

September 21, 2023

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
OTTAWA ON K1A 1J4

Dear Ms. Dubois:

**Re: *First Nations Child and Family Caring Society et al v Attorney General of Canada*,
Tribunal File: T1340/7008
Response of the Attorney General of Canada**

This letter is in response to the Panel's August 21, 2023 correspondence requesting a supplementary report to further detail the previous reports filed on May 10, 2023 and June 12, 2023. I would ask that you bring this letter to the Panel's attention.

As requested by the Panel, Canada's May 2023 response described the steps that Indigenous Services Canada (ISC) has taken to date to address the Tribunal's orders with regard to long-term reform of the First Nations Child and Family Services (FNCFS) Program. These orders stemmed from the Panel's findings of discrimination, which related to the FNCFS Program and the implementation of Jordan's Principle. Annex A of that response provided fulsome details of the measures and reforms put in place to respond to the Panel's findings in 2016 CHRT 2.

For example, in Annex A, Canada explained that the FNCFS Program no longer funds agencies based on the number of children in care or population thresholds. Protection and operational costs eligible under 2018 CHRT 4 are funded at their actual costs. Following transition to the reformed funding approach outlined in the Agreement-in-Principle (AIP), Canada will provide baseline funding for protection, maintenance and operations calculated on an agency's actual costs. Moving forward, Canada will adjust baseline funding according to population and inflation. Canada will also adjust baseline funding as well as other funding to account for the extra costs of delivering services in remote communities.

In addition, Annex A of Canada's May response highlighted that the FNCFS Program is investing in services that were not part of the Program in 2016 and that were not ordered by the Tribunal until the 2022 CHRT 8 consent order, such as post-majority supports (funded at the moment at actual costs). Canada's response also acknowledged reform is ongoing and explained that there is a process underway based on the AIP to complete this important work with the Parties.

Before turning to the Panel's most recent request, I offer the context below, which situates the reform of the FNCFS Program and the implementation of Jordan's Principle within Canada's broader reform of Indigenous policy.

The Government of Canada is committed to a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, truth, co-operation, and partnership. As part of that commitment, Canada dissolved the Department of Indigenous and Northern Affairs in 2017 and created Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada. This structural change replaced the previous colonial structure – whose primary mandate was to implement the paternalistic *Indian Act* – with two new departments with two new legislated mandates. The creation of these new departments has enabled Canada to work more effectively with Indigenous partners, both to improve day-to-day services and to accelerate movement to self-government and self-determination.

In 2019, the *Department of Indigenous Services Act* formally established ISC as a standalone department. ISC's legislated mandate emphasizes taking into account socio-economic gaps between Indigenous individuals and other Canadians, collaborating with Indigenous peoples and gradually transferring departmental responsibilities to Indigenous organizations.

ISC has collaborated – and continues to collaborate – with Indigenous partners and in particular the Assembly of First Nations (AFN), as guided by resolutions of the Chiefs-in-Assembly, to advance its new mandate. This collaboration has led to ongoing large-scale program reforms throughout the department, as detailed in the Minister's mandate letter.

Included in these large-scale reforms are the reform of the FNCFS Program and the implementation of Jordan's Principle. The AIP provides a framework for further reforms of the FNCFS Program, for improved implementation of Jordan's Principle, and for evaluation of ISC to prevent the recurrence of discrimination.

On Jordan's Principle, Canada is continuously improving the current system – which has inherent challenges as a request-based delivery model – and has been taking steps to resolve systemic issues outlined in the AIP or communicated through other means. The number of products and services funded under Jordan's Principle increased by 148% between 2021-22 and 2022-23. Canada is expanding its capacity to respond to this growth while exploring, at the initiative of the Caring Society and with all of the Parties, the involvement of the Honorable Murray Sinclair to further address outstanding operational issues with respect to the implementation of Jordan's Principle.

Through the framework of the AIP, Canada and the Parties are developing the plan for reform referred to in the Panel's latest correspondence. That framework highlights substantive equality as a core component of the FNCFS Program. It outlines a prevention-focused funding approach for the reformed FNCFS Program – a funding approach influenced greatly by the Phase Two recommendations of the Institute of Fiscal Studies and Democracy (IFSD). It speaks to a collaborative process to reach a long-term approach to Jordan's Principle. The AIP's framework also commits Canada to accountability measures, such as an alternative dispute resolution mechanism and a process for periodic funding reviews.

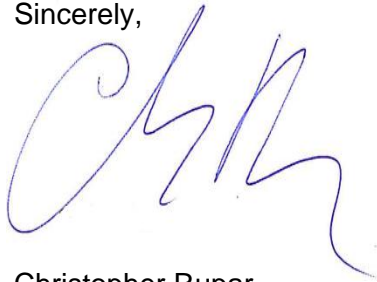
The Final Settlement Agreement (FSA) under negotiation with the Parties will elaborate on the framework set out by the AIP and constitute the comprehensive plan for the reform sought by the Panel.

Negotiations toward a FSA began in January 2022. They have slowed in the past several months as a result of the deadline extensions and other departures from the AIP proposed by the Path Forward presented by the AFN and the First Nations Child and Family Caring (subsequent to a mandate provided to them through the Chiefs-in-Assembly in December 2022). The Path Forward was presented to Canada, the Chiefs of Ontario and Nishnawbe Aski Nation in March 2023. As a result of the proposed departures from the AIP, Canada has sought a revised mandate and is currently awaiting instructions.

As confidential negotiations toward a FSA remain ongoing, Canada is not in a position to provide the Panel with additional plans or reports as to how further reforms or measures will unfold. Canada remains strongly committed to a FSA on long-term reform to prevent the recurrence of discrimination and will provide the Panel with more information on its plans for reform once it is possible to do so. At the same time, as it seeks to advance from the AIP to a FSA, Canada will continue to support the AIP's Expert Advisory Committee as it considers recommendations on how to advance reform of ISC so as to prevent the recurrence of discrimination, addressing such challenges as the "old mindset" referenced in your recent request.

At this time, Canada would like to ask for clarification on the intent of this process of information exchange, begun in March 2023 and now to include a case management call. Any insight the Panel can provide on the direction in which this process is moving would be very much appreciated.

Sincerely,



Christopher Rupar
Counsel for the Attorney General of Canada