Tribunal File No: 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 CANADA NISHNAWBE ASKI NATION and FIRST NATIONS LEADERSHIP COUNCIL

Interested Parties

WRITTEN SUBMISSIONS OF THE COMPLAINANT, ASSEMBLY OF FIRST NATIONS RE: CANADA'S CROSS-MOTION AND THE FIRST NATIONS LEADERSHIP COUNCIL'S INTERVENTION

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I. OVERVIEW

1. The Assembly of First Nations ("AFN"), a co-complainant in these proceedings, files these written submissions in response to the cross-motion filed by the Attorney General of Canada ("Canada") dated March 15, 2024 (the "Cross-Motion")[1], which was filed further to the First Nations Child and Family Caring Society of Canada's ("Caring Society") December 13, 2023, motion alleging non-compliance with the Tribunal's existing orders relating to the meaning and implementation of Jordan's Principle (the "Non-Compliance Motion.").[2] It additionally will address the written submissions of the First Nations Leadership Council ("FNLC") dated July 16, 2024.

2. Further to the direction of the Tribunal[3], the within submissions speak only to Canada's Cross Motion and the FNLC's materials. Accordingly, the AFN will address any other pertinent issues raised in reply to the AFN's May 17, 2024, written submissions at the September hearing.

3. As the AFN previously noted in relation to its submissions on the Caring Society's Non-Compliance motion, the true path to implementation of the full breadth of Jordan's Principle is properly the subject matter of negotiations, further to terms agreed upon in the Agreement-in-Principle ("AIP"), which noted that the parties thereto would work together to develop an evidence informed implementation approach for the long-term reform of Jordan's Principle.[4] Such an approach is consistent with the directions of the Tribunal, and the ongoing statements of the Courts emphasizing negotiation as a means to advancing reconciliation. This also aligns with the AFN's existing directions from the First Nations-in-Assembly, who have directed the AFN develop evidence and policy-based options for the long-term reform of Jordan's Principle, and to return to the First Nations-in-Assembly to approve such solutions and the related Final Settlement Agreement.[5]

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[1] Notice of Cross Motion of the Attorney General of Canada, dated March 15, 2024.
[2] Notice of Motion for Relief of the Complainant First Nations Child and Family Caring Society, dated December 13, 2023.
[3] See the letter from the Registry to the Parties dated July 8, 2024, confirming the schedule for the delivery of materials on Canada's cross-motion and reply to the FNLC's written submissions.
[4] Amended Affidavit of Craig Gideon, affirmed March 22, 2024, ["C. Gideon Affidavit"] at paras 8-10.
[5] C. Gideon Affidavit, Exhibit "A", AFN Resolution – 40-2022.

4. For the AFN, many of the implementation concerns identified, including in the context of the Cross-Motion and positions of the FNLC, are properly the subject of the forthcoming negotiations relating to the long-term reform of Jordan's Principle. The Non-Compliance Motion and associated Cross-Motion should not be avenues for cementing reactionary changes to the definition of Jordan's Principle or its administration – but a way of addressing the clear issues raised within these proceedings on an interim basis, pending completion of the necessary negotiations on long-term reform, as supported by the ongoing work of the Institute for Fiscal Studies and Democracy, which is set to complete its current research in relation to options for the reform of Jordan's Principle in December of 2024.[6] It is important that those who represent First Nations be afforded the opportunity to work with Canada, further to the nation-to-nation relationship, to figure out the best possible solutions for the long-term administration of Jordan's Principle.

5. The AFN submits that in weighing the requests as outlined in Canada's Cross-Motion, the Panel must be cognizant of the contextual realities associated with the current administration of Jordan's Principle, including the exponential increase in Jordan's Principle requests, particularly those identified as urgent, associated with the Back-to-Basics policy. The Panel's existing directions on Jordan's Principle must be considered in light of such realities. Some clarifications with respect to the Tribunal's existing orders may be required to ensure that truly urgent matters are duly and expeditiously addressed, that service providers are reimbursed on a timely basis, and that requests in the existing back-log can be promptly adjudicated. However, any orders derived from the Cross-Motion should be considered interim, focused on ensuring the spirit and intent of the Tribunal's existing orders are respected, while leaving space for the completion of an evidence-informed final settlement agreement on the long-term reform of Jordan's Principle, driven by the mandates of the First Nations-in-Assembly.

II. FACTS

6. The AFN relies on its facts provided in its submissions of May 17, 2024, and provides the additional facts:

[6] See IFSD "Project Overview" https://www.ifsd.ca/en/Aperçu-du-projet-Principe-Jordan.

a) AFN mandate re: negotiated resolution

7. The AFN is committed to working with all Parties via established fora under the December 31, 2021, AIP, including the interim dispute resolution process, to address any immediate operational issues with the implementation of Jordan's Principle, as well as addressing the long-term reform of Jordan's Principle by reaching a First Nations-led final settlement agreement which will build upon this Tribunal's efforts with respect to its scope and implementation.[7] It further remains committed to achieving a final settlement agreement on the long-term reform of Jordan's Principle by March 31, 2025, further to the timelines originally considered in the *Joint Path Forward*, and Canada's revised mandate[8], grounded in the evidence which will be forthcoming from the IFSD by way of its ongoing Jordan's Principle research.

8. As noted by the First Nations-in-Assembly in resolution 40/2022, the AIP was signed as "a framework for the negotiation of a Final Settlement Agreement on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada." The AFN continues to be directed to develop evidence and policy-based options for the long-term reform of Jordan's Principle, including mechanisms to advance self-determination, and has been directed to return to the First Nations-in-Assembly for the approval of said options as encapsulated in a Final Settlement Agreement.[9] The AFN is also under an onus to engage with First Nations leadership on any eventual Final Settlement Agreement, and provide them with an adequate opportunity to discuss and approve same.[10]

9. Said mandates derive from the First Nations-in-Assembly's powers to delegate authority, mandates, tasks, responsibilities or duties to the AFN under the AFN Charter. Such mandates are a sacred trust. While consensus is strived for, the AFN First Nations-in-Assembly may undertake any subject with national or international dimensions based on a vote of 60% of the Chiefs and Proxies present, which will be applicable in the context of a

[7] C. Gideon Affidavit at para. 55.
[8] C. Gideon Affidavit at para. 38.
[9] C. Gideon Affidavit, Exhibit "A", Resolution 40-2022 "To Ensure Quality of Life to the First Nations Child and Services Program and Jordan's Principle".
[10] Resolution 86-2023 "To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle".

future vote on any Final Settlement Agreement relating to the long-term reform of Jordan's Principle.[11]

b) Back-to-Basics

10. As the AFN has previously noted, Back-to-Basics is a policy premised on compromises.[12] While the AFN was involved in the iterative process on an initial draft, as between March and May 2022, having provided some feedback, it was not involved in the negotiations. Feedback does not equate to approval or endorsement, either of which would have been subject to the AFN's internal policies relating to same. The Back-to-Basics policy was implemented by Canada further to its negotiations with the Caring Society.

11. Back-to-Basics was not the subject of any discussion or negotiations between all the Parties to the Tribunal Proceedings or the AIP Parties, despite being called for by the Jordan's Principle workplan[13], and remains subject to the Parties commitments to develop an evidence informed implementation approach for the long-term of Jordan's Principle further to the terms of the AIP in the context of the development of a final settlement agreement.[14] Back-to-Basics, while reflecting the Tribunal's directed timelines, is not a basis for determining Canada's compliance with the Tribunal's previous directions on the matter, but one of the evolving contextual factors that must be duly considered in weighing the relief requested within the context of the Non-Compliance Motion, and Cross-Motion currently before the Tribunal.

c) Immediate Jordan's Principle concerns

12. While the exponential growth in relation to the approval of products and services and approval rates in relation to Jordan's Principle request are positive, there remains several concerns with Canada's current administration of Jordan's Principle. The AFN, in light of the considerations raised in the Cross-Motion, wishes to emphasize the following concerns previously raised in its May 17, 2024, written submissions, which it replicates here

[11] Assembly of First Nations Charter, as amended July 2021 ["AFN Charter"].
[12] April 2, 2024 cross-examination of Dr. Valerie Gideon a p 176, lines 8-25 ["Dr. Gideon CX"].
[13] C. Gideon Affidavit at para. 17.
[14] C. Gideon Affidavit at paras. 10, 18.

for ease of reference of the Tribunal:

i. Compliance with Tribunal timelines

13. In the 2021-22 fiscal year, 61,988 individual requests were submitted to ISC. ISC was only able to comply with the established timeframes in 53% of the urgent requests and 44% of the time for non-urgent requests. With respect to group requests, Canada received a total of 3,237 group requests. ISC was able to process 31% of urgent requests and 54% of non-urgent cases within the established timeframe.[15]

14. In the 2022-23 fiscal year, 101,806 individual requests were submitted to ISC. ISC was only able to comply with the established timeframes in 33% of urgent requests and 36% of the time for non-urgent requests. With respect to group requests, Canada received a total of 6,506 group requests. ISC was able to process 30% of urgent group requests and 66% of non-urgent group requests within the established timeframes. While compliance for group requests improved only marginally, the compliance rates for urgent and non-urgent individual requests marks a significant decline over the previous year.[16]

15. The AFN heard from an individual making an urgent request under Jordan's Principle associated with wildfire evacuations in May 2023, whose request for supports for their child's basic needs as a result evacuation and had not received a response over 5 months later. AFN intervention was required to ensure a response and a decision.[17] In another instance, a family at risk of experiencing homeless was denied interim support pending permanent housing being obtained. The matter was adjudicated over a 14-day period, and support was only obtained after AFN intervention.[18]

ii. Applicants experiencing difficulties contacting ISC officials

16. The AFN has heard concerns on multiple occasions in relation to the challenges of contacting ISC at the national and regional levels, particularly in the context of urgent requests or updating the urgency of requests. The AFN notes that ISC continues to build

[15] C. Gideon Affidavit at para. 28.
[16] C. Gideon Affidavit at para. 29.
[17] C. Gideon Affidavit at para. 41.
[18] C. Gideon Affidavit at para. 42.

capacity in this area, but the ever increasing number of Jordan's Principle requests continues to provide operational challenges.[19]

iii. Backlogs on Intake and Adjudication of Jordan's Principle requests

17. The AFN has been apprised of the fact that a significant backlog has developed in the context of the intake and adjudication of requests, including individuals notifying the AFN of 9-month periods where a request had yet to be adjudicated, which required AFN intervention. The AFN was also informed of a 2,000 requests backlog in the context of the British Columbia region. Unfortunately, ISC reported an ongoing decline in the context of compliance both in the context of urgent and non-urgent request, noting a rate in fiscal year 2021-22 of 53% and 44% respectively, down to 33% and 36% in fiscal year 2022-23.[20]

iv. Delays in reimbursement

18. The AFN has also heard from service providers of significant delays in the context of Canada reimbursements for services rendered to clients, which often requires the AFN's assistance. Such service providers have expressed concerns with the sustainability of continuing to render such services, in light of the ongoing delays. This issue has also been advanced by requestors advancing individual requests, who have noted that despite such requests being approved, payments took several weeks to several months to be received.[21]

III. ISSUES

19. The issues to be determined by the Tribunal with respect to the Cross-Motion include:

a) Should the parties to the proceedings co-develop objective criteria for urgent Jordan's Principle requests, facilitating the ability to triage matters?

b) Should the timelines associated with Canada's intake of Jordan's Principle

[19] C. Gideon Affidavit at para. 43-46.
[20] C. Gideon Affidavit at para. 47-49.
[21] C. Gideon Affidavit at para. 50-54.

requests be altered?

c) Should Canada, in certain circumstances, be allowed to refer requestors despite being the government department of first contact?

d) Should First Nations be bound by procedural orders of the Tribunal directed at Canada in administering any scope of services under Jordan's Principle?

IV. SUBMISSIONS- CROSS-MOTION

a) Urgent Requests and Co-development of Objective Criteria

20. As provided for in its written representations of May 17, 2024, the AFN entirely agrees with the comments of the Tribunal Chair in the context of the cross-examination of Ms. Valerie Gideon- when the tribunal set the timelines, "urgent meant urgent".[22] For the AFN, urgent meant urgent, and should still mean urgent, such circumstances reflecting an objective level of seriousness and gravity commensurate with the Tribunal's original intentions. For clarity, the Tribunal noted these circumstances included situations relating to end-of-life or palliative care, or of sufficient seriousness as a result of the matters time-sensitive nature, affiliated with a similar gravity as to situations where the risk of irremediable harm is reasonably foreseeable, or life threatening cases.[23]

21. Canada notes that Back-to-Basics had unintended consequences on Canada's capacity to effectively triage matters and provided support for First Nations individuals experiencing more serious circumstances[24], noting the complications with the inability to prioritize requests in conjunction with the significant increase in urgent requests, which under Back-to-Basics are self-identified by requestors.[25]

22. It is certainly significant that the rate of urgent request increased from 2% to 26% form the first quarter of the 2022-23 fiscal year to the third quarter of 2023-24 and an unfortunate correlation that commensurate with this spike, ISC's compliance with the

[22] Dr. Gideon CX at p 123, lines 15-20.
[23] 2017 CHRT 35 at para. 10; 2019 CHRT 7 at paras. 58, 81-82, 87 and 89; and 2020 CHRT 36 at para. 44.
[24] Notice of Cross Motion of the Attorney General of Canada dated March 15, 2024, ["AGC Cross-Motion"] at para. 3.
[25] AGC Cross-Motion at para. 4-5.

Tribunal's timeframes decreased from 41-29%.[26] This reflects an increase in the growth of urgent requests of over 900% in this period compared to non-urgent requests (which only grew by 88%).[27]

23. The AFN remains concerned that urgent requests as envisioned by the Tribunal related to life-threatening, -limiting, or -altering needs for First Nations children are not being acted on in a timely manner because of the high rate of urgent requests being received further to the criteria of the Back-to-Basics policy, coupled with the operational inability of Indigenous Services Canada to prioritize and/or triage matters which objectively align with the Tribunal's previous comments on urgency. This is problematic for the AFN as the delays in responding to the highest priority urgent requests for life-threatening, -limiting, or -altering needs put First Nations children in unnecessary risk of harm or death.

24. The AFN has previously observed the problems with the Back-to-Basics policy, including with how urgent matters are identified and the foundational presumption, as implemented by Canada, that every request must be dealt with the same way with zero flexibility for escalating matters whose facts, on their face, could justify increased attention and diligence on behalf of Canada as a result of the truly urgent nature of the matter. When everything is considered urgent and is treated with equal priority in terms of intake, it effectively renders such a distinction moot. This is a fundamental issue, particularly with the increasing and exponential growth in requests under Jordan's Principle, the disproportionate increases in the context of the number of urgent requests, and lack of objectivity inherent in how the Back-to-Basic policy and Canada's implementation thereof addresses urgent requests.

25. Canada now seeks an order requiring the Parties to these proceedings to seek to co-develop objective criteria within sixty (60) days of the order, to be used to identify "urgent" Jordan's Principle requests, noting for example services, products and supports for First Nations children who require urgent medical assistances or those at risk of reasonably foreseeable irremediable harm.[28] It highlights co-development as supporting reconciliation

[26] Affidavit of Candice St- Aubin affirmed March 14, 2024 ["C. St.-Aubin Affidavit"] at para. 11.
[27] Affidavit of Valerie Gideon affirmed March 14, 2024 ["V. Gideon Affidavit"] at para. 21.
[28] AGC Cross-Motion at para. 1.

and reducing the risk of a single party's proposal having adverse unintended outcomes.[29]

26. The AFN has been and remains committed to working with the Parties to the AIP to resolve Jordan's Principle implementation issues, and is open to co-developing interim objective measures related to urgency with the parties to the within proceedings. Such measures would include the capacity for ISC to prioritize and/or triage urgent matters, in line with the Tribunal's existing orders. Such interim measures would remain effective until such date established by the Tribunal, or until a final settlement agreement on the long-term reform of Jordan's Principle is endorsed by both the First Nations-in-Assembly and the Tribunal, further to the AFN's mandates.

27. Such an approach reflects the Tribunal's preference and strong encouragement for the parties to resolve the remedial issues associated with these proceedings through negotiations rather than adjudication, in the interest of reconciliation. The AFN too shares the concern expressed by Canada[30], and the Tribunal previously, that unilateral remedial orders could have potentially unintended consequences[31], which must remain a consideration of the Tribunal in the context of the relief sought in both the Non-Compliance Motion and the Cross-Motion.

b) Requests Timelines

28. Canada submits in the Cross-Motion that Back-to-Basics has had unintended consequences, including the redirection of requests into Jordan's Principle, the misclassification of Jordans Principle requests as urgent, which has added to and complicated a backlog of correspondence and requests.[32] As part of its efforts to address the backlog, it seeks an order for more time in determining Jordan's Principle requests, varying the Tribunal's current timelines in relation to Jordan's Principle requests.[33] Its request includes extending the timelines from 12 to 48 hours for urgent individual request, from 48 hours to without unreasonable delay for all other individual requests, from 48 hours to one

[29] AGC Factum at para. 57.
[30] AGC Factum at paras. 69-72.
[31] 2023 CHRT 44 at para. 22, 2016 CHRT 16 at para. 13.
[32] AGC Factum at para. 28.
[33] AGC Factum at para. 37.

week for urgent group requests, and finally, from one week to without unreasonable delay for all other group requests, all such extensions being subject to such other timelines as Canada and the other First Nations Parties may agree from time to time.[34]

29. The AFN is cognizant of these difficulties that have been raised by Canada with respect to meeting the Tribunal's mandated timelines for the determination of Jordan's Principle requests, including as a result of the exponential increase in the number of both urgent and non-urgent requests. The AFN's submissions herein, and previous submissions dated May 17, 2024, have highlighted the issues observed in the context of the intake and determinations as to urgency under the Back-to-Basics. For the AFN, urgent continues to mean urgent, and those matters falling under the definition of urgency envisioned by the Tribunal, specifically those that are pertaining to life-threatening, -limiting, or -altering needs, and further to co-development of objective criteria amongst the Parties, should continue to see determination by ISC in the context of requests on the expedited timeline provided for by the Tribunal, being 12 hours for individual requests and 48 hours for urgent group requests. For greater certainty, the AFN is opposed to Canada's motion to extend the timeline for urgent individual and group requests.

30. As previously noted, for the AFN, the Tribunal was clear that urgent situations are a special category, including end-of-life or palliative care, or of sufficient seriousness as a result of the matters time-sensitive nature, affiliated with a similar gravity as to situations where the risk of irremediable harm is reasonably foreseeable, or life threatening cases.[35] Urgent matters properly categorized and prioritized, based on a shared understanding of urgency and pursuant to criteria collectively developed with the Parties to these proceedings, should continue to benefit from a timeline befitting their unique and serious nature.

31. With respect to Canada's position on adjustments to all other individual requests and group requests to "without unreasonable delay", the AFN is concerned with the indeterminate nature of such an order. While some comfort may be drawn from Canada's commitments to engaging with the First Nations Parties in the context of adjustments

[34] AGC Factum at para. 82(c).
[35] 2017 CHRT 35 at para. 10; 2019 CHRT 7 at paras. 58, 81-82, 87 and 89; and 2020 CHRT 36 at para. 44.

thereto, the AFN notes its preference for a fixed period as a starting point, designed to provide sufficient flexibility to address the backlog, while ensuring that as the backlog is addressed, the timeline will be commensurately tightened, all on an interim basis and subject to the completion of a final settlement agreement on the long-term reform of Jordan's Principle. The point is ensuring a path forward that will allow for the back-log to be appropriately addressed, and after it is addressed, the return to a tightened reasonable period of time for the determination of requests which will provide certainty for requestors. Based on this approach, the AFN submits that the Tribunal should aim for an interim order which seeks to achieve a middle ground between the extremes present by the Caring Society (no flexibility or consideration for the context giving rise to the backlog) and Canada (too much flexibility, no consideration for re-tightening the timeline after back-log addressed other than consultation with the First Nations parties). The AFN also highlights its preferences that such interim changes to the existing orders be informed by discussions between the Parties further to the dialogic approach and suggest that any interim order addressing said points provide an opportunity for such engagement.

i. Reimbursement Delays

32. The AFN has also heard from both service providers and individual applicants of significant delays in the context of Canada reimbursing or providing payments further to approved Jordan's Principle requests, such delays extending weeks, if not months. For the AFN, such delays are a direct extension of the concerns raised with respect to Canada's adherence to the Tribunal's directed timelines and the backlog which has developed. Consider Canada's evidence which reflects that it went from 82.9% adherence to its internal 15-business day standard in 2020-21 to 50.7% in 2022-23, which it associates with the increase in the volume of requests over said period.

33. Notably, Canada reflects on its commitment to faster reimbursement by way of adjustments to acquisitions cards and ongoing commitment to the 15-business day standard for the processing of all payments.[36] In light of such commitments, and further to the issues raised in depth by the Caring Society, the AFN is generally supportive of an interim order

[36] V. Gideon Affidavit at para. 68-70.

in relation to a timeline for the reimbursement of service providers and individuals.

34. The AFN would note that the primary issue with reimbursement is not necessarily captured in Canada's submissions, wherein it speaks to paying in advance for certain products, supports or services and seeking receipts or other documentation from the requestor later.[37] The issue is that service providers are rendering services further to an approved requests, and then being forced to wait inordinate periods for reimbursement, or requestors are paying for the approved services personally, and then waiting inordinate periods for reimbursement. Clearly no one takes exception to ISC undertaking its necessary due diligence to ensure that payments made resulted in the child obtaining the approved service, product or support, following timely payment by Canada – it is the lack of timely payment that is at issue, which is only exacerbated by the ongoing complications which have been observed in contacting ISC officials. [38]

35. As noted previously, the AFN has heard from various service providers rendering services in good faith to requestors with approved requests, and then waiting months for reimbursement, despite multiple follow-ups with ISC.[39] In the interest of ensuring First Nations children continue to have access to the services they require, more must be done to instill confidence in service providers that they will be paid for the services rendered. This is equally applicable in the context of individuals having to pay for services for approved requests out-of-pocket, often on credit cards, and being forced to carry the balance for months as they wait on reimbursement from ISC.[40] While children are receiving the supports they need for the moment, ISC is effectively incentivizing service providers to not accept children based on an approval under Jordan's Principle, with the uncertainty of when they will get paid. It is also burdening requestors, particularly where they are forced to maintain a balance on a credit card for indeterminate periods.

36. Accordingly, the AFN is agreeable to an interim order striking a balance between Canada's approach (15 business day standard) and the Caring Society's requests (5 calendar day standard for individual requests), establishing a 10 business day standard for

[37] AGC Factum at paras. 60-61.
[38] C. Gideon Affidavit at para. 43-46.
[39] C. Gideon Affidavit at paras. 50-51.
[40] C. Gideon Affidavit at paras. 52-54.

reimbursing individuals and affirming Canada's 15 business day standard for service providers. In light of the significant volume of requests and backlog, the AFN would suggest a graduated approach, providing Canada with sufficient time to ramp up its service level in terms of the more accelerated timeline associated with reimbursing individuals.

37. Such an approach would not preclude ISC from seeking such necessary documentation or materials outside of said timeframes to ensure that the payments made resulted in the child obtaining the approved service, product or support. Additionally, such an interim order would be subject to such timeline established by the Tribunal, or its endorsement of a final settlement agreement on the long-term reform of Jordan's Principle.

c) Referrals

38. Canada notes that Back-to-Basics, read with the Tribunal's Jordan's Principle decisions, has elevated Jordan's Principle as the preferred and accessible option for requesting funding for services for First Nations children that may otherwise be available and accessible under other government programs[41], specifically as the government of first contact must pay for the services without engaging in administrative case conferring or service navigation.[42] It argues that the inability to redirect requestors to existing accessible services has contributed to the backlog, forcing it to address requests through Jordan's Principle that would otherwise be addressed through other government programs. [43]

39. It is accordingly seeking an order from the Tribunal that when ISC is the government department of first contact, Canada may refer requestors to an existing and applicable Jordan's Principle group request that has already been approved and is being administered by a First Nation or organization pursuant to a contribution agreement with Canada, or to an applicable First Nations or organization engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada. Such an order would be limited where the request is deemed urgent in accordance with the objective criteria it seeks to develop with the parties to these proceedings, with an onus placed on ISC to "take into account" whether or not such a referral would enable faster access to the requested product,

[41] AGC Factum at paras. 30-31.
[42] 2017 CHRT 35 at para. 10.
[43] AGC Factum at para. 31.

service or support.[44]

40. For the AFN, the focus must remain on First Nations children getting the services, products and/or supports that they require in a timely manner. If an existing group request has been approved and is being administered by a First Nations or First Nations community organization and a referral would make the process more efficient and timelier for the requestor, than the AFN would certainly take no exception to such a referral being made. Comparably, the AFN would take no exception to a referral being made to the requestors relevant First Nations, or a related organization in the interest of efficiency and expediency, particularly as its mandates include facilitating mechanisms to enable and support self-determination in the administration of Jordan's Principle.[45] Accordingly, the AFN would generally be supportive of an interim order, subject to the completion of a final settlement agreement on the long-term reform of Jordan's Principle, providing the capacity for ISC to make such referrals, in the limited circumstances identified.

41. For clarity, the AFN is of the view that such referrals are subject to the limited circumstances identified. The capacity for limited referrals should not be a basis for any consideration of referrals to other services outside of these specific circumstances. Such referrals, particularly in the context of an existing group request, must also be mindful of the scope of the group requests and capacity for the group request administrator to properly support such a referral and its effective and timely determination.

42. In the context of urgent requests, the AFN is of the view that matters that fit within the Tribunal's original directions associated therewith - serious medical concern, risk of irremediable harm, palliative – should not be subject to referral. Such matters are of such a grave nature that it should remain ISC's responsibility, as the government department of first contact, to ensure their timely process in accordance with the Tribunal's directed timelines, unless there is unequivocal evidence that such a referral will allow the request to be addressed more expeditiously. Such an approach, as previously discussed, is caveated on a shared understanding of urgency, and alignment with the Tribunal's previous discussion

[44] AGC Factum at para. 82.
[45] C. Gideon Affidavit, Exhibit "A", Resolution 40-2022 "To Ensure Quality of Life to the First Nations Child and Services Program and Jordan's Principle".

in relation to same.

d) Tribunal's orders applicability on First Nations administering Jordan's Principle

43. Flowing from its request in relation to modifying the Tribunal's existing orders to provide for referrals, Canada also is seeking clarity from the Tribunal ensuring that where it enters into a contribution with any First Nations or First Nation community organization to administer Jordan's Principle, whether through a group request or otherwise, that First Nation or First Nation community organization would not be bound by the procedural terms of any of Tribunal's Jordan's Principle orders that are directed at Canada.[46]

44. The AFN highlights that the procedural orders with respect to Jordan's Principle are Canada's burden to bear and would not support the imposition of the procedural timelines associated with Jordan's Principle on self-determining First Nations. The AFN would expect however, that through Canada's contribution agreements with First Nations, some reasonable standards associated with the administration of Jordan's Principle requests would be addressed as part of the negotiation of the agreement. Further, as Jordan's Principle is a legal requirement of Canada, not a program[47], the AFN would expect that should a referral be subject to unreasonable delay in the context of the administration by a First Nations or First Nations organization, that Canada's referral would not act as a bar to a requestor escalating the matter back to ISC for administration within the Tribunal mandated timeline as liability for the administration for Jordan's Principle as a legal requirement rests solely with Canada.

45. As such, First Nations requestors should have reasonable flexibility in the context of their requests, and assurance that their request will be addressed in a timely manner, without the imposition of procedural timelines on First Nations or related organizations administering Jordan's Principle under an existing group request or contribution agreement with Canada. The fallback is ultimately the fact that Jordan's Principle remains Canada's

[46] AGC Factum at para. 82.
[47] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada*, 2019 CHRT 7 at paras. 25-26.

legal responsibility.

46. The AFN also highlights its position that truly urgent matters, as provided for within the Tribunal's existing directions, should at all times remain the responsibility of Canada, unless their administration by a First Nation or a First Nations organization would facilitate their more expeditious determination. Accordingly, First Nations and First Nations organizations would generally be responsible solely for referring such matters to ISC for administration, absent the internal capacity to address it on their own in a more expeditious manner.

47. Thus, the AFN supports an interim order clarifying that First Nations or First Nations organizations who have entered into an agreement with Canada to administer aspects of Jordan's Principle, or are doing so under a group requests, will not be subject to the procedural requirements the Tribunal has placed on Canada. Said interim order would remain subject to such terms reached in the context of a final settlement agreement on the long-term reform of Jordan's Principle, endorsed by the First Nations-in-Assembly and the Tribunal.

e) Mediation/Resolution

48. Canada suggests that ISC, the First Nations Parties and the Caring Society seek to resolve the issues raised in these proceedings through mediation, with the Tribunal's assistance. Canada would seek Tribunal-assisted mediation in which the Chairperson or another member of the Tribunal, other than those Panel members seized of this complaint, act as a mediator. Such individuals would have the necessary knowledge of the complaint, within the responsibility of addressing the merits of the Non-Compliance Motion and Cross-Motion.[48]

49. As previously expressed, the AFN would be open to such an approach. As was made clear during the previous case conference on the matter, the AFN is of the view that as the current Panel members are seized of the matter and will be making a determination should the matter proceed to a hearing on the merits, their participation as mediators would not be

[48] AGC Factum at para. 41.

effective. Mediation is generally confidential and focused on each party having the capacity to be fully forthright in the context of their positions – with the mediator providing honest feedback on same, in the interest of achieving resolution. The scope of the mediation and results are kept confidential, and absent resolution, not put to the adjudicator as the parties would have advanced items – strengths, weaknesses of their case – to an independent mediator that they would not necessarily have advanced in the context of a hearing on the merits.

f) Conclusion

50. The AFN, Chiefs of Ontario ("COO"), Nishnawbe Aski Nation ("NAN") and Canada are in active negotiations on reforms to the First Nations Child and Family Services ("FNCFS") Program and are committed to re-engaging with respect to negotiations on Jordan's Principle. Any relief granted under this Cross-Motion should be interim in nature and should not place prohibitions on the suite of reforms said Parties may explore in the negotiating process.

51. With respect to the Cross-Motion, the AFN believes that any interim concessions made should be grounded in the fact that urgent matters, as described by the Tribunal, are those which are truly urgent, pertaining to life-threatening, -limiting, or -altering needs. A First Nations-led objective definition should be established to ensure that such matters are addressed in a timely manner, further to the Tribunal's existing directions on the matter.

V. SUBMISSIONS- FNLC INTERVENTION

a) First Nations rights

52. Like the AFN, the FNLC is an advocacy organization whose representative members represent 204 First Nations in British Columbia ("BC"). Like the AFN, the FNLC has advanced submissions highlighting the inherent rights of First Nations and their children, further to the *United Nations Declaration on the Rights of Indigenous Peoples*[49] and the inherent rights to self-government, which includes jurisdiction over child and family

[49] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15 ("*UN Declaration*").

services, as affirmed in an *Act respecting First Nations, Inuit and Métis children, youth and families*[50], a piece of legislation which was co-drafted by the AFN and defended by the AFN at the Supreme Court of Canada.[51] The AFN continues to advocate to advance the inherent rights of self-determination and self-government for all First Nations in Canada, further to the mandates given to it by the First Nations-in-Assembly, which is also comprised of First Nations represented by the FNLC.

53. Unlike the FNLC, whose focus includes representing and advancing the rights of First Nations in BC[52], the AFN is mandated to advance the collective aspirations of First Nations on a national level, further to the delegated powers of the First Nations-in-Assembly. The First Nations-in-Assembly may direct the AFN to undertake any subject matter of national or international scope based on a positive vote of 60% of the Chiefs and Proxies in attendance at an AFN Assembly[53], ensuring that such actions should not result in a single First Nations to suffer or benefit as a result of privilege, preferential treatment, favoritism, or the abuse of power.[54] In effect, the AFN strives to ensure parity for First Nations wherever possible at the national level.

54. The AFN continues to operate further to this sacred trust. As noted by the First Nations-in-Assembly in resolution 40/2022, the AIP was signed as "a framework for the negotiation of a Final Settlement Agreement on First Nations child and family services, Jordan's Principle, and the reform of Indigenous Services Canada." The AFN continues to be directed to develop evidence and policy-based options for the long-term reform of Jordan's Principle, including mechanisms to advance self-determination, and have been directed to return to the First Nations-in-Assembly for the approval of said options as encapsulated in a Final Settlement Agreement.[55] The AFN is also under an onus to engage with First Nations leadership on any eventual Final Settlement Agreement, and provide

[50] *Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24.*
[51] *Reference re an Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.
[52] FNLC Factum at para. 3.
[53] AFN Charter Articles 2 and 3.
[54] AFN Charter at Article 1(d).
[55] C. Gideon Affidavit, Exhibit "A", Resolution 40-2022 "To Ensure Quality of Life to the First Nations Child and Services Program and Jordan's Principle".

them with an adequate opportunity to discuss and approve same.[56] It is through these directed actions, and eventual approval by the First Nations-in-Assembly of any final settlement agreement related to the long-term reform of Jordan's Principle, that the AFN will ensure recognition of their inherent right to self-determination.

b) Definition of Urgency

55. In addressing the definition of urgency, and the issue of misclassification, the FNLC reflected the fact that a list provided by Canada in terms of misclassified matters all likely fell under the scope of the Tribunal's definition of Jordan's Principle,[57] yet noted that there "are likely some requests that are misclassified as urgent" and that other could be classified at a different level of urgency.[58] Absent the ability to prioritize requests and develop an evidence-based triage system with the Parties, ISC's ability to address urgent requests, as identified within the Tribunal's existing directions, will continue to be impeded.

56. The FNLC also seeks to promote Back-to-Basics, and infers that it was "co-developed by the Parties"[59], when it was in fact the workplan which referenced Back-to-Basics which was co-developed. Back-to-Basics was not the subject of any discussion or negotiations between all the Parties to the Tribunal Proceedings or the AIP Parties, despite being called for by the Jordan's Principle workplan[60], and remains subject to the Parties commitments to develop an evidence informed implementation approach for the long-term of Jordan's Principle further to the terms of the AIP in the context of the development of a final settlement agreement.[61] Back-to-Basics, while reflecting the Tribunal's directed timelines, is not a basis for determining Canada's compliance with the Tribunal's previous directions on the matter, but one of the evolving contextual factors that must be duly considered in weighing the relief requested within the context of the Non-Compliance

[56] Resolution 86-2023 "To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle".
[57] Factum of the First Nations Leadership Counsel dated July 16, 2024 ["FNLC Factum"] at paragraph 25. Note: It appears that the FNLC's citation is off in the context of the Jordan's Principle order, the AFN is assuming the reference was meant to be 2017 CHRT 14 at para. 135, which the AFN would note was amended as per 2017 CHRT 35 at para. 10, as 2017 CHRT 14 at para. 35 is commentary on the separation of powers.
[58] FNLC Factum at para. 26.
[59] FNLC Factum at para. 27.
[60] C. Gideon Affidavit at para. 17.
[61] C. Gideon Affidavit at paras. 10, 18.

Motion, and Cross-Motion currently before the Tribunal.

57. As the AFN has previously noted, Back-to-Basics had inherent flaws which have contributed to the drastic increase in matters marked urgent, and an inability for Canada to effectively ensure that urgent matters as identified by the Tribunal, being life-threatening, -limiting or -altering, are being duly addressed in a timely manner. This includes the inability to prioritize urgent matters, which amounts to an entrenchment on the Tribunal's orders and undermines the Tribunal's clear provisions in relation to the determination of urgency. When everything is considered urgent and must be treated with equal priority in terms of intake, it effectively renders such a distinction moot.

58. With respect to the FNLC's recommendation that the parties jointly develop "a process to triage urgent requests based upon an immediate risk to the life, liberty or security of a child", the AFN would note that such an approach is not grounded in any evidence, provides little certainty in terms of what urgency would actually entail, and certainly serves to confuse the spirit and intent of the Tribunal's existing direction, particularly in its use of verbiage found in section 7 of the *Canadian Charter of Rights and Freedoms*.[62] It would not amount to a simple method for triaging, but the actual re-defining of the scope of Jordan's Principle as it pertains to urgent matters, and certainly amounts to a stark departure from the Tribunal's existing directions in relation to the urgent provision of services, products or supports, particularly when one ponders what the breadth of life, liberty or the security of a child could entail.

59. With respect to social prescription, the AFN merely highlights the fact that evidence being uncontested does not necessarily make it good evidence, nor indicative of an approach which the Tribunal should adopt when it comes to the identification of urgent matters, as put forward by the Caring Society[63] and endorsed by the FNLC[64] without the opportunity to negotiate its role amongst the Parties. Its acceptance in the context of weighing urgency will ultimately undermine the spirit and intent of the Tribunal's existing directions and the

[62] Part I of the Constitution Act, 1982. Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, section 7.
[63] Factum of the Caring Society at para. 50-51, Reply Factum of the Caring Society at para. 18.
[64] FNLC Factum at para. 25.

principle that "urgent means urgent". [65] The AFN would instead recommend that the Parties consider the role of social prescription in the context of non-urgent Jordan's Principle requests and the negotiations of long-term reform of Jordan's Principle. The AFN would therefore caution the Tribunal in considering social prescription's applicability in the context of weighing the scope of misclassified requests under Back-to-Basics. [66]

60. The FNLC also takes a position in support of the expanded definitions of urgency sought by the Caring Society.[67] The AFN relies on submissions of May 17, 2024, in relation thereto in terms of the expansion of the Tribunal's current directions regarding urgency, and the potential unintended consequences of accepting the Caring Society's unliteral request. The AFN highlights the FNLC's submission that "there are many factors which may create a need for urgent support for a bereaved First Nations child, including transforming an otherwise non-urgent request into an urgent one".[68] For the AFN, the Tribunal's existing directions pertaining to truly urgent matters inherently captures such situations and the elevation of such a matter to urgency, while ensuring that non-urgent matters are not arbitrarily assigned urgent status simply by being associated with bereavement. Such an approach is equally applicable in the context of bereavement as it is in the context of First Nations children being impacted by a declared state of emergency.

61. As a reminder, urgent requests already now make up almost 26% of all new Jordan's Principle requests.[69] The AFN must stress that in light of this, how critical it is that urgent matters as identified by the Tribunal, those being life-threatening, -limiting or -altering, must be given priority versus creating more administrative complications by expanding the definition of urgency. Emphasizing the criteria as established by the Tribunal promotes human dignity, versus offending same as provided by the FNLC.[70] While the FNLC believes that the unilateral efforts within the Non-Compliance Motion are "important clarification on the current understanding of urgency", it is clear that the focus of the

[65] Cross Examination of Valerie Gideon, April 4, 2023, at page 123, lines 15-20.
[66] V. Gideon Affidavit at para. 24 and Exhibit C.
[67] FNLC Factum at para. 30.
[68] FNLC Factum at para. 30.
[69] C. St.-Aubin Affidavit at para. 11.
[70] FNLC Factum at para. 30-31.

proposed orders is in fact "expanding the definition of urgent requests"[71]. As noted, the AFN remains open to co-developing interim objective measures related to urgency with the parties to the within proceedings further to an evidence-informed dialogic approach and, for the foregoing, does not support efforts to unilaterally expand the definition of urgency, which may result in unintended administrative burdens and other consequences which undermine Canada's ability to process urgent matters in line with the Tribunal's existing directions.

62. The AFN also wishes to respond to the comments from the FNLC and the Caring Society in relation to its submissions raised on potlatches in its May 17, 2024, submissions. The AFN would highlight that it did, in fact, recognize the cultural importance of such efforts, while noting that they were not necessarily envisioned as part of the Tribunal's original directions as it pertained to Jordan's Principle, which were focused on addressing gaps in services further to the principle of substantive equality. Reflecting on its normative standard equivalent, i.e. a funeral, was not culturally insensitive but meant to reflect on the great strides and enhanced benefits that zealous advocacy and negotiation can make. It was a discussion around the nature of the definition of Jordan's Principle and the Back-to-Basics policy, and where efforts towards negotiating an agreement on the long-term reform of Jordan's Principle may go. The AFN certainly did not intend any insensitivity with respect to the topic.

63. However, the AFN would note its confusion and concerns with the Caring Society's submissions on a "higher substantive equality duty"[72] being owed in the context of potlatches and the FNLC's endorsement of same, reflecting on a "higher degree of support owed by Canada"[73]. No such reflections have been made by the Tribunal, and the AFN as a national organization must highlight the fact that substantive equality is owed equally to all First Nations children, and equal consideration should be made for the funeral customs and ceremonies of First Nations across the country. The AFN's Charter derived mandate speaks to ensuring parity for First Nations wherever possible at the national level, as all First Nations children have been subjected to comparable discrimination, both recently

[71] FNLC Factum at para. 31.
[72] Reply Factum of the Caring Society at para. 85.
[73] FNLC Factum at para. 33.

through the First Nations Child and Family Services Program, and by way of the intergenerational traumas associated with the legacy of the Indian Residential School System.

c) Backlog

64. The FNLC, like the Caring Society, places the backlog situation entirely within Canada's control, citing Canada's continued lack of coordination amongst federal programming.[74] While the fact that gaps in services remain, which certainly precipitated the need for Jordan's Principle and its ongoing existence, the AFN would again point to the contextual factors raised in its May 17, 2024, submissions, particularly in relation to the impacts of Back-to-Basics and the extraordinary increases with respect to both applications and approvals of Jordan's Principle requests, and its positions therein in the context of the Caring Society's requested relief.

65. With respect to the timelines, the FNLC urges Canada to reject any extension of the timelines.[75] The AFN, as noted previously, is in agreement with this position in the context of truly urgent Jordan's Principle requests, but would note some flexibility in the context of non-urgent requests in the interest of addressing the backlog, all on an interim basis and subject to a final settlement agreement on the long-term reform of Jordan's Principle.

d) Payment Processing

66. The FNLC highlights the issues in terms of payment processing for individuals and service providers and supports the Caring Society's relief sought in relation to same.[76] The AFN agrees that the issue of timely reimbursement is not somehow "separate and apart" from the Tribunal's orders as provided by Canada and, as noted, supports an interim order providing a 10 business day standard for individual reimbursement, and a 15 business day standard for service provider reimbursement. The AFN relies on its previous submissions on this point, as addressed hereinabove.

[74] FNLC Factum at para. 41.
[75] FNLC Factum at para. 42.
[76] FNLC Factum at para. 48.

e) Complaints Mechanism

67. The FNLC supports the endorsement of a complaint mechanism and an order by the Tribunal requiring the parties to work towards the establishment of same.[77]

68. As the AFN has previously noted, the Tribunal must be wary of endorsing a complaints approach which has not been subject to the dialogic approach or reconciliatory negotiations with the First Nations parties. The exhaustive proposal of the Caring Society and introduction of such efforts in the context of these proceedings relating to a complaints mechanism do not reflect any mandate of the First Nations-in-Assembly, who have directed the AFN to seek an agreement on long-term reform, and specifically as it relates to Jordan's Principle, develop evidence and policy based options for the long term reform of Jordan's Principle that includes mechanisms that enable and support self-determination.

69. While the FNLC cites a BC direction as some level of mandate for the AFN, as the FNLC noted, it was specifically a mandate of the BCAFN and thus not binding on the AFN as the national representative organization of First Nations in Canada. No such resolution or mandate exists for the AFN, which is notable considering that the AFN just held its Annual General Assembly as of July 9-11, 2024, wherein a record number of resolutions were passed.

70. The AFN continues to operate further to the mandates of the First Nations-in-Assembly in the context of Jordan's Principle. This includes developing evidence and policy-based options for the long-term reform of Jordan's Principle, including mechanisms to advance self-determination, and a direction to return to the First Nations-in-Assembly for the approval of said options as encapsulated in a Final Settlement Agreement.[78] The AFN is also under an onus to engage with First Nations leadership on any eventual Final Settlement Agreement, and provide them with an adequate opportunity to discuss and approve same.[79] It is through these directed actions, and eventual approval by the First

[77] FNLC Factum at para. 54.
[78] C. Gideon Affidavit, Exhibit "A", Resolution 40-2022 "To Ensure Quality of Life to the First Nations Child and Services Program and Jordan's Principle".
[79] Resolution 86-2023 "To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle".

Nations-in-Assembly of any final settlement agreement related to the long-term reform of Jordan's Principle, that the AFN will ensure recognition of their inherent right to self-determination.

71. Critically, the Tribunal has consistently expressed its appreciation for resolutions of the First Nations-in-Assembly, reflecting on the fact such resolutions reflect an effective process for ensuring First Nations are provided with an opportunity to express their consent after meaningful consultation, assuring the Tribunal that rights-holders agree with the requested orders.[80] Such was the basis for the Tribunal's accepting the fact that the AFN was empowered to speak on behalf of First Nations children that have been discriminated against by Canada, as upheld by the Federal Court.[81] The Tribunal also recognizes that not all First Nations may agree with the AFN's approaches and mandates, but that an AFN resolution accounts for such situations and provides assurances to the Tribunal that First Nations have generally agreed to any requested orders.[82]

72. The AFN thusly, and further to its mandates, remains committed to reaching a final settlement agreement which will include a culturally informed alternative dispute resolution mechanism. The imposition of a Tribunal directed complaints mechanism would only serve to undermine efforts to negotiate a long-term, evidence informed, approach in relation to disputes. Finally, a negotiated resolution will be subject to endorsement by the First Nations-in-Assembly, including member First Nations of the FNLC.

f) Administration of Jordan's Principle by First Nations and First Nations Organizations in British Columbia

73. The FNLC advises that it supports the order sought by Canada that procedural orders of the Tribunal will not apply to First Nations and First Nations organizations who engage in the administration of Jordan's Principle under a coordination agreement, citing its concerns with ensuring that Canada sufficiently funds First Nations for the provision of such

[80] 2022 CHRT 41, at para 436.
[81] 2022 CHRT 41 at para. 437; citing *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para. 160.
[82] 2022 CHRT 41 at para 440.

services.[83] Citing concerns with First Nations capacity, the FNLC advises that it supports the Caring Society's request for an order requiring Canada to report to the Tribunal on First Nations and First Nations organizations who are administering Jordan's Principle, and whether they have sufficient and sustainable resources to do so, noting that it should not do so in manner that infringes on First Nations autonomy[84]

74. The AFN would note that it has significant trepidation in the context of the Tribunal making any orders in relation to the reporting of arrangements self-determining First Nations have entered into with Canada, further to the nation-to-nation relationship. While the AFN certainly supports First Nations and related First Nations organizations being sustainably resourced, it is not for the AFN or others to judge the scope of First Nations arrangements with Canada, as they are the ones in the best position to gauge their own needs and the scope of services they may offer.

75. The AFN fails to see how any third-party could effectively gauge the adequacy of a First Nations arrangements made with Canada without an in-depth review of the surrounding circumstances, context and scope of the written agreement, steps which the AFN believes would likely infringes the autonomy of the First Nation in question. The AFN will not endorse the policing of First Nations and their arrangements with Canada but will continue to support and negotiate for mechanisms which enable and support self-determination in the context of the administration of Jordan's Principle and an agreement on the long-term reform of same, further to its mandate as outlined in resolution 40-2022.

g) The Preferred Pathway for Addressing the Implementation and Reform of Jordan's Principle

76. The FNLC has taken stock of the AFN's position with respect to its emphasis that the necessary reforms to Jordan's Principle to ensure its full implementation are best left to negotiations between Canada and the First Nations parties who have and continue to represent rights-holders in the context of the Tribunal Proceedings. The FNLC notes that it supports a nation-to-nation negotiated outcome, but highlights its preference for the

[83] FNLC Factum at para. 57.
[84] FNLC Factum at para. 61.

Tribunal's retention of jurisdiction and oversight over the implementation of Jordan's Principle, citing the fact that "until long-term reform is complete and includes mechanisms to hold Canada accountable", the Tribunal should retain jurisdiction to ensure Canada's compliance with implementing the full scope of Jordan's Principle.

77. The AFN submits that this is in fact its intention and underlies its request that any orders issued by the Tribunal in the context of the Non-Compliance Motion or Cross-Motion be interim in nature as they do not reflect a negotiated resolution, are not evidence based (such evidence to be forthcoming from the IFSD in December 2024) and will likely have unintended consequences. The Tribunal's retention of jurisdiction will be essential until the terms of such an agreement are reached (premised on lengthy discussions as between the parties who each bring significant expertise to the table), and is backed by the evidence, particularly that forthcoming from IFSD with an expected completion date of December 2024.

78. The AFN notes the Tribunal's strong encouragement and preference for the parties to resolve the remedial issues through negotiations rather than adjudication, in the interest of advancing reconciliation. The Tribunal is also aware that unilateral remedial orders could have potentially unintended adverse consequences[85], which are likely should the Tribunal adopt the unliteral request of the Caring Society on a permanent basis.

h) Conclusion

79. Save for the limited interim relief requested below, the AFN confirms that it takes exception to the substantive requests for relief raised by the Caring Society and endorsed by the FNLC, particularly as it runs contrary to the existing mandates of the First Nations-in-Assembly, and by Canada, is not evidence-based, and does not reflect the negotiated pathway that has been mandated by the First Nations-in-Assembly, which has also consistently been called for by the Courts in the interest of reconciliation.

[85] 2023 CHRT 44 at para. 22, 2016 CHRT 16 at para. 13..

VI. ORDER REQUESTED

80. The AFN respectfully request that the Tribunal;

a. order interim relief in relation to reimbursement, including within 10 business days for individual requestors, and 15 business days for service providers;

b. order interim relief clarifying its Orders on the determination of urgent requests and providing a pathway for the parties to engage on developing objective criteria for urgency;

c. order interim relief in relation to adjusting the timeline for non-urgent Jordans' Principle requests and a providing a pathway for the parties to engage on such timeline;

d. order interim relief providing for the ability to ISC to refer non-urgent Jordan's Principle requests in the limited circumstances where First Nations or First Nations organizations have entered into an agreement with Canada to administer aspects of Jordan's Principle, or are doing so under a group requests;

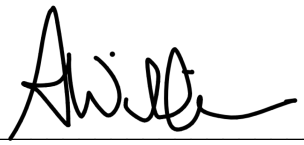
e. order interim relief clarifying that First Nations or First Nations organizations who have entered into an agreement with Canada to administer aspects of Jordan's Principle, or are doing so under a group requests, will not be subject to the procedural requirements the Tribunal has placed on Canada.

f. ensure that any relief ordered by the Tribunal in these proceedings be interim in nature, subject to a final settlement agreement or an expiry date of March 31, 2025; and

g. that all final relief sought by Canada and the Caring Society, as supported by the FNLC, be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: July 30, 2024



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VII. LIST OF AUTHORITES

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2.	*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Norther Affairs Canada),* 2016 CHRT 16
3.	*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Norther Affairs Canada),* 2017 CHRT 35
4.	*First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs),* 2017 CHRT 14
5.	*First Nations Child & Family Caring Society et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs),* 2019 CHRT 7
6.	*First Nations Child & Family Caring Society of Canada v Attorney General of Canada*, 2020 CHRT 36
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),* 2022 CHRT 41.
8.	*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
	International
9.	*United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15*
	SECONDARY SOURCES
10.	Assembly of First Nations Charter, as amended July 2021
11.	Institute for Fiscal Democracy- Project Overview