



The Caring Society's Non-Compliance Motion v. Canada on Jordan's Principle

On December 12, 2023, the Caring Society filed a non-compliance motion with the Canadian Human Rights Tribunal (the Tribunal) regarding Canada's chronic and wilful failure to adhere to the Tribunal's orders on Jordan's Principle. Canada opposes the Caring Society's motion, and the Assembly of First Nations (AFN) opposes most of the Caring Society's requested orders. As interested parties, the Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN) are not taking a position on the motion. The Canadian Human Rights Commission (the Commission) broadly supports the motion.

On June 3, the First Nations Leadership Council (FNLC) filed a motion to intervene in the Caring Society's non-compliance motion and Canada's cross-motion. On July 2, the Tribunal granted the FNLC Interested Party status with participation limited to the Caring Society's non-compliance motion and Canada's cross-motion.

A hearing on the non-compliance motion and cross-motion may take place in August 2024, after which the Tribunal could issue a non-compliance order against Canada with specific measures to address the non-compliance.

The Caring Society has taken a solutions-oriented approach on this non-compliance motion, provided constructive recommendations for Canada to remedy its longstanding non-compliance with Jordan's Principle, and invited Canada to provide its own solutions to meet or beat those the Caring Society has put forward. In doing so, the Caring Society's hope is that the best solutions will be implemented following this motion, because First Nations children deserve nothing less.

This information sheet contains general information about the Caring Society's non-compliance motion and is ***not legal advice***. Consult with your legal counsel to seek advice and guidance about your own needs and circumstances.

Key Questions:

What concerns did the Caring Society raise in the December 2023 non-compliance motion?

In its [December 12, 2023, non-compliance motion](#), the Caring Society identified the following concerns regarding Canada's wilful:

- Narrowing of the Tribunal's orders by imposing additional eligibility criteria and request processing criteria;
- Ineffective methods for receiving and processing Jordan's Principle requests by phone or other formats;
- Chronic failure to adhere to the Tribunal's timelines for determining requests including in urgent cases;
- Failure to adhere to reasonable timeframes to fund approved requests;
- Failure to adopt sufficient accountability measures to ensure that the Tribunal's orders are upheld; and
- Attempting to shield itself from non-compliance by relying on the *Financial Administration Act* and other administrative measures.

What relief is the Caring Society seeking?

Please note that the below is a non-exhaustive summary of the orders the Caring Society seeks on the non-compliance motion. To get a complete picture of the Caring Society's legal arguments and requested orders, please consult its [December 12, 2023 notice of motion](#), [April 19, 2024 factum](#) and [June 7 reply factum](#). To get a complete picture of the Caring Society's evidence, please consult the Caring Society's [January 12, 2024 affidavits](#) and [March 27, 2024 reply affidavits](#).

Orders sought by the Caring Society:

The Caring Society has requested orders related to urgency;

timeliness in determinations, reimbursements/payments, and backlogged requests; and accountability measures.

The Caring Society has requested an order that Canada will immediately include requests from First Nations children experiencing (or reasonably anticipated to experience) the death of a caregiver, biological parent, or sibling and requests from children impacted by a state of emergency in its definition of "urgent requests". The Caring Society has also requested an order to ensure that Canada revises the National Call Centre calling tree (and other contact mechanisms) to ensure that requestors can easily indicate that their request is or has become urgent and that the contact mechanisms are sufficiently staffed with employees who have authority to review and determine urgent requests during and after business hours. The Caring Society is also seeking an order that Canada appoint sufficient staff in each ISC region and nationally who are responsible for managing urgent requests to ensure that the determinations are made in a manner consistent with the Tribunal's orders.

The Caring Society has requested an order that Canada will contact all requestors in the backlog and urge all requestors with urgent or time-sensitive requests, including those requests that have become urgent over time, to contact specific personnel who will determine the requests. The Caring Society has also requested an order that Canada will triage all backlogged requests for urgency and report back to the Tribunal with timelines for when the backlogged requests will be determined.

In terms of reimbursements and payments, the Caring Society has requested an order that Canada report to the Tribunal about 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 to children and families. The Caring Society has also requested an order that Canada will report back to the Tribunal with practical solutions to address payment delays, including methods for emergency payments, an automated process that presumptively approves all requests under \$500 with a recommendation from a professional or supporting letter from an Elder/Knowledge Keeper, expansion of the use of acquisition cards, and payment of any interest accrued by families and service providers who have had to take out additional loans due to Canada's payment delays.

The Caring Society has requested an order that Canada will confirm to the Tribunal that all First Nations and First Nations organizations who have taken on the delivery of Jordan's Principle have sufficient and sustainable resources, including funding, to do so. Finally, the Caring Society has requested an

order that Canada will establish a credible, effective, and independent Jordan's Principle complaints mechanism with authority to approve urgent cases and publicly report on ISC's compliance.

What relief is Canada seeking?

Canada opposes the Caring Society's non-compliance motion. Canada filed its notice of cross-motion on March 15, 2024, and sought several orders (a non-exhaustive summary of which is below). For a full sense of Canada's evidence on the Caring Society's motion and its own cross-motion, please consult [Canada's March 15, 2024 affidavits and notice of cross-motion](#).

Below is a summary of the orders sought by Canada, including an order to dismiss the non-compliance motion. For more information on the orders Canada is seeking from the Tribunal, please consult [Canada's May 24, 2024 factum](#).

Orders sought by Canada:

Canada has requested orders related to urgency, timelines, and the ability to refer requestors to existing services.

Specifically, Canada is seeking an order for the parties to co-develop objective criteria to identify urgent requests, as well as an order extending the determination timeframes ordered by the Tribunal in 2017 CHRT 14 and 2017 CHRT 35 (Amendment).

Canada has requested an order that it may refer requestors to First Nations or First Nations community organizations administering Jordan's Principle when ISC is the government of first contact (and that where a request is urgent, Canada will consider whether referring the requestor will enable faster access to the requested product, service, or support). Canada also requested an order that any First Nations or community organizations administering Jordan's Principle via a contribution agreement with ISC not be bound by the procedural terms of the Tribunal's orders on Jordan's Principle that are directed at Canada.

Further, Canada suggests that ISC, the AFN, COO, NAN, and the Caring Society seek to resolve the issues raised in the non-compliance motion through Tribunal-assisted mediation and submits that the Tribunal should dismiss the Caring Society's non-compliance motion and grant the relief sought in Canada's cross-motion.

What position has the AFN taken?

The AFN has opposed most of the relief sought on the Caring

Society's non-compliance motion. The AFN acknowledges issues related to Canada's compliance with the Tribunal's mandated timelines for urgent requests, families having difficulties reaching ISC officials, backlogs in intake and determinations, and delayed payments to service providers and requestors. However, the AFN also attributes many of the issues to Canada's adoption of the Back-to-Basics policy and asserts that many of the concerns identified in the non-compliance motion are the subject of ongoing negotiations related to the long-term reform of Jordan's Principle. With this in mind, the AFN is of the view that the Caring Society has chosen to "circumvent existing processes in favour of pathways that it views as more favourable to its ends". For a full sense of the AFN's positions, consult its [May 17, 2024 factum](#). You can also get a sense of the AFN's evidence by reading the [AFN's March 22, 2024 affidavit](#).

Orders sought by the AFN:

The AFN has requested orders related to reimbursement and urgency. Specifically, the AFN has requested an order in relation to the reimbursement of service providers and individual requestors, subject to further detail that will be provided in future submissions. The AFN has also requested an order in which the Tribunal clarifies its previous Orders on the determination of urgent requests.

The AFN has requested that the Tribunal ensure that any relief ordered in the non-compliance motion proceedings be interim in nature, subject to a final settlement agreement or an expiry date of March 31, 2025. Finally, the AFN has requested that all relief sought by the Caring Society be dismissed.

What positions have COO, NAN, and the Commission taken?

COO's positions:

In its [May 10, 2024 letter submissions](#), COO indicated that they will not take a position on the Caring Society's non-compliance motion.

NAN's positions:

NAN has indicated that they will not take a position on the Caring Society's non-compliance motion.

Canadian Human Rights Commission's positions:

In its [May 10, 2024 factum](#), the Commission indicated it broadly supports the Caring Society's non-compliance motion.

What about the First Nations Leadership Council's request to intervene?

On June 3, 2024, the First Nations Leadership Council comprised of the Union of British Columbia Indian Chiefs, the First Nations Summit and the BC Assembly of First Nations, filed a [motion for an order granting it interested party status](#). The FNLC motion to intervene is specifically limited to the Caring Society's December 12, 2023 non-compliance motion and Canada's March 15, 2024 cross-motion.

The Caring Society filed letter submissions in support of the FNLC's motion for interested party status. The AFN, COO and NAN have taken no position on the FNLC's motion (subject to certain conditions). The Commission also filed letter submissions in support of the motion. Canada does not oppose granting interested party status to the FNLC on certain terms. On June 26, FNLC filed their reply, with the Tribunal [granted the FNLC Interested Party status](#) with participation limited to the Caring Society's non-compliance motion and Canada's cross-motion on July 2.

What are the key dates and submissions?

As a result of the [AFN's April 5, 2024 request to amend the schedule](#), the Tribunal directed a revised schedule. Furthermore, following the FNLC's request to intervene, the Tribunal paused the schedule on June 12, 2024 until it has ruled on the interested party status motion.

- December 12, 2023: [Caring Society's non-compliance motion](#)
- January 12, 2024: [Caring Society's affidavits](#)
- March 15, 2024: [Canada's cross-motion and affidavits](#)
- March 27, 2024: [Caring Society's reply affidavits](#)
- April 2-3, 2024: Cross-examination of two senior ISC officials
- April 12, 2024: [Canada's response to requests for information](#)
- April 19, 2024: [Caring Society's factum](#)
- May 10, 2024: [Commission's factum](#); NAN and [COO reply](#)
- May 17, 2024: [AFN's factum](#)
- May 24, 2024: [Canada's factum](#)

- June 7, 2024: [Caring Society's reply factum](#)
- June 28, 2024: Caring Society/AFN/Commission/COO/NAN response to Canada's cross-motion factum (paused)
- July 19, 2024: Canada reply factum (paused)

The Tribunal has indicated that a hearing will take place no later than August 2024, but the schedule has been put on hold pending the Tribunal's ruling on the FNLC's motion.

Once any documents are publicly available, they will be posted to fnwitness.ca.

Who is responsible for administering the Tribunal's orders on Jordan's Principle?

The Government of Canada is legally obligated to implement Jordan's Principle in compliance with the Tribunal's orders. The Tribunal has ordered that Jordan's Principle must be implemented based on the principles of substantive equality, culturally appropriate service provision, the child's needs and best interests, and must take distinct community circumstances into account.

Some First Nations are also working to ensure that their citizens have access to Jordan's Principle. This is a positive step but does not absolve Canada from its ultimate legal responsibility to ensure Jordan's Principle is being implemented in a manner consistent with the Tribunal's orders.

What is a non-compliance order?

A non-compliance order is a legal order issued by the Tribunal with specific measures to ensure that Canada follows its existing legal orders. In 2016, the Tribunal ordered Canada to immediately stop the discrimination at the level of the FNCFS Program and Jordan's Principle and prevent it from recurring. Canada did not immediately do so. As a result, the Tribunal has issued more than 28 subsequent orders, many of them non-compliance orders.

What happens if a non-compliance order is issued?

If the Tribunal determines that a non-compliance order is warranted, Canada will be ordered to provide immediate relief in the area(s) captured by the Tribunal's non-compliance order. Non-compliance orders are legally binding and set out specific measures Canada must take to comply with the Tribunal's orders

and often include mandatory reporting to the Tribunal. For example, Canada could be ordered to take certain measures to address the significant backlogs in Jordan's Principle requests, among other things.

Is the Tribunal's hearing on the non-compliance motion public?

Yes, there will be a public hearing on the Caring Society's motion and Canada's cross-motion. Updated information, including the location of the hearing, will be posted on our website as it becomes available.

Background:

In 2007, the First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a human rights complaint against Canada for its inequitable provision of the First Nations Child & Family Services (FNCFS) Program and flawed approach to Jordan's Principle. In late 2009, the Chiefs of Ontario (COO) and Amnesty International were granted interested party status. In 2016, the Tribunal ordered the government to stop its discriminatory conduct and take measures to ensure it does not happen again. After this ruling, Nishnawbe Aski Nation (NAN) was also granted interested party status. Since 2016, the Tribunal has issued over 28 non-compliance and procedural orders against Canada and retains jurisdiction over the complaint.