Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Plaintiff

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Defendant

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO and AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION

Interested Parties

SUPPLEMENTAL AFFIDAVIT OF DUNCAN FARTHING-NICHOL

I, DUNCAN FARTHING-NICHOL, of the Municipality of Dysart et al, in the Province of Ontario, AFFIRM:

1. I am employed by Indigenous Services Canada ("**ISC**") as the Director of the Litigation Management Directorate within the Child and Family Services Reform Sector. I started work in the Litigation Management Directorate in June 2021 and have been in my current role since October 2022. I hold a Juris Doctor from Harvard Law School and a Bachelor of Arts from the University of Manitoba.

2. I am responsible for managing litigation related to the First Nations Child and Family Services Program ("**FNCFS Program**") and *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24. I played a significant role in national negotiations on long-term reform of the FNCFS Program as well as in advancing the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* ("**OFA**") between Chiefs of Ontario ("**COO**"), Nishnawbe Aski Nation ("**NAN**"), and Canada.

3. In my capacity as Director, I have personal knowledge of the facts and matters deposed to in this affidavit. Where my information came from someone else, I identify the source of my information and I believe the information to be true. I am authorized to give evidence on behalf of Canada in regard to this joint motion.

4. In this affidavit, I will provide additional information on the calculations behind the following components of the OFA: post-majority support services funding, baseline funding (operations and maintenance), capital funding and housing funding.

5. As those calculations were done in the context of settlement privileged negotiations, my evidence is necessarily limited by the application of settlement privilege. For clarity, Canada does not waive that privilege.

Post-majority support services funding

6. The OFA's total funding of $328.2 million for post-majority support services is Ontario's share of the total funding for post-majority support services provided in the draft national *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* ("**Final Agreement**"). The Final Agreement's reformed funding approach for post-majority support services was developed during negotiations with the Assembly of First Nations (**"AFN"**), COO and NAN in early 2024.

7. ISC calculated the Final Agreement's total funding for post-majority support services in two steps. First, ISC estimated the cost of direct services to youth and young adults. That cost was estimated as the cost to support a youth or young adult for one year, based on Statistics Canada's "one person household spending" data from 2021. ISC calculated such a cost for each region. It adjusted Statistics Canada's spending figures to remove certain expenditure

categories, such as alcohol. It also reduced those figures by approximately 15% on average to account for the possible influence of remoteness (the OFA applies a remoteness adjustment, averaging approximately 41.3% among Ontario First Nations, to post-majority support services funding).

8. ISC multiplied each region's cost to support a youth or young adult for one year by 75% of the region's forecast for the number of youth and young adults eligible for post-majority support services over the Final Agreement's term. The forecast was built on 2020-21 children-in-care data from the FNCFS Program's Information Management System / Data Management System (the forecast assumed that children in care in 2020-21 would remain in care until the age of majority).

9. The use of "one person household spending" data reflects the broad set of supports that might be provided under the OFA to help a youth aging out of care or young adult formerly in care transition to independence. Included in ISC's estimates of the cost of supporting a youth or young adult are expenditures on food, living quarters, utilities, furniture, clothing, personal care, communications, transportation and education. ISC excluded the following expenditure categories as either not essential or covered by other government programs: direct health care costs to household, home entertainment equipment and services, recreational vehicles and associated services, tobacco products, alcoholic beverages and cannabis for non-medical use, games of chance and miscellaneous expenditures.

10. Regional estimates of the cost of supporting a youth or young adult for one year in 2021 ranged from approximately $34,000 to $45,000. To determine the cost of direct services over the Final Agreement's term, those amounts were adjusted upward by actual inflation for 2022-23 and 2023-24 and by a 2% forecast of inflation thereafter. Applying 75% to the estimated number of youth and young adults reflected an assumption that, under the Final Agreement, 75% of eligible youth and young adults would access $34,000 to $45,000 worth of supports annually, adjusted for inflation.

11. As the second step in the total funding calculation, ISC estimated an amount for indirect services (such as staff salaries). ISC took the 2022-23 operations expenditures of FNCFS service providers and divided that amount by the total operations and maintenance expenditures of those service providers. That ratio estimates the organizational,

administrative and other costs necessary to deliver protection services. To calculate an amount for indirect post-majority services, ISC multiplied the ratio, which averaged approximately 53% across the FNCFS Program's regions, by the total cost of direct services.

12. The Final Agreement's total funding for post-majority support services was the sum of these two steps.

13. To calculate Ontario's share of the Final Agreement's total funding for post-majority support services, ISC estimated the annual amount each First Nation in Ontario would have received under the Final Agreement. It then summed those amounts for each year of the OFA.

14. As of January 20, 2025, 13 First Nations in Ontario had accessed post-majority support services funding in 2024-25. Shifting from funding at actuals to funding by the OFA's formula would mean that many First Nations that are not receiving post-majority support services funding would receive such funding.

Baseline funding

15. Under the OFA, an FNCFS agency's baseline funding would be the sum of the amount of operations and maintenance funding received from the Government of Ontario and an additional amount provided directly by ISC based on the agency's approved actuals claims for intake and investigations, legal fees and building repairs in 2022-23 (adjusted for inflation and population growth between March 31, 2023 and March 31, 2026).

16. The Government of Ontario determines the annual funding available for the administration of its child welfare system. The Government of Ontario provides funding for operations and maintenance to designated children's aid societies, including designated First Nations societies delivering services to children and families living on a reserve (referred to by ISC as "FNCFS agencies").

17. The Government of Ontario's Child Welfare Funding Model divides the province's annual available child welfare funding envelope among children's aid societies. The allocation is based on population served, socio-economic factors (such as number of low-income families, number of lone parent families, and remoteness) and volume factors (such as number of

investigations completed, average number of open protection cases, and average number of children and youth in care).

18. Under the *Memorandum of Agreement Respecting Welfare Programs for Indians of 1965*, ISC reimburses the Government of Ontario approximately 90-95% of an estimate of Ontario's funding for the delivery of child and family services to registered First Nations persons living on-reserve.

19. Most FNCFS agencies in Ontario have carried unexpended FNCFS Program funding in recent years. The latest financial reports available to ISC indicate a sum of unexpended funding held by FNCFS agencies in Ontario of $90.5 million (the year of the latest report depends on the agency and ranges from 2021-22 to 2024-25).

Funding for capital to support the delivery of the FNCFS Program

20. The OFA's total capital amount of $455.0 million represents Ontario's share of the Final Agreement's total capital amount of $2.9 billion. ISC calculated the amount of $2.9 billion as the sum of capital amounts calculated at the regional level. Those calculations were done in early 2024.

21. To calculate a region's capital amount, ISC took the sum of:

    - an estimated amount for each of the region's FNCFS agencies to build and maintain an office building;
    - an estimated amount for each of the region's First Nations affiliated with an FNCFS agency to build and maintain a recreational centre, a community hall or a cultural centre; and
    a. an estimated amount for each of the region's First Nations not affiliated with an FNCFS agency to build and maintain an office building and a recreational centre, a community hall or a cultural centre.

22. The estimate for each building included the cost of a needs assessment and feasibility study.

23. ISC added an amount for vehicles, calculated as approximately 7% of the total for buildings. ISC derived the 7% figure by dividing the total amount for approved vehicle requests under

2021 CHRT 41 by the total amount for all approved requests under 2021 CHRT 41. In other words, 7% of all funding approved under 2021 CHRT 41 was for vehicles, which suggests that First Nations and FNCFS agencies require funding for vehicles in the neighborhood of 7% of total capital expenditures.

24. ISC subtracted from each regional amount the funding provided in 2021-22, 2022-23 and 2023-24 for FNCFS capital projects in that region under 2021 CHRT 41.

25. For Ontario, the end result of these steps was $455 million from 2025-26 to 2033-34.

26. To estimate the costs of office buildings, recreational centres, community halls and cultural centres, ISC used its Colliers Costing Model. I am informed by Kim Solmes, acting manager in ISC's Housing and Infrastructure Service Reform Directorate, that the Colliers Costing Model is a lifecycle costing tool for which the costing study was conducted by Colliers Project Leaders, a professional services company that specializes in capital project advisory services and project management. The Costing Model includes estimates for capital construction, operations and maintenance, minor and major repairs, and replacement. It is based on data from ISC's database of approximately 37,500 ISC-funded capital assets as well as on construction industry data and other data.

27. The total of $455 million includes a combined adjustment for projected inflation and population growth of 3.8% a year. It also includes a remoteness adjustment (ranging up to 59% for Ontario First Nations and FNCFS agencies and averaging approximately 22%) and an adjustment using the City Centre Index (ranging up to 37% for Ontario First Nations and FNCFS agencies and averaging approximately 16%). The City Centre Index accounts for the difference between the costs of materials, services and other construction inputs in the city closest to the construction site and the costs of those inputs in Toronto.

28. ISC anticipates high demand for capital funding in the first years of the OFA as First Nations and FNCFS Agencies continue to build new buildings to deliver the FNCFS Program's expanded services. ISC anticipates a decline in demand as buildings are completed. The OFA's capital profile – in which greater funding is available in the first years than in the last years of the OFA's term – reflects that anticipated pattern of demand.

Funding to support the housing needs of First Nations in Ontario

29. The Agreement-in-Principle on Long-Term Reform of the FNCFS Program and Jordan's Principle ("**Agreement-in-Principle**") and Budget 2022 included $2 billion to address in part the quality and quantity of housing on-reserve as a root cause of the over-representation of First Nations children and youth in the child welfare system. The OFA's $258.4 million in housing funding is Ontario's share for 2025-26, 2026-27 and 2027-28 of the Agreement-in-Principle's total housing funding.

30. The base amount of $250,000 to which each First Nation would be entitled under the OFA was informed by the findings of the report *Cost analysis of current housing gaps and future housing needs in the First Nations*, dated July 30, 2021, by the Institute of Fiscal Studies and Democracy. That report estimated a total cost of $3.3 billion to undertake needed repairs or renovations to 80,646 on-reserve housing units, which returns an average cost of $40,920. A buffer of approximately $10,000 was added to that figure to bring the average home repair cost to $50,000. This amount was multiplied by five years, which is the length of the Agreement-in-Principle's funding commitment, resulting in the base amount of $250,000 per eligible First Nation. That base amount is intended to fund all eligible First Nations at a level at least sufficient to repair one home per year.

31. As indicated in my March 7, 2025 affidavit, the housing funding is intended to support purchase, construction and renovation of housing units for the purposes of preventing First Nations children from being taken into care and of supporting reunification where housing is a barrier. It is not intended to address all First Nation housing needs.

32. I make this affidavit in support of Canada's position in response to COO and NAN's joint notice of motion and for no other or improper purpose.

AFFIRMED before me at the City of Ottawa, in the Province of Ontario, this 15 day of May, 2025.

LSO# 86516B

A Commissioner for Taking Affidavits

DUNCAN FARTHING-NICHOL