

October 20, 2023

Judy Dubois  
Registry Officer  
Canadian Human Rights Tribunal  
160 Elgin Street, 11<sup>th</sup> 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  
Reply of the Attorney General of Canada**

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This letter is in reply to the Parties' October 10, 2023 responses to the Panel's August 21, 2023 correspondence requesting a supplementary report to detail implementation of the Tribunal's orders. It is also in reply to the Panel's October 4, 2023 correspondence requesting an update on negotiations of long-term reform of the First Nations Child and Family Services (FNCFS) Program as well as matters related to the implementation of Jordan's Principle. I would ask that you bring it to the Panel's attention.

#### **Response to the Parties' October 10 letters**

Canada's understanding of the intent of the Tribunal's March 16, 2023 request was to seek general information updates from the Parties on the implementation status of its various orders. The request did not suggest a purpose other than to keep the Tribunal informed of progress. Canada, AFN, NAN, and COO's submissions are in keeping with the Tribunal's inquiry, providing factual information on the status of negotiations and the implementation of the Tribunal's orders.

In Canada's view, the Caring Society's response is not in keeping with that intent. The Caring Society's October 10, 2023 submission makes allegations of non-compliance with the Tribunal's orders, but it has not filed a motion alleging the same. Bringing these allegations to the Tribunal's attention without following proper process impedes the goal of a negotiated resolution.

Canada does not intend in this update to respond to each of the issues raised by the Caring Society in its October 10 letter, many of which continue to be discussed collaboratively with the Parties on a regular basis. Canada would, however, like to clarify the record in respect of certain issues raised as it moves forward with implementation of the Tribunal's orders on the FNCFS Program and Jordan's Principle as well as long-term reform.

In certain instances, the Caring Society has made statements that, in Canada's view, mischaracterize the situation, are factually incorrect, or misinterpret the Tribunal's orders. For example, Canada is not "unilaterally diverting prevention funding away from FNCFS Agencies." Instead, in adhering to Band Council Resolutions that provide direction to Canada on the allocation of prevention funding, it is respecting the decisions of First Nations governments to take control of prevention funding intended to support children and families in their communities. Canada's actions are in alignment with the AFN's July 2022 Chiefs-in-Assembly Resolution,

which directs all funding under 2022 CHRT 8 to be provided to First Nations so that they can determine its allocation.

Canada's adherence to First Nations' direction in this regard does not conflict with the Tribunal's orders in 2022 CHRT 8, which is to provide prevention funding to "First Nations and/or First Nations child and family service providers"<sup>1</sup>. Canada is also making available "least disruptive measures" funding at actual costs to ensure agencies can meet their statutory obligations to prioritize prevention in the delivery of mandated child protection services.

The Caring Society proposes that Canada adjust the FNCFS Program's prevention funding based on a funding recipient's self-reported accounting of population served, irrespective of place of residence. However, 2022 CHRT 8 requires that prevention funding be calculated "at \$2500 per person resident *on reserve* and in the Yukon"<sup>2</sup> [emphasis added]. The Caring Society's suggestion that Canada ought to calculate prevention funding based on population off-reserve departs from the language to which the Caring Society consented in 2022 CHRT 8. Canada has previously acknowledged to the Tribunal the challenges in producing robust on-reserve population estimates and is exploring possible solutions.

On Jordan's Principle, the Caring Society implies that there are long delays in calling back those making urgent Jordan's Principle requests. In fact, the median callback time for child-at-risk calls was 1.35 hours in August 2023 and 1.09 hours in September 2023. The Caring Society also asserts that there is no easy way for a caller to indicate that their request is urgent. Pressing 1 and 1 in the call tree indicates a child is at immediate risk of harm. The call is then placed in a dedicated child-at-risk queue. Canada has always been clear with the Parties that the call line is a mechanism to support Jordan's Principle requests for products, services and supports and is not a 911 service. In emergency situations, call centre staff redirect callers to 911.

The Caring Society submission characterizes ISC officials as defensive, unresponsive and lacking in compassion when responding to inquiries or critiques related to the implementation of Jordan's Principle. ISC officials respond to inquiries from the Caring Society on a daily basis. ISC has taken appropriate action in response to complaints about particular staff members (it cannot share details with the Caring Society due to privacy obligations owed to employees). Canada recognizes that individuals making Jordan's Principle requests are often experiencing trauma and deserve a compassionate response. This is why, with input from the Parties, ISC developed Back to Basics mandatory training courses to support cultural and structural change and cultural humility. Since November 2022, that training has reached over 62% of ISC employees working on Jordan's Principle. One hundred percent of staff are expected to receive the mandatory training by the end of this fiscal year.

The Caring Society response also continues to assert the inapplicability of the *Financial Administration Act* in administering Jordan's Principle, relying on the Tribunal's decision in 2021 CHRT 41. The Tribunal suggested in that decision that its orders would prevail over the *Financial Administration Act* in the event of conflict, but it did not make a specific order to that effect. Such an order should only be made after the Parties have had a full and complete opportunity to directly address that issue.

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<sup>1</sup> 2022 CHRT 8, para 172, point 7.

<sup>2</sup> *Ibid.*

The Caring Society's position is that requesters should be able to purchase products, services and supports without seeking approval from ISC and that reimbursement should be guaranteed without supporting information that would enable ISC to verify eligibility of the product, service or support. The *Financial Administration Act* does not prevent reimbursement, but it does require that ISC possess sufficient information to determine an expense's eligibility for reimbursement. Canada has confirmed to the Caring Society its willingness to work through process issues to simplify and expedite approvals as much as possible, such as by identifying parameters to clarify eligibility and to work towards a structure that allows for the automation of some approvals and payments.

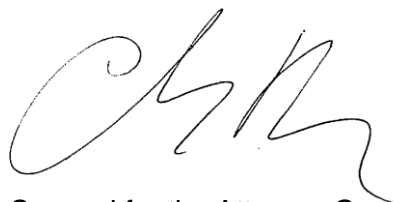
### **Update on long-term reform negotiations**

The Tribunal's October 4, 2023 correspondence requested an update on long-term reform negotiations.

Canada's existing mandate was intended to enable negotiation of a final agreement on long-term reform based on the Agreement-in-Principle concluded on December 31, 2021. The Path Forward, presented in March 2023, required Canada's negotiation team to seek a revised mandate. As highlighted by the AFN in its submission of October 10, 2023, the Parties were advised at the time that proposing changes to elements of the Agreement-in-Principle, such as its timing, its process or significant changes to its level of investment, would necessitate a subsequent and comprehensive decision-making process.

Canada acknowledges that the long-term reform negotiations have been delayed. It has continued meeting with the Parties on a weekly basis to share information and to discuss issues that are within Canada's existing mandate. Canada remains committed to negotiating a resolution to the differences cited by the Panel in its October 4, 2023 letter, and is committed to pursuing an agreement on long-term reform. Canada is continuing its work on a revised mandate to enable advancement of a negotiated resolution with all Parties. Canada strongly believes that a collaborative resolution to the outstanding issues is in the best interests of First Nations children, youth, and families, and looks forward to discussing next steps during the upcoming case management conference.

Sincerely,



Counsel for the Attorney General of Canada