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Via Email

Our File Number: LEX-500166425

December 4, 2024

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Chairperson Khurana,

Re: First Nations Child and Family Caring Society of Canada et al. v. the Attorney General of Canada et al.
Tribunal File: T1340/7008

On November 21, 2024, by way of summary ruling with reasons to follow, Panel members Marchildon and Lustig granted in part the motions filed by both the First Nations Child and Family Caring Society (Caring Society) and the Attorney General of Canada (Canada), regarding Jordan's Principle implementation. As part of the summary ruling, the Panel ordered Canada to consult with the parties in the manner of their choice (mediation, conflict resolution, negotiations, etc.) and report back to the Panel. These consultations are to include:

By January 9, 2025

- co-development of:
    - objective criteria to identify urgent Jordan's Principle requests (page 2);
    - definition of "no access to basic necessities" (page 4);
    - objective criteria and guidelines for cases involving caregivers and children fleeing from domestic violence (page 4);
    - guidelines for coordination between Jordan's Principle and other emergency services meant to support fire evacuation, including how to triage and

respond to multifaceted requests that involve Jordan's Principle and other services (page 4);

- objective criteria to determine who is a "qualified professional" with relevant competence and training to identify urgent cases (page 5);

- solutions to reduce and eventually eliminate the backlog that are efficient, effective and can work within government context (page 6);

- options supported by rationale and available evidence in regards to timelines for non-urgent Jordan's Principle requests (page 10);

- guidelines on when the determination clock starts to run, in keeping with 2017 CHRT 14 and 2017 CHRT 35 (pages 10-11);

- interim practical and operational solutions supported by a rationale and available evidence to redress the hardship imposed on individuals and families (requestors) by reimbursement and payment delays (page 11);

By February 12, 2025

- co-development of options for how to put in place an interim mechanism including a culturally appropriate streamlined risk management system to ensure that requestors referred to First Nations for Jordan's Principle services have their needs met in a timely manner and without barriers such as underfunding, a lack of coordination including of programs or program restrictions (page 9);

By February 22, 2025

- options for orders supported by rationale and available evidence to establish an interim independent, non-complex but effective, credible, national Jordan's Principle complaints mechanism (page 13).

A copy of the panel's summary ruling is attached for your ease of reference.

We believe that Tribunal assisted mediation has the greatest likelihood of success regarding these Panel-ordered consultations, and respectfully request that the Tribunal assign Member Harrington. The reason we are specifically asking for Member Harrington is that she is already familiar with the issues on the non-compliance motion, including the filed materials, having been acquainted with the parties and their counsel during the September 9, 2024 pre-hearing mediation.

We recognize that Member Harrington may not be available and/or otherwise occupied on other matters. Should that be the case, we are open to having another Tribunal member of your choice assigned.

We understand that the interested party, First Nations Leadership Council of British Columbia, has sought to be included in any consultations. However, for practical reasons, we do not agree to include them. The Panel has directed Canada to consult about a large number of issues within a short timeline. The Panel's ruling also allows the parties to be advised by their respective experts and informed by individual First Nations. As such, we propose that the mediation only include the main parties to the Jordan's Principle implementation motions, being the Caring Society, Assembly of First Nations, Chiefs of Ontario, and Nishnawbe Aski Nation.

Finally, we recognize our request imposes on the Tribunal again to seek assistance in mediation. However, we believe that it is essential to have a Tribunal member with knowledge of both human rights law and the *Canadian Human Rights Act* to assist, especially given the short timelines ordered by the Panel.

Sincerely,

Dayna Anderson/Kevin Staska
General Counsel/Senior Counsel

/jd

Encl. CHRT Summary Ruling dated November 21, 2024

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Canadian Human Rights Tribunal
Tribunal canadien des droits de la personne
Ottawa, Canada, K1A 1J4

November 21, 2024

By e-mail

(See Distribution List)

Dear Parties,

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

The Panel (Chair Marchildon and Member Lustig) wishes to provide the parties with the following ruling with full reasons to follow.

Summary ruling with reasons to follow

Motion and Cross-motion on Jordan's Principle's implementation

Ruling: Motion granted in part, Cross-motion granted in part.

The present summary ruling with reasons to follow is released to allow the parties in this case to start important discussions to bring needed change to the current Jordan's Principle's operation and delivery in order to fully implement the Tribunal's orders. The Tribunal believes that it would be beneficial to have all the parties at the table including the Commission and for the parties to be advised by the parties' respective experts (First Nations who are not part of the proceedings, members of local, regional and national Jordan's Principle committees, grassroots experts, First Nations service providers, First Nations Health professionals, etc. They would not be at the negotiations unless all parties agree but the parties could request them to share their valuable input with all the parties). The Tribunal hopes for consent order requests. However, if this is not possible, the Tribunal orders the parties to return to the Tribunal with their respective views and to provide interim options to the Tribunal supported by a plan with clear rationale and supported by available evidence. **The Tribunal is currently looking at <u>interim solutions</u> to address the backlogs and other aspects of Jordan's Principle.**

As will be further detailed in the reasons to follow, the Tribunal remains seized of the issue until long-term reform of Jordan's Principle is achieved or the Tribunal's approval of the parties' agreement supported by adequate rationale and available evidence to <u>clearly demonstrate</u> how the agreement will <u>effectively eliminate the systemic discrimination found and prevent it from recurring</u>. Sustainability is crucial to eliminate the systemic discrimination and prevent its recurrence. This also means sufficient and sustainable resources including funding allocated to First Nations who choose to take on a greater role in Jordan's Principle and for Canada's responsible department (at this time, ISC), which will remain involved as admitted by Canada in

its evidence. The requirement for sufficient and sustainable resources including funding is in line with all of the Tribunal's previous rulings and has been repeated numerous times by this Tribunal in this case.

The Tribunal in accordance with the dialogic approach in this case and recognized by the Federal Court and pursuant to section 53 (2) (a) of the *CHRA* and the Tribunal's previous Jordan's Principle orders and retained jurisdiction, orders Canada to consult with the parties in the manner of their choice (mediation, conflict resolution, negotiations, etc.) with the goal at arrive to consent order requests if possible and if not, with options for orders supported by rationale and available evidence and to report back to the Tribunal by **January 9, 2025**. The FNLC may only participate on consent of all the parties. The parties' consultations will include but are not limited to the following aspect:

- Parties will seek to co-develop objective criteria to be used to identify urgent Jordan's Principle requests by **January 9, 2025**.

Furthermore, the parties will also include in their consultations, all the Tribunal's consultation orders found below.

Jordan's Principle

Tribunal definition:

2020 CHRT 20 para.[89] Jordan's Principle is a human rights principle grounded in substantive equality. The criterion included in the Tribunal's definition in 2017 CHRT 14 of providing services "above normative standard" furthers substantive equality for First Nations children in focusing on their specific needs which includes accounting for intergenerational trauma and other important considerations resulting from the discrimination found in the Merit Decision and other disadvantages such as historical disadvantage they may face. The definition and orders account for First Nations' specific needs and unique circumstances. Jordan's Principle is meant to meet Canada's positive domestic and international obligations towards First Nations children under the CHRA, the Charter, the Convention on the Rights of the Child and the UNDRIP to name a few. Moreover, the Panel relying on the evidentiary record found that it is the most expeditious mechanism currently in place to start eliminating discrimination found in this case and experienced by First Nations children while the National Program is being reformed. Moreover, this especially given its substantive equality objective which also accounts for intersectionality aspects of the discrimination in all government services affecting First Nations children and families. Substantive equality is both a right and a remedy in this case: a right that is owed to First Nations children as a constant and a sustainable remedy to address the discrimination and prevent its reoccurrence. This falls well within the scope of this claim.

> [92] Furthermore, as already found by this Panel, Jordan's Principle is a separate issue in this claim. It is not limited to the child welfare program; it is meant to address all inequalities and gaps in the federal programs destined to First Nations children and families and to provide navigation to access these services, which were found in previous decisions to be uncoordinated and to cause adverse impacts on First Nations children and families (see 2016 CHRT 2, 2017 CHRT 14 and 2018 CHRT 4).

[93] Moreover,

[t]he discrimination found in the [Merit] Decision is in part caused by the way in which health and social programs, policies and funding formulas are designed and operate, and the lack of coordination amongst them. The aim of these programs, policies and funding should be to address the needs for First Nations children and families,

(2017 CHRT 14 at para. 73).

[94] There is a need to take a closer look at the differences between the FNCFS Program and Jordan's Principle which is not a Program rather it is a legal rule and mechanism meant to enable First Nations children to receive culturally appropriate and safe services and overcome barriers that often arise out of jurisdictional disputes within Canada's own organization of Federal Programs and within Canada's constitutional framework including the division of powers. (…)

[96] Moreover, the Panel agrees with Canada that the evidentiary record and findings focus on Federally funded programs, the lack of coordination and gaps within Federal Programs offered to First Nations children and families and that this is also one important aspect of the service analysis under section 5 of the *CHRA* that Canada was ordered to remedy.

[99] Jordan's Principle is about ensuring First Nations children receive the services they need when they need them. Jordan's Principle is available to all First Nations children in Canada. Jordan's Principle, as previously ordered by the Panel, applies to all public services, including services that are beyond the normative standard of care to ensure substantive equality, culturally appropriate services, and to safeguard the best interests of the child. In other words, services above the normative provincial and territorial standards account for substantive equality for First Nations children as a result of the entire discrimination found in this case and further clarified in the Panel's rulings especially 2017 CHRT 14 and 35. Those orders bind Canada on or off-reserves. Moreover, Jordan's Principle provides payment for needed services by the government or department that first receives the request and recovers the funds later. A strict division of powers analysis perpetuates discrimination for First Nations children and is the harm Jordan's Principle aims to remedy.

[100] The focus is on the child and is personalized to the child's specific needs to receive adequate services in a timely fashion without being impacted by jurisdictional disputes or other considerations not in line with what the child requires. First Nations children experience those barriers because of race, national or ethnic origin. This is what causes governments and departments to dispute who pays for the service.

2020 CHRT 36 Annex A

6. Urgent cases – Where the child requires urgent assistance **or** the risk of irremediable harm is reasonably foreseeable, ISC will take positive measures to verbally confirm recognition with the First Nation's Designated Official/Organization. Where applicable, ISC may work with the Jordan's Principle

navigator or service coordinator that submitted the request. Where no designation has been made, or where the designated official or organization is unavailable, the First Nation's Deemed Official(s) may provide verbal confirmation to be followed with written confirmation.

Tribunal clarification of the definition of Urgent services:

The Tribunal, on consent of the parties has determined two levels of urgent services in a 2020 CHRT 36, referred to above:

1. urgent cases involving reasonably foreseeable irremediable harm (requiring immediate response); and
2. the other urgent ones requiring action within 12 hours (see 2020 CHRT 36 Annex A).

The Tribunal confirms that "life threatening cases", and cases involving end-of-life/palliative care, risk of suicide, risk to physical safety, no access to basic necessities (the Tribunal orders that this must be defined by the parties as part of their consultations on objective criteria to be used to identify urgent Jordan's Principle requests), or risk of entering the child welfare system are urgent. The Tribunal has also been clear that the "time-sensitive nature" of a case could also make it urgent. Some life-threatening situations may require immediate response and while others may require a timely response.

The Tribunal agrees to include caregivers and children fleeing from domestic violence in the definition of other urgent cases requiring action within 12 hours. The Tribunal orders Canada to consult with the parties and seek to co-develop objective criteria and guidelines for these cases as part of their consultations on objective criteria to be used to identify urgent Jordan's Principle requests.
The Tribunal agrees that a child with no access to food or other basic necessities is considered an urgent case requiring action within 12 hours. The Tribunal also agrees that once food or other basic necessities have been provided it is appropriate to refer the family to other non-discriminatory services and, if the services include barriers, to eliminate those barriers. The Tribunal orders Canada to consult with the parties and seek to co-develop objective criteria and guidelines for these cases as part of their consultations on objective criteria to be used to identify urgent Jordan's Principle requests and report back to the Tribunal by **January 9, 2025**.

The Tribunal accepts Canada's evidence that there are other services meant to support fire evacuations but Jordan's Principle may still be engaged. However, a clear coordination between Jordan's Principle and the other services ought to be established. In other words, referrals to other services are acceptable if the services are culturally appropriate, timely, effective and address needs in a meaningful way. The Tribunal accepts that a request could be multifaceted involving some aspects under Jordan's Principle and other aspects under other emergency response services. Therefore, the Tribunal orders Canada to consult with the parties and to seek to co-develop guidelines on this coordination aspect and on how to triage and respond to the multifaceted requests that also involve Jordan's Principle aspects as part of their consultations on objective criteria to be used to identify urgent Jordan's Principle requests and report back to the Tribunal by **January 9, 2025**.

The Tribunal agrees that bereavement is a sacred time for First Nations children and that the passing of a parent, sibling or close relative can be particularly traumatic. The Tribunal agrees that in some cases urgent services may be required and in other cases it may be time sensitive (more than 12 hours) but not urgent. The Tribunal also recognizes that cultural ceremonies of many forms are important services in line with substantive equality and also agrees with the AFN that all types of ceremonies should be considered not only potlaches. The Tribunal agrees that First Nations children who lose a parent face numerous life-altering risks and may need Jordan' Principle services even in the absence of a child welfare removal. The Tribunal will review the objective criteria to be used to identify urgent Jordan's Principle requests developed by the parties and will revisit this request at that time.

The Tribunal confirms that Canada is not bound by the Back-to-basics policy under the Tribunal's orders and clarifies that some of the main aspects are in line with the Tribunal's orders and some are not. For clarity, the Tribunal does not discuss every aspect of the Back-to-basics policy, only some that stand out.

Aspects that are in line with the Tribunal's orders: presumption of substantive equality, supporting documentation kept minimal, professionals identifying urgent cases. (However, the Tribunal orders Canada to consult with the parties and seek to co-develop objective criteria to determine who is a qualified professional with relevant competence and training as part of their consultations to develop objective criteria to be used to identify urgent Jordan's Principle requests and report back to the Tribunal by **January 9, 2025**).

The Tribunal clarifies the above should be maintained.

Aspects that are not in line with the Tribunal's orders:

- Self-declaration of urgent cases when no health or other qualified professional is involved (the Tribunal will revisit this once the parties have defined the terms "qualified professional" as they co-develop objective criteria to be used to identify urgent Jordan's Principle requests).
- Canada's interpretation that there is no possibility of re-classifying an urgent case as a non-urgent case.
- The requirement that once identified, every request must be dealt with in the same way with zero flexibility for escalating matters whose facts, on their face, could justify increased attention.
- The inability for ISC to prioritize matters.

The Tribunal clarifies the above should be eliminated.

Addressing the backlog:

This backlog was admitted by Canada and while parties may have different views on the number of backlogged cases, the existence of a backlog is undisputed. There is a backlog of cases and some of them may very well be urgent and this will be established when Canada reviews the email requests in the backlog.

Pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, the Tribunal orders Canada to:

1. immediately deal with the backlog with the assistance of the Tribunal's clarifications mentioned above and return back to the Tribunal with its detailed plan with targets and deadlines by **December 10, 2024.**

2. Report back to the Tribunal and the parties by **December 10, 2024**, to identify the total number of currently backlogged cases both nationally and in each region, including the intake backlog, the in-progress backlog, and the reimbursement backlog, including with information regarding the cumulative number of backlogged cases at month's end, dating back 12 months.

3. triage all backlogged requests for urgency with the assistance of the Tribunal's clarifications mentioned above. ISC shall review all self-declared urgent requests and evaluate if the requests are in fact urgent as per the tribunal clarifications and if not, reclassify them as non-urgent by **December 10, 2024**. If a qualified professional with relevant competence and training has deemed them urgent and until such time as the parties develop a definition for a qualified professional with relevant competence and training, ISC shall deem the requests urgent.

4. communicate with all requestors with undetermined deemed urgent cases as per the Tribunal's clarifications to take interim measures to address any reasonably foreseeable irremediable harms **within fourteen days** of the Tribunal's order and report back to the Tribunal by **December 10, 2024**.

5. consult and work with all parties to co-develop solutions to reduce and eventually eliminate the backlog that are efficient and effective and that can work within a government context (this does not mean that red tape should be excused or permitted in this system) and report back to the Tribunal by **January 9, 2025**.

Other orders on urgent requests

The Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to confirm by **December 10, 2024**, that staff have authority to review and determine urgent requests and are available in sufficient numbers during and outside business hours and that requestors can immediately and easily indicate that their request is urgent.
The Tribunal pursuant to section 53 (2) (of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to ensure that by **December 10, 2024**, requestors who have made an existing non-urgent request that has become urgent have an effective and expeditious way to indicate that the status of their non-urgent request has now changed to urgent**.**

In 2017 CHRT 35, the Tribunal already ordered that in cases where irremediable harm is reasonably foreseeable, Canada must make "all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented." The requested order to provide the National and Regional contact centres with the capacity to put in

place immediate compassionate interventions when a request is placed for urgent services is consistent with this previous ruling.

Relevant contact and other information provided to the public

The Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to confirm if its website and social media pages clearly indicate the relevant contact phone numbers, email addresses, and hours of operation for the ISC office in each province/territory and for headquarters, for requests and payment inquiries. Canada will provide this information to the Tribunal by **December 10, 2024**.

Operation of Jordan's Principle according to the Tribunal

Under the Tribunal's orders Canada is already able to consult with First Nations and professionals if reasonably necessary. See 2017 CHRT 35 at paras 135(2)(A)(ii) and 135(2)(A)(ii.1).

When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child's case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. 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), 2017 CHRT 35 where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government.

The initial evaluation and a determination of requests by individuals shall be made within 48 hours of the initial contact for a service request. In a situation where irremediable harm is reasonably foreseeable, Canada will make all reasonable efforts to provide immediate crisis intervention supports until an extended response can be developed and implemented. In all other urgent cases, the evaluation and determination of the request shall be made within 12 hours of the initial contact for a service request. Where more information is reasonably necessary to the determination of a request by an individual, clinical case conferencing may be undertaken for the purpose described in paragraph 135(1)(B)(iii), 2017 CHRT 35. For non-urgent cases in which this information cannot be obtained within the 48-hour time frame, representatives from the Government of Canada will work with the requestor in order to obtain the needed information so that the determination can be made as close to the 48-hour time frame as possible. In any event, once representatives from the Government of Canada have obtained the necessary information, a determination will be made within 12 hours for urgent cases, and 48 hours for non-urgent cases.

Canada shall cease imposing service delays due to administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada will only engage in clinical case conferencing for the purpose described in paragraph 135(1)(B)(iii), 2017 CHRT 35.

The Tribunal reserved the right to ask questions to allow it to make a determination on the motions. In that regard, the Tribunal confirms that where Canada has agreements with First Nations for service delivery under Jordan's Principle or under other programs that can address the child's needs in a timely manner, Canada may refer the Jordan's Principle requestors to the First Nations as long as Canada does not transfer its legal obligations to them or set them up to fail. For example, as a principle, insufficient resources including insufficient funding and unsustainable resources including funding under the agreements would be similar to the systemic discrimination found and would likely be considered a transfer of Canada's obligations setting First Nations up to fail the children they serve. The Tribunal in clarifying its orders to allow Canada to refer Jordan's Principle requestors to First Nations wants to ensure that First Nations and First Nations organizations receiving, and/or determining and/or funding Jordan's Principle requests have sufficient resources, including funding, to do so and sustainable resources, including funding, to do so. The Tribunal does not have this information and would like to be better informed by Canada on this important aspect by **January 9, 2025**.

Therefore, the Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, allows Canada to refer Jordan's Principle requestors to First Nations or First Nations community organizations engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada as per the Tribunal's orders below in **i** and **ii**. Canada can do so immediately and in the interim for **ii** (see details below for **ii**), and, until such time as either:

1. new criteria, guidelines and a new process are developed by the parties and approved by the Tribunal;

2. if it is already in existence and in conformity with the Tribunal's requirements above (the Tribunal does not yet know and would like to find out), the existing criteria, guidelines and process are provided to the Tribunal by way of an affidavit for the Tribunal's review and approval. This should be filed no later than **December 10, 2024** and parties will have an opportunity to file responding affidavits, cross-examine the affiant and Canada will have an opportunity to file a reply affidavit and to cross-examine the other affiants. All parties will have an opportunity to file written submissions before the Tribunal makes a determination on this specific point; or

3. The parties may propose any other option to the Tribunal that may be more expeditious in addressing this specific point and that would allow the issue to be dealt with efficiently, adequately, fairly and in the best interest of First Nations children viewed through an Indigenous lens.

The parties will report back to the Tribunal on their views on the 3 options above by **December 10, 2024.**

This is to ensure that children referred in this manner do not fall into gaps, long delays and other unforeseen hardships.

The Tribunal confirms that First Nations are not bound by the Tribunal's ordered timelines or other procedural terms of the Tribunal's Jordan's Principle orders. The Canadian Human Rights Act (*CHRA*) is clear that the orders are made against those who have been found to be engaging or have engaged in the discriminatory practice.
Section 53 (2) of the *CHRA* states that:

> If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate (…)
>
> (emphasis ours)

However, an interim mechanism should be put in place to ensure that children and families referred to the services are not waiting in another long queue to receive services. Parties will discuss how to put in place an interim mechanism including a culturally appropriate streamlined risk management system to ensure that requestors referred to First Nations for Jordan's Principle services have their needs met in a timely manner and without barriers such as underfunding, a lack of coordination including of programs or program restrictions. This may be very helpful in gathering evidence to inform long-term reform. The Tribunal in clarifying its orders to allow Canada to refer Jordan's Principle requestors to First Nations wants to ensure that First Nations and First Nations organizations receiving, and/or determining and/or funding Jordan's Principle requests have sufficient resources, including funding, to do so and sustainable resources, including funding, to do so. Furthermore, given that First Nations, as sovereign nations and rights holders, have an inherent right to govern their peoples, lands, and resources, it may be helpful to include these considerations in the parties' negotiations.

The Tribunal pursuant to section 53 (2) (a) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to consult with the parties in the manner of their choice (mediation, conflict resolution, negotiations, etc.) with the goal of arriving at consent order requests if possible and if not, with options for orders on an interim mechanism as referred to above and supported by rationale and available evidence and to report back to the Tribunal by **February 12, 2025**.

Pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous orders, the parameters on Canada's obligations under the *CHRA* and the Tribunal' Jordan's Principle orders mentioned above, including the interdiction to underfund in a similar fashion than the one found in the Merit Decision and/or off-load its legal obligations to First Nations, the Tribunal orders that, when ISC is the government department of first contact, Canada may refer requestors:

i. to an existing and applicable Jordan's Principle group request that has already been approved and that is being administered by a First Nation or First Nation community organization pursuant to a contribution agreement with Canada; or

ii. to an applicable First Nation or First Nation community organization engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada; (**this ii. order is an interim order** which will be revisited by the Tribunal, once the Tribunal has received more information from Canada on the contribution agreements and the criteria, guidelines and process as explained above).

however, where a request is deemed urgent in accordance with the objective criteria to be developed by Canada, the AFN, the Caring Society, the COO, the NAN and the Commission, ISC will first take into account whether or not referring the requestor will enable faster access to the requested product, service or support.

for greater clarity, where Canada enters into a contribution agreement with any First Nation 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 is not bound by the Tribunal ordered timelines or procedural terms of any of the Tribunal's Jordan's Principle orders that are directed at Canada**.**

Timelines:

The Tribunal does not agree to change timelines for urgent services at this time. The Tribunal believes that adjusting Jordan's Principle operations, with the Tribunal's clarifications above, would reduce and reclassify some of the allegedly urgent cases that are not truly urgent and allow Canada to manage the truly urgent cases in the Tribunal ordered timelines. Canada shall monitor cases after implementing the Tribunal's clarifications of urgent requests and report back to the Tribunal by **January 9, 2025**.

Timelines for non-urgent Jordan's Principle cases:

Without ordering a change in timelines at this time, the Tribunal agrees to receive options from the parties that would arise from their discussions in the format that they so choose (mediation, negotiations, conflict resolution, etc.) and in light of the Tribunal's clarifications. The Tribunal pursuant to section 53 (2) (a) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to consult with the parties to seek to co-develop potential options supported by rationale and available evidence to present to this Tribunal in regards to timelines for non-urgent Jordan's Principle requests and report back to the Tribunal by **January 9, 2025**.

However, the Tribunal rejects the proposed terms "Without unreasonable delay". This concept is vague and does not align with the best interest of the child or any reasonable practice standard. As even immediately and urgent were not understood the same way by everyone, the term "without unreasonable delay" would likely cause other misunderstandings.

Determination clock for Jordan's Principle cases:

The Tribunal's orders in 2017 CHRT 14 and 2017 CHRT 35 were meant to start the determination clock at the reception of a request except when clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs information was required. Given the current backlog and the Tribunal's clarifications on the term urgent and the Tribunal's other consultation orders, the Tribunal pursuant

to section 53 (2) (a) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to consult with the parties and seek to co-develop guidelines on this aspect and return to the Tribunal with their options by **January 9, 2025.**

Reimbursements:

A system that requires poor or low-income families to assume the costs of services is essentially displacing Canada's obligations to the people in need of services. Even if for a short time, this may be too onerous for some. In the long-term this should be fixed. In the interim, some solutions must be implemented. Canada has already started.

The Tribunal pursuant to section 53 (2) (a) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to consult with the parties to seek to co-develop interim practical and operational solutions supported by rationale and available evidence to redress the hardship imposed on individuals and families (requestors) by reimbursement and payment delays and report back to the Tribunal by **January 9, 2025**.

The Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, clarifies that consistent with its orders in 2017 CHRT 14 and 2017 CHRT 35, Canada cannot delay paying for approved services in a manner that creates hardship by imposing a burden on families that risks a disruption, delay or inability to meet the child's needs.

The Tribunal finds the current standard deadlines for service providers to be reasonable <u>if there are no delays</u>. As a matter of good practice, guidelines should be in place to avoid unnecessary delays in reimbursements. Canada will report back to the Tribunal to inform the Tribunal if they have such guidelines and if so, provide a copy of the guidelines **December 10, 2024**. The Tribunal will revisit this once it has received Canada's information and/or guidelines.

Social prescription:

The Tribunal generally agrees that social prescribing which takes into account the social determinants of health is an excellent principle to determine and analyze substantive equality in non-urgent Jordan's Principle cases. The Tribunal accepts that social related supports (i.e. social prescribing) are a key tool for redressing those health and social inequities.

However, in urgent cases, there is insufficient evidence and information to support orders given the only affidavit was in reply and was a brief description of examples of urgent cases that are unconvincing. Furthermore, it was not previously considered by this Tribunal to arrive at its findings when the Tribunal made its urgent orders under Jordan's Principle. While the Tribunal is not against exploring such an important process, it is not prudent to include this concept in the current definition of urgent cases at this time. The examples provided by Dr. Giroux at paragraph 20 of his affidavit have merit but do not fit the Tribunal's urgent definition requiring a 12-hour ordered timeline. In a time of backlogs that may include truly urgent requests left unaddressed, it would be unwise to expand the definition of urgent services to include services such as glowsticks to help a child in crisis regulate or a gaming console that provides a displaced teenager with the ability to reconnect with their online gaming community and that may provide stability and mental wellness in a time of crisis under the Tribunal's urgent orders. The Tribunal would need more information to decide otherwise for urgent cases.

Coordination of Federal Programs:

This issue was raised by Canada a part of the motion/cross-motion proceedings. However, at this time, there is insufficient evidence that the coordination of Federal programs has been fully implemented. As part of the Tribunal's past rulings, the lack of coordination between social programs, the First Nations Indigenous Health Branch and Health Canada was addressed and eliminating the lack of coordination in Federal social programs was part of the cease-and-desist order in 2016 CHRT 2. In 2022 CHRT 8, the Tribunal received evidence from the parties and made findings (see for example, paras. 74-93, 142 and 160). The Tribunal agrees that the best programs are First Nations designed and delivered if they have all the resources they need. However, given Canada's own evidence that it will still remain involved in Jordan's Principle, reforming its Federal programs is warranted to improve Jordan's Principle service delivery.

The Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction orders Canada to report back to the Tribunal with a detailed report on its progress in coordinating its federal programs, especially since 2022 CHRT 8. The detailed report shall include a plan, specific targets, deadlines for implementation and the dates when the implementation targets have been met. The information provided shall be sufficient to assist this Tribunal and allow the Tribunal to understand Canada's progress so far. Canada will file its report with the Tribunal and copy all the parties by **January 9, 2025.**

The FAA:

As mentioned, in 2021 CHRT 41 at paragraphs [376]: "The *Financial Administration Act* should be interpreted harmoniously with quasi-constitutional legislation such as the *CHRA* including orders made under the *CHRA*. [377] Further, the Tribunal's orders are to be read harmoniously with the Financial Administration Act and, in the event of conflict, the orders made under the CHRA have primacy over an interpretation of the Financial Administration Act that limits the Tribunal's remedial authority."

Therefore, the Tribunal reiterates that a case-by-case approach must be applied to find that Canada has applied the FAA in a way that hinders the Tribunal's orders under the *CHRA.* Furthermore, there is insufficient evidence in the motion/cross-motion to make a finding that Canada used the FAA to derogate from the Tribunal's orders.

Disputes between the parties relating to the FAA have arisen from time to time in these proceedings. In order to prevent misunderstandings between the parties, the Tribunal will clarify its previous orders. As a general matter and for clarification purposes, the Tribunal's orders have primacy over any conflicting interpretation of the *Financial Administration Act* and related instruments such as "terms and conditions," agreements, policies and conduct that hinder the implementation of the Tribunal's orders. The Tribunal pursuant to section 53 (2) of the *CHRA*, the dialogic approach, the Tribunal's previous orders and its retained jurisdiction, clarifies that Canada shall not rely on the *Financial Administration Act,* and related instruments such as "terms and conditions," agreements, policies and conduct that hinder implementation of the Tribunal's orders to justify departures from this Tribunal's orders**.**

Complaints mechanism:

The evidence supports the clear need for a credible and independent national and effective Jordan's Principle complaints mechanism and the Tribunal has the authority to order it. The Tribunal also agrees that the backlogs need to be addressed and objective criteria for urgent cases must be developed as a priority and parties should focus their efforts on this until at least January 9, 2025.

The Tribunal agrees it would be best to have broad consultations with First Nations for the creation of a permanent independent Indigenous-led complaints mechanism. This may take a long time to achieve to ensure First Nations are involved in its design, creation and composition. In the interim, especially given that Canada will remain involved in Jordan's Principle even if First Nations assume greater Jordan's Principle roles, the Tribunal believes that a non-complex but effective independent complaints mechanism can be implemented until such time as a permanent independent Indigenous-led complaints mechanism is developed and established or a long-term alternative is included in a Jordan's Principle long-term reform settlement agreement and accepted by this Tribunal or, another long-term alternative is put forward as a result of the parties' meaningful consultations and involvement with First Nations, First Nations experts and organizations in Canada and proposed by the parties and accepted by this Tribunal. The long-term aspect of the independent complaints' mechanism will be revisited at a later date by this Tribunal.

The Tribunal pursuant to section 53 (2) (a) of the *CHRA*, the dialogic approach, the Tribunal's previous Jordan's Principle orders and its retained jurisdiction, orders Canada to consult with the parties in the manner of their choice (mediation, conflict resolution, negotiations, etc.) with the goal of arriving at consent order requests if possible and, if not, with options for orders supported by rationale and available evidence to establish an interim independent, non-complex but effective, credible, national Jordan's Principle complaints mechanism and to report back to the Tribunal by **February 22, 2025**.

Conclusion

The Tribunal believes that this summary ruling will be helpful to the parties to start their discussions right now while waiting for the full reasons. This is only a summary ruling in response to the parties' request for clarification and to enable parties to start their discussions. This is the Tribunal's response to pressing matters in the context of a large number of issues and materials. The Tribunal's detailed reasons will take more time. Parties are also invited to return to the Tribunal if they have any significant issues with the wording and/or deadlines set out in the orders.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca by telephone at 613-878-8802 or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Registry Officer

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