Docket: T1340/7008

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

August 8, 2024

David P. Taylor

Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9

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

Sarah Clark

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

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

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

TABLE OF CONTENTS

OVERVIEW

1. As the Tribunal emphasized in the opening line of its landmark Merits Decision, this case concerns children.[1] Time matters for children who face the burden of Canada's discrimination. Time mattered for the two young children in Pikangikum First Nation who died earlier this year, waiting for ISC to determine an urgent group request.[2] Time mattered for the two children who lost multiple family members, including their mom and a sibling, over the course of roughly a year, and had to turn to the Caring Society for funding to attend a memorial Potlatch because Canada, later supported by AFN, said it was not urgent.[3] Time mattered for the mother fleeing domestic abuse who called the Caring Society because she and her kids needed somewhere safe to go and ISC was not picking up the Jordan's Principle phone.[4] Time mattered for a mother with special needs children fleeing a territory-wide wildfire state of emergency, when ISC told her that some of the items Canada's own emergency website says are emergency kit essentials could not be covered by Jordan's Principle.[5] Time matters for First Nations organizations like the Assembly of Manitoba Chiefs and the Keewatin Tribal Council, or First Nations like the Blood Tribe, that have had to bridge finance Canada's approved Jordan's Principle requests because they have children in need and Canada is not paying its bills on time.[6] Time matters for the dedicated First Nations and First Nations Jordan's Principle service coordinators, who watch their communities' children's needs go unaddressed while ISC takes weeks and months to help their kids.[7] Time matters for the thousands of children in need, many of whom could be in urgent need of assistance,

---

[1] 2016 CHRT 2 at para 1: "This decision concerns children (emphasis in original)."
[2] Reply Affidavit of Dr. Cindy Blackstock (aff'd Mar. 27, 2024) ("**Dr. Blackstock Reply Affidavit**") at paras 13-24.
[3] Affidavit of Brittany Mathews (aff'd Jan. 12, 2024) ("**B. Mathews Affidavit**") at paras 43-49; Factum of the Attorney General of Canada, dated May 24, 2024 ("**AGC Factum**") at paras 76-78.
[4] B. Mathews Affidavit at paras 29-42.
[5] Affidavit of Dr. Cindy Blackstock (aff'd Jan 12, 2024) ("**Dr. Blackstock Affidavit**") at paras 136-140.
[6] Dr. Blackstock Affidavit at paras 162-165 and Exhibits 37 and 59; Dr. Blackstock Reply Affidavit at para 30.
[7] Dr. Blackstock Affidavit at Exhibits 33 (Independent First Nations), 34 (Cowessess First Nation), 35 (Dnaagdawenmag Binnoojiiyag Child & Family Services), 36 (Secwepemc Child & Family Services, Ayás Ménmen Child & Family Services, Surrounded by Cedar Child & Family Servies, Vancouver Aboriginal Child & Family Services Society), 55 (Ojibways of Onigaming), 56 (Taku River Tlingit First Nation), 57 (Kasohkowew Child Wellness Society), 59 (Assembly of Manitoba Chiefs).

whose requests remain in Canada's backlog of cases because Canada chose to not tell the parties to this proceeding, the National Advisory Committee or the Jordan's Principle Operations Committee members about the growing backlog of Jordan's Principle cases until it reached the point that tens of thousands of requests to meet children's needs are waiting to be opened or determined.[8] Time matters because children only get one childhood and this case is about them.[9]

2. In 2023 CHRT 44, the Tribunal emphasized that its analysis in these proceedings has always placed the right to substantive equality of First Nations children and families at the forefront of all its rulings and Orders, including those related to Jordan's Principle.[10] That has been, and continues to be, the Tribunal's focus.[11] Despite this guidance, the relief sought on Indigenous Services Canada's ("**ISC**") cross-motion does not focus on substantive equality or on First Nations children. Instead, it focuses on itself, echoing prior approaches that have been critiqued by the Tribunal, when ISC focused on "its administrative needs rather than the seriousness of requests, the need to act expeditiously and, most importantly, the needs and best interests of children."[12] Indeed, ISC failed to sound any alarms regarding its non-compliance and is now trying to leverage its failure in order to shield itself from its obligation to fully implement the Tribunal's orders. Canada chose not to ask for help in dealing with the growing backlog crisis and repeatedly chose, over many years, not to take up suggested effective measures to address it or to propose alternatives.

3. Canada's own data on approved requests demonstrates the efficacy of the Tribunal's orders in making life-changing and life-enhancing improvements for First Nations children. The Tribunal's orders ought to remain, and Canada's compliance ought to be strengthened; the *quasi*-constitutional *Canadian Human Rights Act* ("***CHRA***") requires all victims to be relieved of discrimination – not just most of them. When properly implemented, the Tribunal's orders have

---

[8] B. Mathews Affidavit at paras 73-80.
[9] 2016 CHRT 2 at para 1.
[10] 2023 CHRT 44 at para 224.
[11] 2023 CHRT 44 at para 224.
[12] 2017 CHRT 14 at para 93.

proved successful in safeguarding children from the worst effects of Canada's discrimination.[13] The Tribunal's orders are working. They must be fully implemented for all children.

4. The Tribunal has been clear that the purpose of its retained jurisdiction is to ensure that its orders are effective in ending the discrimination identified in the Merits Decision and preventing its recurrence.[14] The Tribunal's orders and its continuing supervision of their implementation have been incredibly effective and life changing for tens of thousands of First Nations children. This is the lens through which Canada's requested orders should be considered. Canada's invitation to look past the impacts of its discriminatory conduct on children and privilege its administrative concerns, as opposed to First Nations children's access to substantively equal and needs-based products, services, and supports, must be rejected.

5. The Caring Society does not agree that the evidence supports Canada's and the AFN's assertions that allowing requesters to self-identify whether circumstances they face are urgent is causing the most important cases to fall through the cracks. Existing Tribunal orders already require cases threatening irremediable harm to a First Nations child to be prioritized over all other cases. The objective criteria ISC says it needs to ensure that it properly identifies urgent Jordan's Principle requests (a long-standing concern of the Caring Society's) already exist in the Tribunal's orders and in the Back-to-Basics guidance developed two-and-a-half years ago.

6. Similarly, ISC using already provided-for mechanisms under the Tribunal's orders to refer requesters to existing services where this is a more effective means of meeting requesters' needs may achieve the Tribunal's repeated direction to close gaps in services to First Nations children. On the other hand, watering down the Tribunal-ordered determination timelines from 2017 CHRT 14, as confirmed in 2017 CHRT 35,[15] in the face of insufficient and inadequate evidence will not improve First Nations children's access to substantively equal products, services, and supports. Lowering ISC's passing grade will not serve the needs of First Nations children.

---

[13] See Dr. Blackstock Affidavit at para 15.
[14] 2017 CHRT 14 at para 132.
[15] Notice of Cross-Motion of the Attorney General of Canada, dated March 15, 2024 ("**AGC Cross-Motion**") at para 3.

7. On ISC's cross-motion, the Caring Society maintains its solutions-oriented approach.[16] The Caring Society has proffered remedies to ISC's non-compliance and repeatedly invited ISC to provide solutions that (a) are consistent with substantive equality and the best interests of the child; and (b) do not derogate from the Tribunal's existing Jordan's Principle Orders.[17] However, the Caring Society cannot support ISC solutions that are not child focused, that are based on impermissible derogations from the Tribunal's Orders, or that undermine existing human rights entitlements and obligations enshrined in the Tribunal's Orders under the quasi-constitutional *CHRA*.[18]

8. The Caring Society has structured its responding submissions as follows:

a. Part I – Co-Developing Urgency Criteria;

b. Part II – Timelines;

c. Part III – Referring Requestors;

d. Part IV – Procedural Orders Directed at Canada;

e. Part V – Tribunal-Assisted Mediation; and

f. Part VI – Response to FNLC's Submissions

g. Part VII – Relief Sought.

PART I – CO-DEVELOPING URGENCY CRITERIA

9. Canada's cross-motion seeks direction that "objective criteria" for identifying urgent Jordan's Principle requests be co-developed amongst the parties. However, the need to supplant the Back-to-Basics approach to urgency, which acknowledges that requestors are best positioned

[16] Notice of Motion of the Caring Society, dated December 12, 2023, at Schedule A – "Jordan's Principle Work Plan".
[17] AGC Factum at para 40.
[18] *Canadian Human Rights Act*, RSC 1985, c H-6.

to identify the urgent or time-sensitive nature of a First Nations child's need for a product, service or support, has not been established on the evidence.

10. What the evidence does establish is that urgent requests have significantly increased over the last two-and-a-half years.[19] As the Caring Society noted in its factum in chief on the main motion, many factors may underlie this increase.[20] The evidence establishes that ISC does not contest the urgency of roughly four out of five of these urgent requests. This, in itself, demonstrates the efficacy of the present approach. As noted in the Caring Society's reply factum on the main motion, ISC has not proffered sufficient evidence to support its assertion that the remaining one out of five requests identified as urgent are not urgent.[21]

11. More questions would have to be asked to determine that the roughly one out of five requests ISC does contest are not urgent, as requests that do not appear urgent on their face may be tied to urgent needs when contextualized. Indeed, as Dr. Gideon conceded on cross-examination, the cases presented within her affidavit were "just examples, they're not definitive. They would have to be examined within each specific case to be sure."[22] The evidence led by the Caring Society from Dr. Giroux, an Indigenous pediatrician, regarding social prescription, provides an illustration of the kinds of questions that ISC's evidence does not answer. For clarity on this point, and contrary to the AFN's recent suggestion,[23] the Caring Society does not argue that all cases involving social prescription are urgent. Rather, the Caring Society's position is that ISC's evidence of "misclassified" urgent requests, which is based on the nature of the "item" requested rather than the child's needs and circumstances,[24] cannot be accepted on its face, as it is devoid of contextual consideration, such as the impact of social prescription to address urgent circumstances.

---

[19] B. Mathews Affidavit at paras 26-27; Factum of the Caring Society, dated April 19, 2024 ("**CS Factum**") at paras 69-70; Affidavit of Dr. Valerie Gideon (aff'd March 14, 2024) ("**Dr. Gideon Affidavit**") at paras 21-22.
[20] CS Factum at para 70.
[21] Caring Society Reply Factum, dated June 7, 2024 ("**CS Reply Factum**") at para 16.
[22] Cross-examination of Dr. Valerie Gideon ("**Dr. Gideon CX**"), p 91, lines 10-15.
[23] Cross-Motion Factum of the Assembly of First Nations, dated July 30, 2024, ("**AFN Cross-Motion Factum**") at para 59.
[24] Dr. Gideon Affidavit at para 24.

12. Contrary to the assertion of Canada and the AFN,[25] the evidence also does not support the proposition that permitting requesters to identify urgent circumstances facing the First Nations child requiring support is causing life-threatening or -altering circumstances to be missed. Even if this were the case, the Tribunal's orders are clear on this point: situations giving rise to the reasonable belief that a First Nations child may face irremediable harm must go to the front of the line and be dealt with immediately.[26]

13. At the same time, however, the Caring Society is unclear as to why Canada has not made efforts to begin such co-development in advance of a ruling from the Tribunal. Indeed, once the Caring Society commenced this motion, Canada's approach, which remains unexplained, was to cancel or withdraw from the very gatherings in which such co-development could have taken place.[27] The Caring Society has consistently been raising its concerns regarding urgent cases for more than a year,[28] and has clearly identified its openness to Canada's alternative solutions in bringing its non-compliance motion.[29] To this point, ISC's efforts to address continuing concerns have remained a case-by-case endeavour, rather than seeking to address the systemic issues that underlie this proceeding.

14. In light of the AFN's repeated assertion that further remedies should be developed exclusively between Canada, the AFN, COO and NAN, the Caring Society seeks to clarify that its position is that any Tribunal-ordered co-development process should involve the Caring Society and the Commission as well. This is aligned with the 15 letters and resolutions from First Nations and First Nations organizations supporting the Caring Society's relief sought on this motion.[30]

---

[25] AGC Factum at paras 34 and 62; AFN Cross-Motion Factum at para 23.
[26] 2017 CHRT 35 at paras 135(2)(A)(ii) and 135(2)(A)(ii.1).
[27] Dr. Blackstock Reply Affidavit at para 91 and Exhibit 32; B. Mathews Affidavit at para 8 and Exhibit 2; Cross-examination of Candice St-Aubin ("**C. St-Aubin CX**") at p 409, line 20 to p 410, line 1; Dr. Gideon CX at p 148, lines 1-11.
[28] B. Mathews Affidavit at paras 16 and 26-28.
[29] Dr. Blackstock Affidavit at para 179; CS Factum at para 12.
[30] Dr. Blackstock Affidavit at Exhibits 33 (Independent First Nations), 34 (Cowessess First Nation), 35 (Dnaagdawenmag Binnoojiiyag Child & Family Services), 36 (Secwepemc Child & Family Services, Ayás Ménmen Child & Family Services, Surrounded by Cedar Child & Family Servies, Vancouver Aboriginal Child & Family Services Society), 37 (Kainaiwa), 42 (British Columbia Aboriginal Child Care Society), 43 (Interlake Reserves Tribal Council), 44 (Carrier

15. Contrary to ISC's proposal for a 60-day period for discussions, the Caring Society submits that any discussions ordered should be completed within 30 days. Indeed, the proper approach to identifying and responding to urgent cases has been under discussion between the parties for years. The Standard Operating Procedures developed in 2018-2019, Back to Basics (developed in 2021 and implemented in early 2022),[31] the unimplemented AIP Workplan, and the significant effort expended on this motion over the last eight months all provide a substantial basis for the parties to build on in co-development. Indeed, given the details provided in the legal submissions filed to date, the parties' respective positions will not come as a surprise in these discussions.

16. As a result, the Caring Society proposes that, should it be determined that further measures beyond the Caring Society's proposed urgency criteria are required, the Tribunal should order the parties to participate in a 30-day co-development process regarding criteria for identification of urgent cases, following which the parties should either submit a consent order (if there is consensus) or, consistent with the dialogic approach, provide alternative proposals respecting objective urgency criteria for the Tribunal's consideration.

17. Moreover, the Caring Society disagrees with the AFN's repeated assertion that any remedial orders, including guidance related to urgency, should expire at the time of a Final Settlement Agreement or by March 31, 2025.[32] As the Tribunal has repeatedly set out, consent orders are not adopted without the Tribunal's scrutiny. The test set out in 2022 CHRT 41 for modification of the Tribunal's orders should apply to any proposal to replace the Tribunal's remedial orders.

18. Guidance from the Tribunal would, however, be helpful in response to assertions from Canada and the AFN that the needs contemplated by the Tribunal in distinguishing between urgent and non-urgent requests is limited to life-threatening, -limiting, or -altering needs for First Nations

---

Sekani Family Services), 55 (Ojibways of Onigaming), 56 (Taku River Tlingit First Nation), 57 (Kasohkowew Child Wellness Society), 58 (Federation of Sovereign Indigenous Nations), and 59 (Assembly of Manitoba Chiefs); Dr. Blackstock Reply Affidavit at Exhibits 19 (Carrier Sekani Family Services), and 20 (Federation of Indigenous Sovereign Nations).

[31] Affidavit of Dr. Gideon at paras 16-17.

[32] AFN Cross-Motion Factum at paras 26-27 and 80.

children.[33] The Caring Society does not agree that the Tribunal orders are as narrow as Canada and the AFN suggest, given that they distinguish between urgent cases involving reasonably foreseeable irremediable harm (requiring immediate response) and "all other urgent cases" (requiring response within 12 hours for individual cases and 48 hours for group cases).[34] The terms used to describe urgency, particularly in AFN's submissions, appear to capture the former and exclude the latter. This risks eclipsing real and pressing needs faced by First Nations children in a wide array of other urgent cases that require a prompt response. The Caring Society's position is that urgency is not limited to cases that put a First Nations child's life at stake, but should extend to serious situations involving a First Nations child that need to be addressed as soon as possible, as illustrated by the examples provided in the Back-to-Basics guidance document (end-of-life/palliative care, mention of suicide, physical safety concerns, no access to basic necessities, risk of entering the child welfare system).[35]

PART II – TIMELINES

19. In its Notice of Cross Motion, ISC seeks to vary and/or extend the timelines for the determination of Jordan's Principle requests that the Tribunal ordered in 2017 CHRT 14 and confirmed in 2017 CHRT 35.[36] The Tribunal should reject the relief sought because: (i) ISC has failed to provide any credible evidence in support of adjustments to the Tribunal's existing determination timelines; (ii) ISC has led no evidence demonstrating that the discrimination currently experienced by First Nations children would be alleviated by its alternative proposal; and (iii) ISC's "without unreasonable delay" determination standard is too vague to be operationalized, leaves Canada with unreasonable definitional discretion, and is contrary to the federal government's own guidance on best practices. When asked about the standard proposed, ISC's own Senior Assistant Deputy Minister responsible for implementing Jordan's Principle stated: "I would never use that as a standard" and agreed that it is not measurable.[37]

---

[33] Factum of the Attorney General of Canada, dated May 24, 2024 ("**AGC Factum**") at para 62; AFN Cross-Motion Factum at paras 23-24.
[34] 2017 CHRT 35 at paras 135(2)(A)(ii) and 135(2)(A)(ii.1).
[35] B. Mathews Affidavit at Exhibit 8 – Back-to-Basics Approach, p 3.
[36] Notice of Cross-Motion of the Attorney General of Canada, dated March 15, 2024 ("**AGC Notice of Cross-Motion**") at para 3.
[37] Cross-examination of Candice St-Aubin ("**C. St-Aubin CX**") at p 240, lines 11-19.

ISC has led no evidence in support of its revised timelines

20. ISC wants the Tribunal to extend the timelines for dealing with urgent requests from 12 to 48 hours for individual requests and from 48 hours to one week for group requests.[38] For non-urgent requests, ISC proposes eliminating the timeline by replacing the existing 48-hour (individual) and one-week (group) timeframes with an aspirational goal based on the undefined objective of avoiding "unreasonable delay".[39]

21. Instead of leading evidence in support of its proposal, ISC criticizes the evidentiary basis for the current timeframes and points to its own inability to keep up with current demand, despite having led no evidence on why timeline modification is the appropriate option for responding to its operational challenges.[40]

22. The Tribunal's stated approach to amending its orders makes clear that Canada has simply not provided the Tribunal with a basis for granting the relief sought.[41] In 2022 CHRT 41, the Tribunal was clear that, "[o]nce it has reviewed the evidence and made findings and found that orders are warranted, the Tribunal cannot change its mind and rescind this unless it made an error, a reviewing Court overturns a finding or new and compelling evidence justifies it."[42] No such new and compelling evidence justifies the relief sought on ISC's cross-motion. To the contrary, the evidence led by the Caring Society and Ms. St-Aubin's admissions on cross-examination demonstrate that ISC's proposed changes are unjustified.

Canada's evidentiary critiques of the current timelines are unsupported

23. Canada argues that the Tribunal-ordered determination timelines should be modified as they were not based on objective evidence such as child welfare standards. However, this argument ignores the evidence that Canada's own senior official gave in 2017. It also fails to note that child welfare standards do not support Canada's approach to timeframes for determining urgent cases.

24. First, contrary the assertion in Ms. St-Aubin's affidavit, the current CHRT timelines were

---

[38] AGC Notice of Cross-Motion at para 3(a); AGC Factum at para 82(c).
[39] AGC Notice of Cross-Motion at para 3(b); AGC Factum at para 82(c).
[40] See Affidavit of Candice St-Aubin (aff'd March 14, 2024) at para 13.
[41] See 2022 CHRT 41 at paras 467-476.
[42] See 2022 CHRT 41 at para 474 (emphasis added).

based on the evidence of Robin Buckland, a senior ISC official.[43] Ms. Buckland was cross-examined during an earlier stage of this proceeding, in February 2017. Notably, she advised that ISC sought to deal with urgent cases within 12 hours.[44] In general, however, Ms. Buckland's evidence on her cross-examination demonstrates that, prior to the Tribunal's orders in 2017 CHRT 14 and 2017 CHRT 35, ISC's service standards were to determine:

a. Urgent individual cases within 12 hours, non-urgent individual cases within 5 days, and cases "outside the normative standard" within 7 days; and

b. Large group requests within 7 days, though in reality it was closer to 14 days.[45]

25. Ms. St-Aubin was unaware of Ms. Buckland's evidence in these proceedings. During her cross-examination, Ms. St-Aubin admitted that she was not aware that it was the First Nations and Inuit Health Branch's practice to try to deal with urgent Jordan's Principle cases in 12 hours.[46] Nor was she aware that Ms. Buckland's evidence was that ISC's voluntarily adopted non-urgent service standard for Jordan's Principle was 5-7 days.[47] Given that Ms. St-Aubin was unaware that Canada's own evidence informed the Tribunal-ordered timelines, the views on the appropriateness of the Tribunal-ordered timelines expressed in the St-Aubin Affidavit should be given little weight.

26. Second, Ms. St-Aubin criticizes the Tribunal's timeline as "not based on objective evidence" such as standardized child welfare service timelines or standard claims processing industry timelines ("**child welfare standards**").[48] However, the present timelines are indeed aligned with, and supported by, many child welfare standards, while Canada's suggested timelines ignore the very same objective evidence it sought to use to undermine the Tribunal's timeline. Numerous child welfare standards support prompt action to address urgent situations, with the

---

[43] See 2017 CHRT 14 at paras 96-99; see also C. St-Aubin CX, at Exhibit 3, Tab C – Excerpts of the Cross-examination of Robin Buckland.
[44] See C. St-Aubin CX, at Exhibit 3, Tab C – Excerpts of the Cross-examination of Robin Buckland, QQ 180-181.
[45] See C. St-Aubin CX at Exhibit 3, Tab C – Excerpts of the Cross-examination of Robin Buckland, QQ 180-181, 186, and 191-195.
[46] See C. St-Aubin CX at p 221, line 18 to p 222, line 13.
[47] See C. St- Aubin CX at p 222, line 14 to p 223, line 25.
[48] See Affidavit of Candice St-Aubin at para 13.

majority requiring action within 24 hours,[49] rather than the longer 48-hour (for individuals) and one-week (for groups) periods that Canada now seeks.

27. In any event, Canada has failed to indicate why the child welfare standards referred to in Ms. St-Aubin's affidavit provide a compelling reason for changing the current approach. Instead, when specifically asked on cross-examination what was meant by the reference in paragraph 13 of her affidavit to standardized child welfare timelines, Ms. St-Aubin indicated that the comment was "more around just the uses to – standards within and timelines within the systems related to children" but did not provide further clarification than that.[50] This generalized assertion does not provide the Tribunal with solid ground on which to modify timelines that have been in place for seven years.

ISC's "Without Unreasonable Delay" Determination Standard for Non-Urgent Cases is too Vague to Operationalize and is Contrary to Treasury Board Guidance

28. Canada's proposed timeline for determining non-urgent requests is undefined. For both individual and group cases, Canada says that ISC should be ordered to make determinations "without unreasonable delay".

29. In addition to Canada not having provide any evidence to support this timeline, the Tribunal should reject this "without unreasonable delay" determination timeline for three reasons.

30. First, Ms. St-Aubin, Canada's Senior Assistant Deputy Minister proffered to give evidence regarding Canada's current implementation of Jordan's Principle, rejected the proposed service standard on cross-examination, saying: "I would never use [that] as a standard."[51] She agreed that Canada's proposed service standard was not clear, measurable, or ambitious.[52] The Tribunal should have no confidence in a service standard that is not supported by the federal official called to give evidence in support of it.

31. Second, irrespective of Ms. St-Aubin's views, Canada's proposed standard flies in the face

---

[49] See C. St-Aubin CX at p 226, line 4 to p 235, line 7 and at Exhibit 4 (Caring Society Exhibits Brief, Vol. II).
[50] See C. St-Aubin CX at p 226, lines 14-16.
[51] See C. St-Aubin CX at p 240, lines 15-16.
[52] See C. St-Aubin CX at p 240, lines 15-16 and p 242, lines 10-15.

of the Treasury Board's own *Guideline on Service and Digital* ("**the Treasury Board Guideline**").[53] The Treasury Board Guideline applies to the federal government as a whole, including ISC.[54] Ms. St-Aubin agreed that it should have informed Canada's approach on this cross-motion.[55] Accordingly, Canada's failure to comply with its own voluntarily-adopted Treasury Board Guideline, which should be the bare minimum against which its proposal should be evaluated, should give the Tribunal serious concerns regarding the viability of Canada's proposed approach.

32. On cross-examination, Ms. St-Aubin agreed that establishing a timeline within which cases should be dealt with is a service standard.[56] Pursuant to the Treasury Board Guideline, such service standards usually have "three key components": (1) a service standard, being a clear and measurable statement on the level of service a client can expect; (2) a service performance target, which is a clear and measurable statement on the extent or frequency to which the standard will be met; and (3) a service performance result, which is the actual performance against the standard target and which is to be reported.[57] Moreover, one of the characteristics of a good service standard is that it is measurable, in the sense that it quantifiable and linked to the monitored activities.[58]

33. The "without unreasonable delay" metric does not meet any of the Treasury Board's three components for a service standard. It is not measurable. Being undefined, it cannot lend itself to producing measurable accounts of the extent or frequency with which a performance target could be met. Accordingly, it does not enable performance results to be measured against standard targets. It is therefore too vague to operationalize.

34. Third, there is no evidence of any consultation by ISC on the proposed "without unreasonable delay" determination timeline.[59] This is also contrary to the Treasury Board

---

[53] See C. St-Aubin CX at Exhibit 3, Tab D – Treasury Board Guideline on Service and Digital.
[54] See C. St-Aubin CX at p 236, lines 10-15.
[55] See C. St-Aubin CX at p 237, lines 6-10.
[56] See C. St-Aubin CX at p 240, lines 2-10.
[57] See C. St-Aubin CX at Exhibit 3, Tab D – Treasury Board Guideline, p 67/233.
[58] See C. St-Aubin CX at p 241, lines 1-9 and Exhibit 3, Tab D – Treasury Board Guideline, p 68/233.
[59] C. St-Aubin CX at p 252, line 12 to p 252, line 22; see C. St-Aubin CX at p 252, line 12 to p 255, line 4.

Guideline, which provides that service standards should be "developed or reviewed in consultation with clients, managers, staff and other partners in service delivery to ensure that they are meaningful to clients and match the organization's mandate and capacity".[60] No such consultation process has occurred.[61] Instead, in her cross-examination, Ms. St-Aubin's evidence was that Canada's proposal is "based on discussions internally and then partners have proactively come to us to say that they're also challenged to meet the timelines".[62] The Tribunal should reject Canada's "amend first, consult later" approach.

Ultimately, ISC's requested amendments should be rejected as they are not needs-based

35. Consistent with the Tribunal's focus on substantive equality at the forefront of all its rulings and orders,[63] any amendments to the Tribunal's existing orders should be designed to improve the lives of First Nations children, families, and communities. Any such amendments should further substantive equality and the best interests of the child and provide for greater needs-based access to culturally relevant products, services, and supports through Jordan's Principle. That is the outcome towards which all Parties should strive given the aim of uplifting and transforming the lives of First Nations children and families through Jordan's Principle.

36. As noted above, there is no evidence about the impact of Canada's requested amendments on First Nations children and families. On the evidence, the Tribunal can conclude that, in the face of the true depth of First Nations' children's unmet needs, ISC is struggling to meet the Tribunal-mandated timelines. Indeed, between April 1, 2023 and February 29, 2024, ISC's compliance rate for urgent individual requests was 24% and for urgent group requests was 28; during the same period, its compliance rate for non-urgent individual requests was 29% and for non-urgent group requests was 42%.[64] There is no evidence that the delays underlying this performance data will decrease on less ambitious determination timelines. To the contrary, the scatter plots provided by ISC as part of the November 2023 to February 2024 compliance reports demonstrate that current

---

[60] C. St-Aubin CX at Exhibit 3, Tab D - Treasury Board Guideline, pp 67-68/233.
[61] C. St-Aubin CX at p 252, line 12 to p 252, line 22; see C. St-Aubin CX at p 252, line 12 to p 255, line 4.
[62] C. St-Aubin CX at p 252, line 12 to p 252, line 22.
[63] 2023 CHRT 44 at para 224.
[64] Attorney General of Canada Responses to Requests for Information, dated April 12, 2024 ("**AGC Responses to RFI**") at Appendix D, p 58.

processing times far exceed Canada's proposed timelines.[65] More importantly, there is no evidence that such an extended determination timeline would improve the lives of First Nations children and families.

37. ISC should not be permitted to "reopen" the Tribunal-ordered determination timelines based on the evidence it has tendered on the motion and cross-motion.[66] Given the dearth of evidence about how extending the determination timelines would further substantive equality, the Caring Society submits that the extensions Canada requests would simply serve to decrease ISC's non-compliance with the Tribunal's Jordan's Principle orders on paper, without improving results on the ground.

38. Canada's proposed solution also does not address the root cause of the delays in ISC's processes. Indeed, any change to the timelines based on new and compelling evidence should be paired with large-scale changes to ISC's overall approach to Jordan's Principle.[67] The Caring Society's proposals focused on closing gaps in services revealed by existing Jordan's Principle group requests and on the use of automated approvals for low-cost requests, accompanied by a recommendation from a professional or a supporting letter from an Elder/knowledge keeper, are examples of such large-scale changes. ISC's as-yet undefined and un-resourced proposal for First Nations to take on greater roles in administration of Jordan's Principle requests is a further example of a large-scale change. Comprehensive action is required such that, being mindful of ISC's current non-compliance with the Tribunal-ordered timelines, reductions of the service standards ordered in 2017 do not have further deleterious effects on ISC's ability to make timely determinations.

39. The Caring Society does not agree with the AFN's submission that the Tribunal is being asked to choose "between extremes" on this motion.[68] The Caring Society is not asking the Tribunal to order Canada to expand the size of the federal public service to enable 100% compliance with the Tribunal-mandated timelines. Nor is the Caring Society taking the position that 100% compliance is the only measure of the elimination of discrimination. Instead, the Caring

---

[65] AGC Responses to RFI at Appendix D, pp 40-43 (Nov 2023), 47-50 (Dec 2023), 54-57 (Jan 2024), 61-64 (Feb 2024).
[66] See 2022 CHRT 41 at para 474.
[67] C. St-Aubin CX at p 262, line 6 to p 263, line 12.
[68] AFN Cross-Motion Factum at para 31.

Society's position is that a situation in which there are thousands of backlogged cases and in which the Tribunal-mandated timelines are met in a minority of cases across the country cannot endure. Changing the Tribunal-mandated timelines will not make a difference in the lives of First Nations children. Taking proactive and organized measures to address ISC's backlog, and taking measures to address the root causes of the increased demand being placed on Canada's administration of Jordan's Principle will.

PART III – REFERRING REQUESTORS

40. Canada also seeks an order that it may refer individuals to existing Jordan's Principle group requests or to First Nations or First Nations community organizations that have contribution agreements with ISC related to the implementation of Jordan's Principle.[69]

41. The Caring Society supports the direct involvement of First Nations and First Nations service providers in ensuring access to culturally appropriate, substantively equal services to First Nations children. Indeed, it is for this reason that it noted its agreement in 2017, along with Canada and the AFN, that requesters could be referred to existing services within the Tribunal-mandated timelines. This agreement is reflected in 2017 CHRT 35, in which the Tribunal endorsed the consent amendments sought in order to resolve Canada's judicial review of 2017 CHRT 14.[70]

42. Furthermore, the Back-to-Basics Approach, developed in discussions between Canada, the AFN and the Caring Society, encourages, recognizes and endorses the importance of community-level engagement to meet the needs of first Nations children in the following terms:

> Service Coordinators provide a critical support function to First Nations children and families in accessing supports through Jordan's Principle. In addition to providing navigation support through the Jordan's Principle application process, Service Coordinators also have in-depth knowledge of the other services that may be available at the community level and would be of benefit to the child to ensure a continuum of supports and services.[71]

---

[69] AGC Cross-Motion at para 4; AGC Factum at para 82(d).
[70] 2017 CHRT 35 at paras 1-2 and 4.
[71] B. Mathews Affidavit at Exhibit 8 – Back-to-Basics Approach, p 6 (emphasis added).

43. As a result, Back-to-Basics provides that ISC's Jordan's Principle Focal Points will offer the local Service Coordinator's contact information to the requester and "explain the benefits of Service Coordination and the types of supports they can offer to a child and family."[72]

44. The approach ISC seeks support for on its cross-motion, and which is supported by the AFN,[73] is also already reflected in the Tribunal's existing orders themselves. 2017 CHRT 35 already provides that "Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available".[74]

45. Accordingly, the Caring Society's view is that referrals to existing services are permissible under, and consistent with, the Tribunal's Order in 2017 CHRT 35.[75]

46. However, as the Caring Society contemplated in its main submissions on its motion,[76] and as AFN has argued in its cross-motion responding factum, in keeping with the Tribunal's orders' overriding focus on the needs and circumstances of First Nations children and families, First Nations and First Nations service providers must be properly resourced to take on this role.[77] The evidence in this proceeding reveals that there are already serious concerns regarding ISC's resourcing of First Nations and First Nations service providers taking a greater role in implementing Jordan's Principle on the ground.[78] Indeed, both the Federation of Sovereign Indigenous Nations, in Saskatchewan, and the Assembly of Manitoba Chiefs have criticized Canada's failure to provide adequate resources to local First Nations and local First Nations service coordinators where Canada is relying on those entities to implement Jordan's Principle.[79] This practice has very real consequences for First Nations. As Chief Roy Fox noted in a January 8, 2024

---

[72] B. Mathews Affidavit at Exhibit 8 – Back-to-Basics Approach, p 6.
[73] AFN Cross-Motion Factum at para 40.
[74] 2017 CHRT 35 at Orders 1(B)(iii)-(iv).
[75] 2017 CHRT 35 at Orders 1(B)(iii)-(iv); see also CS Reply Factum at para 25.
[76] CS Factum at paras 195(g) and 237(n); AFN Cross-Motion Factum at para 41.
[77] See Factum of the First Nations Leadership Council, dated July 16, 2024 ("**FNLC Factum**") at paras 60-61; AFN Cross-Motion Factum at paras 73-75.
[78] B. Mathews Affidavit at para 21; Dr. Blackstock Affidavit at para 132, citing Exhibit 36 – Letter from Indigenous Child and Family Services Directors.
[79] Dr. Blackstock Affidavit at Exhibits 58 – FSIN Jordan's Principle Working Group Motion, 59 – AMC letter to the Caring Society.

letter to the Caring Society, ISC's long delays in funding approved group requests "has resulted in a multi-million-dollar deficit for our Recreation Department which limits their ability to deliver much-needed programs to our child and youth population."[80]

PART IV – PROCEDURAL ORDERS DIRECTED AT CANADA

47. Canada is asking the Tribunal to confirm that First Nations or First Nations community organizations administering Canada's implementation of Jordan's Principle pursuant to a contribution agreement with ISC are not bound by "the procedural terms" of the Tribunal's Jordan's Principle order.[81] AFN supports this request.[82]

48. ISC submissions do not particularize what ISC views as being the "procedural terms" of the Tribunal's Jordan's Principle orders. Notably, the Tribunal's prior Jordan's Principle orders in these proceedings do not identify which portions are procedural. Moreover, in this litigation, there is no indication that the parties share a common understanding of what the "procedural terms" of the Tribunal's Jordan's Principle orders may be.

49. To the extent that ISC uses the phrase "procedural terms" to refer to the Tribunal-ordered determination timelines,[83] this focus on "procedure" misses the mark. Indeed, in pursuing the important goal of greater involvement for First Nations and First Nations service providers in ensuring First Nations children have the products, services and supports they need, when they need them, ISC's focus should be on closing gaps in services to First Nations children and coordinating among partners at other levels of government (both First Nations and provincial/territorial) to facilitate this gap-closing. Where gaps in services do not exist, Jordan's Principle requests need not arise, such that the Tribunal's timelines do not come into play.

50. The Caring Society is concerned that Canada's focus on procedure does not pay heed to the critiques of the contribution agreement funding model in the context of the First Nations Child and Family Services Program, made over a decade ago by both the Auditor General of Canada and noted by the Tribunal in the Merits Decision, which criticized that reliance on a contribution

---

[80] Dr. Blackstock Affidavit at Exhibit 37 at p 1.
[81] AGC Cross-Motion at para 5; AGC Factum at para 82(e).
[82] AFN Cross-Motion Factum at paras 43-47.
[83] See e.g. AGC Factum at para 82(e).

agreement model can shift focus away from service standards or results to be achieved, and can obscure accountability for achieving improved outcomes.[84]

51. In any event, the Caring Society submits that the Tribunal has already dealt with and disposed of this line of argument in 2020 CHRT 20, in which it considered a declaration requested by the Chiefs of Ontario to the effect that the Tribunal's ruling with respect to the eligibility of First Nations children recognized by their First Nation, but who did not have *Indian Act* status, would not impose any duty of care or responsibility on First Nations.[85] In finding that it would not be appropriate to make such a declaration, the Tribunal endorsed the Commission's submission on the matter, the summary of which is reproduced below, as "the correct legal interpretation to apply in this case":[86]

> In sum, the Commission submits that with respect to negating future duties of care or liability, it must be remembered that the Tribunal is a creature of statute. Its mandate is to conduct hearings into alleged violations of the *CHRA*, and where infringements are found, to determine appropriate remedies under s. 53. The Tribunal does not have jurisdiction to make rulings that would purport to negate any private law duties of care that First Nations might owe as a matter of common or civil law. Further, even in the context of the *CHRA*, one panel of the Tribunal does not have the power to make a ruling that would compel the Commission (as gate-keeper) or future panels (as quasi-judicial decision-makers) to reach particular results, regardless of the facts and arguments that may be before them. This would unduly fetter future decision-making, and unfairly restrict the rights of any parties to those hypothetical future cases.[87]

52. An order directed towards "procedural terms" is unnecessary. The Tribunal has already stated, in the context of the motion related to Jordan's Principle eligibility for First Nations children without *Indian Act* status who are recognized by their First Nation, that it "agrees with Canada that it cannot order First Nations who are not parties to do anything."[88] In that context, as here, the Tribunal recognized that the obligations flowing from the Tribunal's orders are not imposed on First Nations, but on Canada.

---

[84] 2016 CHRT 2 at paras 210 and 215.
[85] 2020 CHRT 20 at para 220.
[86] 2020 CHRT 20 at para 223.
[87] 2020 CHRT 20 at para 221 (emphasis added).
[88] 2020 CHRT 20 at para 225.

53. The Caring Society reiterates that ISC cannot contract out of its human rights obligations.[89] ISC cannot shield itself from the Tribunal's Orders by relying on First Nations' and First Nations service providers' processes,[90] including regarding the implementation of Jordan's Principle. Ultimately, "Canada remains responsible for fulfilling its human rights obligations, both in general and the specific orders from the Tribunal".[91] Canada cannot be absolved of its obligations under Jordan's Principle by establishing procedural avenues for First Nations and First Nations service providers to assist in implementing Jordan's Principle.[92] For this reason, the Caring Society agrees with Dr. Gideon's observation on cross-examination that the federal government will continue to require a mechanism to receive individual requests pursuant to Jordan's Principle.[93]

PART V – TRIBUNAL-ASSISTED MEDIATION

54. Although it has not sought an order to this effect,[94] Canada indicates in its written submissions that it seeks Tribunal-assisted mediation in which the Chairperson or another Member of the Tribunal (other than the Panel members seized of this complaint) would act as a mediator.[95] Canada has noted that the Chairperson and Members of the Tribunal have the requisite knowledge of the *CHRA* and the Tribunal's past rulings to do so and suggested that, in the interests of efficiency, a mediator could rely on filed materials rather than separate mediation briefs.[96]

55. Given that Canada has not taken any other steps to initiate such mediation in the last two-and-a-half months, and bearing in mind that the harm to First Nations children from Canada's ongoing failure to fully implement the Tribunal's orders continues to mount, the window for mediation is now quite narrow. This view is based on the many delays in reaching the hearing of this matter, and the importance of timely remedies to ensuring the effectiveness of the Tribunal's orders.

---

[89] 2022 CHRT 41 at para 250.
[90] 2022 CHRT 41 at para 251.
[91] 2022 CHRT 41 at para 252.
[92] 2022 CHRT 41 at para 252.
[93] Dr. Gideon CX at p 73, lines 7-25.
[94] AGC Cross-Motion; AGC Factum at para 82.
[95] AGC Factum at para 41.
[96] AGC Factum at para 41.

56. This is not to say that the Caring Society does not support mediated discussion as part of a solutions-oriented approach. Indeed, the Caring Society specifically raised the prospect of Tribunal-assisted mediation in the November 1, 2023 case management conference with the Panel, prior to bringing its December 12, 2023 non-compliance motion.[97] In that case management conference, the following positions were taken:

a. **Caring Society**: sought to determine the Panel's openness to engaging in a mediation-arbitration process. The Caring Society noted that the Panel had offered to do this before. The Caring Society indicated that although it was not taking a position about a Tribunal-assisted process in the case conference, it would be assistive to know the options before it.

b. **AFN:** indicated that it did not support Tribunal-administered mediation or arbitration.

c. **COO**: did not have instructions with respect to engaging the Tribunal in mediation.

d. **NAN**: did not have instructions about Tribunal-assisted mediation.

e. **Commission**: did not have instructions, but indicated that it may be possible to get instructions should all parties agree to engage in that process.

f. **Amnesty International**: did not take a position.

g. **Canada**: indicated that any discussion of mediation-arbitration was premature.

57. In sum, the Caring Society declared its interest in Tribunal-assisted mediation-arbitration during the November 1, 2023 case conference. At that time, the AFN conveyed its opposition to this notion, and Canada indicated that mediation was clearly premature.

58. In the January 25, 2024 case conference, Canada raised the prospect of building into the schedule a 30-day period for formal, intensive mediation after the record was closed, to see if the Parties could resolve or narrow issues during that time. The following positions were taken:

---

[97] Dr. Blackstock Affidavit at para 29(h).

a. **Caring Society** indicated its preference for Panel-led mediation-arbitration, noting that no one else would be as familiar with the history of the case and the Tribunal's Jordan's Principle orders as the Panel itself. The Caring Society also indicated that there could be significant efficiencies in pursuing a process with the Panel, as there were during the dialogic approach-based submissions during the compensation framework process in 2020.

b. **Commission**: indicated that it was open to engaging in discussions with the Panel if the Panel decided that it was appropriate to do so and the Parties were willing.

c. **AFN**: advised that it was open to mediation, but would not support mediation before the Tribunal.

59. In short, Canada raised the prospect of engaging in mediation about two weeks after the Caring Society filed its affidavits on its non-compliance motion. At that time, the Caring Society conveyed its openness to mediation and preference for Tribunal-assisted mediation.

60. Consistent with its position since November 2023, the Caring Society's view is that Tribunal-assisted mediation could assist in resolving some issues and narrow others where possible. In the Caring Society's view, such Tribunal-assisted mediation can only take place on an expedited basis, given the serious and urgent issues identified in the motion and cross-motion. For greater certainty, the Caring Society welcomes a Tribunal-assisted mediation process with the Panel, given their expertise and unmatched knowledge of this human rights litigation. The Caring Society notes the AFN's consistent opposition to this form of alternative dispute resolution.[98] However, in light of the 15 letters and resolutions from First Nations and First Nations organizations filed with the Tribunal that express support for the relief sought on the Caring Society's motion,[99] and noting the support of the First Nations and First Nations organizations

[98] AFN Cross-Motion Factum at para 49.

[99] Dr. Blackstock Affidavit at Exhibits 33 (Independent First Nations), 34 (Cowessess First Nation), 35 (Dnaagdawenmag Binnoojiiyag Child & Family Services), 36 (Secwepemc Child & Family Services, Ayás Ménmen Child & Family Services, Surrounded by Cedar Child & Family Servies, Vancouver Aboriginal Child & Family Services Society), 37 (Kainaiwa), 42 (British Columbia Aboriginal Child Care Society), 43 (Interlake Reserves Tribal Council), 44 (Carrier Sekani Family Services), 55 (Ojibways of Onigaming), 56 (Taku River Tlingit First Nation),

represented via the First Nations Leadership Council, the Caring Society hopes that Canada and the AFN will take full advantage of this promising opportunity.

61. If Canada and the AFN do not change their positions, the Caring Society's view is that, in light of the fact the hearing of this matter has already been delayed by three months, and bearing in mind the important harms evidenced in the record assembled by the Caring Society and the many voices of support from First Nations and First Nations organizations for the relief sought, the only feasible path for a mediated resolution or narrowing of issues in this matter is an expedited Tribunal-assisted mediation, with a Tribunal Member other than the Panel members seized of this case. To be clear, expedition is required, as the Caring Society is not prepared to further delay the hearing of this matter, particularly in light of Canada's failure to acknowledge its non-compliance or to take significant measures to fix it. The Caring Society submits that the Panel members should be consulted by the Tribunal Chairperson in assigning the Tribunal Member who would preside over the mediation. The Caring Society further submits that the Tribunal Member named to preside over the mediation should have full range to communicate with both Panel Chair Marchildon and Member Lustig about the case prior to the mediation commencing.

PART VI – RESPONSE TO FNLC'S SUBMISSIONS

62. The Caring Society generally endorses the FNLC's submissions, particularly as regards the identification of First Nations rightsholders. While the AFN's submissions in response to the FNLC on this point are not relevant to dispose of this motion, the Caring Society notes with concern the logical implication of the AFN's submission, which is that a measure negotiated by the AFN and opposed by up to 40% of First Nations would form an adequate basis for resolution of this complaint.[100]

63. The Caring Society also endorses the FNLC's submissions regarding the cultural importance of Potlatches. In response to the AFN's submissions on this point, the Caring Society agrees that substantive equality requires consideration for the funeral customs and ceremonies of all First Nations, particularly where those customs were banned for decades, as was the case with

---

57 (Kasohkowew Child Wellness Society), 58 (Federation of Sovereign Indigenous Nations), and 59 (Assembly of Manitoba Chiefs); Dr. Blackstock Reply Affidavit at Exhibits 19 (Carrier Sekani Family Services), and 20 (Federation of Indigenous Sovereign Nations).

[100] AFN Cross-Motion Factum at para 9.

the Potlatch.[101] The Caring Society also notes that the AFN's emphasis on whether or not supporting a Potlatch goes beyond the normative standard misses the purpose for which the Caring Society raised this issue, which is ISC's failure to identify a time-sensitive request that would have a significant impact on First Nations' children's healing at a time of immense grief as one that should be dealt with within the 12-hour timeframe for responding to an urgent request that does not give rise to reasonably foreseeable irremediable harm.[102]

64. With respect to establishing a complaints mechanism, the Caring Society also endorses the FNLC's submissions.[103] The Caring Society does not agree with the AFN's assertion that developing a complaints mechanism must await the result of its negotiations with Canada, COO and NAN.[104] The Caring Society also does not agree that its requested remedy amounts to a Tribunal-imposed approach; indeed, the remedy requested is in line with the dialogic approach that the Tribunal has used to date. Irrespective of the approach taken, the evidence demonstrates a clear need for additional accountability mechanisms related to Jordan's Principle. On a motion in which a complainant has identified areas in which a respondent is not effectively implementing previous orders made, the Tribunal must act if it is of the view that a measure is required to ensure that its orders are effective.[105] Where the Tribunal identifies a need for action, it cannot abdicate its statutory role where some parties, but not all, wish to hold the matter over for future discussions with an uncertain result.

PART VII – CONCLUSION

65. This case is about children. Time matters to children, and it is time for Canada to fully comply with the Tribunal orders. Children's lives depend on it.[106]

66. The Caring Society asks that the Tribunal dismiss ISC's cross-motion.

---

[101] FNLC Factum at para 33.
[102] CS Factum at paras 42 and 86-88.
[103] See FNLC Factum at paras 53-54.
[104] See AFN Cross-Motion Factum at paras 68-72.
[105] See CS Reply Factum at paras 52-57.
[106] See for example the situation in Pikangikum First Nation, where Canada denied or delayed urgent group-based requests for medical services despite the deaths of children before an initial request was made, after the initial request was denied, and while a fresh request was under consideration: Dr. Blackstock Reply Affidavit at paras 13-24.

67. The Caring Society remains willing to participate in mediation on an expedited timeline, either with the Panel or with another Tribunal Member selected by the Chairperson in consultation with the Panel, with such Member being at liberty to discuss the case in depth with the Panel prior to the mediation commencing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of August, 2024.

David P. Taylor
Sarah Clarke

Counsel for the Caring Society

LIST OF AUTHORITIES

Tab	Description
	Legislation/Statues
1.	*Canadian Human Rights Act*, RSC 1985, c H-6
	Case Law
2.	*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)*, 2016 CHRT 2
3.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2017 CHRT 14
4.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada*, 2017 CHRT 35
5.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 20
6.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 41
7.	*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44