care will still be subject to scaling with respect to their core funding (expenses for Board of Directors, employee salaries, benefits, training and travel, funding for agency evaluations, audits, insurance, legal fees and administrative overhead). However, this does not decrease the funding provided to an agency for protection or prevention services. According to INAC, future approaches to funding small agencies will be part of longer term engagement with First Nations and provincial partners.

[25] The CCI Parties submit that the true measure of the impact of INAC's immediate relief measures is the extent to which the incentive to remove First Nations children from their homes has been reduced. They contend that INAC's compliance report is bereft of assurances that the incentives to bring children into care identified in the *Decision* will be reduced by its immediate relief investments and changes to its funding formulas; they also submit that INAC has not shown that additional program investments will allow FNCFS Agencies to provide services on par with those provided by the provinces.

[26] While upwards adjustments are being made for agencies serving more than 6% of children in care, the CCI Parties are unclear about the extent to which the actual percentage of children in care is being funded. Furthermore, there appears to be no upwards adjustments for agencies serving more than 20% of families in need. For small agencies, the CCI Parties submit that INAC was not given the option of deferring the problems caused by scaling core funding based on population levels.

[27] The CCI Parties request an order that INAC immediately make adjustments to its funding formulas to ensure operations budgets for FNCFS Agencies approximate actual costs. They suggest various modifications to INAC's funding formulas, including:

- increases to the base amounts in the formula, including for the child purchase amount;
- that FNCFS Agencies, serving a population where the percentage of children in care and percentage of families receiving services exceeds 6% and 20% respectively, be provided with an upward adjustment for their operations and prevention budgets in proportion to the excess percentages;
- that no downwards adjustments be applied to FNCFS Agencies with fewer than 6% of children in care and/or serving fewer than 20% of families;
- that adjustments to the fixed amount in the funding formula for population levels be increased; and

- that the fixed amount in the funding formula for all FNCFS Agencies serving fewer than 251 Registered Indian children be the same amount provided to agencies serving at least 251 Registered Indian children.

[28] The Panel recognizes the efforts made so far by INAC and its desire to improve the lives of First Nations children through negotiations with key partners. The Panel also finds INAC's explanation outlined in paragraph 23 above to be reasonable in terms of the amount of funding being higher than the amount in the 2012 *Way Forward Presentation*. Aside from the overall amount of additional funding being invested in the FNCFS Program, the Panel was pleased to learn that new funding (approximately \$28.4 million) was actually provided to FNCFS Agencies on July 1st, 2016, with other additional funds coming before the end of this fiscal year, in part to address some of the flawed assumptions in INAC's funding formulas.

[29] However, as stated in the *Decision* at paragraph 482, "[m]ore than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice." The Panel is concerned to read in INAC's submissions much of the same type of statements and reasoning that it has seen from the organization in the past. For example, that it is up to each FNCFS Agency to determine how they allocate their funding for such things as prevention and cultural programming (see *Decision* at paras. 187-189, 311, 313 and 314). This prompts the same question as at the time of the hearing: what if funding is not sufficient to allow for that flexibility? How has INAC determined that each agency has sufficient funding to comply with provincial child welfare standards and is still able to deliver necessary prevention and cultural services? The fact that key items, such as determining funding for remote and small agencies, were deferred to later is reflective of INAC's old mindset that spurred this complaint. This may imply that INAC is still informed by information and policies that fall within this old mindset and that led to discrimination. Indeed, the Panel identified the challenges faced by small and/or remote agencies and communities across Canada, numerous times in the *Decision* (see for example paras. 153, 277, 284, 287, 291, 313 and 314). INAC has studied and been aware of these issues for quite some time and, yet, has still not shown it has developed a strategy to address them.

[30] The emphasis on discussions with key partners at tripartite tables is also something this Panel has seen in the evidence and heard from INAC many times throughout these proceedings (see *Decision* at paras. 138, 139, 191-197, 201 and 213-215). One main example of this in the evidence is the situations in Quebec and British Columbia. Despite many consultations, discussions and joint studies in the past, and even with ready and willing partners prepared to transition those provinces from Directive 20-1 to the EPFA, that transition has yet to occur or was significantly delayed (see *Decision* at paras. 73-77 and 314).

[31] While the Panel understands meaningful long-term reform and change will be accomplished in consultation with key partners, such as Indigenous peoples across Canada and the provinces, the purpose of immediate relief has been and still is to eliminate as many adverse impacts as possible at this time with the information that we have, the findings in the *Decision* and with the assistance of experts, FNCFS Agencies and the parties. Immediate relief is a temporary measure to remove as many adverse impacts as possible with the understanding that consultation, studies and data collection will translate into a more comprehensive and effective change of the FNCFS Program.

[32] Comprehensive reform will take some time. The Panel understands this and believes a complete reform will happen. However, immediate relief should be treated as such and not transformed into a long term remedy. While additional funding may address the most discriminatory aspects of INAC's funding formulas in the short term, the Panel is not currently in a position to determine if this is the case. The Panel acknowledges and appreciates much of the additional information INAC provided in response to its ruling in 2016 CHRT 10; however, even with this additional information, the rationale and/or methodology for allocating the additional funding is not fully explained and the supporting data and/or documentation, including the cost driver study and trend analysis on which INAC claims Budget 2016 investments in the FNCFS Program were developed is incomplete.

[33] That is, the Panel analyzing is not concerned with the specific amount of funding per se, but rather the way in which it is determined. It is the way in which the FNCFS Program is delivered and funding is determined that results in discriminatory effects for

First Nations children and families. The Panel's focus is on whether funding is being determined based on an evaluation of the distinct needs and circumstances of First Nations children and families and their communities. While other key factors come into play in determining whether the amount of funding provided to FNCFS Agencies is adequate to address the needs of the communities they serve, such as remoteness and the extent of travel to meet children and families (which will be addressed later in this ruling), the assumptions about the number of children in care, the number of families in need of services and population levels are the starting point for addressing the discriminatory impacts of INAC's funding formulas.

[34] Therefore, leaving some of the assumptions and flaws in the funding formulas for long term reform to ensure everyone is consulted may be problematic. As said in the *Decision*, a piecemeal approach to reform is not an effective way to proceed (see *Decision* at paras. 185 and 331). While the Panel understands that INAC is determined to reform the entire FNCFS Program and believes it intends do so, it is concerned that deferring immediate action in favour of consultation and reform at a later date will perpetuate the discrimination the FNCFS Program has fostered for the past 15 years. Over that time, despite well documented problems with the program and consultations with its partners and at tripartite tables, INAC's system has failed to adapt to the needs of First Nations children and families (for example, see *Decision* at paras. 134, 138-141, 203, 311, 314-315, 383-394 and 456-467). The Panel understands this is no easy task and that the FNCFS Program cannot be reformed in an instant. However, this does not mean that effective measures cannot be implemented in the meantime. The Panel also agrees with the parties that a one-size-fits-all type of approach is not to be used; this was also addressed in the *Decision* (see para. 315).

[35] Throughout the *Decision*, the Panel highlighted the dichotomy between the objectives of the FNCFS Program and INAC's flawed methods for achieving those objectives (see for example para. 312). Many of those flaws can be corrected at this time, without the need for additional large scale consultation and study. Again, the purpose is to eliminate as many adverse impacts as possible while the system is being reviewed and reformed. Indeed, as indicated by the CCI Parties, INAC was not given the option to defer

addressing the assumptions and flaws in its funding formulas to address them solely in the long term. As the service provider, funder and FNCFS Program manager, INAC was given some flexibility in the manner in which to address the findings in the *Decision*. However, in 2016 CHRT 10, the Panel was clear that the immediate measures underlined and identified in that ruling had to be undertaken now while further long-term reform was being contemplated.

[36] The Panel reiterates its immediate relief orders that all items identified in paragraph 20 of 2016 CHRT 10, and not limited to the items that were underlined, must be remedied immediately, including the adverse effects related to:

- The assumptions about children in care, families in need of services and population levels;
- Remote and/or small agencies;
- Inflation/cost of living and for changing service standards; and
- Salaries and benefits, training, legal costs, insurance premiums, travel, multiple offices, capital infrastructure, culturally appropriate programs and services, and least disruptive measures.

[37] With specific regard to remote agencies, the Panel expects INAC to develop a strategy that takes into account such things as the additional costs associated with travel distances between service centers in terms of similarity to provincial statutory response times and managing impacts on service providers and the children and families they serve; the availability of surrounding services or lack thereof; and, the higher costs and cost of living in northern and/or isolated areas. Remoteness can affect each item in a FNCFS Agency's budget. The Panel will return to the issue of remoteness below.

[38] Again, the objectives of the FNCFS Program can only be met if INAC's funding methodology is focused on service levels and the real needs of First Nations children and families, which may vary from one child, family or Nation to another. A focus on the overall amount of funding, through the continued application of flawed funding formulas, does little, if anything, to correct the discrimination found in the *Decision*. Therefore, the Panel

orders INAC to immediately establish the funding assumptions of 6% of children in care and 20% of families in need of services as minimum standards only. INAC has indicated that, even where the number of children in care is below 6%, it will not reduce the amount of funding to such agencies. INAC is ordered to apply the same standard for the assumption of 20% of families in need of services. That is, it will not reduce the amount of funding for FNCFS Agencies that serve less than 20% of families in need of services.

[39] For agencies that have more than 6% of children in care and/or that serve more than 20% of families, INAC is ordered to determine funding for those agencies based on an assessment of the actual levels of children in care and families in need of services. While INAC has indicated that it is allowing upward adjustments to be made for 26 FNCFS Agencies with more than 6% of children in care, there is insufficient information that those upward adjustments are based on an assessment of the actual levels of children in care. Furthermore, INAC has not indicated how it is addressing agencies serving more than 20% of families. As indicated below in its order at the end of this ruling, INAC will be required to report back to the Tribunal confirming that it has implemented this order and clearly demonstrate how it has done so. Again, this order is only meant to provide short-term relief given that a full reform of the FNCFS Program will occur in the long term following further consultation with Indigenous peoples, partners and experts from across Canada.

[40] For the assumptions in the funding formulas based on population levels, INAC is ordered to immediately stop formulaically reducing funding based on arbitrary population thresholds. Again, funding must be provided based on an assessment of the actual service level needs of FNCFS Agencies. As above, INAC will be required to report back to the Tribunal confirming that it has implemented this order and clearly demonstrate how it has done so.

[41] Relatedly, and as addressed in more detail below, the Panel needs more information on how INAC determined its five-year plan for investing in the FNCFS Program and in determining budgets for each FNCFS Agency. The Panel notes that there are already some costing model template documents filed in evidence with the Tribunal and in INAC's most recent submissions which provide some of this additional information.

However, this information still needs to be further detailed to clearly explain how the children's and families' needs are being addressed in response to the Panel's findings and orders.

[42] Furthermore, given INAC's emphasis on consultation in response to many of the items in this ruling, it would be helpful to the Panel and the other parties if INAC could provide a list of the First Nations, FNCFS Agencies, provincial and territorial authorities, partners, experts or any other persons it has consulted with so far in response to the findings in the *Decision*, along with its consultation plan moving forward. The list of any past consultations from January to September 2016 should include the agenda and summary of the discussions.

B. Funding for legal fees, capital infrastructure, culturally appropriate services, child service purchase amount and the receipt, assessment and investigation of child protection reports

[43] According to INAC, the issue of funding legal fees, capital infrastructure and culturally appropriate programs and services will be addressed as part of future reform discussions. Addressing some of these issues may require engagement and discussion with First Nations, FNCFS Agencies and provincial/territorial governments. According to INAC, unilateral action in addressing these important issues would be contrary to the federal government's commitment to renew the relationship between Canada and Indigenous peoples. INAC adds that immediate relief investments could be utilized by FNCFS Agencies to respond to individual community needs for culturally based programming and activities.

[44] With respect to the child service purchase amount, INAC indicates that it has increased it from \$100 to \$175 per child. On the receipt, assessment and investigation of child protection reports, INAC submits that Budget 2016 investments will provide approximately \$45 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.

[45] For their part, the CCI Parties do not understand why the issue of funding legal fees, capital infrastructure and culturally appropriate programs and services cannot be addressed at this stage. There are actions that can be taken now to alleviate discrimination that fall entirely within federal jurisdiction and do not depend on corresponding provincial action, including simply adopting and adequately funding applicable provincial/territorial standards regarding these issues. Specifically, the CCI Parties request:

- Each FNCFS Agency be provided \$75,000 in fiscal year 2016/2017 to develop and/or update a culturally based vision for safe and healthy children and families, and to begin to develop and/or update culturally based child and family service standards, programs and evaluation mechanisms;
- Legal fees related to children in care, and child welfare investigations and inquiries, be fully reimbursable according to the tariff employed by the federal government for the remuneration of outside counsel; and
- The costs of building repairs, where a FNCFS Agency has received a notice to the effect that repairs must be done to comply with applicable fire, safety and building codes and regulations, or where there is other evidence of non-compliance with applicable fire, safety and building codes and regulations, be fully reimbursable.

[46] For the child service purchase amount, the CCI Parties request that it be increased to \$200 per child. For costs related to the receipt, assessment and investigation of child protection reports, the CCI Parties submit that they should be fully reimbursable.

[47] As stated above in the previous section of this ruling, the Panel is not concerned with the specific amount of funding per se, but with the way in which it is determined: that it is based on an evaluation of the distinct needs and circumstances of each individual FNCFS Agency. Pursuant to this reasoning, the Panel has insufficient information at this time to make an order with respect to the request for a specific amount of funding for the development and/or update of culturally based child and family service standards, programs and evaluation mechanisms. The Panel recognizes that leaving it to FNCFS Agencies to use immediate relief investments to address this item does not ensure this

need is met, especially in the case of a small agency and/or remote community. However, the Panel will address this request at the upcoming in-person case management meeting.

[48] For legal fees, as indicated in 2016 CHRT 10 and reiterated at paragraph 36 above, the Panel expects INAC to address this issue as part of immediate relief measures while a longer-term solution is being developed. While the Panel understands the benefit of having discussions on funding for legal fees in the long term, this issue should also be addressed immediately. The Panel orders INAC to provide detailed information in its compliance report to clearly demonstrate how it is addressing this issue. This will form part of the upcoming in-person case management meeting.

[49] On the issue of building repairs, the Panel fails to understand why INAC cannot address it now, especially where a FNCFS Agency has received a notice to the effect that repairs must be done to comply with applicable fire, safety and building codes and regulations, or where there is other evidence of non-compliance with applicable fire, safety and building codes and regulations. Again, while the Panel understands the benefit of having discussions on capital infrastructure in the long term, this urgent issue should also be addressed immediately. The Panel orders INAC to provide detailed information in its compliance report to clearly demonstrate how it is addressing this issue. This will form part of the upcoming in-person case management meeting.

[50] Finally, with regard to the issues of the child service purchase amount and the costs related to the receipt, assessment and investigation of child protection reports, again, the Panel requires further information on how INAC's funding allotment for this item meets the needs of individual FNCFS Agencies. The Panel orders INAC to provide detailed information in its compliance report to clearly demonstrate how it determined funding for such costs. This will form part of the upcoming in-person case management meeting.

C. Adjustments for inflation

[51] Another significant finding in the *Decision* was INAC's failure to adjust Directive 20-1 funding levels since 1995, along with funding levels under the EPFA, since its implementation, to account for inflation/cost of living.

[52] INAC indicates that 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 (e.g. rent, transportation, supplies and equipment), salaries and increases in ratios of children in care. According to INAC, the annual amount for growth and cost drivers was calculated at approximately 3% of program investments and it is providing \$159 million in additional funding over the next five years to address these issues.

[53] The CCI Parties submit that INAC has failed to detail how much it is allocating for each "growth and future cost driver" and does not clearly detail how it arrived at corresponding allocations. Moreover, not all of the future cost drivers identified are linked to inflation. Indeed, the CCI Parties submit some of these cost drivers are linked to the FNCFS Program's legacy of discrimination (for instance, child maintenance costs). Additionally, they argue the annual adjustment for growth and future cost drivers does nothing to address the systemic disadvantage perpetuated by a lack of inflation adjustments over the last two decades.

[54] The CCI Parties request increased funding to restore lost purchasing power related to the failure to provide a compounded annual inflation adjustment pursuant to the Consumer Price Index. For fiscal years 2016-17 and forward, they request annual adjustments in funding for FNCFS Agencies according to the increase in the Consumer Price Index.

[55] INAC is ordered to detail how much it is allocating for each "growth and future cost driver" and to detail how it arrived at its corresponding allocations. Given the Panel has questions for INAC, the request for increased funding to restore lost purchasing power will be addressed during the upcoming in-person case management meeting.

D. Cost overruns and the reallocation of funds from other INAC programs

[56] The *Decision* also addressed evidence that where there were cost overruns for maintenance expenses, and before providing any additional funding, INAC required FNCFS Agencies to recover those overruns from their prevention or operations funding streams first. Relatedly, in the event maintenance costs exceeded the FNCFS Program budget, funds were reallocated from other INAC programs, such as housing and infrastructure, to meet those maintenance costs. This was described by the Auditor General of Canada as being unsustainable and as also negatively impacting other important social programs for First Nations on reserve.

[57] Again, INAC submits that Budget 2016 investments took into account cost drivers and growth considerations, including those impacting maintenance expenditures. If pressures exceed the allocated budget, additional resources can be secured. Funds will be allocated to agencies on an as-needed basis to respond to increases in maintenance expenses, provincial salary changes and any increases to the ratio of children in care.

[58] Furthermore, INAC submits that Budget 2016 investments will contribute to a more stable and predictable funding environment within INAC, thus reducing the need for reallocations from other critical programs such as infrastructure and housing. However, INAC notes that any commitment relating to funding for programs other than the FNCFS Program is beyond the scope of this complaint.

[59] The CCI Parties submit that only \$51,830,765.38 will be conferred to FNCFS Agencies to cover cost overruns in 2016-17. Therefore, they request that INAC be ordered to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and operations funding streams. Moreover, the CCI Parties request an order that INAC cease its practice of reallocating funding from other First Nations programs to address shortfalls in the FNCFS Program.

[60] The Panel orders INAC to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and operations funding streams. Again, this ensures FNCFS budgets are in a better position to meet the actual needs of the children and families they serve.

[61] While the reallocation of funding from other First Nations programs to address shortfalls in the FNCFS Program may be outside the four corners of this complaint, the Panel made findings about the adverse impacts of this practice in the *Decision* (see for example paras. 373 and 390). Therefore, the Panel urges INAC to eliminate this practice.

E. Additional information requests

[62] The CCI Parties request further detail on the budget allocations for the FNCFS Program and FNCFS Agencies. Specifically, they note that INAC's compliance report states that much of the additional funding will be provided "at full implementation" and "over the next five years." In the CCI Parties' view, INAC has not provided an explanation as to why there is a five-year delay in taking action and requests INAC be ordered to cease its incremental approach to remedying discrimination. The CCI Parties are also unclear as to when exactly "full implementation" will be reached or when "over the next five years" many of INAC's proposed measures will come into effect.

[63] Furthermore, while INAC has provided the funding models that generated its budgets, the CCI Parties also request that it provide the raw data relied upon to calculate any funding increases, including how it arrived at financial projections beyond fiscal year 2016-2017, any steps taken to ensure comparability of staff salaries and benefit packages to provincial rates, the information used to determine the caseload ratios in Quebec and Manitoba, and, generally, how it determined values for off-hour emergency services, staff travel, agency audits, insurance and legal services.

[64] According to INAC, 'full implementation' of Budget 2016 will be reached in Year 4 and again in Year 5 of its five-year plan. The financial projections for 2017-18 to 2020-21 were calculated by scaling the full annual investment of Years 4 and 5. Funding will be provided to agencies incrementally because, according to INAC, past experience and discussions with funding recipients have shown that incremental funding allows agencies enough time to hire, train and retain staff, based on the availability of qualified social workers and other staff, and to expand their prevention programming. INAC submits that this approach in no way means that Canada presumes that agencies lack the capacity to

implement immediate relief measures, but recognizes that it takes time to grow any organization and this is a mechanism to ensure funding does not lapse.

[65] INAC adds that the revised funding formulas used to support Budget 2016 investments were updated through a process undertaken over several years, and which include a comprehensive cost driver study and trend analysis based on the most current data available by jurisdiction. With specific regard to staff benefit packages, INAC states that the amount was calculated based on 20.45% of total salaries. This was the methodology agreed upon when EPFA was established. As part of longer-term reform to the FNCFS Program, INAC is open to further discussions with respect to changing the way in which future staff benefits allocations are calculated.

[66] Much of the information in INAC's most recent submissions, including information on its methods for determining the amount of new funding and the rationale for rolling it out incrementally, should have been provided months ago, especially given that INAC submits its cost study and trend analysis has been developed over several years. This information would have been helpful in moving forward with immediate relief measures more expeditiously. While the incremental funding approach may be following the past EPFA roll-out, the Panel requests the information above from INAC rather than be left with hypotheses. INAC is directed to disclose to the Panel and the CCI Parties, its cost study and trend analysis documentation on which it based its calculations for allocating Budget 2016 funding. . Furthermore, INAC is ordered to provide its rationale, data and any other relevant information in order to assist this Panel in understanding INAC's Budget 2016 investments and how they address the findings in the *Decision*, including how it arrived at financial projections beyond fiscal year 2016-2017; any steps taken to ensure comparability of staff salaries and benefit packages to provincial rates; the information used to determine the caseload ratios in Quebec and Manitoba; and, generally, how it determined values for off-hour emergency services, staff travel, agency audits, insurance, and legal services.

IV. The 1965 Agreement in Ontario

[67] With respect to the *1965 Agreement* in Ontario, the *Decision* found that, while it was seemingly an improvement on Directive 20-1 and more advantageous than the EPFA, the application of the *1965 Agreement* in Ontario also results in denials of services and adverse effects for First Nations children and families. The *Agreement* has not been updated for quite some time and does not account for changes made over the years to the Ontario's *Child and Family Services Act* for such things as mental health and other prevention services. This is further compounded by a lack of coordination amongst federal programs in dealing with health and social services that affect children and families in need, despite those types of programs being synchronized under the Ontario's *Child and Family Services Act*. The *Decision* also found that the lack of surrounding services to support the delivery of child and family services on-reserve, especially in remote and isolated communities, exacerbates the gap further. Finally, the *Decision* indicated there is discordance between Ontario's legislation and standards for providing culturally appropriate services to First Nations children and families, for example, through the appointment of a Band Representative and INAC's lack of funding thereof (see *Decisions* at paras. 223-246).

[68] Again, for the reasons that follow, the Panel is of the view that further orders, including additional information and reporting by INAC, are required to ensure the findings in the *Decision* with respect to the *1965 Agreement* have been or will be addressed in the short term.

A. Updating the 1965 Agreement

[69] The CCI Parties request that the schedules of the *1965 Agreement* be updated to reflect the current version of Ontario's *Child and Family Services Act*. They also ask for an order ensuring funding for the full range of statutory services, including Band Representatives and children's mental health services, provided by the Ontario's child welfare legislation.

[70] On this issue, INAC has indicated that it 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 necessary reforms to the *1965 Agreement*. 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*. According to Canada, 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.

[71] Furthermore, on May 10, 2016, INAC's Ontario regional office sent a letter to Ontario Regional Chief Isadore Day and provincial Deputy Minister Deborah Richardson, advising them of immediate relief investments coming to Ontario for child and family services. This letter states that funding for Band Representatives will be considered as part of the FNCFS Program reform process.

[72] In terms of mental health services, INAC submits that \$69 million will be invested over the next three years to provide immediate support for Indigenous mental wellness across Canada. This funding is in addition to the close to \$300 million provided annually for community-based mental health and addictions programming on-reserve and in the territories. According to INAC, this new funding will support various measures, including some that are specific to Ontario.

[73] The Panel is pleased to learn about the significant new investments mentioned above. While it may address some of the adverse impacts highlighted in the *Decision*, again, the Panel is not in a position to assess the extent that it does so whether in the short or longer-term. INAC is ordered to provide its rationale, data and other relevant information to assist this Panel in understanding INAC's Budget 2016 investments and how they are responsive to the needs of the First Nations children and how it addresses the findings in the *Decision*, in the short term, especially in terms of mental health services and Band Representatives.

[74] In this regard, the Panel is aware that, as opposed to provincial service delivery and the Ontario's *Child and Family Services Act*, federal health and social services to First Nations children are delivered through different departments. Nevertheless, the Panel made findings with the evidence before it in relation to the gaps and adverse impacts caused by the Federal government's involvement in health and social services to First Nations children in Ontario (for example, see the *Decision* at paras. 364-373 and 391-392). Overall, the Panel found the situation in Ontario fell short of the objective of the 1965 Agreement "...to make available to the Indians in the Province the full range of provincial welfare programs" (see *Decision* at para. 246). Again, the Panel wants to know how those findings are being addressed in the short term while the *Agreement* is being reformed.

B. Remoteness Quotient

[75] The NAN submits that a new remoteness quotient needs to be developed to ensure funding to remote northern communities reflects the high costs of living and the extraordinary costs of providing services in those communities. The new remoteness quotient should take into account cost of living; demographics of northern communities where children and youth form a significantly higher percentage of the population than the rest of Canada; the high rates of child deaths; and, high youth suicide rates.

[76] According to the NAN, the *Barnes Report* (Exhibit HR-11, Tab 219: David Barnes and Vijay Shankar, *Northern Remoteness, Study and Analysis of Child Welfare Funding Model Implications on Two First Nations Agencies, Tikinagan Child and Family Services and Payukotayno: James Bay and Hudson Bay Family Services* (Barnes Management Group Inc., 2006) provides a good example of what its proposed remoteness quotient could look like, and what a remoteness quotient could accomplish. However, the *Barnes Report* is specific to Ontario, identified several data gaps and was authored in 2006. As such, the NAN requests that an update to the *Barnes Report* be funded by the Federal government. The NAN further proposes that experts be engaged to develop a new remoteness quotient based on the *Barnes Report* and that the selection of the experts be by joint-agreement between the NAN and the Federal government. If no agreement is

reached within a reasonable but short timeframe, it requests the Panel select the appropriate experts.

[77] While a robust, empirically-based remoteness Quotient is being developed, the NAN submits adjustments reflecting northern remoteness realities can be undertaken in the immediate term and looks forward to working collaboratively with the parties on the mechanics of these adjustments.

[78] Whereas the NAN's submissions were mainly focused on the application of a robust remoteness quotient to determine funding for its own communities in Ontario, the AFN submits that the application of remoteness factors ought to be considered across Canada. Similarly, the Caring Society submits remoteness issues should not be dealt with through an "update" of the *Barnes Report* but rather as part of a comprehensive special study for Ontario and as part of the NAC process. The COO also expects the NAC process and the Ontario Special Study to yield data to inform a remoteness quotient, which in turn will inform programming and funding models.

[79] For its part, INAC states that it will engage on undertaking and providing support for research on this topic, building on the research contained in the *Barnes Report*, to analyze a possible remoteness quotient.

[80] The Panel agrees with the NAN that a remoteness quotient needs to be developed as part of medium to long term relief and that data needs to be appropriately collected. The Panel is also pleased to learn that INAC will engage on undertaking and providing support for research on this topic and to discuss a possible remoteness quotient. The Caring Society and the COO have provided interesting suggestions on how to develop a remoteness quotient. This topic will form part of the upcoming in-person case management meeting.

[81] The Panel again agrees with the NAN that while a robust, empirically-based remoteness quotient is being developed, adjustments reflecting northern remoteness realities can be undertaken in the immediate term. The Panel also agrees with the AFN that this should not only apply to Ontario but, rather, the application of remoteness factors ought to be considered across Canada. As indicated above at paragraph 36, in 2016

CHRT 10 the Panel ordered INAC to immediately address how it determines funding for remote FNCFS Agencies. That determination should account for such things as travel to provide or access services; the higher cost of living and service delivery in remote communities; the ability of remote FNCFS Agencies to recruit and retain staff; and, the compounded effect of reducing core funding for remote agencies that may also be small agencies (for example, see *Decision* at paras. 213-233 and 291). A standardized, one-size-fits-all approach to determining funding for remote agencies affects their overall ability to provide services and results in adverse impacts for many First Nations children and families. The Panel orders INAC to provide detailed information in its compliance report to clearly demonstrate how it is determining funding for remote FNCFS Agencies that allows them to meet the actual needs of the communities they serve. This will form part of the upcoming in-person case management meeting.

C. Allocation of immediate relief funding

[82] INAC has indicated that Budget 2016 will provide new investments in Ontario of approximately \$5.8 million in 2016-17. By 2019-20, the total annual allocation for prevention services in Ontario First Nations will be approximately \$1,160 per child: an increase of approximately \$560 per child from the current amount of funding.

[83] In order to provide immediate relief to children in Ontario, the CCI Parties submit that the funding should be distributed to Ontario First Nations regardless of the provincial government's concurrence. The CCI Parties further requests that a deadline be set for the distribution of those funds. According to the COO, it is in the process of arranging meetings with INAC and the Province of Ontario to discuss how the budgeted amount of funding for Ontario was determined and how it can be distributed. As such, it requests that INAC provide further information to assess the sufficiency of funding and ongoing reporting to ensure compliance with its commitments.

[84] The CCI Parties also submit that Budget 2016 investments do not address inflation. Therefore, they request INAC pay an amount of \$5 million, adjusted for the compound rate

of inflation from 2012 values pursuant to the Consumer Price Index, to be divided among FNCFS Agencies in Ontario.

[85] INAC submits that it cannot flow funds to Ontario via the *1965 Agreement* without the Province's concurrence. At this time, Ontario has not agreed to allow immediate relief funding to be flowed through the *1965 Agreement*. Rather, according to INAC, Ontario has proposed that an alternative approach be found to create an interim arrangement outside of the *1965 Agreement* for INAC to flow funds for immediate relief. INAC states that it is actively working with the Province to find a means to provide immediate relief funding as soon as possible and is prepared to immediately flow the funding for on-reserve preventative services within Budget 2016 commitments. However, before any options are finalized, INAC will seek support from First Nations leadership. As work on the allocation of immediate relief funding in Ontario is ongoing, INAC requests the Tribunal not impose a deadline and instead allow the parties to work collaboratively to address this issue.

[86] With regard to the additional amount for inflation, INAC submits that its Budget 2016 investments account for cost drivers and yearly growth, for a five year investment of \$70.5 million in additional program funding for service providers in Ontario.

[87] The Panel acknowledges INAC's investments and explanation. As work on the allocation of immediate relief funding in Ontario is ongoing, the Tribunal will not impose a deadline and instead will allow the parties to work collaboratively to address this issue. This is with the understanding that it will be addressed immediately and not delayed further. However, the Panel expects an update from INAC on this issue as part of its compliance report, and asks that it disclose the correspondence with the Province of Ontario referred to in its submissions. This will also be addressed during the upcoming in-person case management meeting.

[88] Similarly, for the same reasons mentioned in paragraph 55 above, the Panel needs additional information on the request for additional funding to address inflation. There is no doubt that inflation is a key factor which impacts overall service delivery and agency capacity to deliver those services. This was addressed in the *Decision* at paragraphs 311, 387 and 458. However, given the lack of detailed information regarding the determination

of funding for future “cost drivers and yearly growth” the Panel is unable to assess if in fact INAC’s investments are responsive to the needs of Ontario FNCFS Agencies. The Panel orders INAC to provide detailed information in its compliance report to clearly demonstrate how it has determined funding to account for future “cost drivers and yearly growth” and will discuss this issue at the upcoming in-person case management meeting.

D. Expanding the definition of ‘prevention services’

[89] The CCI Parties request an order that the definition of ‘prevention services’ in the *1965 Agreement* be expanded to include special needs rehabilitative and support services and respite care. The CCI Parties submit that if special needs supports and respite care are provided as a form of prevention services, this may lead to a reduction of children in care. Families will no longer have to make the decision between keeping their families together and having a child’s special needs unassessed or supported or breaking families apart by placing a child in care with an increased opportunity that the child will have better access to supports.

[90] Relatedly, the CCI Parties submit that children with special needs are at a significantly higher-than-normal risk of being apprehended due to their inability to travel to get access to the care and services they require. That is, children perceived to be in a position where they are not being provided with required care by their families may be viewed as children in need of protection. Funding for travel to access special needs services and assessments is not provided for under the *1965 Agreement*. Therefore, the CCI Parties request that the definition of ‘prevention services’ under the *1965 Agreement* include funding for travel to access all physician-prescribed health services, including special needs assessments and services.

[91] Finally, the CCI Parties request that the definition of ‘prevention services’ under the *1965 Agreement* be expanded to include the supports for families in crisis identified under Ontario’s recently announced Family Well-Being Program; and that Canada match the Ontario Government’s financial commitment of \$80 million over three years to serve families in crisis under the Family Well-Being Program.

[92] In response, INAC states that it looks forward to participating in discussions on the Province of Ontario's definition of 'prevention services' and is committed to working with other federal partners, as well as Ontario and First Nations partners, to discuss the supports needed to reduce or prevent First Nations children from coming into care. However, it argues the request for a unilateral order expanding the definition of 'prevention services' under the *1965 Agreement* is not appropriate. That is, the *1965 Agreement* is between the Federal government and the Province of Ontario and will require joint provincial and federal agreement to undertake changes.

[93] The COO suggests that any order for an expanded definition of 'prevention services' be considered in the medium to long term relief stage, to allow for planning and consultation with First Nations, child welfare agencies or other proposed service providers; and to ensure that the appropriate service provider can be identified, has the required mandate, and is willing and able to provide such services.

[94] The Panel made findings in the *Decision* with regard to the services covered by the *1965 Agreement*, along with the difficulties faced by some First Nations children and families in accessing services in remote Ontario communities (see paras 223-244). However, the Panel agrees with the COO's suggestion above that expanding the definition of 'prevention services' in the *1965 Agreement* should be considered in the medium to long term. That said, as part of INAC's immediate relief investments, which are being coordinated on an interim basis outside of the *1965 Agreement*, and until an expanded definition of prevention services can be considered, INAC should consider reimbursing costs for travel to access physician-prescribed special needs services and assessments, special needs rehabilitative and support services and respite care, and support for families in crisis. The Panel expects a detailed response from INAC on this issue and will discuss the issue with all parties at the upcoming in-person case management meeting.

E. Reinstate cost-sharing of capital expenditures

[95] The CCI Parties request an order that INAC reinstate the cost-sharing of capital expenditures under the *1965 Agreement* at the same allocation of 90%, as provided for in clause 4 of the *Agreement*.

[96] In response, INAC states that it will engage on the broader issue of infrastructure needs for the FNCFS Program as part of long-term reform efforts.

[97] As noted in the *Decision*, the *1965 Agreement* has not provided for the cost-sharing of capital expenditures since 1975 and, as a result, many FNCFS Agencies in Ontario lack funding to establish infrastructure necessary to deliver statutory child protection services (see paras. 244-245). Therefore, as part of INAC's immediate relief investments, which are being coordinated on an interim basis outside of the *1965 Agreement*, and until the broader issue of infrastructure needs under the *1965 Agreement* can be fully reviewed, INAC should develop an interim strategy to deal with the infrastructure needs of FNCFS Agencies. The Panel expects a detailed response from INAC on this issue and will discuss the issue with all parties at the upcoming in-person case management meeting.

F. Eligibility

[98] According to the CCI Parties, in order to be eligible for federal funding under the cost-sharing formula of the *1965 Agreement*, children and youth must be: 1) registered Indians; and, 2) resident on reserve, Crown land, or off reserve less than 12 months. They submit that this residency and status requirement under the *1965 Agreement* has a significantly negative impact on children and youth who are entitled to be registered, but for a variety of reasons, have not been. In this regard, the CCI Parties suggest that the documentation requirements for registering a child at birth or while still young present a serious challenge. Therefore, they request that the *1965 Agreement's* residency and registered status requirements be amended to ensure that not only children and youth who are registered are eligible for services, but also children and youth who are entitled to be registered.

[99] According to INAC, residency and registered status is a national issue that will require the development of a comprehensive approach in collaboration with key partners. INAC states that it will pursue discussions on this issue as part of long-term reform efforts.

[100] Although eligibility under the *1965 Agreement* is not discussed per se in the *Decision*, the need for review and update of the *Agreement* was discussed in detail (see for example paras. 223-228). The Panel agrees that a comprehensive approach to eligibility needs to be developed in collaboration with key partners and that it is best addressed at the long term stage when the *1965 Agreement* is reformed. However, as part of INAC's immediate relief investments, which are being coordinated on an interim basis outside of the *1965 Agreement*, INAC should also consider addressing access to services for First Nations children 'entitled to be registered'. The Panel expects a detailed response from INAC on this issue and will discuss the issue with all parties at the upcoming in-person case management meeting.

G. Special study

[101] The CCI Parties request that, within one year, a special study be performed of the application of the *1965 Agreement* in Ontario. The study would be conducted by experts and through a mechanism developed through the agreement of the parties, and with accompanying funding that allows for the meaningful participation of FNCFS Agencies, First Nations governments, INAC and the Province of Ontario. According to the CCI Parties, the study would determine the adequacy of the *1965 Agreement* in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount. Ultimately, the results of the study would inform medium to long term reforms to the *1965 Agreement*.

[102] The NAN agrees with the proposed study, but submits that it should specifically include a component that thoroughly reviews and addresses the effect of the *1965 Agreement* on northern remote communities. Also, it submits the study should include a comprehensive data collection component and the data be made available publicly.

[103] As noted in the *Decision*, the *1965 Agreement* has never undergone a formal review by INAC. The Panel agrees with the CCI Parties that a study would greatly assist in determining the adequacy of the *1965 Agreement* in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount (see *Decision* at paras. 223-227). A study would also inform long-term reform to the *1965 Agreement* by identifying concrete measures INAC can take to redress the discrimination found in the *Decision* with respect to the *1965 Agreement*. While INAC has generally indicated that it is open to reviewing the *1965 Agreement*, its submissions did not specifically address the CCI Parties' request for a special study.

[104] Therefore, the Panel will reserve making an order with respect to the special study in Ontario pending a specific response from INAC on the issue. The Panel expects a detailed response from INAC on this issue prior to the upcoming in-person case management meeting and will further discuss the issue with the parties at that time.

H. One-time contingency fund

[105] The NAN requests an order for a one-time contingency fund to alleviate funding shortfalls for agencies serving remote and northern communities. According to the NAN, ameliorating the effects of existing deficits and debts will give more room and flexibility for such agencies to address the live, pressing and complex needs of children and families using child welfare services in remote and northern communities.

[106] This request was provided in the NAN's reply and therefore was not commented upon by the other parties. This request will form part of the upcoming in-person case management discussions.

V. Jordan's Principle

[107] In the *Decision*, the Panel found Canada's definition and implementation of Jordan's Principle to be narrow and inadequate, resulting in service gaps, delays and denials for First Nations children. Namely, delays were inherently built into the Federal

government's process for dealing with potential Jordan's Principle cases. It was also unclear why the government's approach to Jordan's Principle cases focused on inter-governmental disputes in situations where a child has multiple disabilities, as opposed to all jurisdictional disputes (including between federal government departments) involving all First Nations children (see the *Decision* at paras. 379-382 and 458).

[108] In 2016 CHRT 10, the Panel ordered INAC to immediately consider Jordan's Principle as including all jurisdictional disputes (including disputes between federal government departments) and involving all First Nations children (not only those children with multiple disabilities). It added that, pursuant to the purpose and intent of Jordan's Principle, the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided.

[109] In response to that ruling, INAC indicated that it took the following steps to implement the Panel's order:

- A. It expanded Jordan's Principle by eliminating the requirement that the First Nations child on reserve must have multiple disabilities that require multiple service providers;
- B. It expanded Jordan's Principle to apply to all jurisdictional disputes and now includes those between federal government departments;
- C. Services for any Jordan's Principle case will not be delayed due to case conferencing or policy review; and
- D. Working level committees comprised of Health Canada and INAC officials, Director Generals and Assistant Deputy Ministers will provide oversight and will guide the implementation of the new application of Jordan's Principle and provide for an appeals function.

[110] In order to implement this new approach to Jordan's Principle, Canada has indicated that it will invest up to \$382 million in new funding over three years. It will also engage with First Nations, the provinces and the Yukon on a long-term strategy over that time. Furthermore, Canada has indicated that it will provide an annual report on Jordan's

Principle, including the number of cases tracked and the amount of funding spent to address specific cases. INAC has also updated its website to reflect the changes above, including posting contact information for individuals encountering a Jordan's Principle case. Further, it is assessing whether an off-business hour mechanism needs to be put in place.

[111] Moving forward, INAC states engagement will be a key component of its new approach to Jordan's Principle. It adds that Health Canada and INAC have written jointly to provinces and territories to initiate discussions related to Jordan's Principle. First Nations leaders will also be engaged on the design, management and delivery of the new approach to Jordan's Principle as well as longer-term policy and program reform. Moreover, INAC and Health Canada senior officials will meet with the AFN to discuss next steps and to develop specific details on implementation of a child-first approach. At the same time, headquarters and regional executives will engage their First Nations partners on the proposed approach.

[112] The CCI Parties request INAC provide further information and reporting on its implementation of the order and commitments above. They specifically ask for the following:

- Details of how Canada will consult with the parties, First Nations and FNCFS Agencies regarding all matters related to Jordan's Principle;
- Details as to what action INAC has taken to comply with the "government of first contact" provision in the order;
- Confirmation that INAC is applying Jordan's Principle to all jurisdictional disputes;
- Confirmation that INAC is applying Jordan's Principle to all First Nations children;
- Clarification as to what process will be followed to manage Jordan's Principle cases, how urgent cases will be addressed, and what accountability and transparency measures have been built into that process to ensure compliance with the order; and

- Clarification as to how Canada will ensure that First Nations and FNCFS Agencies are part of the consultation process with the provinces/territories, and in other elements of the implementation of Jordan's Principle.

[113] The CCI Parties further request that INAC post and keep up-to-date information regarding its implementation of Jordan's Principle, including its definition of Jordan's Principle, assessment criteria and process, remediation and appeal mechanism. Furthermore, on an annual basis, the CCI Parties request that INAC post non-identifying data on the number of Jordan's Principle referrals made, the disposition of those cases and the time frame for disposition, as well as the result of independent appeals. Finally, the CCI Parties request that INAC provide all First Nations and FNCFS Agencies with the names and contact information of the Jordan's Principle focal points in all regions and inform the First Nations and FNCFS Agencies in question of any changes of such.

[114] The Panel is pleased with Canada's stated changes and investments in enacting the full meaning and scope of Jordan's Principle, but shares many of the same questions with respect to consultation and implementation as the CCI Parties. First, it would be helpful to the Panel and the other parties for INAC to provide a list of the First Nations, FNCFS Agencies, provincial and territorial authorities, partners, experts or any other persons it has consulted with so far with regard to Jordan's Principle, along with its consultation plan moving forward. The list of any past consultations from January to September 2016 should include the agenda and summary of the discussions.

[115] INAC has also indicated that an interim guidance document was issued to regional Jordan's Principle focal points directing regional staff to "ensure that needed services for children will not be delayed due to case conferencing or policy review." However, Canada's submissions are unclear on the process that is being followed in dealing with a Jordan's Principle case. Canada's submissions state:

- Health Canada and INAC will provide further direction to their staff to initiate the implementation of this approach, as well as support the resolution of disputes or service gaps over the next three years based on provincial normative standards;

- Senior officials will engage with First Nations at the national and regional levels to plan the design and the implementation of the Service Coordination function and develop an effective approach to organize services for First Nations children on-reserve with disabilities;
- Further management of any such case will be done in a manner that will ensure the appropriate service or suite of services is being implemented in a timely manner;
- Additional training and orientation of focal points to the new definition and expanded scope of Jordan's Principle will begin immediately;
- A governance structure will be established to deal with Jordan's Principle cases when they arise; and
- Appeals will be heard in an expeditious way to ensure children with disabilities receive services in a timely manner.

[116] With regard to INAC's submissions above, the Panel is unclear as to what the current process is for dealing with Jordan's Principle cases and/or who is involved in processing these cases (INAC employees, social workers, health professionals, etc.). The Panel directs INAC to provide the following information:

- Details as to what action INAC has taken to comply with the "government of first contact" provision in the order;
- Clarification as to what process will be followed to manage Jordan's Principle cases, how urgent cases will be addressed, and what accountability and transparency measures have been built into that process to ensure compliance with the order;
- Clarification as to how Canada will ensure that First Nations, FNCFS Agencies and the CCI Parties are part of the consultation process with the provinces/territories, and in other elements of the implementation of Jordan's Principle; and

- Provide all First Nations and FNCFS Agencies with the names and contact information of the Jordan's Principle focal points in all regions and inform the First Nations and FNCFS Agencies in question of any changes of such.

[117] On the issue of the breadth of INAC's new formulation of Jordan's Principle, the Panel notes that the motion unanimously passed by the House of Commons did not restrict the application of the principle solely to First Nations children on reserve, but to all First Nations children: "the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children" (see *Decision* at para. 353, emphasis added). INAC's formulation of Jordan's Principle is also not in line with the eligibility requirements for its own FNCFS Program, which applies to First Nations "resident on reserve or Ordinarily Resident On Reserve" (see ss. 1.3.2 and 1.3.7 of the *2005 FNCFS National Program Manual* and s. 1.1 of the *2012 National Social Programs Manual* at paras. 52-53 of the *Decision*). That is, the application of Jordan's Principle only to First Nations children living on reserve is more restrictive than the definition included in INAC's FNCFS Program. This type of restriction will likely create gaps for First Nations children and is not in line with the *Decision* (see paras. 362, 364-382 and 391).

[118] The Panel notes that, in responding to the findings in the *Decision* on Jordan's Principle, INAC's rationale for its new formulation of Jordan's Principle was in reference to two paragraphs of the *Decision* (see *Respondent's Further Reply Submissions Re Immediate Relief*, Justice Canada, July 6, 2016 at pp. 22-23), which it narrowly interpreted as indicating that Jordan's Principle should only apply to First Nations children on reserve. This type of narrow analysis is to be discouraged moving forward as it can lead to discrimination as found in the *Decision*. Rather, consistent with the motion unanimously adopted by the House of Commons, the Panel orders INAC to immediately apply Jordan's Principle to all First Nations children, not only to those residing on reserve.

[119] INAC's new formulation of Jordan's Principle also appears to narrow its application to only those First Nations children with "disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports." Without additional information, this formulation of Jordan's Principle once again appears to be

more restrictive than formulated by the House of Commons. The Panel requests that INAC explain in its compliance report why it formulated its definition of Jordan's Principle as such so that it can assess its full impact. This will also form part of the discussions at the upcoming in-person case management meeting.

[120] Finally, the Panel is satisfied that INAC has confirmed it is applying Jordan's Principle to all jurisdictional disputes. The Panel will assess this application through ongoing reporting.

VI. Other requested orders

A. No reductions in funding

[121] The CCI Parties request that INAC be ordered not to decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle.

[122] INAC agrees not to decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle.

[123] The Panel acknowledges INAC's undertaking above and will incorporate it in its order below.

B. Adoption of the principle that children and youth living in residential care must live as close as possible to their home communities

[124] The CCI Parties request an order that Canada adopt the principle that children and youth living in residential care must live as close as possible to their home communities and that necessary funding and resources be provided to ensure this fundamental principle is met.

[125] INAC submits that the decision on placement of a child brought into care is at the service providers' discretion. However, as part of the reform to the FNCFS Program, INAC states it will engage service providers, the provinces/territory and any other relevant

partner, including First Nations leadership and organizations, to facilitate opportunities for children placed in care outside of their communities to maintain a connection to their communities and cultures.

[126] This request will form part of the upcoming in-person case management discussions.

C. National Advisory Committee

[127] INAC has committed to the reestablishment of the NAC, and discussions with the AFN and the Caring Society on the formation of the committee are underway.

[128] The NAN requests an order that it be granted representation at the NAC and regional roundtables. Further, the NAN requests that the NAC include a northern remoteness subcommittee with representation from the NAN. Alternatively, if the Panel finds that the NAN's proposal is premature, it requests that a deadline or schedule be set, by which the NAC, subcommittees and regional tables should be struck.

[129] INAC is supportive of the NAN's proposal to have a northern remoteness subcommittee included as part of the work of the NAC and states that it will raise this with the committee.

[130] The AFN submits that it would be premature to incorporate the NAC or its composition into an order. The parties envision the NAC as being a mechanism to address medium to long-term reforms of the FNCFS Program and the parties are focused on immediate relief at this stage.

[131] The Panel will address this issue at the upcoming in-person case management.

D. Canadian Incidence Study of Child Abuse and Neglect

[132] The CCI Parties request that INAC be ordered to immediately fund a new iteration of the Canadian Incidence Study of Reported Child Abuse and Neglect, including data collection specific to remote and northern First Nations communities.

[133] According to INAC, it is currently in the process of working with the Public Health Agency of Canada to provide funding for the Aboriginal component of the Canadian Incidence Study.

[134] The Panel believes a new iteration of the Canadian Incidence Study would be a useful tool in further informing reform to the FNCFS Program and the *1965 Agreement*. The Panel also acknowledges INAC's willingness to fund the Aboriginal component of the study as indicated above. The Panel expects INAC to indicate in its report if indeed it is providing funding for the Aboriginal component of the Canadian Incidence Study, including whether that component of the study will include data collection specific to remote and northern First Nations communities.

E. Updating policies, procedures and agreements

[135] The CCI Parties request that INAC be ordered to update its policies, procedures (including FNCFS Agency reporting procedures) and contribution agreements to comply with the Panel's order and communicate such reforms in detail and in writing to First Nations, FNCFS Agencies and the public.

[136] According to INAC, reform of the FNCFS Program will involve a redesign of its funding models, policies and procedures. However, such work will require significant analysis and collaboration with all relevant key partners and is therefore a longer-term process. In the interim, INAC submits that using existing funding mechanisms and procedures will ensure children and families continue receiving services and will prevent any disruption to services. It states that it will work with its partners to update and adjust processes as needed for next fiscal year.

[137] In the Panel's view, the request to update policies, procedures and agreements is captured by its general order to reform the FNCFS Program and *1965 Agreement* in compliance with the findings in the *Decision*. For clarity, the Panel orders INAC to update its policies, procedures and agreements to comply with the Panel's findings in the *Decision*. The Panel understands this reform will be achieved in the longer term, with certain interim measures being put in place until that time as addressed in this ruling.

Considering the central importance of this matter and the need for a process along with interim measures to be put in place, this request will also form part of the upcoming in-person case management meeting.

F. Training and performance metrics for federal public servants

[138] The CCI Parties request INAC be ordered to ensure that its executives and staff receive 15 hours of mandatory training on: the Truth and Reconciliation Commission's final report (December 2015); the FNCFS Program (including formula development, assumptions, and program reviews); the *Decision*; and on the full meaning and scope of Jordan's Principle. It requests this training occur before August 31, 2016 and in a manner approved by the Commission and the Complainants.

[139] Relatedly, the CCI Parties also request that the annual performance evaluations of federal public servants who provide services to Aboriginal Peoples, or who assign work related thereto, include metrics designed to demonstrate how each individual has contributed to closing the socio-economic gap with respect to Aboriginal Peoples. It further requests that Canada develop mandatory intercultural competency programming for these employees.

[140] In response, INAC indicates that it looks forward to further discussions on improving the cultural sensitivity of its employees. However, it submits that the request that staff undertake specific training is beyond the scope of the complaint and seeking to have all staff trained is overly broad. Further, it submits the performance evaluations of specific federal public servants was not at issue in the complaint, nor were allegations made against specific employees. In INAC's view, the performance metrics request goes beyond the scope of the complaint, including any mandatory programming related thereto.

[141] Given that INAC is open to further discussions on this issue, the Panel will address this issue at the upcoming in-person case management meeting.

G. Funding for the Aboriginal Peoples Television Network

[142] The hearings in this matter were recorded and broadcasted by the Aboriginal Peoples Television Network (the APTN) pursuant to operating guidelines for coverage approved by the Panel (see *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2012 CHRT 18; and *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2012 CHRT 23). One of those guidelines required APTN to retain the recordings of the hearing for three years.

[143] As the three-year period will be coming to an end shortly, and given the legal, social, moral and political importance of this case, the CCI Parties request that INAC be ordered to immediately provide \$30,000 to the APTN to transfer the tapes of the Tribunal hearings onto a publicly accessible format and provide sufficient funds to the National Centre for Truth and Reconciliation to store and manage public access to the tapes.

[144] In response, INAC submits that the APTN was not a party to the complaint and, as such, the Tribunal should not grant it relief as part of the remedies. However, it is willing to further consider this undertaking.

[145] The Panel supports and believes in APTN's work and mission. It was very pleased with their involvement in filming the hearings in this matter. However, the Panel will not make the order requested. The Tribunal's remedial discretion must be exercised on a principled basis, considering the link between the discriminatory practice and the loss claimed (see *Chopra v. Canada (Attorney General)*, 2007 FCA 268 (CanLII), at para. 37). The APTN is not a party to this complaint, nor is it a victim of the discriminatory practices at issue. While there is no doubt that this case has a legal, social, moral and political importance that merited public broadcasting, this public interest is not linked to any findings of discrimination.

[146] Although the Panel will not make the order requested, it notes INAC is favorable to fund the transfer of the recordings. Given the recordings are of great importance and public interest, the Panel encourages INAC to do so.

H. Review decisions with respect to funding new agencies

[147] The CCI Parties request that INAC be ordered to review decisions to deny funding to support the development and operation of FNCFS Agencies, particularly with regard to the applications for new agencies by the Okanagan Nation Alliance and the Carcross First Nation.

[148] 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 with First Nations partners.

[149] Before contemplating an order, the Panel believes this request would benefit from further discussion as part of the upcoming in-person case management meeting.

I. Funding for research, scholarships and conferences

[150] The CCI Parties request that, for a minimum of ten years, INAC fully fund research and scholarships in relation to measuring the provision of child welfare services for First Nations children, along with issues such as control over and access to education, the revitalization of Indigenous legal orders, access to the economy and control over lands and resources. Further, they submit that such research and scholarship funding should be managed by an independent scholar-based oversight body. Thereafter, the CCI Parties request INAC fund annual conferences for the presentation of the research findings emanating from the above and that federal public servants involved in the provision of services to Aboriginal Peoples be required to attend.

[151] While INAC is open to further discussions on supporting research, it argues this specific request falls outside the scope of the FNCFS Program.

[152] Given that INAC is open to further discussion, this request will form part of the upcoming in-person case management meeting.

J. Appoint the Commission to engage all parties and create a draft order

[153] The AFN requests that INAC be ordered to engage in consultations with the Commission on immediate measures to redress the discrimination identified in the *Decision*. It asks that the Commission be appointed to engage all parties in a discussion on immediate relief and thereafter create a draft order, including specific dates for INAC to implement all of the elements of immediate relief. The Commission would then be required to submit the draft order, agreed upon by all parties, within 60 days of the date of this ruling.

[154] Furthermore, the AFN submits that the Panel should order INAC, or direct the Commission, to address the issue of resourcing the parties to ensure their meaningful participation in the process.

[155] INAC submits that it has already addressed a number of immediate relief measures, such as providing increased funding to FNCFS Agencies through an updated and improved funding formula. It would like to move forward with addressing medium and long-term reform through engagement with key partners. According to INAC, all work to reform the FNCFS Program will include engagement with key partners such as FNCFS Agencies, First Nations communities and leadership, the provinces, the Yukon Territory and the parties to this complaint.

[156] The AFN's request above was submitted in reply and the other CCI Parties did not have an opportunity to respond thereto. Therefore, this request could form part of discussions at the upcoming in-person case management meeting. INAC has also indicated it is open to providing funds for the CCI Parties' participation in meetings. Therefore, the Panel would like to know if INAC is agreeable to provide funds for the CCI Parties' participation in the upcoming in-person case management meeting and any subsequent meetings.

VII. Order

[157] In the *Decision*, INAC was ordered to cease its discriminatory practices and reform the FNCFS Program and the *1965 Agreement* to reflect the Panel's findings and to cease applying its narrow definition of Jordan's Principle and take measures to immediately implement the full meaning and scope of Jordan's Principle (see at para. 481). As mentioned above, the CCI Parties' request to update policies, procedures and agreements is captured by this general order to reform the FNCFS Program and the *1965 Agreement* in compliance with the findings in the *Decision*. For clarity, the Panel orders INAC to update its policies, procedures and agreements to comply with the Panel's findings in the *Decision*.

[158] In addition, to address this general order in the short term, INAC was subsequently ordered to immediately take measures to address a number of items. As indicated in 2016 CHRT 10 and reiterated in this ruling, those items were to be addressed immediately. Again, those items include addressing the adverse impacts related to the assumptions about the number of children in care, families in need of services and population levels; remote and/or small FNCFS agencies; inflation/cost of living; changing service standards; salaries and benefits; training; legal costs; insurance premiums; travel; multiple offices; capital infrastructure; culturally appropriate programs and services; and, least disruptive measures. INAC was then ordered to report back to the Panel to explain how those items are being addressed in the short term to provide immediate relief to First Nations children on reserve (see 2016 CHRT 10 at paras. 20 and 23).

[159] INAC was also ordered to immediately consider Jordan's Principle as including all jurisdictional disputes (including disputes between federal government departments) and involving all First Nations children (not only those children with multiple disabilities). Pursuant to the purpose and intent of Jordan's Principle, the Panel also indicated that the government organization that is first contacted should pay for the service without the need for policy review or case conferencing before funding is provided (see 2016 CHRT 10 at para. 33).

[160] In addition to the orders in the *Decision* and in 2016 CHRT 10, and pursuant to the ruling above, the Panel orders as follows.

A. Additional Immediate measures to be taken

1. INAC will not decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle (see paras. 121-123 above);
2. INAC will determine budgets for each individual FNCFS Agency based on an evaluation of its distinct needs and circumstances, including an appropriate evaluation of how remoteness may affect the FNCFS Agency's ability to provide services (see paras. 33, 37, 40 and 47 above);
3. In determining funding for FNCFS Agencies, INAC is to establish the assumptions of 6% of children in care and 20% of families in need of services as minimum standards only. INAC will not reduce funding to FNCFS Agencies because the number of children in care they serve is below 6% or where the number of families in need of services is below 20% (see para. 38 above);
4. In determining funding for FNCFS Agencies that have more than 6% of children in care and/or that serve more than 20% of families, INAC is ordered to determine funding for those agencies based on an assessment of the actual levels of children in care and families in need of services (see para. 39 above);
5. In determining funding for FNCFS Agencies, INAC is to cease the practice of formulaically reducing funding for agencies that serve fewer than 251 eligible children. Rather, funding must be determined on an assessment of the actual service level needs of each FNCFS Agency, regardless of population level (see para. 40 above);
6. INAC is to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and/or operations funding streams (see paras. 56-61 above); and
7. INAC is to immediately apply Jordan's Principle to all First Nations children (not only to those resident on reserve) (see paras. 117-118 above).

B. Reporting

1. By October 31, 2016, INAC is to provide a detailed compliance report indicating:
 - a. How it has complied with the immediate measures ordered above in section A of this order;

- b. How it is immediately addressing funding for legal fees (see para. 48 above);
- c. How it is immediately addressing the costs of building repairs where a FNCFS Agency has received a notice to the effect that repairs must be done to comply with applicable fire, safety and building codes and regulations, or where there is other evidence of non-compliance with applicable fire, safety and building codes and regulations (see para. 49 above);
- d. How it determined funding for each FNCFS Agency for the child service purchase amount and the receipt, assessment and investigation of child protection reports (see para. 50 above);
- e. How much it is allocating for each “growth and future cost driver” and to detail how it arrived at its corresponding allocations for each FNCFS Agency, including for Ontario (see paras. 51-55 above);
- f. How new funding is immediately addressing the adverse effects identified with respect to the *1965 Agreement*, especially in terms of mental health services and Band Representatives (see paras. 69-74 above);
- g. How it determined funding for remote FNCFS Agencies that allows them to meet the actual needs of the communities they serve, taking into account such things as travel to provide or access services, the higher cost of living and service delivery in remote communities and the ability of remote FNCFS Agencies to recruit and retain staff (see paras. 75-81 above);
- h. How immediate relief funding is being distributed in Ontario (see paras. 82-88 above);
- i. How it has complied with the order to immediately implement the full meaning and scope of Jordan’s Principle (see paras. 107-120 above), including:
 - i. confirmation that it is applying the principle to all First Nations children (not just to those resident on reserve);
 - ii. an explanation as to why it formulated the application of the principle to children with “disabilities and those who present with a discrete, short-term issue for which there is a critical need for health and social supports”;
 - iii. details as to what action it has taken to comply with the “government of first contact” provision in the order;
 - iv. clarification as to what process will be followed to manage Jordan’s Principle cases, how urgent cases will be addressed, and what accountability and transparency measures have been built into that process to ensure compliance with the order;

- v. clarification as to how it will ensure that First Nations, CCI Parties and FNCFS Agencies are part of the consultation process with the provinces/territories, and in other elements of the implementation of Jordan's Principle;
 - vi. providing all First Nations and FNCFS Agencies with the names and contact information of the Jordan's Principle focal points in all regions and informing them of any changes of such; and
- j. If it is providing funding for the Aboriginal component of the Canadian Incidence Study, including whether that component of the study will include data collection specific to remote and northern First Nations communities (see paras. 132-134 above).

C. Additional information to be provided

1. By September 30, 2016, INAC is directed to serve and file:

- a. The rationale, data and any other relevant information it states it used to determine its five-year plan for investing in the FNCFS Program and in determining budgets for each FNCFS Agency, including its cost driver study and trend analysis documentation, how it arrived at financial projections beyond fiscal year 2016-2017, any steps taken to ensure comparability of staff salaries and benefit packages to provincial rates, the information used to determine the caseload ratios in Quebec and Manitoba and, generally, how it determined values for off-hour emergency services, staff travel, agency audits, insurance and legal services; and
- b. The correspondence with the Province of Ontario referred to in its submissions (see paras. 85-87).

2. By October 31, 2016, INAC is directed to serve and file:

- a. A list of the First Nations, FNCFS Agencies, provincial and territorial authorities, partners, experts or any other persons it has consulted with so far in response to the findings in the *Decision* and Jordan's Principle, along with its consultation plan moving forward. The list of any past consultations from January to September 2016 should include the agenda and summary of the discussions (see paras. 42 and 114 above);
- b. A response indicating its views on the request that it reimburse costs for travel to access physician-prescribed special needs services and assessments, special needs rehabilitative and support services and respite care, and support for families in crisis as part of immediate relief investments in Ontario (see para. 94 above);

- c. A response indicating its views on dealing with the infrastructure needs of FNCFS Agencies as part of immediate relief investments in Ontario (see para. 97 above);
- d. A response indicating its views on the request to expand the eligibility requirements of the *1965 Agreement* as part of immediate relief investments in Ontario (see para. 100 above);
- e. A response indicating its views on the request that it conduct a special study on the application of the *1965 Agreement* in Ontario (see paras. 103-104 above); and
- f. A response indicating if it is agreeable to providing funds for the CCI Parties' participation in the upcoming in-person case management meeting and any subsequent meetings (see para. 156 above).

D. Retention of jurisdiction

[161] Given the ongoing nature of the Panel's orders, and given the Panel still needs to rule upon other outstanding remedial requests (see para. 4 above), the Panel will continue to maintain jurisdiction over this matter. Any further retention of jurisdiction will be re-evaluated following further reporting by INAC, the upcoming in-person case management meeting and any ruling on the other outstanding remedies.

VIII. In-person case management meeting

[162] The Tribunal will be in contact with the parties shortly to schedule an in-person case management meeting between the Panel and the parties. Subject to the availability of those involved, the intention is to have the meeting as soon as is possible. As indicated throughout this ruling, there will be many items up for discussion. Any other outstanding issues can also be discussed at the meeting.

[163] With the additional information and reporting requested as part of this ruling, the Panel's hope is that all outstanding short-term remedial requests can be resolved by the end of the meeting as to not delay immediate action any further. The Panel also hopes the meeting can be used to begin discussions on mid to long-term orders, including compensation under sections 53(2)(e) and 53(3) of the *CHRA*. Therefore, the parties should anticipate several days for this meeting.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
September 14, 2016