

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**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 Indigenous Services Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL and
NISHNAWBE ASKI NATION**

Interested Parties

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
WRITTEN SUBMISSION RE: NON-COMPLIANCE MOTION FILED DEC 12, 2023
AND CROSS-MOTION FILED MAR 15, 2024**

April 19, 2024

**David P. Taylor
Kevin Droz
Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9**

**Sarah Clarke
Clarke Child & Family Law
950-36 Toronto Street
Toronto, ON M5C 2C6**

**Tel: 613-288-0149
Email: dtaylor@conwaylitigation.ca**

**Tel: 416-260-3030
Email: sarah@childandfamilylaw.ca**

**Counsel for the Complainant
First Nations Child and Family Caring Society
of Canada**

TABLE OF CONTENTS

OVERVIEW 1

Honouring Jordan River Anderson..... 1

Background 2

The Decision to Bring This Non-Compliance Motion..... 3

Solutions-oriented approach 4

Structure 5

PART I - URGENCY 6

Overview 6

A.Background 9

 (i) Concerns from First Nations..... 9

 (ii) Concerns from Service Providers 10

 (iii) Concerns from Pediatricians..... 11

B.The Caring Society’s Experiences in Specific Requests 12

 (i) Pikangikum First Nation..... 13

 (ii) S.M.’s Case..... 16

 (iii) X.X.’s Case..... 17

C.The Need to Reject Canada’s “Likely Misclassified” Argument..... 17

 (i) Insufficient evidence..... 18

 (ii) Dr. Gideon was not involved in the data analysis 19

 (iii) The Caring Society’s uncontested evidence regarding social prescription casts doubt on the “likely misclassified” requests 19

 (iv) The Tribunal should reject a category-based or item-based approach 20

 (v) ISC’s determination processing, not self-identification, is the real issue 22

D.Little Weight Should Be Given to Exhibit A to the St-Aubin Affidavit..... 22

 (i) Insufficient evidence..... 23

 (ii) Unsupported assertions about ISC’s perspective on urgency or reasons for the delay 23

 (iii) The Evidence is double or triple hearsay from unknown declarants 24

E.Back-to-Basics improved upon the SOPs, which were not working 24

F.....Back-to-Basics Added Definitional Clarity to the Meaning of Urgency 26

 (i) Back-to-Basics did not trench on the priority given in the Tribunal’s orders 28

 (i) Back-to-Basics was not a radical departure from the SOPs 29

 (ii) Back-to-Basics added definitional clarity..... 30

G.Building on Back-to-Basics: The Caring Society’s Proposed Caregiving Family Member Death and State of Emergency Criteria..... 30

(i) Urgency includes the death of a caregiving family member, biological parent(s) and/or sibling	31
(ii) Urgency includes a state of emergency	33
(iii) Social prescription evidence may address concerns about apparently unrelated items	34
(iv) A working triage function would be assistive	35
(v) Tribunal-ordered discussions about the Schedule A Jordan’s Principle Workplan will be assistive	36
H.Improving on Back-to-Basics: Solutions-oriented Proposals for Further Definitional Clarity	36
I.Solutions-oriented Proposals for Managing Urgent Requests at the National and Regional Contact Centres.....	38
(i) The Tribunal should order ISC to enable requestors to flag whether a request is or has become urgent, as opposed to whether a child is at risk.....	39
(ii) The Tribunal should order ISC to empower call centres to put in place immediate compassionate interventions for urgent requests	40
J.Sufficient Staffing to Manage Urgent Requests	41
PART II - TIMELINESS	43
Overview	43
A.When the Determination Clock Starts	44
B.Backlogs	47
(i) Intake Backlog and Surge Support	50
(ii) In Process Backlog is Less than One Month of ISC’s Processing Capacity	53
(iii) Impact of Backlogs on Service Coordinators	55
C.Reimbursement and Payment Delays	56
(i) Understanding the Problem	56
(ii) Acquisition Cards	59
(iii) Gift Cards	60
(iv) Solutions Focused on Alleviating the Hardship	61
D.The Financial Administration Act.....	63
PART III - COMPLAINTS MECHANISM.....	65
Critical Components of an Effective Accountability Mechanism.....	67
A.The Existing Patchwork of Attempting to Build a Complaints Mechanism	69
(i) The Caring Society’s Involvement	69
(ii) Other Efforts to Call on Canada to Implement a Complaints Mechanism	75
B.The Problem with the Current Approach	76
(i) ISC Appeals Committee	79

(ii) Federal Court Oversight	79
(iii) The Appeals Secretariat is not an advocacy office	80
(iv) Quality Assurance Call Centre Team	81
C.The Importance of a Complaint Mechanism.....	82
PART IV - RELIEF SOUGHT	86
PART V - LIST OF AUTHORITIES.....	92

OVERVIEW

Honouring Jordan River Anderson

1. The very first thing that visitors to the Caring Society's office may see as they enter is Jordan's River Anderson's baby blanket. It has pride of place at the Caring Society's office.¹ Jordan's blanket is intended to remind staff and visitors alike about the sacred obligation to honour Jordan's legacy by ensuring that Canada upholds and implements the full and proper scope of Jordan's Principle.² Jordan's blanket also reminds us to ensure good being done in Jordan's name is not just a moral victory, as Jordan's father, Ernest Anderson, had asked of the House of Commons in 2007 when they unanimously adopted the private members motion on Jordan's Principle.³

2. Jordan, of Norway House Cree Nation, was born on October 22, 1999. He had to remain in the hospital for the first two years of his life for medical reasons. When he was two years old, doctors cleared Jordan to live in a specialized foster home with at-home supports located near the hospital as part of a transition plan for Jordan to return to his family in Norway House. The governments of Canada and Manitoba disagreed on which government or government department (Health Canada or the Department of Indian Affairs and Northern Development) should pay for Jordan's in-home care, given his parents' on-reserve residence and *Indian Act*⁴ status. As a result of this disagreement, Jordan continued living in a hospital ward unnecessarily for over 2 years before tragically passing away on February 2, 2005, at the age of five, never having had the opportunity to live in a family home.⁵

3. Until the Canadian Human Rights Tribunal (the "**Tribunal**") released its decision on the merits in 2016 (the "**Merits Decision**"), Canada had insisted there were no Jordan's Principle cases,⁶ despite being presented with clear and cogent evidence to the contrary. Indeed, the National Policy Review, completed in 2000, had already urged the resolution of jurisdictional disputes to

¹ Affidavit of Dr. Cindy Blackstock (aff'd Jan. 12, 2024) at para. 2 ("**C. Blackstock Affidavit**").

² C. Blackstock Affidavit at para. 2.

³ See C. Blackstock Affidavit at para. 10.

⁴ *Indian Act*, RSC, 1985, c 1-5, s 6.

⁵ C. Blackstock Affidavit at para. 6.

⁶ April 30, 2014 examination-in-chief of C. Baggley at p. 117, lines 1-12.

prevent tragedies like Jordan experienced; Canada simply failed to act.⁷ Others, such as Maurina Beadle, started legal proceedings against Canada to give effect to Jordan’s Principle. In 2013, the Federal Court found that Ms. Beadle’s son was eligible for Jordan’s Principle.⁸ As Maurina would frequently say, she did this for her son and for all First Nations children in Canada.⁹

4. The sacredness of Jordan’s legacy continues to guide the Caring Society. This motion is focused on giving full effect to Jordan’s Principle’s nature and scope so that First Nations children can fully enjoy the substantive equality rights it promises.

Background

5. This case is about First Nations children.¹⁰ It was filed over 17 years ago. The Tribunal released the Merits Decision over eight years ago.¹¹ Roughly five-and-a-half years ago, the Tribunal released its consent order on immediate relief respecting Jordan’s Principle.¹² During these intervening years, Indigenous Services Canada (“ISC”) has approved millions of Jordan’s Principle products, services, and supports that have, in many instances, been life changing for children, youth, and families.¹³ More specifically, between July 2016 and January 31, 2024, ISC reports approving more than 4.48 million products, services, and supports pursuant to Jordan’s Principle.¹⁴

6. The volume of products, services and supports that are now reaching First Nations children is to be celebrated. It is a tribute to Jordan’s family and flows from the Tribunal’s clear and

⁷ Dr. Rose-Alma J. McDonald, Dr. Peter Ladd, et al., The Assembly of First Nations and Department of Indian and Northern Affairs Development, *First Nations Child and Family Services Joint National Policy Review: Final Review* (Ottawa: AFN/INAC, June 2000) at pp. 16, 38-39 (“**National Policy Review**”), Canadian Human Rights Commission Book of Documents (“**CHRC BOD**”), Tab 3.

⁸ *Pictou Landing Band Council v Canada (Attorney General)*, [2013 FC 342](#) (CanLII) at paras. [124-127](#).

⁹ Affidavit of C. Blackstock (aff’d June 30, 2023) at para. 4, in support of the joint consent motion to approve the Revised Final Settlement Agreement re compensation.

¹⁰ [2016 CHRT 2](#) at para. [1](#) (“**Merits Decision**”).

¹¹ [Merits Decision](#) (released January 26, 2016).

¹² [2017 CHRT 35](#) (released November 2, 2017).

¹³ C. Blackstock Affidavit at para. 76.

¹⁴ April 2, 2024 cross-examination of Dr. Valerie Gideon at p. 12, lines 10-22, referencing Exhibit 1, Tab A (“**V. Gideon CX**”).

unequivocal orders embedding the human rights of First Nations children within Jordan’s Principle,¹⁵ and the implementation of the “Back-to-Basics” approach, which places the child at the centre of a request.¹⁶

7. The *Canadian Human Rights Act* prohibits discrimination towards individuals and groups of individuals on prohibited grounds. The millions of approvals, while significant, do not shield Canada from its obligation to ensure all eligible First Nations children and youth can access Jordan’s Principle free of discrimination and in alignment with the Tribunal orders. Approval figures, by themselves, do not necessarily confirm Tribunal-compliant determinations of Jordan’s Principle requests. Instead, it is critical that we examine the experiences of those who are waiting, of those who have waited beyond the Tribunal’s timeline orders, and of those who have been denied. Tragically, as the evidence in this case shows, when Canada has not acted promptly, some children have died waiting.¹⁷

The Decision to Bring This Non-Compliance Motion

8. ISC’s own data demonstrates a profound failure to determine requests, particularly urgent requests, within the Tribunal-ordered timelines. There are also significant backlogs, reimbursement delays, non-communication and miscommunication with requestors, and concerns regarding how and where requestors can direct complaints. Since at least 2018, the Caring Society has consistently offered solutions to ISC that would have reduced the volume of requests requiring determination and assisted in redressing operational issues that are detrimentally impacting First Nations children. Canada has chosen not to implement the suggested measures or effective alternatives. Canada’s lack of action has resulted in widespread and multi-faceted non-compliance.

9. Considering the irremediable harm and other serious consequences that may flow from ISC’s non-compliance with the Tribunal’s Jordan’s Principle orders, the Caring Society filed this

¹⁵ [2016 CHRT 10](#); [2016 CHRT 16](#); [2017 CHRT 14](#) (amended in [2017 CHRT 35](#)); [2019 CHRT 7](#); [2020 CHRT 20](#); [2020 CHRT 36](#); [2021 CHRT 41](#).

¹⁶ V. Gideon CX at p. 19, line 24 to p. 20, line 21.

¹⁷ Reply Affidavit of Dr. Blackstock (aff’d March 27, 2024) at paras. 13-30 and Exhibits 1-13 (“**C. Blackstock Reply Affidavit**”) (re Pikangikum). See also [2017 CHRT 14](#) at paras [88-92](#) (re Wapekeka) and C. See also [2017 CHRT 14](#) at paras 88-92 (re Wapekeka) and C. Blackstock Reply Affidavit at para 38 (re Walpole Island).

motion on December 12, 2023.¹⁸ The Caring Society did so as a last resort, having exhausted all other reasonable alternatives and having brought its concerns to various senior ISC officials in multiple fora over a period of years. The Caring Society wants to support Canada’s efforts to operationalize Jordan’s Principle in a child focused, rights-based manner, that eliminates the discrimination, and prevents its recurrence.¹⁹ Unfortunately, the issues raised on this non-compliance motion are longstanding and persist to this day.²⁰ Too often, the Caring Society has raised an issue of concern with ISC, only to find that change has not been implemented and the problems persist.²¹

10. At this point, Canada’s conduct towards First Nations children, youth, and families is at a crisis point and again requires the Tribunal’s urgent intervention.²² For the Caring Society, ISC’s non-compliance respecting Jordan’s Principle was serious enough that, in order to bring its motion, the Caring Society had to step away from the Agreement-in-Principle (“**AIP**”) reached in December 2021, as that instrument precluded the Caring Society’s return to the Tribunal to seek this relief.²³

Solutions-oriented approach

11. First Nations children deserve to have their Jordan’s Principle requests determined in a compassionate, common sense, and reconciliation-first manner that is non-discriminatory, needs-based, and ultimately is grounded in the best interests of the child, substantive equality and the right to culturally-relevant service provision.²⁴ The Caring Society wants ISC, and Canada as a whole, to meet that goal.²⁵ When ISC does well, First Nations children do well, and their lives are

¹⁸ Caring Society Notice of Motion for Relief (December 12, 2023) (“**Caring Society Notice of Motion**”); C. Blackstock Affidavit at paras. 28-35.

¹⁹ C. Blackstock Affidavit at paras. 28-29 and 172.

²⁰ C. Blackstock Affidavit at para. 30.

²¹ C. Blackstock Affidavit at para. 30.

²² C. Blackstock Affidavit at para. 35; C. Blackstock Reply Affidavit at paras. 13-20 and Exhibits 1-13.

²³ C. Blackstock Reply Affidavit at para. 87.

²⁴ Affidavit of Brittany Mathews (aff’d Jan. 12, 2024) at Exhibit 8 (Back-to-Basics Approach at p. 2) (“**B. Mathews Affidavit**”).

²⁵ C. Blackstock Affidavit at para. 179.

uplifted and transformed through Jordan’s Principle.²⁶

12. To help ISC achieve that aim, the Caring Society has taken a solutions-oriented approach on this non-compliance motion. The Caring Society has provided constructive recommendations to ISC about how to remedy its years-long non-compliance with Jordan’s Principle. The Caring Society does not claim to be the sole purveyor of solutions. Quite the opposite is true: the Caring Society has repeatedly invited ISC to provide its own solutions that meet or beat the efficacy of those put forward by the Caring Society.²⁷ Simply put, the best solutions should be implemented, because First Nations children deserve nothing less.

Structure

13. In keeping with the solutions-oriented approach, the Caring Society has organized these submissions regarding its proposed solutions as follows:

- a. Part I – Urgency: The Caring Society addresses: (i) its experiences in trying to help those with urgent requests; (ii) ISC’s unsubstantiated evidence about the “misclassification” of certain urgent requests; (iii) Back-to-Basics and building beyond to strive towards further definitional clarity about the meaning of urgency; and (iv) solutions for managing urgent requests, both in the National and Regional Contact Centres and more broadly in the regions and nationally. The Caring Society also advances its proposal to ensure children who have experienced a caregiver or sibling death, and children in communities under a state of emergency, are included in ISC’s urgent case categorization.
- b. Part II – Timeliness: The Caring Society addresses: (i) when the determination clock starts on the Tribunal-ordered timelines; (ii) backlogs; (iii) reimbursement delays; and (iv) the *Financial Administration Act*. Key considerations include practical solutions to bring ISC into compliance with the Tribunal’s orders.
- c. Part III – Complaints Mechanism: The Caring Society addresses: (i) its current role

²⁶ C. Blackstock Affidavit at para. 182.

²⁷ C. Blackstock Affidavit at para. 179.

in raising complaints to ISC; (ii) the problem with ISC’s current approach; and (iii) the importance of an independent complaints mechanism. Key considerations in Part III include the Caring Society’s proposed effective complaints mechanism regarding Jordan’s Principle.

- d. Part IV – Relief Sought: The Caring Society sets out the relief sought for First Nations children, youth, families and the First Nations and First Nations Jordan’s Principle coordinators that care for them.

14. Throughout Parts I-III, the Caring Society also references its “Jordan’s Principle Workplan”, attached as Schedule “A” to its Notice of Motion (“**Schedule A Jordan’s Principle Workplan**”).²⁸ This is, of course, consistent with, but separate from, the largely unimplemented Jordan’s Principle workplan appended to the AIP (“**AIP Workplan**”).

15. Above all else, it is vital that effective measures to remedy the discrimination and non-compliance respecting Jordan’s Principle and prevent its recurrence are implemented in a timely manner. That is the minimum standard that all First Nations children are entitled to under the *Canadian Human Rights Act* and the Tribunal’s orders.

PART I - URGENCY

Overview

16. In the Merits Decision, Canada was ordered “to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s Principle.”²⁹ Canada’s response appeared indifferent and was not in keeping with the full meaning and scope of Jordan’s Principle. Following two non-compliance rulings noting that Canada was falling short of the orders in the Merits Decision,³⁰ the Caring Society brought a non-compliance motion in November 2016, seeking more comprehensive and timely action from Canada in implementing Jordan’s Principle.

²⁸ Caring Society Notice of Motion at para. 9 and Schedule A.

²⁹ [Merits Decision](#) at para 481.

³⁰ [2016 CHRT 10](#) at paras [21-23](#), [32-34](#); [2016 CHRT 16](#) at paras [17](#), [36-42](#), [60-61](#), [68](#), [137](#), [160](#).

17. On May 26, 2017, the Tribunal rendered its ruling on immediate relief concerning Jordan’s Principle.³¹ Canada’s response was to launch an application for judicial review before the Federal Court.³² The parties resolved Canada’s challenge by agreement and the Tribunal issued a consent order on November 2, 2017, amending its May 26, 2017 order.³³ This consent order requires Canada to determine urgent Jordan’s Principle requests on the following timelines:

- a. 12 hours for urgent individual requests; and
- b. 48 hours for urgent group requests.³⁴

18. Through its work at the Jordan’s Principle Operations Committee (“**JPOC**”), the Caring Society has learned that from April 1, 2021 to March 31, 2022, ISC’s compliance rate for urgent individual requests was 53% and a concerning 31% for urgent group requests.³⁵ More recently, the Caring Society has learned that from April 1, 2023 to February 29, 2024, ISC’s compliance rate for urgent individual requests was 24% and for urgent group requests was 28%.³⁶

19. This data lays bare ISC’s profound non-compliance in responding to urgent cases and is consistent with concerns that the Caring Society has received from First Nations leadership, Jordan’s Principle service coordinators and community members for some time. For years, families have informed the Caring Society about the difficulties that they have faced in trying to access urgently needed supports from ISC through Jordan’s Principle.³⁷ Since 2017, the Caring Society has been bringing individual Jordan’s Principle cases to ISC’s attention after having been contacted by families and service coordinators.³⁸

³¹ [2017 CHRT 14](#).

³² T-918-17: *AGC v First Nations Child and Family Caring Society of Canada et al.*

³³ [2017 CHRT 35](#).

³⁴ [2017 CHRT 35](#). The C. St-Aubin Affidavit also acknowledges that Canada has been unable to maintain compliance with the Tribunal’s timelines. See Affidavit of Candice St-Aubin (aff’d Mar. 14, 2024) at para. 8 (“**C. St-Aubin Affidavit**”).

³⁵ C. Blackstock Affidavit at para. 71 and Exhibit 3 (Jordan’s Principle Deep Dive National Package Tables for fiscal year 2021-2022, with Table 71 capturing “Compliance rate by request type, urgency, and month of sufficient information, fiscal year (FY) 2021-22” at p. 77).

³⁶ Attorney General of Canada Responses to Requests for Information (April 12, 2024), at Appendix D (at p. 58) (“**AGC Responses to RFI**”).

³⁷ C. Blackstock Affidavit at para. 75; B. Mathews Affidavit at paras. 15-16.

³⁸ B. Mathews Affidavit at para. 20.

20. Since 2018, the Caring Society has consistently raised concerns about Canada's conduct with urgent cases and proposed possible solutions in its Jordan's Principle Concerns Document.³⁹ Over many years, the Caring Society has consistently been proactive in identifying non-compliance concerns and providing possible solutions to aid ISC in implementing the Tribunal's Jordan's Principle requests in a Tribunal-compliant manner.⁴⁰ This includes multiple iterations of the Caring Society's Jordan's Principle Concerns Document, published since August 2018.⁴¹

21. In Part I, urgency is examined as follows:

- a. Background;
- b. The Caring Society's Experiences in Specific Requests;
- c. The Need to Reject Canada's "Likely Misclassified" Argument;
- d. The Three Reasons the Tribunal Should Give Little Weight to Exhibit A to the St-Aubin Affidavit (ISC's Response to Exhibit 9 of the Mathews Affidavit);
- e. Back-to-Basics Improved Upon the SOPs, Which Were Not Working;
- f. Back-to-Basics Added Definitional Clarity to the Meaning of Urgency as Compared to the Former Standard Operating Procedures;
- g. Building on Back-to-Basics: The Caring Society's Proposed Caregiving Family Member Death and State of Emergency Criteria;
- h. Improving on Back-to-Basics: Solutions-Oriented Proposals for Further Definitional Clarity;
- i. Solutions-Oriented Proposals for Managing Urgent Requests at the National and Regional Contact Centres; and

³⁹ C. Blackstock Affidavit at para. 67 and Exhibit 11.

⁴⁰ B. Mathews Affidavit at paras. 9-14.

⁴¹ B. Mathews Affidavit at para. 9.

j. Sufficient Staffing to Manage Urgent Requests.

A. Background

22. For years, First Nations, service providers, and community members have raised concerns with the Caring Society about the barriers and obstacles they have faced in trying to access urgent supports for First Nations children under Jordan’s Principle. In turn, the Caring Society has also shared the concerns it has heard from communities, families, and service providers with ISC, including through its own case interventions and escalations over the years.

(i) Concerns from First Nations

23. First Nations have contacted the Caring Society to advise about barriers and obstacles they have faced while trying to access urgent products, services, and supports through Jordan’s Principle.⁴²

24. First Nations have advised the Caring Society that:

- a. Urgent requests can take up to and over 30 days to get reviewed and time-sensitive requests can take over 100 days to get reviewed;⁴³
- b. Canada’s non-compliance with the Tribunal’s urgent timeline order continues to have adverse and harmful impacts on children, youth, and families, including:
 - i. children in palliative care not receiving needed supports,
 - ii. families fleeing domestic violence being forced to return to the home of the abuser due to a lack of crisis supports,
 - iii. families fleeing wildfires not having access to basic supports including emergency kit supplies; and

⁴² C. Blackstock Affidavit at para. 77.

⁴³ C. Blackstock Affidavit at para. 78 and Exhibit 33 (letter from Independent First Nations dated December 20, 2023).

- iv. families not being able to place urgent requests or report a change in urgency due to Canada’s failure to ensure the 24-hour Call Centre is adequately staffed.⁴⁴

25. The experience of the Ojibways of Onigaming First Nation (“**Onigaming First Nation**”) is illustrative of the seriousness of the concerns raised by First Nations. As set out in his September 2023 letter to the Caring Society, Chief Copenace explains his frustration with attempting to bring youth crisis supports the community, in the face of a state of emergency in place since 2014. In describing the lack of collaboration, the lack of information sharing and lack of assistance in trying to help the youth of his community, Chief Copenace explains:

We understand that the intent of Jordan's Principle is to ensure all First Nations children living in Canada can access the products, services, and supports they need, when they need them. However, this is not the experience of Onigaming First Nation. The perceived delay tactics and unanswered requests from federal government officials we've met with have only exacerbated the problems in our community and have undoubtedly resulted in numerous lives being lost and the destruction of families.⁴⁵

26. While ISC has met with Onigaming First Nation on a number of occasions, the children and youth remain in a precarious and dangerous position. As recently as April 2, 2024, Chief Copenace explained: “we still have no commitment from Canada for the youth crisis infrastructure that we applied for + need to lift our state of emergency for suicide and mental wellness. [...] The deaths continue every month in Onigaming, tragically.”⁴⁶

(ii) Concerns from Service Providers

27. First Nations service providers have also reached out to the Caring Society to advise about barriers and obstacles they have faced while trying to access urgent products, services, and

⁴⁴ C. Blackstock Affidavit at para. 79 and Exhibit 34 (Cowessess First Nation’s Band Council Resolution dated December 19, 2023).

⁴⁵ C. Blackstock Affidavit, at para. 151 and Exhibit 55. See also C. Blackstock Affidavit, at Exhibit 59 (Letter from Assembly of Manitoba Chiefs setting out various concerns identified by First Nations in Manitoba in relation to Canada’s non-compliance with the Tribunal’s orders).

⁴⁶ C. St-Aubin CX, at Exhibit 3, Tab F.

supports through Jordan's Principle.

28. First Nations service providers have advised the Caring Society that:

- a. The criteria used to determine whether a request is urgent do not meet the needs of children who require immediate assistance;
- b. Urgent applications are not being determined according to the Tribunal-ordered timelines; and
- c. ISC staffing issues and the lack of clarity about staff contact persons have resulted in lost applications and delayed processing times.⁴⁷

29. ISC's failure to determine all requests within the Tribunal's timeline orders has also put service providers in an unfair and impossible situation. For example:

Ayás Ménmen Child & Family Services [...]

I have urgent dental surgeries for young children waiting months for a file number and approval. Orthodontic treatments that are time sensitive that go up to 6 months or more without review. The only way I can get a file through is to mark it as urgent, but I get in trouble for marking files as urgent because that is supposed to be used for life-or-death situations. Many of my clients apply for food security and emergency services that need to happen immediately. These items are taking up to a month or more, even if marked with an urgent status.⁴⁸

(iii) Concerns from Pediatricians

30. Pediatricians caring for First Nations children have also advised the Caring Society of their concerns regarding ISC's implementation of Jordan's Principle. The Canadian Paediatric Society (CPS), a national professional organization involved in professional education and knowledge translation on child and youth health, conducted a survey of pediatricians to document their experiences accessing Jordan's Principle for the First Nations children and young people they care

⁴⁷ C. Blackstock Affidavit at para. 80 and Exhibit 35 (chart outlining Dnaagdawenmag Binnoojiiyag Child & Family Services' concerns about Canada's conduct respecting Jordan's Principle received on December 19, 2023).

⁴⁸ C. Blackstock Affidavit at para. 82 and Exhibit 36 (January 11, 2024 letter from Indigenous Child and Family Services Directors, Our Children Our Way Society).

for. A sample of 219 pediatricians participated in the study.⁴⁹

31. Through this study, the Caring Society has learned about challenges that pediatricians have faced in attempting to access supports through Jordan's Principle for their patients.⁵⁰ Among the findings relevant to urgent cases, the CPS study found:

- a. Delays were very common, especially for urgent cases, with only 3 (or roughly 14%) of 22 respondents who answered a question about urgency indicating that an urgent request had been processed within 12 hours;⁵¹
- b. Delays in services can lead to negative outcomes for children, with 28 (approximately 28%) of 99 respondents who answered a question about the implications of delays in accessing Jordan's Principle indicating that there was a negative outcome for a patient or family;⁵² and
- c. Negative outcomes included developmental/educational impacts; medical complications; worsened mental health; unnecessary separation from family; delay of therapy; and prolonged hospitalization.⁵³

B. The Caring Society's Experiences in Specific Requests

32. Since January 2023, families, communities, and service coordinators have been increasingly reaching out to the Caring Society with difficulties in accessing Jordan's Principle requests in urgent circumstances.⁵⁴ In general, the Caring Society has identified a growing trend of ISC breaching the timelines for both individual and group urgent requests.⁵⁵ Further, the Caring Society has also noted that ISC has often not taken immediate action to put in place compassionate and/or crisis supports to ensure the safety and wellbeing of the First Nations child or children when

⁴⁹ C. Blackstock Reply Affidavit, at Exhibit 14 (at pp. 1 and 4).

⁵⁰ C. Blackstock Reply Affidavit, at Exhibit 14 (at p. 2).

⁵¹ C. Blackstock Reply Affidavit, at Exhibit 14 (at p. 3).

⁵² C. Blackstock Reply Affidavit, at Exhibit 14 (at p. 3).

⁵³ C. Blackstock Reply Affidavit, at Exhibit 14 (at p. 3).

⁵⁴ B. Mathews Affidavit at para. 26.

⁵⁵ B. Mathews Affidavit at para. 26.

it is clear that a determination will not be made within the Tribunal-ordered timelines.⁵⁶

(i) Pikangikum First Nation

33. Dr. Blackstock’s Reply Affidavit details, in an uncontested account, the Independent First Nations Alliance’s (“**IFNA**”) efforts to secure funding for two critical Jordan’s Principle group requests for urgent life-saving interventions for the children of Pikangikum First Nation.⁵⁷

34. Nicholas Rhone, Director of Integrated Emergency Services for IFNA, contacted the Caring Society following the deaths of two children under the age of 5 in Pikangikum First Nation, after IFNA’s urgent group request for Pre-Hospital Emergency Response (“**PACER**”) funding had been denied.⁵⁸ Following the denial, Mr. Rhone advised ISC that the Jordan’s Principle request was “in direct response to children dying and children who continue to be at imminent risk, and some have commented that there is no clearer case for a [Jordan’s Principle request] since it’s directly linked not just to health services for children but emergency life-saving health services for children.”⁵⁹

35. On March 1, 2024, IFNA placed another urgent group request for a school-based Pediatric Medical Assistance Team (“**PMAT**”) focused on school-age children in Pikangikum. The request followed multiple child deaths in the community, ongoing weekly suicide attempts by school-aged children, including the death by suicide of a young girl a few days before her 12th birthday.⁶⁰ The request included multiple letters from doctors, as well as the school principal:

On February 27, 2024, I reached out to Nick Rhone, the IFNA Director of Integrated Emergency Services because we have seen risks to our students further escalating and we are in need of emergency assistance to avoid further loss of life in our student population. While there has been ongoing health services gaps, recently these gaps have been more pronounced and below is a short summary:

1. A child was injured within the last week and required immediate medical transport from the school (this has been an ongoing gap).

⁵⁶ B. Mathews Affidavit at para. 26.

⁵⁷ C. Blackstock Reply Affidavit at paras. 13-30 and Exhibits 1-13.

⁵⁸ C. Blackstock Reply Affidavit at para. 14.

⁵⁹ C. Blackstock Reply Affidavit at para. 15 and Exhibit 1 (correspondence).

⁶⁰ C. Blackstock Reply Affidavit at para. 19.

2. It has come to our attention that the recent suicide was actually partially due to the fact that there were some youth that had been all talking about suicide and when of the youths weren't responding [redacted] thought the other child had already taken her own life so she did as well. The other child however was okay; she just hadn't been responding. That group of girls continues to be at risk as a number of them had been talking about suicide and this risk continues, with an additional burden on our staff and supports as in the event of another attempt we do not have any emergency medical response in place.

3. We continue to have students who engage in cutting and other behaviours that require immediate emergency medical attention and we do not have this capacity.

4. We also have many children who have suffered sexual abuse and they are not comfortable going to the Nursing Station.

5. Some students continue to grieve to the other fire deaths last year as well as a suicide by a high school student last year.

In addition to the above, currently we are experiencing a minimum of 2 suicide attempts a week by including attempts in the school bathrooms, where students have self-inflicted deep wounds causing major bleeding. A lack of an immediate medical response such as Paramedics is a matter of life and death for these children. Based on the escalated risk we are currently facing we believe having the PMAT team based out of the school and able to assist with school hours as well as after school response support is a necessary step in addressing the health needs of our children. **We are requesting a response within the next 24-48 hours given the ongoing risk to our youth.** [Emphasis added]⁶¹

36. On March 19, 2024 (16 days after the expiry of the 48-hour timeline on the urgent group PMAT request), Mr. Rhone advised ISC and the Caring Society that a 3-year-old girl had died that morning.⁶² Following a meeting on March 19, 2024, IFNA was given a verbal 6-month approval for their PMAT request.⁶³ Mr. Rhone pointed out that two children from Pikangikum First Nation died between the original PACER application and the approval of the PMAT application. While he acknowledged that no one could know for sure if those lives would have been saved if IFNA's applications had been immediately approved, he pointed out that "had they been approved at least it we would not have the trauma of wondering what if. And we know it would have increased

⁶¹ C. Blackstock Reply Affidavit, at Exhibit 3 (encl. Jordan's Principle Application PMAT, Tab 3).

⁶² C. Blackstock Reply Affidavit at para. 23 and Exhibit 7 (correspondence).

⁶³ C. Blackstock Reply Affidavit at para. 25.

safety and met unmet needs sooner.”⁶⁴

37. Mr. Rhone then received written approval of the PMAT application on March 22, 2024, which was 19 days after the expiry of the 48-hour urgent group request timeline.⁶⁵ In a March 27, 2024 letter, Dr. Kirlew, who has been an investigating Coroner for Ontario’s Northwest Region and has previously provided evidence in these proceedings,⁶⁶ wrote a letter of support of the PMAT application: “I am heartbroken and devastated that we lost yet another child in a crisis moment when we have solutions that can be implemented to save children.”⁶⁷

38. In the Caring Society’s view, given the tragic child deaths in Pikangikum First Nation that occurred both prior to and following INFA’s urgent PACER request, it should have been obvious to ISC that the PMAT request was urgent – not least because of the risk of irremediable harm and death to children and the mention of suicide. Accordingly, there were at least two extremely serious indicators/criteria of urgency of which ISC should have been aware.

39. Therefore, the Caring Society’s view is that:

- a. ISC should have determined INFA’s requests within the Tribunal-ordered 48-hour timeline for urgent group requests and done everything in its power to determine it prior to the 48-hour timeframe;
- b. Consistent with 2017 CHRT 35, ISC should have put in place effective immediate crisis intervention supports until an extended response could be developed and implemented given the reasonable foreseeability of irremediable harm to the children of Pikangikum First Nation;⁶⁸ and
- c. Consistent with Back-to-Basics and the Tribunal’s orders, the urgency of these

⁶⁴ C. Blackstock Reply Affidavit at para. 25 and Exhibit 8 (correspondence).

⁶⁵ C. Blackstock Reply Affidavit at para. 27.

⁶⁶ Affidavit of Dr. Michael Kirlew (aff’d January 27, 2017) in support of Nishnawbe Aski Nation’s November 22, 2016 Notice of Motion for Immediate Relief (“**M. Kirlew Affidavit**”).

⁶⁷ C. Blackstock Reply Affidavit at para. 29 and Exhibit 12 (letter from Dr. Kirlew).

⁶⁸ [2017 CHRT 35](#) at para 135(2)(A)(ii.1): “In a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented”.

requests ought to have been clear and obvious to any reasonable person given the life-threatening circumstances identified in the professional recommendations of physicians and first-responders, and the support from First Nations leadership, particularly those evidenced by the past deaths of children.⁶⁹

40. It is unsettling that ISC failed to determine this request within the timeframes despite the frequent calls for action by IFNA, the Caring Society and others. It is particularly concerning that ISC only moved with expediency after the tragic passing of a three-year old child. Pikangikum is not alone – other First Nations, including the Ojibways of Onigaming First Nation, continue to face crises and mental health emergencies that remain unaddressed by ISC, even in the face of a Jordan’s Principle application.⁷⁰ More must be done.

41. ISC’s management of the Pikangikum First Nation and IFNA’s urgent case lies in tragic similarity to its failure to address the urgent request for mental health supports for children in Wapekeka First Nation to address a suicide pact amongst children. ISC did not determine that request for months and only sprang into action after the deaths of two twelve year old girls.⁷¹

(ii) S.M.’s Case

42. The Mathews Affidavit details the Caring Society’s involvement in S.M.’s case.⁷² S.M. had sought to receive supports from Jordan’s Principle for her grandchildren to attend a memorial Potlatch following the death of the children’s mother and sibling.⁷³ Later, S.M. sought to amend an approved request for her grandchild in her care to attend a memorial Potlatch ceremony for the child’s great-grandfather.⁷⁴

43. For the Caring Society, and as discussed further below, S.M.’s case is illustrative of the need for requestors to be able to make an urgent Jordan’s Principle request when they have recently

⁶⁹ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

⁷⁰ C. Blackstock Affidavit at paras. 151-152, and Exhibit 55.

⁷¹ [2017 CHRT 7](#).

⁷² B. Mathews Affidavit at paras. 43-49.

⁷³ B. Mathews Affidavit at para. 49. Potlaches were one of many First Nations cultural ceremonies prohibited under the *Indian Act* starting in 1884, see: *Thomas and Saik’uz First Nation v Rio Tinto Alcan Inc*, [2022 BCSC 15](#) at para. [172](#).

⁷⁴ B. Mathews Affidavit at para. 43.

experienced the death of a caregiving family member, biological parent(s), and/or siblings, or are reasonably anticipated to experience such a death.⁷⁵ In S.M.'s case, there was a clear connection between the travel assistance and the Potlatch ceremony, which was of deep cultural and personal significance to the S.M.'s family during that sacred period.

(iii) X.X.'s Case

44. The Mathews Affidavit details the Caring Society's involvement in X.X.'s case.⁷⁶ ISC took 5 months to determine an urgent request in varied circumstances in which children, including a child with suicidal ideation, required basic necessities and relocation from a precarious and unsafe housing situation.⁷⁷ On two occasions, the Caring Society had to intervene and provide financial and compassionate supports.⁷⁸

45. For the Caring Society, X.X.'s case demonstrates that lack of access to basic necessities can exacerbate an urgent situation. Indeed, children's needs and vulnerability can be compounded in urgent situations (when fleeing domestic violence for example) by *also* not having access to basic necessities.⁷⁹ For that reason and as discussed below, X.X.'s case also speaks to the dangers of excluding certain items or categories of requests from eligibility pursuant to Jordan's Principle: accessing Jordan's Principle supports for moving and storage fees may make all the difference in the life of a First Nations child and their family when fleeing an unsafe home environment.⁸⁰

C. The Need to Reject Canada's "Likely Misclassified" Argument

46. Following an ISC review of thousands of self-identified urgent requests, conducted for the purposes of this litigation, Canada alleges there are likely misclassified self-identified urgent requests that challenge ISC's ability to comply with the Tribunal's timeline order regarding

⁷⁵ Caring Society Notice of Motion at para. 1.

⁷⁶ B. Mathews Affidavit at paras. 29-42 and Exhibits 11A, 11B, and 11C (correspondence). See also C. Blackstock Affidavit, at Exhibits 25A and 25B (audio recording and unofficial transcription of that recording); C. Blackstock Reply Affidavit at para. 45(b) and Exhibit 18 (correspondence).

⁷⁷ B. Mathews Affidavit at para. 30.

⁷⁸ B. Mathews Affidavit at paras. 34 and 39.

⁷⁹ C. Blackstock Reply Affidavit at para. 45(b).

⁸⁰ C. Blackstock Reply Affidavit at para. 45(b).

urgency.⁸¹ In particular, Dr. Gideon’s affidavit stipulates that, from a sample of 31,258 urgent requests between January 1, 2022 and December 31, 2023, ISC has identified 5,800 (or 18.5%) requests that were likely misclassified as urgent following the implementation of the Back-to-Basics Approach.⁸² Dr. Gideon’s Affidavit provides a list of such allegedly likely misclassified request, including: glowsticks; bicycles; gaming console; toys; summer camp registration; sporting equipment; furniture, social/recreational activities; and more.⁸³ However, Dr. Gideon was unable to explain how these numbers were arrived at or what instructions the unidentified “data team” was given in preparing this evidence.⁸⁴

47. The Caring Society notes that ISC’s own data indicates that the remaining 81.5% of requests as not having been misclassified, meaning that ISC’s sample contained 25,458 requests that were urgent. However, the Tribunal should give little weight to ISC’s evidence about the impugned misclassified self-identified urgent requests for five reasons.

(i) Insufficient evidence

48. First, the evidence before the Tribunal is insufficient for the Tribunal to conclude that around or up to 18.5% of identified urgent Jordan’s Principle requests are likely misclassified as such. Dr. Gideon’s affidavit and the list in Exhibit C thereto provide no context regarding the impugned urgent requests, including whether they were accompanied by letters of support or recommendations from professionals and/or Elders in the child’s community.⁸⁵ Indeed, on cross-examination Dr. Gideon conceded that more information would be needed to determine whether the impugned requests were true misclassifications.⁸⁶ Simply put, without an understanding of the specific, case-by-case circumstances in which the impugned requests were made and the link between the child’s unmet need and the urgent request, the Tribunal lacks the evidence necessary to conclude that a significant number of self-identified urgent requests may likely be misclassified.

⁸¹ Affidavit of Dr. Valerie Gideon (aff’d Mar. 14, 2024) at paras. 24-26 and Exhibit C (“**V. Gideon Affidavit**”).

⁸² V. Gideon Affidavit at para. 24 and Exhibit C.

⁸³ V. Gideon Affidavit at para. 24 and Exhibit C.

⁸⁴ V. Gideon CX at p. 78, line 14 to p. 80, line 19.

⁸⁵ C. Blackstock Reply Affidavit at para. 36.

⁸⁶ V. Gideon CX at p. 118, lines 9-16. See also V. Gideon CX at p. 91, lines 10-15.

(ii) Dr. Gideon was not involved in the data analysis

49. Second, Dr. Gideon did not carry out this review of alleged likely misclassified requests: a data team at ISC did so. Dr. Gideon did not know how many people were involved in conducting that analysis, how long it took to carry out, or what instructions the team was given. Nor did she check the team’s work in any way. Dr. Gideon’s understanding of the criteria the team used to make the determination about whether something was misclassified was simply that they looked at the item itself as an example of an item that would likely not be tied to an urgent need.⁸⁷ ISC appears to have impugned the items without any due consideration to the child’s needs or the recommended interventions to meet that need.

(iii) The Caring Society’s uncontested evidence regarding social prescription casts doubt on the “likely misclassified” requests

50. Third, the Caring Society’s evidence surrounding social prescription casts doubt on the notion that the “likely misclassified” requests may not meet the criteria for urgency under Back-to-Basics.⁸⁸

51. In the uncontested opinion of Ryan Giroux, M.D., a Métis General Pediatrician carrying out a clinical practice within the urban Indigenous community in Toronto and Scarborough, the information presented in Dr. Gideon’s Affidavit fails to recognize or understand the practice of social prescription.⁸⁹ According to Dr. Giroux, “the internationally-accepted definition of social prescribing” is:

a means for trusted individuals in clinical and community settings to identify that a person has nonmedical, health-related social needs and to subsequently connect them to non-clinical supports and services within the community by co-producing a social prescription—a non-medical prescription, to improve health and wellbeing and to strengthen community connections.⁹⁰

52. In particular, social prescribing may include: supports for basic needs (e.g., income, food, housing); physical activity (e.g., exercise classes, team sports, individual sports); arts and culture

⁸⁷ V. Gideon CX at p. 79, line 22 to p. 80, line 3.

⁸⁸ Affidavit of Ryan Giroux, M.D. (affirmed March 27, 2024) (“**R. Giroux Affidavit**”); C. Blackstock Reply Affidavit at paras. 39-45.

⁸⁹ R. Giroux Affidavit at paras. 1 and 8.

⁹⁰ R. Giroux Affidavit at para. 9 and Exhibit 1.

programs (e.g., dance, museums, music); social activities (e.g., hobby groups, camps, mentorship programs); time in nature (e.g., parks passes, nature clubs, community gardens); and volunteer opportunities.⁹¹

53. Social prescribing may be a key tool, and even a necessary tool, for redressing health inequities experienced by First Nations children.⁹² For example, a pediatrician may recommend enrolment in a sports camp to manage childhood obesity or the removal of mold or carpet in a home in which a child with poorly controlled asthma lives.⁹³

54. Viewed in this light, many of the impugned items in Dr. Gideon's affidavit may have a link to a child's individual needs and best interests and may be properly classified as urgent in the unique circumstances and life of a child.⁹⁴ For instance, glowsticks may be used in sensory environments for neuro-diverse children and for self-regulation.⁹⁵ It was Dr. Blackstock's uncontested evidence that, based on her experience, it may be in keeping with sound social work practice to facilitate some children's access to some of the impugned items so as to meet urgent, diverse, and complex needs.⁹⁶ Moreover, during Dr. Gideon's cross-examination, Dr. Gideon acknowledged that ISC had received requests for toys for children with autism for calming purposes.⁹⁷ Lastly, the Caring Society's experience in escalating and bringing individual cases to ISC's attention has demonstrated that apparently misclassified items can be urgent given a First Nation's child's or youth's unique life and circumstances and given the passage of time and processing delays at ISC.⁹⁸

(iv) The Tribunal should reject a category-based or item-based approach

55. Fourth, the Tribunal should reject the notion that specific items, categories, or products are ineligible as products, services, or supports under Jordan's Principle. Doing so is out of step with

⁹¹ R. Giroux Affidavit at para. 12.

⁹² R. Giroux Affidavit at paras. 13 and 21.

⁹³ R. Giroux Affidavit at para. 15.

⁹⁴ C. Blackstock Reply Affidavit at paras. 38 and 44.

⁹⁵ R. Giroux Affidavit at para. 20; C. Blackstock Reply Affidavit at para. 38.

⁹⁶ C. Blackstock Reply Affidavit at para. 39.

⁹⁷ V. Gideon CX at p. 169, line 24 to p. 170, line 4.

⁹⁸ C. Blackstock Reply Affidavit at para. 45.

an individualized, child-focused approach to determining Jordan's Principle requests.⁹⁹ Only by assessing a child's real and specific needs, on a case-by-case basis through a substantive equality lens and with the benefit of a letter from a professional and/or Elder in the child's circle of care, can Jordan's Principle requests be determined and the child's unique needs be met.¹⁰⁰ Indeed, Dr. Gideon's overall evidence on cross-examination was that whether requests for specific items were urgent would depend on the specifics of a case.¹⁰¹ This evidence casts further doubt on the impugned "likely misclassified items" provided to Dr. Gideon and that she attached as Exhibit C to her Affidavit.¹⁰²

56. For greater certainty, and to avoid suggestions to the contrary by the other parties, the Caring's Society's view is that ISC may deny a Jordan's Principle request where the request is not in the best interests of the child or where a requested item is not in keeping with substantive equality.¹⁰³ Moreover, the Caring Society acknowledges that it is possible that some items requested through Jordan's Principle are misclassified as urgent; however, there is no credible information that this is a significant problem that rises to the level of requiring Canada to be released from its obligations under the existing orders or that the parameters that indicate urgency are unjust.¹⁰⁴

57. Taking a categorical approach as opposed to a needs-based approach grounded in substantive equality risks failing to meet the unique needs of unique First Nations children. Indeed, Dr. Blackstock, in her reply affidavit, sets out a clear example of when a categorial approach can have devastating consequences:

I have previously raised the dangers of dismissing items as ineligible on their face with ISC, and with Dr. Gideon in particular, after ISC denied requests for a backpack, generator, fridge, and other items recommended by a physician for a child in Walpole Island. The child had cystic fibrosis. The generator and fridge were to store medication that required reliable cold storage. The backpack and laptop were for her to participate in schools. [...] The child tragically passed away without the requested services ever

⁹⁹ C. Blackstock Reply Affidavit at para. 37; B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 2).

¹⁰⁰ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 2).

¹⁰¹ V. Gideon CX at p. 89, line 6 to p. 90, line 7.

¹⁰² V. Gideon Affidavit, at Exhibit C.

¹⁰³ C. Blackstock Reply Affidavit at para. 37.

¹⁰⁴ R. Giroux Affidavit at para. 19.

being approved. Dr. Gideon commissioned a review of this tragic case when she was Assistant Deputy Minister responsible for Regional Operations at the First Nations and Inuit Health Branch at ISC.¹⁰⁵

(v) ISC's determination processing, not self-identification, is the real issue

58. It is ISC's failure to establish effective mechanisms to receive and process complaints that is the heart of the issue, not the self-identification of urgent requests pursuant to Back-to-Basics. ISC's analysis shows that 81.5% of requests identified as urgent are properly categorized.¹⁰⁶ ISC has not put forward any evidence demonstrating that the 18.5% of cases it says were misclassified are preventing it from complying with the Tribunal's orders for the 81.5% of properly classified cases.¹⁰⁷ In the absence of compelling evidence that allegedly misclassified cases are having a determinative impact on ISC's ability to process urgent cases, the remedy should not be an extension of timeframes for determining urgency or a change to the already-reasonable definition of urgency.

D. Little Weight Should Be Given to Exhibit A to the St-Aubin Affidavit

59. In her affidavit, Ms. Mathews attaches a chart as Exhibit "9", which tracks the Caring Society's cases it has helped with (from January 5, 2023 to January 9, 2024), the interventions it makes with ISC, and the systemic issues and themes that are repetitively and negatively impacting First Nations children and families seeking to access services, products, and supports under Jordan's Principle.¹⁰⁸

60. Instead of focusing on solutions to redress both the individual and systemic issues set out in Exhibit 9, Canada proffers Exhibit A to the St-Aubin Affidavit in an attempt to raise questions about the work the Caring Society is doing to support Jordan's Principle requestors.¹⁰⁹ In particular, the St-Aubin Affidavit asserts that the Caring Society's intervention was not necessary in many of these cases as ISC (a) had already taken steps to address the issues and (b) in most

¹⁰⁵ C. Blackstock Reply Affidavit at para. 38.

¹⁰⁶ V. Gideon Affidavit at paras. 24-25.

¹⁰⁷ AGC Responses to RFI, at Appendix B (at p. 16).

¹⁰⁸ B. Mathews Affidavit at paras. 15-17 and Exhibit 9; C. St-Aubin Affidavit at paras. 15-16 and Exhibit A.

¹⁰⁹ C. St-Aubin Affidavit at paras. 15-16 and Exhibit A.

cases required more information to address the issue properly.¹¹⁰ However, as Ms. St-Aubin conceded on cross-examination, the Caring Society can only provide the information it has access to, and has no ability to go into ISC's files to find additional information.¹¹¹

61. The Caring Society submits that the Tribunal should give little weight to this evidence for the following reasons.

(i) Insufficient evidence

62. First, Exhibit A to the St-Aubin Affidavit is not accompanied by supporting evidence, such as correspondence, that details the steps ISC asserts it has taken to address the issues raised in Exhibit 9 to the Mathews Affidavit. The Caring Society acknowledges that Exhibit 9 to the Mathews Affidavit is also a table generated for the purposes of this litigation to capture its more than 160 interventions with ISC over a one-year period and to highlight the ongoing systemic issues being raised through these individual interventions. However, Exhibit 9 is based on either Ms. Mathews' firsthand interactions with the requestors, or that of her two other colleagues at the Caring Society.¹¹² ISC had an opportunity to test this evidence on cross-examination, and opted not to take it.

63. The Caring Society was diligent to, as Ms. St-Aubin's affidavit puts it, "highlight frequent communications from the Caring Society to ISC officers regarding individual requests".¹¹³ The sampling of these frequent communications represent the types of concerns that the Caring Society hears from families, First Nations, and service providers. No such examples of ISC's own interventions appear in the St-Aubin Affidavit. Moreover, First Nations leadership, families, Jordan's Principle coordinators and other service providers proactively reach out to the Caring Society because they are not receiving the response to which they are entitled from ISC.

(ii) Unsupported assertions about ISC's perspective on urgency or reasons for the delay

64. Second and relatedly, two of the columns in Exhibit A to the St-Aubin Affidavit simply indicate whether the case was "urgent in ISC's perspective" and whether the "reason for delay

¹¹⁰ C. St-Aubin Affidavit at para. 16.

¹¹¹ C. St-Aubin CX at p. 284, line 24 to p. 285, line 17.

¹¹² B. Mathews Affidavit at paras. 17-20.

¹¹³ C. St-Aubin Affidavit at para. 15.

[was] outside of ISC’s control”.¹¹⁴ Bald, unsupported assertions about whether ISC considered a given case to be urgent or viewed the delay as being within its control should be given little weight. Moreover, St-Aubin stated that often the Caring Society has more information than ISC has regarding a request,¹¹⁵ thus calling into question the efficacy of Exhibit A.

(iii) The Evidence is double or triple hearsay from unknown declarants

65. Third, the table in Exhibit A to the St-Aubin Affidavit is mostly double or triple hearsay. Based on Ms. St-Aubin’s overall evidence on cross-examination, the Caring Society’s understanding is that she generally reviewed synopses of the responses and actions ISC officials took, which were prepared by others, and that she did not review the individual cases in depth.¹¹⁶ Ms. St-Aubin acknowledged that it was “potentially” true that there may be people at ISC with firsthand information about a case, but that it is thirdhand information by the time it gets to her desk.¹¹⁷ Ms. St-Aubin also advised that she could not answer how many hands touched a given summary prior to it making it into Exhibit A.¹¹⁸

E. Back-to-Basics improved upon the SOPs, which were not working

66. The history behind the Back-to-Basics Approach indicates that ISC’s prior approach to urgent requests, which was grounded in its lengthy and prescriptive Standard Operating Procedures (“SOPs”), was not working for First Nations children in need of urgent assistance.

67. ISC developed its SOPs in or about 2018, after the Caring Society raised concerns about the implementation of Jordan’s Principle in fora such as the Jordan’s Principle Oversight Committee (as JPOC was then known).¹¹⁹ The SOPs were an evergreen policy and procedures document.¹²⁰ The SOPs were intended to communicate standard processes for reviewing, processing, and reporting all Jordan’s Principle requests.¹²¹ Due to the overly bureaucratic nature of the SOPs, it became clear that ISC’s approach was not working, as ISC acknowledged in Fall

¹¹⁴ C. St-Aubin Affidavit, at Exhibit A.

¹¹⁵ April 3, 2024 cross-examination of Candice St-Aubin at p. 287, lines 4-10 (“C. St-Aubin CX”).

¹¹⁶ C. St-Aubin CX at p. 283, line 2 to p. 284, line 23.

¹¹⁷ C. St-Aubin CX at p. 284, lines 18-23.

¹¹⁸ C. St-Aubin CX at p. 284, lines 22-23.

¹¹⁹ V. Gideon Affidavit at para. 16.

¹²⁰ B. Mathews Affidavit at para. 11; V. Gideon Affidavit at para. 16.

¹²¹ V. Gideon Affidavit at para. 16.

2021. Working together, the Caring Society and ISC, in consultation with the AFN, developed an approach that got back to the basics of Jordan’s Principle, putting the child and family at the centre, and replaced the SOPs.¹²²

68. In December 2021, as part of the workplan to improve outcomes under Jordan’s Principle that was appended to the AIP (i.e. AIP Workplan), ISC committed to implementing a “Back to Basics” approach and culture change to determining of Jordan’s Principle requests.¹²³ The result of that commitment was the Back-to-Basics Approach to Jordan’s Principle, which has been operational since early 2022.¹²⁴ In part, the Back-to-Basics Approach acknowledges that the requestor is best positioned to judge the urgency of a request.¹²⁵

69. Dr. Gideon’s affidavit asserts that there has been an increase in the number of urgent requests since Back-to-Basics was introduced, with urgent requests growing by over 900% compared to non-urgent requests (which only grew by 88%).¹²⁶ However, independent and credible evidence is required to better understand the reasons driving this increase.

70. Evidence before the Tribunal suggests the following factors should be considered:

- a. Canada may have been under-identifying urgent cases prior to the implementation of the Back-to-Basics Approach (this was a consistent and longstanding Caring Society concern);¹²⁷
- b. Given that the Back-to-Basics Approach was developed to course correct following the determination that the approach under the SOPs was not working,¹²⁸ the increased uptake may indicate how effective Back-to-Basics has been in contrast to the SOPs;

¹²² B. Mathews Affidavit at para. 12.

¹²³ B. Mathews Affidavit, at Exhibit 6 (Executive Summary of Agreement-in-Principle on Long-Term Reform).

¹²⁴ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach); V. Gideon Affidavit at para. 16.

¹²⁵ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

¹²⁶ V. Gideon Affidavit at para. 21.

¹²⁷ B. Mathews Affidavit, at Exhibit 4 (at p. 5) and Exhibit 5 (at p. 16).

¹²⁸ B. Mathews Affidavit at para. 12.

- c. Back-to-Basics would have only been operational at the end of fiscal year 2021-22, which was during the pandemic, and so the 2021-22 fiscal year data may include pandemic considerations;
- d. The general increase in the volume of requests may be related to impacts during and after the pandemic;¹²⁹
- e. The general increase in the volume of requests may be related to increases in the cost of living and/or public safety emergencies such as wildfires;¹³⁰
- f. The Parties have led successful awareness campaigns for Jordan’s Principle, including through social media,¹³¹ and so there may be a greater awareness of Jordan’s Principle in among First Nations and the general public; and
- g. Post-pandemic social conditions may play a key role.¹³²

71. Indeed, the Caring Society is concerned that Canada is attempting to build a narrative that negatively associates the rising number of urgent requests with the Back-to-Basics approach.

F. Back-to-Basics Added Definitional Clarity to the Meaning of Urgency

72. Efforts to arrive at greater precision regarding the meaning of the word “urgent” should be grounded in the Tribunal’s orders and Back-to-Basics, which, in part, was created to provide guidance to ISC staff in better understanding urgency. The stated purpose of this approach is “[t]o apply a Canadian Human Rights Tribunal order compliant “back to basics” approach for implementing Jordan’s Principle [...]”.¹³³ For clarity, the Back-to-Basics Approach explains urgency, in relevant part, as follows:

- a. Focal Points and call centre staff will ask all service requesters if they feel the case is urgent or time-sensitive, using a plain-language approach to ensure the requester understands the question and providing examples of an urgent request (as listed below).

¹²⁹ V. Gideon Affidavit at para. 7.

¹³⁰ V. Gideon Affidavit at para. 7.

¹³¹ V. Gideon Affidavit at para. 7.

¹³² V. Gideon CX at p. 20, line 22 to p. 22, line 15.

¹³³ B. Mathews Affidavit, Exhibit 8 (“Jordan’s Principle: Back to Basics Approach” at p. 2).

- b. The requestor is best positioned to judge the urgency of a request. Focal Points and call centre staff will accept the requestor's identification of the request as urgent and will not re-assign the request to a lower level of urgency.
- c. Even if a requester does not identify a case as urgent or time-sensitive, Focal Points and call centre staff may determine, based on a common-sense appraisal of the information, that the request is urgent or time-sensitive for the purposes of determining the request.
- d. Examples of urgency include all cases involving:
 - end-of-life/palliative care;
 - mention of suicide;
 - physical safety concerns;
 - no access to basic necessities;
 - risk of child entering child welfare system, etc.
- e. The age and vulnerability of children should be considered in determining urgency.
- f. Focal Points and call centre staff will advise requesters to immediately contact the call centre if their request becomes urgent over time.
- g. In urgent cases, compassionate crisis intervention that meets the child's needs must come first; and documentation can follow. This means requests can be determined before all documentation is submitted. ISC only needs a minimum amount of information to adjudicate a request:
 - (i) Verbal or written consent from the parent or guardian or a young person who is legally able to make decisions about their care;
 - (ii) If possible, a verbal or other confirmation of the service need by a professional. Such confirmation cannot delay a child receiving urgent support.
 - (iii) If possible, confirmation of eligibility. Conditional approvals can be granted in absence of eligibility confirmation. Efforts to obtain confirmation of eligibility cannot delay a child receiving urgent support.¹³⁴

73. For the reasons that follow, the Caring Society rejects the notion, implication, and/or suggestion that the treatment of urgency in Back-to-Basics is vague, undefined, or problematic.¹³⁵

¹³⁴ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

¹³⁵ C. Blackstock Reply Affidavit at para. 31.

(i) Back-to-Basics did not trench on the priority given in the Tribunal's orders

74. The Tribunal's orders are centered on embedding substantive equality within the child's best interests. Canada's critiques of the Back-to-Basics approach to urgency do not pay due regard to the consequences for children and families. When eligible First Nations children, youth and families identify a case as urgent, the rebuttable presumption ought to be urgency, as the consequences of misclassifying a non-urgent case as urgent are remediable (for instance, through proper triage, as addressed below); however, as the evidence in this case shows, the consequences of treating urgent cases as non-urgent can be catastrophic for children, including death.

75. There are other reasons that Back-to-Basics does not trench on the priority given in the Tribunal's orders to cases involving reasonably foreseeable irreparable harm in establishing a framework for ISC's determination of urgent Jordan's Principle requests. More specifically, the Back-to-Basics Approach does not purport to, and cannot, derogate from the definition of urgency set out in 2017 CHRT 35, which provides in part that: "In a situation where irreparable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented. In all other urgent cases, the evaluation and determination of the request shall be made within 12 hours of the initial contact for a service request [emphasis added]."¹³⁶

76. Simply put, the Tribunal-ordered irreparable harm criterion is in full force and is not eroded by the Back-to-Basics policy. Cases involving reasonably foreseeable irreparable harm to First Nations children must be dealt with before all other cases. Any suggestion made in the evidence or during cross-examination that the Back-to-Basics approach to urgency is causing the most serious urgent cases to fall through the cracks should be rejected. In fact, no clear or cogent evidence was led to demonstrate such an assertion.

77. To the extent cases involving reasonably foreseeable irreparable harm to First Nations children are not being addressed pursuant to the Tribunal's orders, this is indicative of a failure in ISC's ability to identify and prioritize the most serious cases, rather than any deficiency in the Back-to-Basics approach.

¹³⁶ 2017 CHRT 35, at Annex, para. 135(2)(A)(ii).

78. In keeping with its simplicity, the Back-to-Basics Approach requires Focal Points to ascertain a requestor's view of urgency and provides that, where there is a disagreement between the Focal Point and the requestor, the requestor's view should prevail. This is a means for identifying the cases to which the urgent timeframes for determination apply. It is not a restriction on ISC's ability to prioritize which requests should be decided first within that category.

(i) Back-to-Basics was not a radical departure from the SOPs

79. Second, Back-to-Basics does not notably depart from the understanding of urgency set out in the former SOPs. Section 5.1.2.3 of the SOPs ("Assessing Urgency") included, in relevant part, and as summarized below, the following:

- a. At the beginning of the intake process, ISC staff were to assess whether a child was facing an immediate or foreseeable health or safety risk and/or a time sensitive request, with uncertainty in that respect being resolved in favour of urgency;
- b. Where an urgent request for a service, product, or support had been submitted, the Focal Point was to determine the case and begin arranging payment within 12 hours even if not all of the documentation was available (e.g., a check-in about documentation could occur later with the requestor);
- c. All requests involving children in palliative care or where the child had a known safety risk (e.g., flight risk) were considered urgent requests; and
- d. The best interests of the child were the fundamental decision-making point for urgent requests.¹³⁷

80. Accordingly, the former SOPs had a basic definition of urgent requests, involving: (a) immediate or foreseeable health or safety risks; (b) children in palliative care; and (c) children with a known safety risk such as a flight risk. Further, the SOPs also specified that the best interests of the child were fundamental to the urgency determination and that urgent requests could be determined in the absence of full documentation. Accordingly, the Back-to-Basics does not mark

¹³⁷ V. Gideon Affidavit, at Exhibit A (Standard Operating Procedures at pp. 5-6 (5.1.2.3 ASSESSING URGENCY)).

a significant shift from the definitional approach taken in the SOPs.

(ii) Back-to-Basics added definitional clarity

81. Back-to-Basics calls for the compassionate, commonsense, and reconciliation-first reception, processing, and determination of Jordan’s Principle requests.¹³⁸ It may also be understood as an effort to provide additional definitional clarity in determining urgent Jordan’s Principle requests.

82. From the Caring Society’s perspective, Back-to-Basics provides further examples of urgency and more guideposts to ISC and Focal Points in making determinations about when a request is urgent than was provided for under the SOPs. Whereas the SOPs provided three illustrations of urgency (immediate/foreseeable harm, palliative care, and safety risk such as flight risk) in addition to the irremediable harm criterion from the Tribunal, Back-to-Basics provides four additional examples (mention of suicide, physical safety concerns, no access to basic necessities, risk of child entering child welfare system). In this way, Back-to-Basics adds definitional clarity. Importantly, Back-to-Basics is the result of negotiations between the Caring Society and ISC about how to go “back to basics” following the joint realization that the SOPs were not working well on the ground.¹³⁹

G. Building on Back-to-Basics: The Caring Society’s Proposed Caregiving Family Member Death and State of Emergency Criteria

83. The combination of the Tribunal’s criteria and Back-to-Basics’ definitional parameters provide clear and evidence-based guidance regarding urgency. However, it is also clear that ISC requires further direction on what constitutes urgent circumstances to ensure that First Nations children and youth facing such circumstances are receiving the assistance they need.

84. The Caring Society asks the Tribunal to order that Canada immediately include in its definition of “urgent” requests from First Nations children: (a) who have recently experienced the death of a caregiving family member, biological parent(s), and/or siblings, or are reasonably

¹³⁸ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 2).

¹³⁹ B. Mathews Affidavit at para. 12; V. Gideon CX at p. 71, line 8 to p. 72, line 20 and p. 168, line 1 to p. 169, line 7.

anticipated to experience such a death;¹⁴⁰ and (b) who are impacted by a state of emergency proclaimed by a First Nations government, a provincial/territorial government, or the federal government.¹⁴¹ These additional criteria will provide meaningful guidance to ISC and Focal Points in their determinations of urgent requests.

- (i) Urgency includes the death of a caregiving family member, biological parent(s) and/or sibling

85. In the context of compensation, the Tribunal has found that the death of parent or caregiving grandparent can cause serious and compounded harms for First Nations children:

The trauma of losing a parent or grandparent through separation was found by this Tribunal to cause serious harm and suffering to a child and, as found by the Tribunal above, is in addition to the other aspects of the systemic racial discrimination. The Tribunal finds this also applies to the death of a parent or grandparent or family member. Moreover, Marie Wilson, former Truth and Reconciliation Commissioner, provided affidavit evidence on the harm of separating a child and a parent that was considered by this Tribunal. [...]

Moreover, losing the hope of an opportunity of reunification with a deceased parent or grandparent for example, can add further suffering to the child. Another example would be of a child who was removed and later finally reunited with a parent or grandparent who then passes away. It is reasonable to find that it is more probable than not that these situations would add further harm and trauma to a child's soul.

[...]

Furthermore, the evidence and findings discussed above demonstrate the suffering and negative consequences associated with the separation between children and their parents. Therefore, it is reasonable to find that permanent separation caused by the death of a parent or of a grand parent can amount to compound harm for their children.

[...]

In the case at hand, focusing on the children's compound harms first, is in line with a human rights approach and, the spirit of the Tribunal's views in this case.¹⁴²

86. The Caring Society has witnessed the indignities and harms to children and families linked to ISC's failures to consider the urgent circumstances involving the death of close family members.

¹⁴⁰ Caring Society Notice of Motion at para. 1.

¹⁴¹ Caring Society Notice of Motion at para. 1.

¹⁴² [2023 CHRT 44](#) at paras. [147-148](#), [150](#), [159](#).

For example, in the S.M. case, ISC failed to urgently respond to the need for two children to attend the memorial potlatch for their mother and sibling who passed away within weeks of one another.¹⁴³ An Elder sought Jordan's Principle supports in Spring 2022 for her grandchildren to attend a potlatch ceremony in their home territory after the children's mother and sibling had passed away.¹⁴⁴ The Caring Society was involved in this initial request, including the need to educate ISC on the nature of a Potlach ceremony, including forwarding to ISC a PowerPoint presentation from the Elder about the significance of Potlach ceremonies for children.¹⁴⁵

87. Later, in Spring 2023, S.M. requested and was approved for her grandchild, who was in her care, to attend a memorial Potlach ceremony for the child's great-grandfather. S.M. sought to amend her request to accommodate additional days of ceremony, critical to the completion of the Potlach.¹⁴⁶ Notwithstanding that the request was accompanied by a letter of support from the Chief of the First Nation, ISC demanded an additional letter detailing how the ceremony related to the child's best interest and specific needs.¹⁴⁷ Ultimately, the Caring Society provided compassionate supports to the family.¹⁴⁸

88. Given the significant and detrimental mishandling of the original request for these First Nations children to attend the memorial Potlach for their mother and sibling and the grandmother's steps to try and educate ISC regarding the sacredness of a Potlach, it is discouraging that ISC would continue to question the importance to a child to attend a memorial Potlach for a close family member.

89. In short, in S.M.'s case, there was a clear connection between the urgent request and the ongoing Potlach ceremony, which itself was linked to the caregiver and sibling death criterion. The proposed caregiver death criterion is a workable criterion that can, and should, be used to enable requestors to access urgently needed supports linked to the death of or reasonably anticipated death of a caregiving family member or sibling.

¹⁴³ B. Mathews Affidavit at paras. 43-49.

¹⁴⁴ B. Mathews Affidavit at para. 49 and Exhibits 12A and 12B.

¹⁴⁵ B. Mathews Affidavit at para. 49.

¹⁴⁶ B. Mathews Affidavit at paras. 43-49; C. Blackstock Reply Affidavit at paras. 47-48.

¹⁴⁷ B. Mathews Affidavit at para. 45.

¹⁴⁸ B. Mathews Affidavit at para. 48.

90. In Dr. Gideon’s affidavit, ISC asserts that the proposed caregiver death and state of emergency criteria do not necessarily assist in identifying whether or not a given requested service, product or support is urgent.¹⁴⁹ For example, ISC asserts that a request for an unrelated product, service, or support such as a gaming console is likely non-urgent in the context of a child who recently experienced caregiver death or in context of a child in a community impacted by a state of emergency, while a request for therapy services may well be objectively urgent in such circumstances.¹⁵⁰ On cross-examination, Dr. Gideon acknowledged that the Caring Society’s proposed criteria are contributing factors to urgency.¹⁵¹

(ii) Urgency includes a state of emergency

91. The Tribunal has examined and discussed the devastating impacts for children found in a state of emergency when their calls for help are unanswered. In February 2016, Nishnawbe Aski Nation declared a Public Health Emergency. In a supporting letter attached to the affidavit of Dr. Michael Kirlew, Grand Chief Alvin Fiddler set out as follows:

It has almost been one year since NAN declared a Public Health Emergency (February 24, 2016). During that time, we continued our work to address this crisis, and to keep our children with us. While we worked with what we had, we submitted various NAN proposals and community proposals to your government that have been ignored. Of course, there were many reports and initiatives created prior to your term as Prime Minister, but I set out below various NAN and community proposals, inquest, inquiry, and court orders, ignored by your government during your tenure in office. Ignoring proposals and terminating successful community led programming is the starkest example of the problems within the INAC and Ministry of Health bureaucracies. In the last year alone, specific concrete solutions from Wapekeka have been ignored.¹⁵²

92. As set out in 2017 CHRT 7, in January 2017, two twelve-year-old children took their own lives in Wapekeka First Nation (“Wapekeka”). Before the loss of these children, in July 2016, Wapekeka had submitted a proposal, through Health Canada, aimed at seeking funding for an in-community mental health team. The proposal was left unaddressed by Canada for several months with a reactive response coming only after the two youths died by suicide. The media response from Health Canada acknowledged the proposal, but that it came at an “awkward time in the federal

¹⁴⁹ V. Gideon Affidavit at para. 26.

¹⁵⁰ V. Gideon Affidavit at para. 26.

¹⁵¹ V. Gideon CX at p. 89, lines 6-16.

¹⁵² M. Kirlew Affidavit, at Exhibit B (Letter from Grand Chief Alvin Fiddler).

funding cycle’’.¹⁵³

93. In February 2017, two other youths aged 11 and 21 died by suicide in the NAN communities of Deer Lake and Kitchenuhmaykoosib Inninuwug. In response to this tragedy, NAN brought an immediate relief motion with respect to the provision of mental health services to First Nations in Ontario. While the motion was ultimately resolved on consent, the Tribunal the underlined sadness and severity of losing children to suicide.¹⁵⁴

94. The Caring Society has observed the impacts of failing to respond in a timely way to an urgent request in the midst of a state of emergency.¹⁵⁵ In particular, the F.D. case involved an urgent Jordan’s Principle request during the wildfires for food and clothing following a family’s evacuation from their home because of a territorial state of emergency. F.D.’s case was not processed within the Tribunal-ordered timeline for urgent individual requests, and F.D. faced obstacles in accessing funds from ISC because of her inability to pay out of pocket and seek reimbursement from ISC to the point where the Caring Society had to intervene to provide some relief for the family.¹⁵⁶ It should be clear that when one is, for example, displaced by a climate emergency, the products, services, and supports one might need to meet a child’s needs during this period of displacement may be urgent. So too may it be urgent to meet the unmet needs of a child affected by a public health-related state of emergency, such as an opioid epidemic or suicide crisis.

95. Importantly, requests made in the context of a state of emergency may also become urgent with the passage of time and/or changing circumstances, including a family forced to flee from environmental disaster or seeking urgent supports in response to a public health emergency.

(iii) Social prescription evidence may address concerns about apparently unrelated items

96. Second, concerns about apparently unrelated products, services, or supports may be resolved on the basis of recommendations from professionals involved in the child’s case, such as through social prescription, as discussed above.¹⁵⁷ It is possible that recommendations from

¹⁵³ M. Kirlew Affidavit at para. 16; [2017 CHRT 7](#) at paras. 8-9.

¹⁵⁴ [2017 CHRT 7](#) at para 11.

¹⁵⁵ C. Blackstock Affidavit at paras. 136-140; C. Blackstock Reply Affidavit at paras. 46-48.

¹⁵⁶ C. Blackstock Affidavit at paras. 136-140.

¹⁵⁷ R. Giroux Affidavit, and C. Blackstock Reply Affidavit at paras. 39-45.

professionals involved in a First Nations child’s circle of care, including medical professionals and social workers, may link the apparently unrelated products, services, or supports to the child’s unmet need(s), thereby dispensing with concerns about such products, services, or supports on a case-by-case basis. For instance, glowsticks may meet the needs of a neuro-diverse child and be a calming influence during the attendant upheaval of escaping from a climate emergency.¹⁵⁸

97. Moreover, a gaming console may enable a displaced teenager to reconnect with an online community and therefore provide stability and mental wellness in a time of crisis.¹⁵⁹ Understood in this way, the broad and vague concern about “unrelated” products, services, or supports may be addressed in individual cases by relying on the recommendations of relevant professionals. The key consideration should be whether the urgent request will meet a child’s unique and unmet needs and is in keeping with substantive equality and the best interests of that child, not on whether a particular category or requested item is presumptively ineligible as an urgent request. In any case, where the apparently “unrelated” request is not in keeping with substantive equality or the best interest of the child, ISC may deny the request, irrespective of urgency.

(iv) A working triage function would be assistive

98. Third, the Caring Society is not opposed, in appropriately-defined circumstances and exclusive of the palliative care/end of life criterion, to a triage function that identifies those “items” or products, services, or supports within a request that are linked to the urgent nature of the request (e.g., caregiver death or state of emergency being linked to a need for basic necessities such as food or rental supports, to a need for various professional or therapeutic supports, or to a need for moving or other expenses, etc.) as opposed to those that are not (e.g., a request for school supplies three months in advance of the upcoming school year made in tandem with, or prior to, an urgent request for supports for basic necessities following a caregiver’s death or a declared state of emergency). For the purposes of this triage function, it will be essential to consider whether the underlying circumstances or conditions would be exacerbated by the caregiver’s death or anticipated death or by a state of emergency (whether environmental, public health related, or otherwise). If the request would not be so exacerbated (e.g., a request for summer camp registration

¹⁵⁸ R. Giroux Affidavit at para. 20.

¹⁵⁹ R. Giroux Affidavit at para. 20.

fees made three months in advance of the start of the camp), then the Tribunal’s non-urgent timeframes would apply.

- (v) Tribunal-ordered discussions about the Schedule A Jordan’s Principle Workplan will be assistive

99. Fourth, through Tribunal-ordered discussions and/or negotiations about the Schedule A Jordan’s Principle Workplan appended to the Caring Society’s Notice of Motion, the Caring Society is of the view that future changes to ISC’s intake processes may dispense with concerns generated by “unrelated” urgent requests. For instance, an electronic intake form that enables requestors to identify urgent aspects of their Jordan’s Principle request in addition to non-urgent aspects of their Jordan’s Principle request—resulting in individual “line items” of the request being flagged as urgent or non-urgent respectively and then determined on the appropriate Tribunal-ordered timeline—may assist ISC by triaging, at the front end of the intake process, those products, services, and supports which are urgent from those which are not.

H. Improving on Back-to-Basics: Solutions-oriented Proposals for Further Definitional Clarity

100. The process of clarifying the definition of urgency, which began with Back-to-Basics, should continue and that the Parties should strive for further definitional clarity about the circumstances in which a Jordan’s Principle request is urgent.

101. Clarifying the definition of urgency is an iterative process that involves building upon the strong foundation provided in Back-to-Basics. Building upon this foundation could provide that:

- a. Urgent requests are to be determined in a compassionate, commonsense, and reconciliation-first manner that is non-discriminatory, needs-based, grounded in substantive equality, and in keeping with the best interests of the child and the distinct circumstances of their community.¹⁶⁰
- b. Urgent requests include, but are not limited to, circumstances in which:

¹⁶⁰ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 2).

- i. Irremediable harm to a child is reasonably foreseeable;¹⁶¹
- ii. A child is at risk of immediate or foreseeable harm;¹⁶²
- iii. A child is in end-of-life and/or palliative care;¹⁶³
- iv. There is a mention of suicide;¹⁶⁴
- v. There are safety concerns respecting a child,¹⁶⁵
- vi. A child lacks, or is at imminent risk of lacking, access to basic necessities;¹⁶⁶
- vii. A child is or may be at risk of entering the child welfare system;¹⁶⁷
- viii. A child has recently experienced the death of a caregiving family member, biological parent(s), and/or siblings, or is reasonably anticipated to experience such a death;¹⁶⁸
- ix. A child is impacted by a state of emergency (including but not limited to environmental and public health emergencies) proclaimed by a First Nations government, a provincial/territorial government, or the federal government;¹⁶⁹ or
- x. A letter of recommendation, verbal confirmation, or other confirmation from a professional or Elder in the child's circle of care speaks to, touches on, or provides some basis for the urgency of the request.¹⁷⁰

¹⁶¹ [2017 CHRT 35](#).

¹⁶² V. Gideon Affidavit, at Exhibit A (Standard Operating Procedures at p. 5-6).

¹⁶³ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3); See V. Gideon Affidavit, at Exhibit A (Standard Operating Procedures at p. 5-6).

¹⁶⁴ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

¹⁶⁵ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3); See V. Gideon Affidavit, at Exhibit A (Standard Operating Procedures at p. 5-6).

¹⁶⁶ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

¹⁶⁷ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

¹⁶⁸ C. Blackstock Reply Affidavit at paras. 46-48.

¹⁶⁹ C. Blackstock Affidavit at paras. 136-140; C. Blackstock Reply Affidavit at paras. 46-48.

¹⁷⁰ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 3).

- c. Urgent requests do not include:
 - i. Requests or requested items that are not in the best interests of the child;¹⁷¹ or
 - ii. Requests or requested items that are not in keeping with substantive equality.¹⁷²
- d. For greater certainty, no specific item or category of request is presumptively ineligible as part of an urgent Jordan's Principle request.

102. Such an approach would provide Focal Points with 10 circumstances in which a request may be urgent. It would also allow for flexibility on a case-by-case basis by stipulating that Focal Points may approve urgent requests where a request is accompanied by a letter from a professional and/or Elder that provides some basis for the urgency of the request. It would also avoid category-based exclusions of certain products, services, and supports from urgent Jordan's Principle requests.

I. Solutions-oriented Proposals for Managing Urgent Requests at the National and Regional Contact Centres

103. The Caring Society consistently hears complaints from families and service coordinators who are unable to reach Jordan's Principle staff at ISC, including by way of the National Call Centre and regional contact centres.¹⁷³ Families and service coordinators often reach out to the Caring Society as a last resort after being unable to reach anyone at ISC with concerns regarding determination delays, reimbursement delays, and more.¹⁷⁴ Indeed, the Caring Society has even heard from one requestor, A.E., that they attempted to contact ISC 31 times via phone between October 5, 2023 and December 29, 2023, but were unable to do so.¹⁷⁵

104. Especially for urgent cases, requestors' ability to access the National and Regional Contact Centres is crucial: it is the only mechanism that requestors have to place an urgent Jordan's

¹⁷¹ C. Blackstock Reply Affidavit at para. 37.

¹⁷² C. Blackstock Reply Affidavit at para. 37.

¹⁷³ B. Mathews Affidavit at para. 68.

¹⁷⁴ B. Mathews Affidavit at paras. 29-39, 69 and 11B, 11C, 15; C. Blackstock Affidavit, at Exhibits 16, 18, 39A.

¹⁷⁵ B. Mathews Affidavit at paras. 70-72.

Principle request outside business hours.¹⁷⁶ Notwithstanding Canada’s representations that call centre agents are available 24 hours a day, 7 days a week, to receive Jordan’s Principle requests, calls to these lines often go unanswered, and it has not been the Caring Society’s experience that the average callback time for calls in the urgent queue is 20 minutes.¹⁷⁷ That representation also is out of step with the Caring Society’s repeated attempts to contact the National Call Centre and its audits assessing same.¹⁷⁸

105. Informed both by its own experiences and by those of families and service coordinators who have contacted it, the Caring Society has identified numerous serious concerns with the National Call Centre.¹⁷⁹ To address those concerns, the Caring Society has also proposed a number of solutions and remedies in the Schedule A Jordan’s Principle Workplan.¹⁸⁰

106. Beyond the Schedule A Jordan’s Principle Workplan, however, the Caring Society seeks two items of relief relating to urgency and the National and Regional Contact Centres.

- (i) The Tribunal should order ISC to enable requestors to flag whether a request is or has become urgent, as opposed to whether a child is at risk

107. The Caring Society seeks an order that Canada immediately revise its National Call Centre calling tree and other contact mechanisms that may exist to ensure that requestors can immediately and easily indicate that their request is urgent or, in the case of an existing request, has become urgent. ISC should also ensure that staff with authority to review and determine urgent requests are available in sufficient numbers during and outside business hours.¹⁸¹

108. In describing the National Call Centre calling tree, the St-Aubin Affidavit refers to callers’ ability to choose the “child at risk” option to indicate the urgency of their request and redirect callers to a live agent at the start of the call tree.¹⁸² ISC indicated that this is an example of how improvements to ISC’s operations are based on the Caring Society’s recommendations on service

¹⁷⁶ C. Blackstock Affidavit at paras. 46 and 48.

¹⁷⁷ C. Blackstock Affidavit at para. 48; C. St-Aubin Affidavit at para. 51.

¹⁷⁸ C. Blackstock Affidavit at paras. 48-64 and Exhibits 16-24.

¹⁷⁹ C. Blackstock Affidavit at para. 65.

¹⁸⁰ C. Blackstock Affidavit at para. 66 and Exhibit 26 (Schedule A Jordan’s Principle Workplan).

¹⁸¹ Caring Society Notice of Motion at para. 2.

¹⁸² C. St-Aubin Affidavit at paras. 51 and 53.

enhancements.¹⁸³

109. For clarity, the Caring Society has been recommending that callers be able to select an “urgent” option as opposed to a “child at risk” option.¹⁸⁴ The Caring Society seeks an order for ISC to revise its call tree and specifically provide an “urgent option”. Revising the call tree in this way would align with the terminology in place in the Tribunal’s orders and the Back-to-Basics Approach and would add clarity for requestors seeking to inform ISC about the urgent nature of their request.

110. In a similar vein, the Caring Society seeks an order for ISC to enable requestors to flag when their request has become urgent while awaiting determination. Requests may become urgent after they have initially been made for a variety of reasons, including urgency created by time passing while a request is backlogged in one of the regions, by a change in the child’s condition, by a state of emergency, or by the death of a caregiver. Accordingly, requestors should be able to flag to ISC that the level of urgency of their request has changed because of changed circumstances.

(ii) The Tribunal should order ISC to empower call centres to put in place immediate compassionate interventions for urgent requests

111. The Caring Society seeks an order requiring Canada to provide the National and Regional contact centres with the capacity to put in place immediate compassionate interventions when a request is placed for urgent services.¹⁸⁵

112. ISC has advised that Call Centre agents do not determine Jordan’s Principle requests.¹⁸⁶ Instead, the call centres function as intake points and provide support and assistance to requestors in getting their requests into ISC’s system.¹⁸⁷ Once the Call Centre receives the requestor’s request, their call will be transferred to a Focal Point for the actual determination of their request.¹⁸⁸

¹⁸³ C. St-Aubin Affidavit at para. 53.

¹⁸⁴ C. Blackstock Affidavit, at Exhibit 16 (email from Dr. Blackstock to S. Wilson-Clark on January 11, 2023).

¹⁸⁵ Caring Society Notice of Motion at para. 5(c).

¹⁸⁶ V. Gideon Affidavit at para. 38.

¹⁸⁷ V. Gideon Affidavit at para. 38.

¹⁸⁸ V. Gideon Affidavit at para. 38.

113. The Caring Society’s view, discussed further below in the context of staffing strategies for determining urgent requests more efficiently, is that ISC should ensure that the National and Regional Contact Centres have Focal Points embedded among their staff, so that determinations may be made about urgent requests more directly, with immediate supports put in place while doing so. This approach is consistent with, and would facilitate, the Tribunal’s order that “[i]n a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented.”¹⁸⁹ Creating efficiencies at the National and Regional Contact Centres may also assist with ISC’s processing timelines, insofar as these centres may be able to act, to a certain extent, as hubs for processing urgent requests received via phone calls rather than through emails to the regions.

J. Sufficient Staffing to Manage Urgent Requests

114. With respect to staffing levels at ISC, the Caring Society seeks orders that:

- a. Canada will, within 45 days, appoint sufficient persons in each ISC region and nationally who are responsible for managing urgent Jordan’s Principle cases to ensure that the determinations are made in a manner consistent with the Tribunal’s orders;¹⁹⁰ and
- b. Canada will immediately revise its National Call Centre calling tree and other contact mechanisms that may exist to ensure that requestors can immediately and easily indicate that their request is urgent or, in the case of an existing request, has become urgent and ensure that ISC staff with authority to review and determine urgent requests are available in sufficient numbers during and outside business hours.¹⁹¹

115. Both of these requested orders pertain to sufficient staffing levels to manage urgent Jordan’s Principle requests, both in general in the regions and nationally and in particular at the

¹⁸⁹ [2017 CHRT 35](#).

¹⁹⁰ Caring Society Notice of Motion at para. 3.

¹⁹¹ Caring Society Notice of Motion at para. 2.

National and Regional Contact Centres.¹⁹² However, the St-Aubin Affidavit indicates that the Caring Society’s solution of appointing sufficient staff is not feasible for a several reasons, including that there is no readily available formula for sufficient, budget considerations, public service hiring considerations, and training considerations.¹⁹³

116. For clarity, the Caring Society’s relief sought seeks sufficient staffing levels “for managing urgent Jordan’s Principle cases to ensure that the determinations are made in a manner consistent with the Tribunal’s orders”.¹⁹⁴ The Caring Society is not advocating that ISC double, triple, or otherwise increase the amount of existing Full-time Equivalents (“**FTEs**”) working at ISC. In this respect, the Caring Society shares the concerns raised by Dr. Gideon in her cross-examination, when she expressed concern about any attempt to double the FTEs working at ISC and therefore create “a mini federal department with a heavy public service capacity”.¹⁹⁵ Indeed, the Caring Society’s recommendation that Canada adopt a presumptive approval model for requests under \$500 that are supported by a letter of recommendation could be implemented using automation. As set out in the Notice of Motion and throughout these submissions, the Caring Society is seeking multi-faceted changes within the operational structure of Jordan’s Principle – many of which the Caring Society has been advocating and suggesting for years.

117. The Caring Society’s proposed relief seeks to address ISC’s general practice of having Focal Points deal with and determine both urgent and non-urgent cases.¹⁹⁶ In the very same way that Focal Points have focused on urgent cases through surge initiatives,¹⁹⁷ ISC could and should establish dedicated Focal Points in the regions and nationally (including at the 24-hour line) who are particularly adept at handling urgent cases. Since ISC has had some success in doing this on a

¹⁹² Caring Society Notice of Motion at paras. 2-3. Separately, the Caring Society’s relief sought at para. 5(a) of its Notice of Motion also touches on staffing issues to the extent that the Caring Society seeks an order for ISC to “[r]estrict the National Jordan’s Principle Contact Centre’s practice of referring urgent cases to ISC regional offices (or vice versa) to only situations wherein ISC staff conduct a live transfer of the requestor and can confirm that the Regional Office (or National Jordan’s Principle Contact Centre) has sufficient capacity to determine the case within the timeframe required under the Tribunal’s orders”.

¹⁹³ C. St-Aubin Affidavit at para. 59.

¹⁹⁴ Caring Society Notice of Motion at para. 3 (emphasis added).

¹⁹⁵ V. Gideon CX at p. 152, line 2-11 (see also p. 149, line 18 to p. 153, line 21).

¹⁹⁶ C. St-Aubin CX at p. 372, line 6-13.

¹⁹⁷ C. St-Aubin CX at p. 372, line 16-23.

targeted basis in the context of surge initiatives, it may enjoy continued and sustained success by doing so permanently. This would also ensure that ISC has in place staff with authority to review and determine urgent requests in sufficient numbers, during and outside business hours.

PART II - TIMELINESS

Overview

118. In Part II, the Caring Society addresses the following issues on this motion:

- a. When the determination clock starts;
- b. Backlogs;
- c. Reimbursement delays; and
- d. The *Financial Administration Act*.

119. The Caring Society's suggestions in this part, which seek to remedy Canada's non-compliance, align with the principles and guidance in the *Department of Indigenous Services Act's* preamble:

And whereas it is appropriate to establish a Department of Indigenous Services and that the Department, in carrying out its activities,

ensures that Indigenous individuals have access — in accordance with transparent service standards and the needs of each Indigenous group, community or people — to services for which those individuals are eligible,

takes into account socio-economic gaps that persist between Indigenous individuals and other Canadians with respect to a range of matters as well as social factors having an impact on health and well-being,

recognizes and promotes Indigenous ways of knowing, being and doing,

collaborates and cooperates with Indigenous peoples and with the provinces and territories, and

implements the gradual transfer of departmental responsibilities to Indigenous organizations.¹⁹⁸

A. When the Determination Clock Starts

120. The Caring Society seeks an order clarifying that, consistent with 2017 CHRT 14 and 2017 CHRT 35, Canada shall immediately: (i) “begin the determination clock” when a request on behalf of a First Nations child or youth is received; and (ii) stop the clock when the requestor is advised of the determination of the case.¹⁹⁹ The focus of the Caring Society’s request flows from the perspective of the First Nations child who is waiting; for them, their experience is tied to the date the request is made and not the date an ISC employee looks at the request. Such an approach is in keeping with the spirit of the Tribunal’s rulings date: focusing on the experiences of the child.

121. The Caring Society is concerned that ISC only starts the “clock” on the timeframes for determination when ISC is satisfied that it has the documentation required as opposed to when the requestor first submits their request. ISC is skirting its compliance with the Tribunal’s orders, which require meeting First Nations children’s needs in a timely manner. It does this by creating and relying on systems that make it very difficult for requesters to have their requests considered. Its 24-hour line results in calls that are unreturned or receive significantly delayed callbacks. Its email intake has resulted in many thousands of requests that remain unopened or unentered into ISC’s database.²⁰⁰ ISC then does not count these requests in its timeline compliance as ISC has not “satisfied itself” that the required documentation has been included.²⁰¹ Indeed, when asked on cross-examination when ISC starts the determination clock on Jordan’s Principle requests, Ms. St-Aubin’s evidence was as follows:

Q. Do you know when they’re starting the clock on that? When does the day count starts?

A. So when does the clock start and when the request begins to –

Q. Yes.

¹⁹⁸ *Department of Indigenous Services Act*, S.C. 2019, c. 29, s. 336, Preamble.

¹⁹⁹ Caring Society Notice of Motion at para. 6.

²⁰⁰ C. Blackstock Affidavit at para. 65(f) and Exhibit 39(b) (at p. 2 (July 6, 2023 email from Dr. Blackstock to Samatha Wilson-Clark)).

²⁰¹ C. Blackstock Affidavit at para. 65(f) and Exhibit 39(b) (at p. 2 (July 6, 2023 email from Dr. Blackstock to Samatha Wilson-Clark)).

A. -- process, for lack of a better word?

Q. For the purpose of this, you know, how old a request is –

A. Right. So it's when the file is completely entered into the case management system with the relevant information (indiscernible).

Q. And that would be the end of the intake process?

A. Yes.

Q. So if a file is in the email queue, the time that's spent in the email queue isn't counted towards that 15 or 30-day standard?

A. As far as I know it's not. However, I'm (indiscernible). That's the information I --²⁰²

122. ISC's approach to "starting and stopping the clock" amounts to a public relations response. It does not account for the real needs of children, youth and families who are in good faith trying to contact ISC to make requests and have their cases determined in a timely manner. This echoes the evidence heard during the hearing on the Merits, which described similar strategies used by Canada to shield itself from allegations of discriminatory conduct. This old mindset approach focuses on how the Department looks and deflects energy from meeting the real needs of those who are the primary beneficiaries of the Tribunal's orders. Indeed, there was a time when Canada's position was simply that it was upholding Jordan's Principle because there were no Jordan's Principle cases.²⁰³

123. Grounded in its longstanding concerns about when ISC "starts the clock",²⁰⁴ the Caring Society's position is that the determination clock should start to run when the requestor first attempts to make a request. Such an approach is grounded in the following:

²⁰² C. St-Aubin CX at p. 216, line 20 to p. 217, line 17.

²⁰³ April 30, 2014 examination-in-chief of C. Baggley at p. 117, lines 1-12.

²⁰⁴ B. Mathews Affidavit, at Exhibit 4 (December 2018 Jordan's Principle Concerns Document, discussing payment delays at p. 13: "In our dealings with the financial department, it would seem that finance personnel 'turn on the clock' when they receive all relevant information from Focal Points, or when they themselves have time to start working on payment. As such, the 'clock' does not actually start when families submit their information; invoices and payment information may well be sitting in the Focal Point's (or finance person's) inbox for weeks before attention is given to the file.")

- a. Children, youth and families cannot control how and when ISC receives or reviews a request – the Tribunal’s timeline orders are in place to protect and promote the substantive equality rights of First Nations children and their families. The administrative burden of processing a request ought to be borne by the government²⁰⁵ and not those seeking to access a needed service, product or support;
- b. The Back-to-Basics Approach stipulates that Jordan’s Principle must be implemented in a way that minimizes the administrative burden on families. Urgent requests can be determined before all documentation is submitted and ISC only needs a minimum amount of information to determine a request.²⁰⁶ To this end, the timelines ought to be for the benefit of First Nations children and not be defined in a way that provides an administrative shield that protects government in relation to compliance issues;
- c. Using the date a request is made also fosters a collaborative relationship between ISC and the requestor, ensuring that ISC will raise any concerns with the documentation in a timely way while avoiding multiple requests for additional documentation, so that the requestor can either address those concerns at once or submit a new request; and
- d. Using the date a request is made also more accurately captures the time the child is waiting. Indeed, when a professional makes a professional recommendation for a particular service, product, or support, that child is entitled to receive same at the time the professional makes its recommendation, in line with the Tribunal’s orders.

124. In the alternative, the Caring Society submits that the determination clock should start to run when ISC has received a recommendation/authorization from a professional or a letter of support from a community-authorized Elder/knowledge holder, as that constitutes reasonable documentation and is the presumptive standard under which ISC may determine a Jordan’s

²⁰⁵ [2017 CHRT 14](#) at para. [93](#), [98](#) and [2017 CHRT 35](#)

²⁰⁶ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at pp. 2-3).

Principle request pursuant to the Back-to-Basics Approach.²⁰⁷

B. Backlogs

125. The many thousands of “backlogged requests” addressed in this section do not include families who have told the Caring Society they simply “gave up” because they could not reach ISC, or no one at ISC got back to them.²⁰⁸ Moreover, the Caring Society uses the term “backlog” with caution. It is an administrative and procedural term that can mask the serious consequences for children who are in need and cannot reach anyone at ISC to have their case determined. Indeed, the Tribunal has already found in this case that significant and detrimental delays can cause real harms to First Nations children and families, including serious physical and mental pain.²⁰⁹

126. Backlogs are a serious issue. Intake backlogs are requests submitted to ISC that are unopened or not entered into ISC’s data system. This means that no one has assessed the nature of the request to determine its urgency or time sensitivity. This creates serious risks of harm for First Nations children. Other backlogs involve waiting for ISC to determine the request, including acknowledging receipt of additional documentation, redetermination and appeals. At every stage, children are left waiting. Most concerning are those stages in which ISC has no way of knowing how serious the children’s needs are.

127. The Caring Society seeks the following measures within seven days of the Tribunal’s order:

- a. Report back to the Tribunal and the parties to identify the total number of currently backlogged cases, including with information regarding the cumulative number of backlogged cases at month’s end, dating back 12 months;
- b. Contact all requestors in the backlog by email or phone setting out the Tribunal’s timeline orders, noting Canada’s non-compliant backlogs and urging requestors with urgent or time sensitive requests, including non-urgent requests that have become urgent, to contact specific personnel who will determine such requests within 12 hours. The notice should also include timeframes for resolving the

²⁰⁷ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at pp. 3-4).

²⁰⁸ See, for example, C. Blackstock Affidavit at paras. 101-102, discussing the case of S.W.

²⁰⁹ [2019 CHRT 39](#) at para [226](#).

backlogs, information on requesting retroactive payments for requestors who had to pay for services, products or supports due to Canada's non-compliance, and information on measures being taken to prevent backlogs from recurring.

- c. Triage all backlogged requests for urgency and communicate with all requestors with undetermined urgent cases to take interim measures to address any reasonably foreseeable irremediable harms; and
- d. Report back to this Tribunal and the parties regarding the number of urgent cases identified in the backlog and the timeframe by which all urgent and non-urgent backlogged requests will be determined.²¹⁰

128. The Caring Society has been raising concerns with ISC about operational backlogs, and the negative impacts they have on children and families, since December 2018.²¹¹ It raised the need to establish an effective 24-hour line even earlier, in 2016.²¹² Various iterations of the Caring Society's Jordan's Principle Concerns Document have addressed concerns about backlogs.²¹³ Nonetheless, Canada did not disclose the severity of the backlog issue to the Parties, JPOC, NAC or the EAC. Nor did they seek assistance in addressing the backlog. Such failure to disclose the problem and invite solutions amounted to a further "public relations response", as addressed above.

129. In August 2023, the Caring Society became aware of the possible extent of the operational backlogs at ISC. During a JPOC meeting, a First Nations Jordan's Principle representative noted that British Columbia region had a backlog of 2,000 requests in queue.²¹⁴ This representative later advised the Caring Society that her understanding was that, as of July 28, 2023, British Columbia Region had 1,000 requests in queue and 2,000+ requests unopened in the region's inbox, waiting for review.²¹⁵ Then, at the September 19, 2023, JPOC meeting, ISC advised that it had approved

²¹⁰ Caring Society Notice of Motion at para. 4.

²¹¹ B. Mathews Affidavit at para. 75 and Exhibit 4 (December 2018 Jordan's Principle Concerns Document, discussing payment delays at p. 13).

²¹² Affidavit of Cindy Blackstock, affirmed October 30, 2020, Exhibit 1 (September 22, 2016 Letter from Dr. Blackstock to Rick Theis), in support of the Caring Society's August 7, 2020 Notice of Motion for Relief for Non-Agency Communities.

²¹³ B. Mathews Affidavit at paras. 75-77 and Exhibits 4-5 and 18.

²¹⁴ C. Blackstock Affidavit at para. 103; B. Mathews Affidavit at para. 73.

²¹⁵ B. Mathews Affidavit at paras. 73-74.

overtime to focus on reducing the reported British Columbia backlog.²¹⁶ ISC still made no disclosure of the severity of the backlog problem in other regions at Headquarters.²¹⁷

130. ISC's decision to sweep serious non-compliance concerns under the carpet instead of disclosing them raises serious questions about its commitment to ending discrimination and preventing its recurrence. The backlog problem would have been more easily attended to when the backlogs were just starting to accumulate. Put simply, problems cannot be solved if they are not acknowledged.

131. The evidence on this motion shows that ISC's own understanding of its non-compliance is incomplete. As of March 27, 2024, ISC says that there are between 40,000 and 82,000 products, services and supports under consideration within ISC. However, this excludes the intake backlog in many regions. There is also no data on the volume of backlogged payments. ISC is only able to say that in December 2023, 43% of all invoices were processed within 15 business days.²¹⁸

132. Notwithstanding the high numbers of backlogged requested items, Canada's evidence on this motion suggests that, up until recently, there has been no effective internal accountability to redress and control the backlog, despite the Caring Society's repeated calls to do so:

- a. Ms. St-Aubin only became aware of the extent of the backlogs issue and/or began to investigate it months after serious concerns were raised at JPOC. This awareness followed conversations with Chiefs and Leadership in Manitoba, as opposed to information reported up by ISC officials;²¹⁹
- b. Ms. St-Aubin indicated that she left it up to ISC officials as to whether they would bring an issue of this nature to her desk;²²⁰ and
- c. Despite the backlog crisis being raised at JPOC in August 2023, ISC is still not able to provide a full and accurate account of its intake backlogs. ISC has provided no

²¹⁶ B. Mathews Affidavit at para. 79 and Exhibit 17.

²¹⁷ B. Mathews Affidavit at paras. 80-84; C. Blackstock Affidavit at paras. 103-112; and C. Blackstock Reply Affidavit at paras. 50-51.

²¹⁸ AGC Responses to RFI, at Appendix B (at p. 13).

²¹⁹ C. St-Aubin CX at p. 393, line 12 to p. 395, line 22.

²²⁰ C. St-Aubin CX at p. 395, line 23 to p. 396, line 14.

estimated intake pending backlog for Alberta, Ontario, Quebec, Saskatchewan, and Northern regions and it has not provided updated “post surge” information for the regions for which data was provided.²²¹

133. The state of ISC’s understanding of its backlog problem is reminiscent of its early implementation of the Tribunal’s Jordan’s Principle orders, despite the Tribunal’s direction in 2017 CHRT 14 that “performance measures should be tracked in terms of stated timelines for resolving Jordan’s Principle cases and in providing approved services.”²²²

134. Further data, information, auditing, and reporting is needed from ISC to better understand the issue, remedy it, and ensure it does not happen again. The failure to address requests within the Tribunal’s timelines has serious impacts on children. Operating in a self-created informational desert cannot shield Canada from its legal obligations to meet the needs of First Nations children, youth and families, particularly in urgent circumstances. ISC must be motivated to solve the problem at the level of children and families, thus facilitating a collective problem-solving approach to prevent the recurrence of its non-compliance.

(i) Intake Backlog and Surge Support

135. Intake backlogs represent the most pressing and potentially detrimental backlog issue facing First Nations children under Jordan’s Principle. An intake backlog refers to unopened and uncategorized requests. This includes the risk that ISC does not know whether a request is urgent or whether failing to respond or otherwise determine the request within with the Tribunal-ordered timelines will have to a detrimental impact for a child.²²³

136. For example, in X.X.’s case, the Caring Society sought an update about a request for an extension for food supports for X.X.’s children and flagged that the request was urgent. When the Caring Society received a callback from the National Call Centre, the agent was unable to give an update about the determination timeline as the request “wasn’t in the system yet”. The Caring

²²¹ AGC Responses to RFI, at Appendix B (at p. 16). Despite ISC having provided figures regarding Ontario in this table, counsel advised on April 19, 2024 that this may have been in error.

²²² [2017 CHRT 14](#) at para [107](#), see also para [135\(2\)\(C\)](#), which requires Canada to track, among other items, “the progression of each case” and “the timelines for resolving each case”.

²²³ V. Gideon CX at p. 40, line 7 to p. 40, line 10, and Exhibit 2; C. St-Aubin CX at p. 182, line 4 to p. 183, line 22.

Society had previously made it clear to ISC that the amount of support provided for this family (totaling \$270 for the week for meals for her four children) was not sufficient.²²⁴

137. ISC's evidence does not reveal the full picture respecting the scope of its intake backlogs.²²⁵ As a result, it is unclear how many urgent cases are awaiting determination in unopened emails in regional inboxes. The worst-case scenario is that a situation or request akin to those brought by IFNA and Pikangikum First Nation is lost in the intake backlog.

138. ISC has described its use of surge teams between January 15 and March 8, 2024 to assist with intake backlogs, facilitate determinations, and provide ongoing support to the regions.²²⁶ These surge teams have reviewed backlogged email correspondence and provided data entry support, with ISC indicating that doing so has enabled Focal Point staff to focus on other areas, such as determinations.²²⁷ According to ISC, surge teams are an interim measure to support its implementation of Jordan's Principle while ISC develops broader systems and technologies to enable faster determinations.²²⁸ This use of surge teams has been part of measures that ISC has introduced to address backlogs, with other measures including managing call volume, hiring additional staff, managing staff retention, and use of technology.²²⁹

139. From ISC's evidence about surge teams, four things are clear:

- a. Surge teams may be somewhat effective in reducing email intake backlog. For example, in the British Columbia region, surge support from February 28 to April 8, 2024 cleared the intake pending backlog from 1,677 to 0.²³⁰
- b. The daily rate at which surge teams reduced intake backlog, could and should be improved upon. In the British Columbia example, it appears as though the surge efforts reduced the daily intake backlog by roughly 41 intake requests per day (being the average rate arising from 1,677 emails being dealt with over a 41-day

²²⁴ B. Mathews Affidavit at Exhibit 11A.

²²⁵ AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

²²⁶ C. St-Aubin Affidavit at paras. 60-62.

²²⁷ C. St-Aubin Affidavit at para. 60.

²²⁸ C. St-Aubin Affidavit at para. 62.

²²⁹ C. St-Aubin Affidavit at para. 44.

²³⁰ AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

period).²³¹ In Atlantic region, it appears as though the surge efforts reduced the daily intake backlog by roughly 43 intake requests per day (being the average rate arising from 300 emails being dealt with over a 7-day period).²³²

- c. Surge teams, alongside operational quality control measures, would be more effective if they were implemented on a sustained basis until an intake backlog has been fully cleared. For example, in the Manitoba region, the intake pending backlog was reduced from 5,000 to 3,337 from January 24 to March 5, 2024, which is a reduction of 1,663 cases in a roughly 42-day period (or roughly 40 cases a day).²³³ While this is an improvement on the intake backlog prior to January 24, 2024, it is still a serious backlog and one that risks building once again. Moreover, having one's request wait among a backlog of 3,337 at intake rather than 5,000 may be cold consolation to children with unmet needs, especially urgent unmet needs. If surge efforts could clear the Manitoba region's intake backlog in about 83 days (the time required to clear an intake backlog of 3,337 at an average rate of 40 cases a day),²³⁴ then ISC should conduct those surge efforts.
- d. Surge support at intake should be part of a suite of strategies, not the only one, as ISC has noted.²³⁵ It is clear that surge support at intake alone will not resolve the backlogs issue, given the backlogs may arise at various parts of the determination process.²³⁶

140. ISC must be committed to redressing the intake backlog issue as quickly as possible: First Nations children with urgent requests need an urgent response; it is their right to have their request assessed within the urgent timelines to protect them from harm.

²³¹ AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

²³² AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

²³³ AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

²³⁴ AGC Responses to RFI, at Appendix B (at p. 16, Table 2).

²³⁵ C. St-Aubin Affidavit at para. 44.

²³⁶ AGC Responses to RFI, at Appendix B (at pp. 13 and 16-18).

(ii) In Process Backlog is Less than One Month of ISC’s Processing Capacity

141. Although there are tens of thousands of backlogged requested items,²³⁷ the problem is not insurmountable considering how many requested items ISC is able to approve each month.

142. Based on the evidence in the Jordan’s Principle Monthly Reports, the Caring Society’s understanding is that ISC may be processing, on average, roughly 100,000 (or more) Jordan’s Principle requests per month:²³⁸

- a. From April 1 – November 30, 2023, ISC approved a total of 1,502,063 requested items,²³⁹ which indicates that with an approval rate of roughly 96%,²⁴⁰ ISC made determinations regarding roughly 1,564,649 requested items during this period (or, on average, 130,387 requested items per month);
- b. Between November 2023 and December 2023, ISC approved a total of 91,724 requested items (being the difference between the 1,593,787 approvals from April 1 – December 31, 2023²⁴¹ and the 1,502,063 approvals from April 1 – November 30, 2023),²⁴² which indicates that, with an approval rate of roughly 96%,²⁴³ ISC made determinations regarding roughly 95,546 requested items;
- c. Between December 2023 and January 2024, ISC approved a total of 195,853 requested items (being the difference between the 1,789,640 approvals from April 1 – January 31, 2024²⁴⁴ and the 1,593,787 approvals from April 1 – December 31, 2023),²⁴⁵ which indicates that with an approval rate of roughly 96%,²⁴⁶ ISC made determinations regarding roughly 204,014 requested items; and

²³⁷ AGC Responses to RFI, at Appendix B (at p. 13).

²³⁸ AGC Responses to RFI, at Appendix C.

²³⁹ AGC Responses to RFI, at Appendix C (at p. 20).

²⁴⁰ V. Gideon Affidavit at para. 6 (“Growth in Request Volume” table).

²⁴¹ AGC Responses to RFI, at Appendix C (at p. 24).

²⁴² AGC Responses to RFI, at Appendix C (at p. 20).

²⁴³ V. Gideon Affidavit at para. 6 (“Growth in Request Volume” table).

²⁴⁴ AGC Responses to RFI, at Appendix C (at p. 28).

²⁴⁵ AGC Responses to RFI, at Appendix C (at p. 24).

²⁴⁶ V. Gideon Affidavit at para. 6 (“Growth in Request Volume” table).

- d. Between January 2024 and February 2024, ISC approved a total of 97,473 requested items (being the difference between the 1,887,113 approvals from April 1 – February 29, 2024²⁴⁷ and the 1,789,640 approvals from April 1 – January 31, 2024),²⁴⁸ which indicates that with an approval rate of roughly 96%,²⁴⁹ ISC made determinations regarding roughly 101,534 requested items.

143. Therefore, the fact that ISC’s estimated request in process backlog as of March 27, 2024 was between 34,116 on the low end and 75,397 on the high end suggests that the Parties’ and the Tribunal’s concerns about this specific backlog should be modulated accordingly.²⁵⁰ The Caring Society’s view is that the current “in progress backlog” is significant and of serious concern, particularly as it is leading some requests to linger for many months.²⁵¹ However, it would appear that amounts to less than one month of ISC’s processing capacity, regardless of whether the low end or high-end estimates more accurately capture the realities of this backlog.

144. Additionally, the evidence shows that the regions are operating with varied request in process backlog levels.²⁵² Quebec’s estimated request in progress backlog is between 110 and 592, whereas Ontario’s is between 6,819 and 10,946 and Manitoba’s is between 4,750 and 12,660.²⁵³

145. In terms of its request in process backlogs, Quebec region may offer some best practices to other ISC regions (though its comparatively lower “in progress backlog” may also be explained by other factors, such as the volume of requests that region processes). Quebec’s experience lends support to the Caring Society’s request that ISC be ordered to consult with the Caring Society about the proposed solutions in its Schedule A Jordan’s Principle Workplan, including the solution that ISC be ordered to, “Within 60 days, audit ISC regional offices to understand why compliance rates (against timelines for determining requests) and payment timelines vary by region, to identify

²⁴⁷ AGC Responses to RFI, at Appendix C (at p. 32).

²⁴⁸ AGC Responses to RFI, at Appendix C (at p. 28).

²⁴⁹ V. Gideon Affidavit at para. 6 (“Growth in Request Volume” table).

²⁵⁰ AGC Responses to RFI, at Appendix B (at p. 17, Table 3).

²⁵¹ B. Mathews Affidavit at paras. 32, 107, Exhibit 12A at p. 4, Exhibit 18 at p. 6, Exhibit 22C at p. 2, Exhibit 24 at p. 2; C. Blackstock Affidavit at para 82, Exhibit 9 at pp. 9-10, Exhibit 30 at p. 2. Additionally, the scatter plots contained as Figures 1-4 show a significantly concerning number of requests that have been outstanding for months (see: AGC Responses to RFI, at Appendix D).

²⁵² AGC Responses to RFI, at Appendix B (at p. 17, Table 3).

²⁵³ AGC Responses to RFI, at Appendix B (at p. 17, Table 3).

‘best practices’ in regions with higher compliance rates, and to course correct in keeping with the Tribunal’s orders, audit results and best practices”.²⁵⁴

146. The Caring Society has recommended presumptive approvals for requests valued at less than \$500 that are accompanied by at least one letter of support from a professional and automation of the intake process as two options to reduce backlogs. It has also been clear with ISC that it is welcome to provide its own solutions that meet or beat the efficacy of those the Caring Society puts forward in order to do better for First Nations children and families.²⁵⁵ If turning to the best practices from the Quebec region is one way of doing so, then ISC should provide details of the solution to the Caring Society and implement the solution immediately.

(iii) Impact of Backlogs on Service Coordinators

147. It is important to note that the impact of ISC’s backlogs is not limited to First Nations children and families. They also impose a hardship on Service Coordinators. Backlogs amount to a waste of time for Service Coordinators whose time would be better used working directly with families, instead of managing ISC’s operational issues. Service Coordinators are now spending time chasing after ISC rather than working with families and, at times, are forced to take on the unfair and uncomfortable position of taking the brunt of community frustration regarding Canada’s non-compliance.²⁵⁶

148. Service Coordinators provide a vital link to First Nations children, youth and families accessing Jordan’s Principle. Unfortunately, Canada has tried to shift the burden of its non-compliance onto Service Coordinators. For example, Service Coordinators are being advised to submit group requests as opposed to individual requests to alleviate the backlogs, essentially shifting the burden of ISC’s non-compliance and operational issues to Service Coordinator work to make such requests.²⁵⁷ At the same time, ISC is not providing further funding to support service coordinators in this effort. As Ms. Hallgren says, “We are so strapped at times... ISC is not funding

²⁵⁴ Caring Society Notice of Motion at para. 9 and Schedule A Jordan’s Principle Workplan (at s. 5.5).

²⁵⁵ C. Blackstock Affidavit at para. 179.

²⁵⁶ See e.g. C. Blackstock Affidavit at paras. 147, 162-163 and Exhibits 54, 59.

²⁵⁷ C. Blackstock Reply Affidavit, at Exhibit 19, p. 1.

the processing appropriately.”²⁵⁸

149. It is telling that First Nations leadership organizations, such as Federation of Sovereign Indigenous Nations (“**FSIN**”), find the need to pass motions that remind Canada of its legal obligations. Indeed, FSIN has called on Canada:

to take immediate and positive measures to publicize that it is Canada that is ultimately responsible for implementing the Canadian Human Rights Tribunal orders and that where it relies on First Nations and First Nations Coordinators to assist with implementation of the orders, Canada must provide adequate resources, capacity, liability and workplace safety measures that take into account the distinct circumstances arising from First Nations persons providing services in their own communities.²⁵⁹

C. Reimbursement and Payment Delays

(i) Understanding the Problem

150. During Dr. Gideon’s cross examination, Chairperson Marchildon and Dr. Gideon shared the following exchange:

THE CHAIR: [...] Would you agree with me that if a family is poor and that’s been recognized earlier, and in your evidence that we are -- you’re dealing with families that are poor, that could be extremely difficult for them to even advance for three days, seven days and wait for reimbursement, even if it takes the 14 days that you’ve mentioned? Would you agree that poverty can [make] this very difficult for a family?

DR. GIDEON: I would agree with that, that’s why we’ve set-up some advanced payment options, including gift cards in some context, but there are value limits to those payments. The best is for us to set-up a direct arrangement or, if it’s the landlord, we can issue a payment to the landlord. If it’s the grocery store and they will take a direct billing from us. Could be Home Depot, right, we set-up arrangements with Home Depot. Like, that is the preferred mechanism for supporting a family that is living in poverty.²⁶⁰

151. Despite the existence of good ideas and practical solutions for addressing reimbursement delays, the evidence makes clear that families continue to bear the burden of ISC’s failure to redress payment backlogs. Dr. Gideon’s ideas – while helpful for some families – are not currently

²⁵⁸ C. Blackstock Reply Affidavit, at Exhibit 19, p. 1.

²⁵⁹ C. Blackstock Affidavit, at Exhibit 58.

²⁶⁰ V. Gideon CX, at Exhibit 2 (at p. 123, line 6 to p. 124, line 1).

in place or sufficient for all families.

152. The evidence proffered on this motion makes clear that there are significant concerns from families, service coordinators, and service providers regarding excessive delays in, and restrictions on, receiving reimbursement for approved and provided Jordan's Principle services.²⁶¹

153. First Nations communities and families are experiencing severe delays in obtaining reimbursements. The Caring Society has evidence that some reimbursements have taken over a year to receive.²⁶² These delays cause significant financial consequences and stress. For example, the Caring Society has learned of instances of:

- a. Service providers, including daycares and health professionals, threatening to terminate, or outright refusing services due to lack of payment;²⁶³
- b. Children at risk of being removed from homes to do non-payment;²⁶⁴
- c. Families opting out of making requests through Jordan's Principle due to lengthy reimbursement delays, the resulting financial hardship this creates, and the interest charges incurred;²⁶⁵ and
- d. Family services organizations and First Nations communities draining their internal funds to cover costs for families due to reimbursement delays, which in some instances have caused deficits within these entities.²⁶⁶

154. Children are being left without the supports and services they need, and are at greater risk of harm, due to ISC's disbursement delays. This is not in keeping with Jordan's Principle's intent or spirit.

155. While ISC follows an internal service standard requiring Jordan's Principle staff to process

²⁶¹ C. Blackstock Affidavit at para. 114.

²⁶² C. Blackstock Affidavit at para. 124.

²⁶³ C. Blackstock Affidavit at paras. 124, 129, 132; B. Mathews Affidavit at paras. 93-96.

²⁶⁴ C. Blackstock Affidavit at para. 124.

²⁶⁵ C. Blackstock Affidavit at para. 129.

²⁶⁶ C. Blackstock Affidavit at paras. 130, 132, 134. See also C. Blackstock Reply Affidavit at para. 30 and Exhibit 13, re the experience of Keewatin.

and issue reimbursements—both to service providers and to individual requestors—within a 15-business day period, the evidence set out above makes clear that this service standards is not equitably applied to all requests and determinations.²⁶⁷ The Caring Society has voiced concerns for some time that this timeline is not working on the ground.²⁶⁸ In general, the Caring Society has four main concerns about ISC’s reimbursement practices.

156. First, ISC’s compliance rate with the 15-business day standard is now quite low. According to its own data, ISC processed just over half of all payments within its 15-day timeline in 2022-2023.²⁶⁹ This is a sharp reduction from 82.9% of payments processed within 15 days in 2020-2021.²⁷⁰ While the reduction is explained in part by ISC approving (and having to pay for) more requested items than ever before in 2022-2023,²⁷¹ the practical effect is that many First Nations children and families are waiting longer than they should to receive approved services, supports or products, or families are waiting longer to be reimbursed. To this end, ISC’s capacity is not aligned with the needs of First Nations children and families, nor with the legal orders made by the Tribunal and the Back-to-Basics approach, which seeks to operationalize those orders.²⁷²

157. Second, there are uneven and unexplained variations in capacity to meet the 15-business day standard across the country. For example, from April 1, 2022 to December 1, 2022, Ontario region processed 32.8% of 6,774 payments (or 2,221 payments) within ISC’s 15-day timeframe, whereas Northern region processed 53.2% of 7,817 payments (or 4,161 payments) in that time.²⁷³ Quebec processed 93.6% of 1,779 payments in that time (or 1,666 payments), whereas Atlantic region processed 76.7% of 1,729 payments (or 1,327 payments).²⁷⁴ The reason that different regions have very divergent performance in dealing with similar numbers of payments are unclear to the Caring Society.²⁷⁵ Population alone does not explain these variances as, for instance, Quebec

²⁶⁷ C. Blackstock Affidavit at para. 113.

²⁶⁸ See e.g., C. Blackstock Affidavit, at Exhibit 12 (April 2019 Jordan’s Principle Concerns Document at pp. 14-15).

²⁶⁹ C. Blackstock Affidavit at para. 115.

²⁷⁰ C. Blackstock Affidavit at para. 115.

²⁷¹ C. Blackstock Affidavit at para. 116.

²⁷² See e.g., V. Gideon Affidavit at para. 72.

²⁷³ C. Blackstock Affidavit, at Exhibit 45 (ISC Payment Timelines FY22-23 at pp. 7-8).

²⁷⁴ C. Blackstock Affidavit, at Exhibit 45 (ISC Payment Timelines FY22-23 at pp. 5 and 9).

²⁷⁵ C. Blackstock Affidavit at para. 120.

outperforms less populated regions. Where a First Nations child lives in Canada should not determine the likelihood of their receiving timely reimbursement from ISC.²⁷⁶

158. Third, several service providers have lost trust in ISC's ability to effect timely payment. As a result, and to the Caring Society's knowledge, these providers are refusing to provide services or are contemplating terminating service provision to families.²⁷⁷ Some of these service providers include health professionals such as dentists and psychiatrists.²⁷⁸ Child supports, such as daycares, are also threatening to pull their services due to a lack of payment.²⁷⁹

159. Fourth, even if ISC regularly abided by its 15-business day timeline, it would still be too long to meaningfully assist families in need who are often living in deep poverty. For example, a 15-business day standard may not meet the urgent needs of children whose guardians may be required to expend significant amounts of money upfront and await reimbursement.²⁸⁰ Financially vulnerable families, or those fleeing domestic violence and natural disasters,²⁸¹ may feel this strain more acutely when, following a Jordan's Principle approval from ISC, they purchase everyday essentials such as clothing, diapers, or food, and must wait 15-business days, or more, to be reimbursed. These families may lack control or certainty over their cash flow and therefore may be unable to "cash manage" when their money is tied up in services, products, or supports that the federal government has agreed to provide pursuant to Jordan's Principle because they are important to their children's needs. As one Indigenous family and child support agency put it, "if [families] had the money, they would not have applied to Jordan's Principle for the assistance."²⁸²

(ii) Acquisition Cards

160. ISC uses acquisition cards for Jordan's Principle requests to ensure that families, who may not have immediate access to funds, can access approved services, products and supports.²⁸³ As

²⁷⁶ C. Blackstock Affidavit at para. 120.

²⁷⁷ C. Blackstock Affidavit at paras. 129, 130.

²⁷⁸ C. Blackstock Affidavit at para. 132.

²⁷⁹ C. Blackstock Affidavit at para. 124.

²⁸⁰ B. Mathews Affidavit at para. 86.

²⁸¹ C. Blackstock Affidavit at paras. 136-137.

²⁸² C. Blackstock Affidavit, at Exhibit 36 ("Letter from Indigenous Child and Family Service Directors").

²⁸³ C. Blackstock Affidavit at para. 120.

the Tribunal may recall, the use of acquisition cards has been discussed before as a mechanism to help children access the supports, products and services they need when they need them.²⁸⁴

161. However, the Caring Society understands that, although acquisition cards are now available to families, they are rarely used and families do not know to ask for them.²⁸⁵ For example, in fiscal year 2022-2023, acquisition card transactions only accounted for 1.5% of total operations and maintenance payments.²⁸⁶ In her affidavit, Dr. Gideon asserted that many service providers and organizations “will not accept acquisition cards as a form of payment”.²⁸⁷ In some cases, these limitations run contrary to the very purpose of acquisition card use.²⁸⁸ Acquisition cards therefore appear to be an underutilized resource.

162. To resolve the deficiencies in ISC’s acquisition card framework, the Caring Society seeks an order for Canada to report to the Tribunal within 7 days of this Tribunal’s order regarding which of the proposed solutions contained in the Caring Society’s “Jordan’s Principle Work Plan” (i.e. the Schedule A Jordan’s Principle Workplan) it is prepared to adopt.²⁸⁹ On this point, the Caring Society proposes expanding the use and range of eligible expenses on acquisition cards.²⁹⁰

(iii) Gift Cards

163. ISC’s approach to gift cards under Jordan’s Principle similarly imposes restrictions on families and creates unnecessary administrative burdens encroaching on the dignity of First Nations children and families and undermining parents’ ability to meet their children’s needs. The Caring Society has learned that ISC has imposed monetary limits on gift cards and has required that requestors to provide itemized receipts for items purchased, thereby imposing an administrative barrier on the requestor. Even when ISC specifically provides *grocery store* gift cards to families, which can only be used at a grocery store, requestors have been required to

²⁸⁴ October 31, 2018 Cross-examination of Dr. Valerie Gideon at p. 48, line 18 to p. 51, line 15.

²⁸⁵ C. Blackstock Affidavit at para. 122.

²⁸⁶ C. Blackstock Affidavit at para. 120.

²⁸⁷ V. Gideon Affidavit at para. 67.

²⁸⁸ C. Blackstock Affidavit at para. 121.

²⁸⁹ Caring Society Notice of Motion at para. 1.

²⁹⁰ Caring Society Notice of Motion, Schedule A Jordan’s Principle Workplan (at s. 4.2(ii)).

provide itemized receipts to prove that groceries were purchased.²⁹¹ These requirements are imposed even when requestors may be facing financial hardship or fleeing emergency situations.²⁹²

164. Gift cards cannot exceed \$100 in value.²⁹³ This limit does little to aid families in need. To put this value into perspective, the average family of four is estimated to have spent roughly \$299.91 a week on food alone over the past year.²⁹⁴ A \$100 gift card would be insufficient, even for a small family purchasing only groceries while living in an urban centre and with children who do not have nutrition or dietary needs. This limit becomes particularly concerning with the understanding that gift cards are “most commonly used in the context of necessities of life such as food, clothing, diapers or formula.”²⁹⁵

165. The Caring Society lacks clarity on ISC’s justification behind the \$100 monetary limit on gift cards. Dr. Gideon explained that this limit derives from “Jordan’s Principle acquisition cards terms and conditions”, but these terms and conditions were not attached to her affidavit.²⁹⁶

166. The Caring Society has learned that, in some instances, ISC has imposed unexplained restrictions on items purchased with gift cards, including by dictating a list of ineligible items. For example, the Caring Society learned of a single mother of two, who was forced to evacuate her home due to a territorial state of emergency due to wildfires, being told by ISC that she could not use her gift card to purchase items such as batteries or other household items.²⁹⁷ The ineligibility of these items is unexplained, particularly as these items are specifically recommended by the federal government for inclusion in emergency kits,²⁹⁸ and suggests that ISC thinks that gift card users do not know what is best for their families in times of need.

(iv) Solutions Focused on Alleviating the Hardship

167. The Caring Society requests an order clarifying that, consistent with 2017 CHRT 14 and

²⁹¹ C. Blackstock Affidavit, at Exhibit 53 (Email thread between Caring Society and ISC re FAA from January-April 2023).

²⁹² C. Blackstock Affidavit at paras. 146-147.

²⁹³ V. Gideon Affidavit at para. 67.

²⁹⁴ C. Blackstock Reply Affidavit at para. 60.

²⁹⁵ V. Gideon Affidavit at para. 67.

²⁹⁶ V. Gideon Affidavit at paras. 66-67; C. Blackstock Reply Affidavit at para. 59.

²⁹⁷ C. Blackstock Affidavit at para. 138.

²⁹⁸ C. Blackstock Affidavit at para. 139-140 and Exhibit 52 (GoC Basic Emergency Kit).

2017 CHRT 35, ISC cannot delay paying for approved services in a manner that creates hardship by imposing a financial or administrative burden on families that risks a disruption, delay, or inability to meet the child's needs.²⁹⁹

168. The 15-business day service standard does not consider the financial realities of Jordan's Principle requestors, who often cannot wait three weeks for reimbursement. Shorter reimbursement timelines are required to provide certainty, confidence, and public trust in Jordan's Principle, in line with the spirit of the Tribunal's focus on the impacts on First Nations children.³⁰⁰

169. Accordingly, a shorter service standard of five calendar days is required for individual requestors to ensure that families are not put under financial strain. This revised timeline respects the fact that many First Nations families accessing Jordan's Principle do not have the funds to pre-purchase necessary products, services, and supports. It also provides certainty and bolsters trust in Jordan's Principle by reassuring First Nations parents that they will have the supports their children in-hand at a pre-determined time.³⁰¹

170. In keeping with the dialogic approach, the Caring Society also seeks an order that Canada report to the Tribunal within 7 days of this Tribunal's order regarding whether it is prepared to adopt s. 4.1 of the Caring Society's Schedule A Jordan's Principle Workplan, namely whether it will adopt and adhere to a 15-calendar day payment standard for service providers and a 5-calendar day payment standard for reimbursements directly to children and families.³⁰²

171. The Caring Society understands that ISC is in the process of exploring "potential automated determination under a certain cost threshold".³⁰³ On cross-examination, Ms. St-Aubin advised that she is "open to exploring" automatic thresholds. Tribunal-ordered discussions and/or negotiations about this element of the Caring Society's Schedule A Jordan's Principle Workplan will be an effective way to explore these thresholds.³⁰⁴ To this end, the Caring Society offers practical and

²⁹⁹ Caring Society Notice of Motion at para. 7.

³⁰⁰ [2017 CHRT 35](#)

³⁰¹ C. Blackstock Affidavit at para. 129.

³⁰² Caring Society Notice of Motion at para. 1 and Schedule A Jordan's Principle Workplan.

³⁰³ C. St-Aubin Affidavit at para. 68. See also C. St-Aubin CX at p. 406, lines 16-22.

³⁰⁴ C. St-Aubin CX at p. 406, line 23 to p. 409, line 15. See also Caring Society Notice of Motion at para. 9 and Schedule A Jordan's Principle Workplan (at s. 2.3).

operational solutions to redress the hardship imposed by reimbursement delays:

- a. First, develop mechanisms to issue emergency payments for urgent cases, including electronic funds transfers and more effective use of gift cards;
- b. Second, the Caring Society proposes that ISC implement an automated process that presumptively approves all Jordan’s Principle requests under a \$500 threshold accompanied by a recommendation from a professional or letter of support from a community-authorized Elder/Knowledge Keeper. This will aid in payment and reimbursement timelines by eliminating the adjudication period and is financially advantageous to Canada;³⁰⁵
- c. Third, expand the use of acquisition cards, including the types of expenditures allowable and spending limits, and ensure that the number of ISC employees authorized to use acquisition cards meets the demands in the community and is well-publicized; and
- d. Fourth, within 60 days, pay in full any interest charges or bank fees for service providers, individuals and families who took on additional financing due to payment delays beyond Canada’s 15-business day standard.

D. The Financial Administration Act

172. The Caring Society seeks an order clarifying that, consistent with the reasoning in 2021 CHRT 41, this Tribunal’s orders have primacy over any interpretation of the *Financial Administration Act* (“*FAA*”)³⁰⁶ and related instruments such as “terms and conditions,” agreements, policies and conduct that hinder implementation of the Tribunal’s orders, and that Canada shall not rely on the *FAA* to justify departures from this Tribunal’s orders.³⁰⁷

173. Despite this Tribunal’s clear reasoning in 2021 CHRT 41,³⁰⁸ ISC continues to invoke the *FAA* to narrow eligibility under Jordan’s Principle. Namely, ISC has used the *FAA* to impose

³⁰⁵ C. Blackstock Affidavit, at Exhibit 62 (IFSD Note on Cost of Adjudicating Applications).

³⁰⁶ *Financial Administration Act*, R.S.C. 1985, c. F-11.

³⁰⁷ Caring Society Notice of Motion at para. 8.

³⁰⁸ [2021 CHRT 41](#) at para. [377](#).

administrative barriers on Jordan's Principle requestors, refuse reimbursement to families who use gift cards supplied through Jordan's Principle, and deny Jordan's Principle service provision altogether.

174. The Caring Society has learned that in Alberta Region, ISC invoked the *FAA* to justify its decision not to fund new group requests, which barred a community's access to necessary programs and services for its children.³⁰⁹ This refusal is out of step with the Tribunal's statements regarding the *CHRA*'s³¹⁰ primacy, as quasi-constitutional legislation, over the *FAA*. As stated above, the Caring Society has also learned that ISC is requiring some families to provide itemized receipts for items purchased using gift cards supplied by ISC, to ensure that the funds are used on approved items.³¹¹ ISC appears to justify this administrative burden in Treasury Board policies and the *FAA*, contrary to the Tribunal's reasons.³¹² Through its approach, ISC has questioned families' purchases of essential items like socks or groceries, or has denied reimbursement of necessary supports altogether.³¹³

175. ISC's giving primacy to the *FAA* places an unnecessary administrative burden on requestors and runs contrary to the commonsense approach to Jordan's Principle outlined in Back-to-Basics.³¹⁴ This approach also infringes on children and families' dignity, which conflicts with the substantive equality principles that animate Jordan's Principle.

176. Notably, this request for relief is unchallenged by ISC. Both of ISC's affidavits are silent on the *FAA* and its relationship to the *CHRA*.³¹⁵ Nor did ISC elect to cross-examine Dr. Blackstock or Ms. Mathews on their evidence regarding the challenges imposed by ISC's reliance on the *FAA*.

177. Clarification on the relationship between the *FAA* and the *CHRA* in the event of a conflict is necessary to ensure that First Nations children and families can benefit from the full meaning and scope of Jordan's Principle. As such, the Caring Society respectfully requests that this Tribunal

³⁰⁹ C. Blackstock Affidavit at para. 144.

³¹⁰ *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 ("*CHRA*").

³¹¹ C. Blackstock Affidavit at paras. 146-147.

³¹² C. Blackstock Affidavit at paras. 146-147.

³¹³ C. Blackstock Affidavit at para 141.

³¹⁴ B. Mathews Affidavit, at Exhibit 8 (Back-to-Basics Approach at p. 2).

³¹⁵ V. Gideon Affidavit; C. St-Aubin Affidavit.

make an order consistent with its reasons in 2021 CHRT 41, articulating the *CHRA*'s primacy over the *FAA* in the face of conflict.

PART III - COMPLAINTS MECHANISM

Overview

178. Since the Merits Decision, the Tribunal has crafted orders that are focused on ensuring that Canada ceases applying a narrow definition of Jordan's Principle and takes measures to immediately implement Jordan's Principle's full meaning and scope.³¹⁶ Further orders have been made to give effect to the Tribunal's orders on Jordan's Principle so that First Nations children can access the services, products, and supports they need when they need them.³¹⁷ Indeed, in 2017 CHRT 14, the Tribunal explained its solutions-oriented approach:

[...] the Tribunal's determination of appropriate remedies is less about an onus being on a particular party to prove certain facts, and more about gathering the necessary information to craft meaningful and effective orders that address the discriminatory practice identified.³¹⁸

179. As part of its relief sought, the Caring Society included the Schedule A Jordan's Principle Workplan to the Notice of Motion, setting out multiple solutions to redress the significant areas of Canada's non-compliance. It has become clear, through the exchange of affidavit evidence on the Caring Society's Motion and Canada's Cross-Motion, as well as the cross-examinations, that a complaints mechanism is a critical preventive measure to ensure Canada's compliance with the Tribunal's orders. To this end, the Caring Society seeks that, on this motion and as set out in the Schedule A Jordan's Principle Workplan, ISC:

5.6 Within 90 days of the order, and with the advice of the expert on service request contact centres serving children and youth, including those in urgent situations, establish a credible and independent national and effective Jordan's Principle complaints mechanism with authority to approve urgent cases and publicly report on Canada's compliance (akin to the role currently filled by the Caring Society or those recommended in the report authored by

³¹⁶ [Merits Decision](#) at paras. 474-484; [2016 CHRT 10](#); [2016 CHRT 16](#); [2017 CHRT 14](#) (amended in [2017 CHRT 35](#)); [2019 CHRT 7](#); [2020 CHRT 20](#); [2020 CHRT 36](#); [2021 CHRT 41](#).

³¹⁷ [2017 CHRT 14](#) and [2017 CHRT 35](#).

³¹⁸ [2017 CHRT 14](#) at para. 28.

Naiomi Metallic, Hadley Friedland and Shelby Thomas);³¹⁹

180. As set out in more detail below, third parties such as the Caring Society have made *ad hoc* efforts over the years to try and usher in an effective accountability mechanism both (a) to address individual instances of non-compliance and (b) to identify and “course-correct” systemic issues that negatively impact the substantive equality rights of First Nations under Jordan’s Principle.

181. To date, ISC has failed to take adequate steps to address these issues. Due to the lack of progress in these respects, the Caring Society is seeking relief from the Tribunal on this motion and asked for a practical and solutions-focused remedy under section 53 of the *CHRA*.³²⁰ Ultimately, Canada’s failure to adopt adequate complaints and quality assurance measures has severely delayed the identification and implementation of systemic reforms to Jordan’s Principle.

182. In keeping with the pattern of ISC’s conduct in this case, ISC has asked for and received solutions to redress the issue of a much-needed complaints mechanism. In the summer of 2020, the Caring Society and ISC jointly commissioned the report, *Doing Better for Indigenous Children and Families: Jordan’s Principle Accountability Mechanisms Report* (the “**Accountability Report**”), from authors Naiomi Metallic, Hadley Friedland, and Shelby Thomas. The intention of this report was to generate recommendations from experts about the design of an independent accountability mechanism.³²¹ The Accountability Report was published in March 2022 and, to date, none of the substantive recommendations have been actioned or implemented.

183. This failure to implement and operationalize key solutions to identified problems is a pattern of Canada’s behaviour in this case and is directly in keeping with its “old mindset”. Indeed, ISC has worked with First Nations partners, commissioned research, generated expert solutions, and failed to implement these solutions even in the face of a crisis. As is apparent from the Merits Decision, the government has a habit of engaging partners to develop solutions, after which it fails to implement the very recommendations it has asked for.³²² This tendency is particularly evident in Canada’s failure to meaningfully reaction to the recommendations in the National Policy

³¹⁹ Caring Society Notice of Motion, Schedule A Jordan’s Principle Workplan (at s. 5.6).

³²⁰ *CHRA*, s. 53.

³²¹ C. Blackstock Reply Affidavit, at Exhibit 26 (at p. 4).

³²² See, for e.g., *Merits Decision* at paras. 386 and 461.

Review and the *Wen:De* Reports.³²³

184. This pattern was amplified with the release of the and the Auditor General Reports of 2008 and 2011, which identified critical aspects of the government’s discriminatory conduct that were left unadjusted until ordered otherwise by the Tribunal.³²⁴ The Caring Society is concerned that ISC remains unable or unwilling to accept and implement solutions that will benefit First Nations children, youth and families absent an order from the Tribunal.

Critical Components of an Effective Accountability Mechanism

185. As set out in the Accountability Report, ISC has 10 outstanding requirements to achieve accountability relating to Jordan’s Principle and to ensure non-discriminatory services, products and supports for First Nations children, families, and communities:

- a. Oversight of the current Jordan's Principle process at ISC;
- b. Oversight of ISC’s long-term reform of CFS, including funding of agencies, as well as CIRNAC’s funding and negotiation of self-government under Bill C-92;
- c. Oversight of Canada’s efforts addressing systemic inequality in services related to Indigenous children and families;
- d. Oversight of federal-provincial efforts at cooperation in relation to funding and servicing of Indigenous children and families;
- e. Ongoing education to ISC, CIRNA, provincial DCS staff, provincial agencies, social

³²³ [2019 CHRT 39](#) at para. [231](#); National Policy Review, CHRC BOD, Tab 3; John Loxley, Fred Wien and Cindy Blackstock, *Bridging Econometrics and First Nations Child and Family Service Agency Funding: Phase One Report* (Vancouver: Caring Society, 2004), CHRC BOD, Tab 4; Dr. Cindy Blackstock et al., *Wen:De We Are Coming to the Light of Day* (Ottawa: Caring Society, 2005), CHRC BOD, Tab 5; John Loxley et al., *Wen:De The Journey Continues*, 1st ed. (Ottawa: Caring Society, 2005), CHRC BOD, Tab 6.

³²⁴ Auditor General of Canada, “Chapter 4: First Nations Child and Family Services Program – Indian and Northern Affairs Canada” in *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Minister of Public Works and Government Services Canada, 2008), CHRC BOD, Tab 11; Auditor General of Canada, “Chapter 4: Programs for First Nations on Reserves” in *Status Report of the Auditor General of Canada to the House of Commons* (Ottawa: Minister of Public Works and Government Services Canada, 2011), CHRC BOD, Tab 53.

workers, Crown lawyers, legal aid lawyers, and judges;

- f. Investigating and mediating individual complaints about provincial governments' failure to provide services to Indigenous children and families;
- g. Investigating and mediating individual complaints about child welfare agencies' implementation of CFS laws and policies, including Bill C-92
- h. Powers for enforceable orders against Canada for non-compliance with Jordan's Principle, substantive equality and other relevant laws and international requirements (Bill C-92, DISA, UNDRIP, CRC, etc.);
- i. Powers for enforceable orders against provinces for non-compliance with Jordan's Principle, substantive equality against provinces and relevant laws and international requirements (Bill C-92, UNDRIP, CRC, etc.); and
- j. Legal advocacy for First Nations children, families and communities for government services and in child welfare matters.³²⁵

186. Further, the Accountability Report identifies five features of effective accountability mechanisms:

- a. External accountability mechanisms;
- b. Legislated mechanisms, not simply created by the executive;
- c. Mechanisms with specific mandates relating to Indigenous children and families;
- d. Mechanisms with powers over all Indigenous children; and
- e. Mechanisms that bypass jurisdictional wrangling.³²⁶

187. The authors then recommended three interconnected mechanisms to safeguard the needs

³²⁵ C. Blackstock Reply Affidavit, at Exhibit 26 (at pp. 8-10).

³²⁶ C. Blackstock Reply Affidavit, at Exhibit 26 (at p. 10).

of Indigenous children and families, namely:

- a. National Indigenous Child and Family Advocate;
- b. A National Indigenous Child and Family Tribunal; and
- c. National Legal Services for Indigenous Children and Families.³²⁷

188. The Accountability Report has identified (a) ISC’s accountability needs, (b) characteristics of effective accountability mechanisms, and (c) recommendations to address ISC’s accountability needs. Indeed, “[t]he stakes are too high, the pattern of discrimination too long and entrenched, and Canada’s practice, policy and even legal reforms still too inadequate, for anything less to actually be effective at this point”.³²⁸ Notwithstanding these important warnings, the evidence proffered on motion fails to disclose any meaningful planning on ISC’s part to learn from the very research it has commissioned and act on the very recommendations it has asked for.

A. The Existing Patchwork of Attempting to Build a Complaints Mechanism

(i) The Caring Society’s Involvement

189. Since 2018, the Caring Society has been consistently raising concerns directly with ISC that it hears from the community, including First Nations families, service coordinators, and service providers seeking services, products, and supports pursuant to Jordan’s Principle.³²⁹ The Caring Society’s role in bringing cases to the attention of ISC Headquarters, identifying patterns regarding non-compliance issues, and proposing systemics solutions was intended to be a stop-gap measure until an independent, accountable, complaint mechanism and quality assurance measures were put in place.³³⁰ For years, ISC has been aware of the need for an independent, accountable, and effective complaints mechanism, as evidenced by its co-commissioning of the Accountability Report over three years ago.³³¹

190. Over the years, the Caring Society has performed two central functions to support, develop

³²⁷ C. Blackstock Reply Affidavit, at Exhibit 26 (at pp. 10-11).

³²⁸ C. Blackstock Reply Affidavit, at Exhibit 26 (at pp. 10-11).

³²⁹ B. Mathews Affidavit at paras. 9-14, 16.

³³⁰ C. Blackstock Affidavit at para. 38.

³³¹ C. Blackstock Reply Affidavit, at Exhibit 26 (at p. 4).

and implement an accountability mechanism: (1) it has assisted individual families, service providers and services organizations with specific requests (both individual and group) that have not been addressed in line with the Tribunal’s orders (“**Individual Request Assistance**”); and (2) it has tracked and analyzed the patterns arising from its Individual Case Assistance to identify ongoing and systemic issues with the operations of Jordan’s Principle (“**Systemic Pattern Assistance**”). Moreover, the Accountability Report, which was the result of a joint initiative by the Caring Society and ISC, served as a further attempt to focus ISC on solutions to support its system for operationalizing Jordan’s Principle.

191. With respect to Individual Request Assistance, the Caring Society’s small team of staff members are frequently contacted by First Nations Leadership, families, First Nations service coordinators, and service providers experiencing difficulties accessing supports, products, and services from ISC pursuant to Jordan’s Principle.³³² Indeed, from January 2023 to January 2024, the Caring Society raised over 160 cases regarding Jordan’s Principle to ISC Headquarters and senior ISC officials.³³³ Caring Society staff often intervene, with consent, to try and ensure that the underlying request is determined in a manner that is consistent with the Tribunal’s orders, the best interest of the child, and substantive equality. These interventions aim to ensure that the First Nations child or children receives the supports they need when they need them.

192. The majority of Individual Request Assistance relates to issues that occur either *prior* to a determination or *after an approval*. As Ms. St-Aubin and Dr. Gideon conceded on cross-examination, the existing appeals process does not address either of these scenarios.³³⁴ In addition, due to the increasing volume of urgent cases reaching the Caring Society, and cases requiring repeated interventions with ISC, the Caring Society no longer sends individual non-urgent cases to ISC Headquarters upon receipt. Instead, as of December 2023, weekly batches of “non-urgent” cases are to ISC Headquarters, while urgent cases are immediately raised with ISC.³³⁵

193. ISC has acknowledged that the Caring Society’s interventions have assisted children and

³³² B. Mathews Affidavit at para. 3.

³³³ B. Mathews Affidavit at para. 16.

³³⁴ C. St-Aubin Affidavit at para. 47; C. St-Aubin CX at p. 309, line 25 to p. 310, line 14; V. Gideon CX at p. 136, line 19 to p. 8, line 138.

³³⁵ B. Mathews Affidavit at para. 21.

families, and brought administrative, timeline, and systemic issues to ISC's attention.³³⁶ Ms. St-Aubin testified that once the Caring Society brings a case to ISC's attention, it tends to be resolved "quickly afterwards",³³⁷ and that the Caring Society's involvement often facilitates resolution happening faster because the Caring Society may have more information than ISC in certain cases.³³⁸ In some instances, that may be because there is a certain level of comfort that First Nations children and families have in raising issues with the Caring Society, as opposed to with ISC.³³⁹ However, this does not explain Canada's non-compliance in the majority of cases in which the Caring Society intervenes. In many cases, ISC is already in possession of all relevant information and has not determined the request in keeping with the Tribunal-ordered determination timelines or the Back-to-Basics Approach. IFNA's urgent applications for the children of Pikangikum First Nation is a critical example of where an urgent request, with complete documentation, supported by Leadership, community partners, and advocates (including the Caring Society) nonetheless fell victim to ISC's inability or unwillingness to make a timely determination in keeping with the Tribunal's orders.

194. The Caring Society has had a high success rate of ensuring that its Individual Request Assistance has led to requests being addressed at the level of the child, as required pursuant to the Tribunal's orders and the agreed upon Back-to-Basics Approach. Through these interventions, the Caring Society is essentially performing a complaints-gathering function, while also trying to hold ISC accountable to the Tribunal's orders.

195. The Caring Society's work regarding Individual Request Assistance has led to its Systemic Pattern Assistance. Instead of simply raising individual families' concerns or concerns on behalf of a group request, and moving on, the Caring Society has consistently and openly shared what it has learned from a systems analysis perspective. To this end, the Caring Society has identified patterns of non-compliance including: (a) First Nations families and service coordinators not being able to reach ISC staff through the National Call Centre, regional contact centres, or email; (b) urgent requests going unread or undetermined and ISC not putting in place immediate

³³⁶ C. St-Aubin Affidavit at para. 15; C. St-Aubin CX at p. 274, line 7 to p. 275, line 16; and p. 486, lines 5-10.

³³⁷ C. St-Aubin CX at p. 281, line 24 to p. 282, line 21.

³³⁸ C. St-Aubin CX at p. 286, line 22 to p. 287, line 11.

³³⁹ C. St-Aubin CX at p. 286, line 22 to p. 287, line 22.

compassionate supports when it is going to exceed the determination timelines; (c) other determination delays; and (d) reimbursement and funding delays.³⁴⁰ Since January 2023 alone, the Caring Society has received complaints and information from First Nations and service coordinators identifying the following systemic issues contributing to ISC's non-compliance:

- a. An overly complex approval process, contrary to the Back-to-Basics Approach;³⁴¹
- b. Regional disparities in operations and approvals;³⁴²
- c. Long delays in approvals;³⁴³
- d. Data and document loss;³⁴⁴
- e. Denial or lack of responses to applications for critical services;³⁴⁵
- f. Lack of quality assurance and transparency regarding issues that arise;³⁴⁶
- g. Reliance on First Nations and First Nations Coordinators for the implementation of Tribunal orders, without the provision of adequate resources.³⁴⁷

196. The Caring Society has tried to track these themes over many years to help ISC identify and address their non-compliance. In August 2018, the Caring Society began tracking systemic themes and issues arising within Canada's implementation of Jordan's Principle and created the

³⁴⁰ B. Mathews Affidavit at paras. 15-17 and Exhibit 9.

³⁴¹ This has been brought to the attention of the Caring Society, notably by the Ojibways of Onigaming First Nation, Taku River Tlingit First Nation, and the Kasohkewew Child Wellness Society: C. Blackstock Affidavit at paras. 151-156 and Exhibits 55, 56 and 57.

³⁴² This has been brought to the attention of the Caring Society, notably by Taku River Tlingit First Nation and the Jordan's Principle Enhanced Service Coordination Hub: C. Blackstock Affidavit at paras. 153, 166-167 and Exhibits 42, 56.

³⁴³ This has been brought to the attention of the Caring Society, notably by Taku River Tlingit First Nation, the Assembly of Manitoba Chiefs, and Blood Tribe. C. Blackstock Affidavit at paras. 153, 162-163, 168 and Exhibits 37, 56, 59.

³⁴⁴ This has been brought to the attention of the Caring Society, notably by Taku River Tlingit First Nation. C. Blackstock Affidavit at para. 153 and Exhibit 56.,

³⁴⁵ This has been brought to the attention of the Caring Society, notably by the Kasohkewew Child Wellness Society: C. Blackstock Affidavit at paras. 155-156 and Exhibit 57.

³⁴⁶ This has been brought to the attention of the Caring Society, notably by Carrier Sekani Family Services and L.S.: C. Blackstock Affidavit at paras. 157-158 and Exhibit 44; B. Mathews Affidavit at paras. 106-111 and Exhibit 24.

³⁴⁷ This has been brought to the attention of the Caring Society, notably by the Federation of Sovereign Indigenous Nations Jordan's Principle Working Group and the Assembly of Manitoba Chiefs: C. Blackstock Affidavit at paras. 159-163 and Exhibits 58, 59.

document “Concerns with Canada’s Compliance with CHRT orders on Jordan’s Principle” (the “**Jordan’s Principle Concerns Document**”). The Jordan’s Principle Concerns Document outlined ISC’s areas of departure from the Tribunal’s orders and suggested remedies to systemic issues that First Nations families, service coordinators, service providers, and communities were bringing forward to the Caring Society.³⁴⁸ The Caring Society published 11 updates of its Jordan’s Principle Concerns Document between December 2018 and April 2021 and created a further version in June 2023.³⁴⁹ Various versions of the Jordan’s Principle Concerns Document have been published and were shared with senior ISC official via email, as well as through JPOC.³⁵⁰

197. On December 31, 2021, the Caring Society signed the AIP on Long-Term Reform of the First Nations Child and Family Services Program and Jordan’s Principle. The AIP included an appended AIP Workplan, which was developed to improve systemic outcomes under Jordan’s Principle and ensure ISC’s compliance with the Tribunal’s orders.³⁵¹ Included in the AIP Workplan was Canada’s commitment to “[d]evelop and implement Indigenous Services Canada internal quality assurance measures, including training on various topics, a complaint mechanism, and an independent office to ensure compliance.”³⁵² To date, the AIP Workplan remains largely unimplemented.³⁵³ The AIP Workplan was consistent with ISC’s recognition, dating back to the summer 2020 when the Accountability Report was commissioned,³⁵⁴ that a complaints mechanism for Jordan’s Principle was needed alongside broader considerations of accountability.

198. In addition to the Individual Request Assistance and the Systemic Pattern Assistance, the Caring Society has engaged directly with ISC to problem solve existing issues and implement quality assurance measures that will allow the department to better identify non-compliance and redress it system wide. Those meetings and engagements include the following:

- a) On June 7, 2022, Dr. Blackstock sent an email to ISC officials and provided them with a chart of urgent cases in which the Caring Society had intervened between April 2022

³⁴⁸ B. Mathews Affidavit at paras. 9-10; C. Blackstock Affidavit at para. 31.

³⁴⁹ B. Mathews Affidavit at para. 9.

³⁵⁰ C. Blackstock Affidavit at para. 32 and Exhibit 8; B. Mathews Affidavit at para. 10.

³⁵¹ B. Mathews Affidavit at para. 14.

³⁵² B. Mathews Affidavit, at Exhibit 6.

³⁵³ C. Blackstock Affidavit at para. 34 and Exhibit 10.

³⁵⁴ C. Blackstock Reply Affidavit, at Exhibit 26 (at p. 4).

and June 2022 and identified concerns regarding ISC's lack of compliance with the CHRT orders, the AIP Workplan, and the Back-to-Basic approach.³⁵⁵

- b) On November 16, 2023, Dr. Blackstock sent an email to ISC officials, once again expressing concern regarding Canada's non-compliance with Tribunal orders.³⁵⁶ The response from ISC highlighted improvements ISC was making in its implementation, but acknowledged that it was facing operational challenges, which it attributed to the increase demand for Jordan's Principle.³⁵⁷

199. Beyond its direct relationship with ISC, the Caring Society has also advocated for reform within the broader community. Those efforts include raising concerns on the public record in its 2018 and 2019 cross-examination of ISC officials,³⁵⁸ in 2018 to 2020 at the CCCW,³⁵⁹ in its Jordan's Principle Concerns Documents,³⁶⁰ and in the presentations it delivers across the country.³⁶¹

200. It is unreasonable that ISC has failed to establish an effective, independent, and accessible complaints mechanism and has left First Nations, First Nations Service Coordinators, and families to seek the Caring Society's assistance to meet their children's needs. While, the Caring Society continues to make significant efforts to ensure that children's needs are met, it intended for this type of assistance to be a temporary measure pending ISC's establishment of a complaints mechanism. It is clear to the Caring Society that there is significant need for ISC to establish this complaints mechanism. There must be a sustainable solution.

³⁵⁵ C. Blackstock Affidavit at para. 74 and Exhibit 31.

³⁵⁶ C. Blackstock Affidavit, at Exhibit 10.

³⁵⁷ C. Blackstock Affidavit, at Exhibit 10.

³⁵⁸ See e.g. May 9, 2018 cross-examination of Sony Perron at pp. 18-19; October 31, 2018 cross-examination of Valerie Gideon at pp. 70-71; May 7, 2019 cross-examination of Dr. Valerie Gideon at pp. 84-85, 116-118.

³⁵⁹ May 7, 2019 cross-examination of Dr. Valerie Gideon at pp. 115-116.

³⁶⁰ C. Blackstock Affidavit at para. 32.

³⁶¹ B. Mathews Affidavit at para. 15.

(ii) Other Efforts to Call on Canada to Implement a Complaints Mechanism

201. JPOC was formed in 2018,³⁶² with a mandate to:
- a. Provide operational guidance on the implementation of Jordan’s Principle;
 - b. Provide input into the development of a longer-term approach;
 - c. Champion Jordan’s Principle within ISC, other federal departments, among First Nations partners, and the broader community;
 - d. Discuss and provide input on key policy and operational issues;
 - e. Periodically review updates on progress, performance, and the achievement of key milestones; and
 - f. Keep participating organizations and the wider community informed about the work accomplished by JPOC.³⁶³
202. JPOC is composed of six First Nations partners, including the Caring Society, ten First Nations representatives, and eleven ISC representatives.³⁶⁴ JPOC meetings take place roughly every six weeks.³⁶⁵
203. JPOC has attempted to address the need for a complaints mechanism, but to date has not been successful in convincing ISC to put an accessible system in place. For example, on May 9, 2023, JPOC met and discussed a proposed complaints mechanism for Jordan’s Principle, flowing from ISC’s commitment to the AIP Workplan.³⁶⁶ In particular, JPOC sought to identify:
- a. The scope of complaints to be handled by this mechanism;
 - b. What an effective complaint and/or resolution process would look like;
 - c. Where the complaints mechanism should be housed;

³⁶² B. Mathews Affidavit at para. 6.

³⁶³ B. Mathews Affidavit at paras. 6-7 and Exhibit I.

³⁶⁴ B. Mathews Affidavit at paras. 6-7.

³⁶⁵ B. Mathews Affidavit at para. 7.

³⁶⁶ B. Mathews Affidavit, at Exhibit 7 (Draft JPOC Record of Decision dated May 9, 2023 (“**May 2023 JPOC ROC**”), p. 2). The ongoing implementation of a consistent complaints process had been discussed at JPOC going back to at least December 13, 2022 meeting: C. Blackstock Affidavit, at Exhibit 13 (at p. 4).

- d. How to measure success;
- e. How decisions from this process would be used to improve ongoing implementation of Jordan’s Principle; and
- f. How this process would connect to the existing appeals mechanism.³⁶⁷

204. This May 2023 meeting took place almost a year ago. To date, there has been no significant movement on ISC’s part to implement a complaints mechanism. Once again, this lack of progress is indicative of the “old mindset”, in which ISC is aware that a problem or systemic issue persists, seeks expert input, and then does nothing to remedy the underlying concerns. Notably, the January 24-25, 2024, and February 26, 2024, JPOC meetings were canceled.³⁶⁸ Ms. St-Aubin, ISC’s senior official responsible for Jordan’s Principle, was unaware of who decided to cancel the JPOC meetings,³⁶⁹ while Dr. Gideon was only made aware of these cancellations through reviewing the affidavit materials.³⁷⁰

B. The Problem with the Current Approach

205. Jordan’s Principle is a legal obligation on the part of Canada to protect and promote the substantive equality rights of First Nations children so they can access the products, services and supports they need, when they need them—free of discrimination. As noted by both Dr. Gideon and Ms. St-Aubin, the significant increase in the volume of requests over the last two years is likely tied directly to the need experienced by First Nations children, the gaps in services, supports and products in other federal/provincial/territorial programs and the good work of the parties to promote and publicize access to Jordan’s Principle.³⁷¹

206. The significant increase in volume was not unexpected. The Caring Society anticipated this

³⁶⁷ B. Mathews Affidavit, at Exhibit 7 (May 2023 JPOC ROC at p. 3).

³⁶⁸ C. Blackstock Reply Affidavit at paras. 91 and Exhibit 32; B. Mathews Affidavit at para. 8 and Exhibit 2.

³⁶⁹ C. St-Aubin CX at p. 409, line 20 to p. 410, line 1.

³⁷⁰ V. Gideon CX at p. 148, lines 1-11.

³⁷¹ C. St-Aubin CX at p. 261, line 10 to p. 262, line 5; and p. 479, line 21 to p. 480, line 6. See also V. Gideon CX at p. 19, line 24 to p. 21, line 18; p. 54, line 11 to p. 56, line 4; and p. 93, line 21 to p. 94, line 9.

increase.³⁷² IFSD also indicated an upward trend in cases in its data analysis report.³⁷³ On cross-examination, Dr. Gideon agreed that the government was also aware of the risk of backlogs due to increasing demand, which it discussed in ISC's 2023-2024 Department Plan and identified the need for continued monitoring and assessment of trends in requests to meet their legal obligations.³⁷⁴ As noted above, Dr. Gideon conceded that the success of the Back-to-Basics approach was a factor leading to the increased number in Jordan's Principle cases.³⁷⁵

207. Canada's proposition that complaints be addressed to the department raises serious concerns about the objectivity of such a process. Based on past results, it is clear that whatever internal complaints mechanism ISC relies on is insufficient to address the volume of complaints and cannot provide accountability within or outside the department. The nature and seriousness of the requests, particularly urgent requests, now far exceed what can be addressed within ISC.

208. On December 1, 2023, Dr. Blackstock met with senior ISC representatives, including Ms. St-Aubin,³⁷⁶ to discuss how families, services coordinators, and First Nations community representatives contact the Caring Society about difficulties they have faced in accessing Jordan's Principle and request assistance from the Caring Society in navigating Jordan's Principle. ISC made another commitment to identify a staff contact person at ISC to whom the Caring Society could direct people, akin to the role the Caring Society had been playing.³⁷⁷ This, too, went unimplemented, in keeping with the lack of follow-through following the May 9, 2023 JPOC meeting, the Accountability Report, and the AIP Workplan. Although Ms. St-Aubin did not recall discussing a specific contact person at this December meeting, she acknowledged that a discussion occurred about setting up a "triage or targeted team" to whom to direct individuals and groups who contact the Caring Society.³⁷⁸

³⁷² C. Blackstock Affidavit at paras. 15, 17, and Exhibit 63 at p. 18.

³⁷³ V. Gideon CX at Exhibit 2 (*IFSD Data assessment and framing of an analysis of substantive equality through the application of Jordan's Principle* (Sept. 1, 2022) at p. 22).

³⁷⁴ V. Gideon CX at p. 32, line 9 to p. 34, line 13; C. Blackstock Affidavit at para. 17 and Exhibit 5.

³⁷⁵ V. Gideon CX at p. 19, line 24 to p. 20, line 21.

³⁷⁶ C. St-Aubin CX at p. 276, line 9 to p. 277, line 6.

³⁷⁷ C. Blackstock Affidavit at para. 169.

³⁷⁸ C. St-Aubin CX at p. 278, line 7-16.

209. The Caring Society had still not heard back from ISC regarding such a contact person or team by December 14, 2023, so Ms. Mathews, the Director of Reconciliation and Policy of the Caring Society, sent an email to Ms. St-Aubin to inform her that the Caring Society would be directing concerns to Ms. St-Aubin using her publicly available contact information.³⁷⁹ Ms. Mathews did not receive a response to this email.³⁸⁰ ISC has advised that it did not respond to Ms. Mathews' correspondence as, after the Caring Society filed this motion on December 12, 2023, ISC reached out the parties and the Tribunal about its planned coverage for Jordan's Principle requests over the holiday period.³⁸¹ This was, of course, a time-limited effort.

210. As of January 12, 2024, the Caring Society had not heard anything further regarding an ISC contact person. In her cross-examination, Ms. St-Aubin testified that Canada was still looking into solutions on this issue, and that changes were "underway".³⁸²

211. The months-long delay in identifying a contact person or team at ISC to whom accountability issues may be addressed is a serious concern. Such a contact person or team may be well-positioned to act on systemic issues raised at JPOC or by the Caring Society through its Systemic Pattern Assistance. For example, and as discussed above, Ms. St-Aubin advised on cross-examination that she did not hear about the extent of the potential backlogs issue from ISC officials for at least two months following the August 2023 JPOC meeting and that she left it up to officials to bring this issue to her.³⁸³ A contact person or team may be positioned to escalate and act on concerns such as these after they have been raised in various fora, including JPOC.

212. The affidavit evidence proffered by Canada on this motion suggested four existing avenues to deal with complaints: (a) the Appeals Committee; (b) Federal Court oversight; (c) the Appeals Secretariat; and (d) Quality Assurance Teams. As was made clear on cross-examination, none of these measures can substitute for an effective complaints mechanism. Nor do they speak to the accountability needs, the characteristics of effective accountability mechanisms, or the recommendations to address ISC's accountability needs from the 2022 Accountability Report,

³⁷⁹ B. Mathews Affidavit at para. 23 and Exhibit 10.

³⁸⁰ B. Mathews Affidavit at para. 23.

³⁸¹ C. St-Aubin Affidavit at para. 19.

³⁸² C. St-Aubin CX at p. 279, line 9 to p. 280, line 10.

³⁸³ C. St-Aubin CX at p. 393, line 12 to p. 396, line 14.

which ISC co-commissioned and funded.

(i) ISC Appeals Committee

213. The ISC Appeals process does not identify systemic issues and is ill-equipped to act as a complaints mechanism. Nor is it intended to do so. The Appeals Committee deals only with requests that have already been determined and may be re-examined by the Appeals Committee. Indeed, Ms. St-Aubin agreed on cross-examination that complaints regarding issues that arose either (a) prior to a determination, or (b) following an approval, would not go through the appeals committee and that a complaints mechanism receiving those complaints would thus not be duplicating the appeals process.³⁸⁴ Ms. St-Aubin admitted on cross-examination that such a complaint mechanism, and an independent office for ensuring compliance, would be important.³⁸⁵

214. ISC committed to the development and implementation of a complaint mechanism, alongside an independent office to ensure compliance, in the AIP Workplan in 2021.³⁸⁶ Dr. Gideon testified that this complaints mechanism and independent office would be separate from the Appeals Committee.³⁸⁷ As Dr. Gideon describes in her affidavit, the Appeals Committee's role is to assess denied Jordan's Principle requests.³⁸⁸ On cross-examination, Dr. Gideon agreed that the Appeals Committee could only be an avenue for complaints regarding requests that had been determined and denied, in whole or in part.³⁸⁹ Dr. Gideon could not even see *how* the Appeals Committee would receive complaints regarding issues that arose (a) prior to a determination or (b) following an approval, such as failure to make a timely reimbursement.³⁹⁰

(ii) Federal Court Oversight

215. Judicial review by the Federal Court cannot be a substitute for a meaningful complaints mechanism.

³⁸⁴ C. St-Aubin CX at p. 309, line 25 to p. 310, line 20.

³⁸⁵ C. St-Aubin CX at p. 314, line 25 to p. 315, line 7.

³⁸⁶ B. Mathews Affidavit, at Exhibit 6.

³⁸⁷ V. Gideon CX at p. 139, line 22 to p. 140, line 2.

³⁸⁸ V. Gideon Affidavit at paras. 61-63.

³⁸⁹ V. Gideon CX at p. 136, line 19 to p. 137, line 25.

³⁹⁰ V. Gideon CX at p. 137, line 20 to p. 138, line 8.

216. The fact that a requestor may elect to file an application for judicial review after their appeal has been denied on appeal is distinct from whether that requestor may seek to bring an individual or systemic concern about how ISC handled their request to an independent accountability mechanism. Notably, neither Dr. Gideon’s Affidavit nor Ms. St-Aubin’s affidavit explain how the Federal Court’s oversight would duplicate the role played by a complaint mechanism.³⁹¹ For example, it is not clear how an application for judicial review would assist requestors whose requests are caught in a regional intake backlog or in-progress backlog.

(iii) The Appeals Secretariat is not an advocacy office

217. In her affidavit, Dr. Gideon stated that the Appeals Secretariat serves as an “advocacy office to support families in bringing appeals forward”.³⁹² On cross-examination, however, she declined to give evidence regarding to the operation of the appeal process, given her departure from ISC.³⁹³

218. The evidence demonstrates, however, that the Appeals Secretariat is not an advocacy office. Indeed, the defined objective and scope of the External Expert Review Committee does not ascribe an advocacy role to the Appeals Secretariat.³⁹⁴ ISC did not lead additional evidence respecting any advocacy role, and on cross-examination Ms. St-Aubin stated that she could not speak to the function of the Appeals Secretariat.³⁹⁵ Moreover, the evidence before the Tribunal suggests that the Appeals Secretariat prepares summary-style documents for the External Expert Review Committee’s review in its determinations of appeals. There is no evidence, other than Dr. Gideon’s bald assertion in her affidavit, which neither she nor Ms. St-Aubin could support on cross-examination,³⁹⁶ that the Appeals Secretariat or the External Expert Review Committee

³⁹¹ V. Gideon Affidavit at para. 64 (in which Dr. Gideon indicates that further information on Federal Court oversight is provided in the C. St-Aubin Affidavit). See also the C. St-Aubin Affidavit at para. 5 (in which Ms. St-Aubin states that the Gideon Affidavit demonstrates that an Appeals Committee and Federal Court oversight address any substantive issues that arise in the implementation of Jordan’s Principle).

³⁹² V. Gideon Affidavit at para. 58.

³⁹³ V. Gideon CX at p. 135, lines 13-25.

³⁹⁴ V. Gideon Affidavit, at Exhibit D.

³⁹⁵ C. St-Aubin CX at p. 337, line 16-17.

³⁹⁶ C. St-Aubin CX at p. 336, line 7 to p. 337, line 25; V. Gideon CX at p. 135, lines 13-18.

advocates on behalf of children, families, or First Nations.³⁹⁷ Indeed, Dr. Blackstock’s evidence was that she was not aware of any such function.³⁹⁸

(iv) Quality Assurance Call Centre Team

219. The quality assurance team at ISC’s Call Centre does not supplant the need for an effective complaints mechanism. As Ms. St-Aubin’s affidavit demonstrates, the ISC Call Centre quality assurance team’s authority is limited, and does not include: (a) the ability to approve or escalate requests; (b) the ability to initiate re-reviews to course correct; (c) the independence required to ensure complainants feel comfortable discussing concerns; and (d) mechanisms to identify and propose solutions to broader systemic issues beyond call centre management and training.³⁹⁹

220. In her cross-examination, Ms. St-Aubin’s evidence was that the quality assurance team was “supposed to be doing random audits” at the call centre.⁴⁰⁰ However, Ms. St-Aubin was not aware if those audits had completed or been shared with JPOC or if any changes had been implemented as a result of those audits.⁴⁰¹ Further, she advised that the Director General responsible for Jordan’s Principle, who did not provide evidence on this motion, would have a “better handle on that, dealing with the operations”.⁴⁰²

221. In the Caring Society’s view, the data arising from the random sampling audits of the Call Centre that was provided following Ms. St-Aubin’s cross-examination is not assistive.⁴⁰³ Based on the limited information contained in the audits, it appears that, as of April 12, 2024, the Call Centre audits took place between March 2, 2023 and April 4, 2024.⁴⁰⁴ The audits only tracked whether “call evaluation” or “silent monitoring” took place.⁴⁰⁵ No other information was provided. The Caring Society is not aware of the instruction, guidance, or direction provided by ISC to the auditors to inform their work. ISC’s data does not indicate what, if any, lessons were learned from

³⁹⁷ C. Blackstock Reply Affidavit, at Exhibits 27A-28C.

³⁹⁸ C. Blackstock Reply Affidavit at para. 67.

³⁹⁹ C. St-Aubin Affidavit at para. 52.

⁴⁰⁰ C. St-Aubin CX at p. 347, line 25 to p. 348, line 11.

⁴⁰¹ C. St-Aubin CX at p. 348, lines 12-17.

⁴⁰² C. St-Aubin CX at p. 348, lines 18-22.

⁴⁰³ AGC Responses to RFI, at Appendix G.

⁴⁰⁴ See AGC Responses to RFI, at Appendix G (at pp. 169-174).

⁴⁰⁵ AGC Responses to RFI, at Appendix G.

these audits. Nor does it stipulate how the results of the audits were, or might be, used to implement meaningful and effective reforms at the contact centres. As a result, the Tribunal is left with the knowledge that call evaluation and silent monitoring took place on given days, but nothing other than that.

C. The Importance of a Complaint Mechanism

222. ISC has already recognized the importance of a complaint mechanism and an independent body to ensure compliance with the Tribunal's orders.⁴⁰⁶ However, eight years after the Merits Decision, Canada continues to fail to implement these critical accountability measures and there is no clear timeline for it to do so. The Caring Society's proposed solutions seek to set ISC up for success through an effective complaint mechanism, which will provide relief to individual requestors while also helping to clarify systemic issues affecting its determinations of Jordan's Principle requests.

223. This Tribunal has previously ordered respondents to create a complaints mechanism in cases in which a respondent's existing complaints or investigation process was inadequate, for example, due to a lack of transparency, independence, or systemic considerations.⁴⁰⁷ This Tribunal has similarly ordered respondents to create accountability mechanisms to monitor the effects of policies, training, and procedures in order to assess whether they are having the necessary and desired effect of preventing discrimination.⁴⁰⁸

224. Substandard investigations into complaints can themselves be considered a denial of service and an adverse differentiation under section 5 of the *CHRA*, particularly if the organization fails to change discriminatory conduct that formed the basis of the complaint.⁴⁰⁹ In *Hughes v Elections Canada*, this Tribunal found that, despite the respondent's willingness to engage in improving its policies with the involvement of the other parties, there were problems in the application of these policies and in the respondent's internal mechanisms for handling complaints

⁴⁰⁶ B. Mathews Affidavit, at Exhibit 6; C. St-Aubin CX at p. 314, line 25 to p. 135, line 7.

⁴⁰⁷ *Young v Via Rail Canada Inc.*, [2023 CHRT 25](#) at paras. [290](#), [362](#), [368](#); *André v Matimekush-Lac John Nation Innu*, [2021 CHRT 8](#) at paras. 236; *Chuba v. Canada (Human Rights Comm.)*, [1983 CanLII 4708 \(CHRT\)](#) at paras. [94](#), [109](#).

⁴⁰⁸ See e.g. *Young v Via Rail Canada Inc.*, [2023 CHRT 25](#) at paras. [362](#), [368](#).

⁴⁰⁹ *Hughes v Elections Canada*, [2010 CHRT 4](#) at paras. [59](#), [70](#).

around access barriers to voting.⁴¹⁰ Based on these identified discriminatory practices, this Tribunal ordered, *inter alia*, the following systemic remedies: (a) the review of relevant policies, in consultation with the other parties; (b) the review and update of training materials, including training on a new public complaints procedure, in consultation with the other parties; and (c) the implementation of a publicized complaints procedure, including the tracking of complaints and their dispositions and the public reporting of the number of complaints, in consultation with the other parties.⁴¹¹

225. Despite ISC’s commitment to the development of a complaints process, progress on the issue has stagnated, leaving individual requestors without a proper avenue for recourse and leaving ISC without a proper mechanism to monitor the effectiveness of its practices, which is required to detect and prevent discrimination.

226. The presence of an effective complaint mechanism is a hallmark for determining whether a respondent has adequately responded to an incident of discrimination/harassment in the employment context. Indeed, when considering an employer’s duty to investigate a complaint of discrimination, the Canadian Human Rights Tribunal often relies to the Human Rights Tribunal of Ontario decision of *Laskowska v. Marineland of Canada Inc*⁴¹² in which the HRTTO stated at para 53:

It would make the protection under subsection 5(1) to be a discrimination-free work environment a hollow one if an employer could sit idly when a complaint of discrimination was made and not have to investigate it. If that were so, how could it determine if a discriminatory act occurred or a poisoned work environment existed? The duty to investigate is a “means” by which the employer ensures that it is achieving the Code-mandated “ends” of operating in a discrimination-free environment and providing its employees with a safe work environment.⁴¹³

227. In *Laskowska*, the HRTTO set out the relevant criteria to consider in determining whether an employer complied with its duty to investigate:

1. Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination or harassment

⁴¹⁰ *Hughes* at para. [70-71](#).

⁴¹¹ *Hughes* at paras. [74](#), [100](#).

⁴¹² [2005 HRTTO 30](#) relied on in, for example, [2023 CHRT 25](#).

⁴¹³ [2005 HRTTO 30](#) at para. [53](#).

policy with a complaint mechanism in place? Was adequate training given to management and employees;

2. Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and

3. Did the employer provide a reasonable resolution in the circumstances? Could the employer provide a healthy, discrimination-free work environment? Did it communicate its findings and actions to the complainant?

228. While this proceeding does not arise in the employment context, ISC is clearly aware of issues of discrimination and non-compliance in relation to the Tribunal's Jordan's Principle orders. And yet, it has not taken any substantive steps to implement a complaint mechanism. Indeed, ISC anticipated backlog problems as early as the end of the 2022 calendar year,⁴¹⁴ but did not disclose these serious backlog concerns until external parties at JPOC raised the issue in August 2023, once there were thousands of unopened Jordan's Principle requests in the queue.⁴¹⁵ Those in the backlog have no complaint mechanism to turn to (other than reaching out to a third party like the Caring Society), and those at JPOC have no independent and accountable mechanism to report concerns to, beyond the ISC officials with whom they are already.

229. Although individual cases may have been resolved at the level of the child through the Caring Society's and other third parties' interventions, systemic issues within the implementation of Jordan's Principle continue in large part due to the ongoing lack of transparency and accountability within the system.

230. In the Accountability Report, the authors outline the important need for accountability within Jordan's Principle, the issues that would be addressed by such an accountability mechanism, and the forms that such a mechanism could take.⁴¹⁶

231. ISC already know how to do this. The Accountability Report also identified key needs that must be addressed by the accountability mechanisms, such as: (a) oversight of the current Jordan's Principle process at ISC; (b) oversight of efforts to address systemic inequality; (c) ongoing

⁴¹⁴ V. Gideon CX at p. 33-34, line 9-17.

⁴¹⁵ C. Blackstock Affidavit at paras. 13, 103.

⁴¹⁶ C. Blackstock Reply Affidavit, at Exhibit 26.

education; (d) investigating and mediating complaints; and (e) powers for enforceable orders; and (f) formal advocacy.⁴¹⁷

232. One accountability mechanism proposed in the Accountability Report is a National Indigenous Child and Family Advocate. The Advocate's role, similar in some ways to an Ombudsperson, should have sufficient independence from the government and third parties to make effective change and should include a "soft advocacy" function by which it would not simply screen complaints but also assist Indigenous children and families resolve individual complaints through informal and confidential means.⁴¹⁸ The Caring Society accepts that while the Accountability Report's recommendation was for an "Indigenous" child and family advocate, the implementation of this recommendation would need to be tailored for First Nations children, within the purview of the Tribunal's jurisdiction over this complaint.

233. Ms. St-Aubin identified in her cross-examination that one of the reasons the Caring Society can be helpful in assisting families and children, and in identifying systemic issues, is that there is a level of comfort that requestors may have with the Caring Society, their community, or their service coordinator.⁴¹⁹ This creates a vehicle for additional information to flow in problematic cases. Comfort and trust help ISC do its job⁴²⁰ and benefit First Nations children.⁴²¹ Any established complaints mechanism should aim to fill a similar role. This would ensure that requestors feel comfortable relying on the accountability mechanism and avoid information asymmetries that may exist between ISC and the Caring Society respecting a given case.

234. The May 2023 JPOC meeting identified that the complaints mechanism must be established in a way that "ensures requestors and their families will not fear reprisal for submitting a complaint, and instills trust, recognizing the power dynamic individuals face when interacting with the federal government."⁴²² Such an entity would ensure that additional information flows to ISC in a more efficient, reliable way, without overburdening third party organizations and risking

⁴¹⁷ C. Blackstock Reply Affidavit, at Exhibit 26 at pp. 41-48.

⁴¹⁸ C. Blackstock Reply Affidavit, at Exhibit 26 at pp. 59-60.

⁴¹⁹ C. St-Aubin CX at p. 287, line 16-22.

⁴²⁰ C. St-Aubin CX at p. 287, line 12-22.

⁴²¹ C. St-Aubin CX at p. 481, line 9-20.

⁴²² B. Mathews Affidavit, Exhibit 7 (May 2023 JPOC ROC at p. 3).

further delayed determinations. This is particularly important in the context of Jordan's Principle requests, as delays can lead, and have led, to serious harms to individuals and communities.⁴²³

235. The Caring Society continues to bring individual cases and systemic problems to ISC's attention because it has no other option but to do so. Canada has failed to implement accountability mechanisms that are independent and strong enough to have an impact on its conduct. There is no effective mechanism for resolving issues with ongoing requests, and proposing informed solutions that would ensure compliance with the Tribunal's orders. The Caring Society, alongside many First Nations Leaders and organizations and other advocates, has become an *ad hoc* replacement for a complaints body that Canada acknowledged the need for,⁴²⁴ and committed to,⁴²⁵ but failed to implement. The Caring Society was never intended to fill this role long-term, nor does it have the capacity to do so or to meet the level of need that exists.

236. Implementing an independent complaints mechanism will be critical both to ensure Canada's compliance with Jordan's Principle and to break out of the cycle of non-compliance motions the Caring Society has been forced to resort to over the years since the Merits Decision. That is precisely why the Accountability Report was commissioned. It has been over 8 years since the Tribunal's Merits Decision and, at this stage of the Complaint, there is no credible reason for which ISC has not been able to implement an effective, independent complaints mechanism. Now, it is time for ISC to act upon the many recommendations and solutions it has received from experts so that it can uplift the lives of First Nations children, youth, families, and communities to the full extent contemplated by Jordan's Principle.

PART IV - RELIEF SOUGHT

237. The Caring Society requests the following relief:

Orders Addressing Urgency

- a. An order that Canada shall immediately include in its definition of "urgent

⁴²³ C. Blackstock Affidavit at paras. 72-73 and Exhibits 28, 29, 30.

⁴²⁴ See e.g. B. Mathews Affidavit, at Exhibit 7 (May 2023 JPOC ROC at pp. 3-4). See also C. St-Aubin CX at p. 315.

⁴²⁵ B. Mathews Affidavit, at Exhibit 6.

requests” requests from First Nations children: (a) who have recently experienced the death of a caregiving family member, biological parent(s), and/or siblings, or are reasonably anticipated to experience such a death; and (b) who are impacted by a state of emergency proclaimed by a First Nations government, a provincial/territorial government, or the federal government.

- b. An order that Canada immediately revise its National Call Centre calling tree and other contact mechanisms that may exist to ensure that requestors can immediately and easily indicate that their request is urgent or, in the case of an existing request, has become urgent.
- c. An order that Canada ensure that the National Call Centre staff have authority to review and determine urgent requests and are available in sufficient numbers during and outside business hours.
- d. An order that Canada will, within 45 days, appoint sufficient persons in each ISC region and nationally who are responsible for managing urgent Jordan’s Principle cases to ensure that the determinations are made in a manner consistent with the Tribunal’s orders.
- e. An order that Canada adopt the measures set out in paragraph 5 of the Caring Society’s Notice of Motion, dated December 12, 2023.

Orders Addressing Timeliness and Backlogs

- f. An order clarifying that, consistent with 2017 CHRT 14 and 2017 CHRT 35, Canada shall immediately: (a) “begin the determination clock” when a request on behalf of a First Nations child or youth is received; and (b) stop the clock when the requestor is advised of the determination of the case.
- g. In the alternative to (f), an order that the determination clock shall start to run when ISC has received a recommendation/authorization from a professional or a letter of support from a community-authorized Elder/knowledge holder.
- h. An order that Canada shall within seven days of the Tribunal’s order:

- i. Report back to the Tribunal and the parties to identify the total number of currently backlogged cases both nationally and in each region, including the intake backlog, the in-progress backlog, and the reimbursement backlog, including with information regarding the cumulative number of backlogged cases at month's end, dating back 12 months;
- ii. Contact all requestors in the backlog, including those in the in-take backlog, the in-progress and the reimbursement backlog by email or phone setting out the Tribunal's timeline orders, noting ISC's non-compliant backlogs and urging requestors with urgent or time sensitive requests, including non-urgent requests that have become urgent, to contact specific personnel who will determine such requests within 12 hours. The notice should also include timeframes for resolving the backlogs, information on requesting retroactive payments for requestors who had to pay for services, products or supports due to Canada's non-compliance, and information on measures being taken to prevent backlogs from recurring;
- iii. Triage all backlogged requests for urgency and communicate with all requestors with undetermined urgent cases to take interim measures to address any reasonably foreseeable irreparable harms; and
- iv. Report back to this Tribunal and the parties regarding the number of urgent cases identified in the backlog, including the intake backlog, the in-progress backlog, and the reimbursement backlog, and the timeframe by which all urgent and non-urgent backlogged requests will be determined.

Orders Addressing Reimbursement and Payment Delays

- i. An order clarifying that Canada, consistent with 2017 CHRT 14 and 2017 CHRT 35, cannot delay paying for approved services in a manner that creates hardship by imposing a burden on families that risks a disruption, delay or inability to meet the child's needs.
- j. An order clarifying that, consistent with the reasoning in 2021 CHRT 41, the

Tribunal's orders have primacy over any interpretation of the *Financial Administration Act* and related instruments such as "terms and conditions," agreements, policies and conduct that hinder implementation of the Tribunal's orders, and that Canada shall not rely on the *Financial Administration Act* to justify departures from this Tribunal's orders;

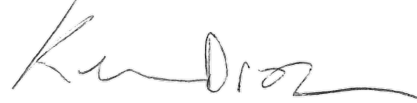
- k. An order that Canada report to the Tribunal within 7 days of this Tribunal's order regarding whether it will adopt and adhere to a 15-calendar day payment standard for service providers and a 5-calendar day payment standard for reimbursements directly to children and families, as set out in section 4.1 of the Schedule A Jordan's Principle Workplan.
- l. An order that Canada report to the Tribunal within 7 days of the Tribunal's order regarding practical and operational solutions to redress the hardship imposed by reimbursement and payment delays, including with respect to the following options:
 - i. mechanisms to issue emergency payments for urgent cases, including electronic funds transfers and more effective use of gift cards;
 - ii. an automated process that presumptively approves all Jordan's Principle requests under a \$500 threshold accompanied by a recommendation from a professional or letter of support from a community-authorized Elder/Knowledge Keeper;
 - iii. expanding the use of acquisition cards, including the types of expenditures allowable and spending limits, and ensure that the number of ISC employees authorized to use acquisition cards meets the demands in the community and is well-publicized;
 - iv. within 60 days, paying in full any interest charges or bank fees for service providers, individuals, and families who took on additional financing due to payment delays beyond Canada's 15-business day standard.

Orders Addressing a Complaint Mechanism and Accountability Measures

- m. An order that Canada shall, within 90 days of the order, and with the advice of the expert on service request contact centres serving children and youth, including those in urgent situations, establish a credible and independent national and effective Jordan's Principle complaints mechanism with authority to approve urgent cases and publicly report on ISC's compliance.
- n. An order that within 45 days, ISC shall provide a report confirming to the Tribunal that First Nations and First Nations organization receiving, and/or determining and/or funding Jordan's Principle requests have sufficient resources, including funding, to do so and sustainable resources, including funding, to do so.
- o. An order that Canada report to the Tribunal, within 7 days of the Tribunal's order, regarding which of the proposed solutions set out in the Schedule A Jordan's Principle Workplan (not otherwise covered in paragraphs 237(k) and (l) herein) it is prepared to adopt (including timeframes for implementation) and, in the case of any proposed solution ISC is not prepared to adopt, the reason why not and what effective alternative measure ISC proposes to take (and the timeline on which such effective alternative measure will be implemented). ISC shall report to the Tribunal, within 7 days of this Tribunal's order, regarding which of the proposed solutions (and timelines for implementation of those solutions) contained in the Caring Society's Schedule A Jordan's Principle Workplan it is prepared to adopt (including timeframes for implementation) and, in the case of any proposed solution ISC is not prepared to adopt, the reason why not and what effective alternative measure ISC proposes to take (and the timeline on which such effective alternative measure will be implemented);
- p. An order, as set out in paragraph 10 of the Notice of Motion, convening a case conference within 7 days of Canada's having submitted its response to the Schedule A Jordan's Principle Workplan.

- q. An order that the Tribunal retain jurisdiction until such time as measures are in place to end the discrimination and prevent its recurrence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of April, 2024.



**David P. Taylor
Sarah Clarke
Kevin Droz**

Counsel for the Caring Society

PART V - LIST OF AUTHORITIES

Legislation	
1.	<i>Canadian Human Rights Act</i> , R.S.C. 1985, c. H
2.	<i>Department of Indigenous Services Act</i> , S.C. 2019, c. 29 s. 336
3.	<i>Financial Administration Act</i> , R.S.C. 1985, c. F-11
4.	<i>Indian Act</i> , RSC, 1985, c 1-5
Case Law	
5.	<i>André v. Matimekush-Lac John Nation Innu</i> , 2021 CHRT 8
6.	<i>Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada</i> , 2021 FC 969
7.	<i>Chuba v. Canada (Human Rights Comm.)</i> , 1983 CanLII 4708 (CHRT)
8.	<i>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)</i> , 2016 CHRT 2
9.	<i>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)</i> , 2016 CHRT 10
10.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indian and Northern Affairs)</i> , 2016 CHRT 16
11.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2017 CHRT 7
12.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2017 CHRT 14
13.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2017 CHRT 35
14.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2019 CHRT 7
15.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2019 CHRT 39

16.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2020 CHRT 20
17.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2020 CHRT 36
18.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> 2021 CHRT 41
19.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> 2022 CHRT 8
20.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> 2022 CHRT 41
21.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> 2023 CHRT 44
22.	<i>Hughes v. Elections Canada</i> , 2010 CHRT 4
23.	<i>Laskowska v. Marineland of Canada Inc.</i> , 2005 HRTO 30
24.	<i>Pictou Landing Band Council v Canada (Attorney General)</i> , 2013 FC 342 (CanLII)
25.	<i>Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.</i> , 2022 BCSC 15
26.	<i>Young v. Via Rail Canada Inc.</i> , 2023 CHRT 25