

January 27, 2025

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

**RE: *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL V
ATTORNEY GENERAL OF CANADA – T#1340/7008***

We are counsel for the First Nations Child and Family Caring Society (the “**Caring Society**”). We write further to the Panel’s direction of January 22, 2025, requesting submissions on the procedural steps in relation to the Caring Society’s motion filed on January 14, 2025. We reinforce the Caring Society’s request that the motion proceed in writing on an expedited schedule.

Given that the Caring Society has not had the benefit of hearing from the Respondent (“**Canada**”) on its suggested timelines and approach to the motion, the Caring Society requests an opportunity to respond to Canada’s written submissions on or before January 29, 2025.

Relief Regarding the Ontario Specific Long-Term Reform of Child and Family Services

Further to the Caring Society’s correspondence of January 22, 2025, we are no longer seeking an order directing consultation between Canada, the AFN and the Caring Society on the Ontario-specific long-term reform announced January 7, 2025, in line with the Tribunal’s Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders (Notice of Motion #2). Enclosed please find an Amended Notice of Motion filed on behalf of the Caring Society.

The Caring Society acknowledges the correspondence sent by the Chiefs of Ontario (“**COO**”) on January 24, 2025, and agrees with its suggestion that written submissions on the motion ought to be no more than 30 pages.

Procedural Steps and Scheduling of the Caring Society’s Consultation Motion

The Caring Society is seeking an order directing consultation between Canada, the Assembly of First Nations (the “**AFN**”) and the Caring Society on the national long-term reform of the FNCFS Program, First Nations federal child and family services and

Jordan's Principle in line with the Tribunal's Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders (Amended Notice of Motion #1).

The central issue raised in the motion is uncomplicated and the facts are not in dispute. Fundamentally, the Tribunal must decide whether Canada is required to consult with the AFN and the Caring Society on the long-term reform of child and family services given that the First Nations-in-Assembly voted to reset the negotiations and seek structural changes to the July 2024 draft final settlement agreement (the "**Draft FSA**").

As set out in the AFN resolutions filed in support of the motion, the First Nations-in-Assembly have established a National Children's Chiefs Commission (the "**NCCC**") to guide negotiations on long-term reform in collaboration with the AFN Executive Committee. A letter dated January 24, 2025, from the NCCC supporting the Caring Society's motion is attached to these submissions.

As set out in numerous decisions on questions of procedure, procedural fairness and the exercise of discretion, the Canadian Human Rights Tribunal is the master of its own procedure.¹ It can make decisions in the context of the proceeding to ensure a just and efficient outcome, in keeping with the procedural rights of the victims of the case and the parties. Moreover, section 48.9(1) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "**CHRA**") provides that "[p]roceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow".

Cases involving children compel a balancing of children's best interests against the various interests of parties engaged in procedural questions. This is particularly the case where delay in resolving a proceeding involving discriminatory government action (and inaction) could have harmful and detrimental impacts on the children already victimized by the Respondent.

The Supreme Court of Canada has been clear about the importance of reaching a speedy resolution in matters affecting children. In *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, the Supreme Court held as follows:

Finally, it is clear that the best interests of a child require different solutions over time and such interests may have to take precedence over any parental interests. As was recently said in *Young v. Young, supra*, at p. 60, the "furtherance and protection of the child's best interests must take priority over the desires and interests of the parent". Further, as examined in *New Brunswick (Minister of Health and Community Services) v. S.G. and S.A.* (1989), 1989 CanLII 160 (NB CA), 100 N.B.R. (2d) 357, at p. 360, **a child's best interests**

¹ See for example, *Agnaou v Canada (Public Prosecution Service)*, 2022 FCA 140 at para 79 and 81; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 at para 119 and 128;

must take precedence over all other considerations including the effect of delay.² [Emphasis added]

In this case, the Panel has often approached procedural steps within the context of the needs of First Nations children, balancing their vulnerability against the positions of the other parties.³ Using its tools of discretion, fairness and the best interests of the children, the Panel ought to continue balancing the rights of the victims in this case – First Nations children, youth and families – against the claims of the discriminator, namely the Respondent, Canada.

First Nations children are waiting for substantively equitable child and family services reform critical to their overall well-being. Time is of the essence for them, their families and their communities. This relief is sought in the context of Canada returning to the negotiating table with the Interested Parties, Chiefs of Ontario and Nishnawbe Aski Nation. The Caring Society is seeking an order directing that reform, in whole or in part, be achieved through the dialogic approach - similar to the process undertaken for the compensation framework. The issue on this motion can and should be decided on a paper record as the nature of the question focuses on a single legal question: is consultation required at this juncture of the case?

Indeed, even if the Caring Society is not successful on this motion, there is value to having this question determined efficiently and expeditiously. If consultation is not required and Canada continues to refuse to return to the negotiating table in good faith, the co-complainants and the rights holders can use that information to pivot another approach to long-term reform of child and family services that satisfies the Tribunal's direction in the best interests of First Nations children.

Much can be achieved in a short period of time. The Caring Society is confident that, given the parties' collective commitment to the rights of First Nations children, an expedited schedule on a paper record is appropriate in the context of this motion. Although the parties are engaged in mediation regarding the Caring Society's motion for non-compliance and Canada's cross-motion, the Respondent, Canada, has availed itself of its significant legal resources to discharge a separate legal team to work on the child and family services portion of this proceeding. This provides the Respondent with flexibility and availability to address this matter.

Moreover, the Caring Society is mindful that the Panel is currently engaged in preparing written reasons in relation to the Jordan's Principle motions. Unnecessarily asking the Panel to set aside time for cross-examinations and an oral hearing is not an appropriate use of Tribunal resources, particularly given the straightforward nature of the question posed on this motion.

² *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] 2 S.C.R. 165 at para 41.

³ See for example, 2012 CHRT 16 at paras 28-29, 2022 CHRT 26 at para 13.

Given all of the above, and given that the parties have had the Caring Society motion material since January 14, 2025, the Caring Society suggests the following schedule in order to expeditiously resolve its motion:

January 14, 2025	Caring Society Notice of Motion and Affidavit
February 10, 2025	Responding Affidavits from all Parties and Interested Parties
February 14, 2025	Caring Society Factum
February 21, 2025	AFN, Commission, COO and NAN Factums
February 28, 2025	Canada Factum
March 5, 2025	Caring Society Reply Factum

As noted above, the Caring Society supports COO's request to limit all written submission to 30 pages.

Yours Truly,



Sarah Clarke

Sent by e-mail

January 24, 2025

Cindy Blackstock, PhD
Executive Director
First Nations Child & Family Caring Society
E-mail: CBlackst@fncaringsociety.com

Dear Dr. Blackstock:

RE: Caring Society's January 14, 2025 motion directing Canada to continue negotiations

I. Introduction and Overview

I write on behalf of the National Children's Chiefs Commission (the "**NCCC**") to express its support for the Caring Society's January 14, 2025 motion to the Canadian Human Rights Tribunal ("**CHRT**") seeking orders requiring Canada to continue negotiations on the national long-term reform of the First Nations Child and Family Services Program, federal child and family services, and Jordan's Principle (the "**LTR Agreements**").

As you know, the NCCC is a regionally-representative Commission that has been established by resolutions of the First Nations-in-Assembly to assist First Nations in conducting further negotiations in relation to the LTR Agreements.

In this letter, I describe the following matters:

- a) the mandate, structure, and purpose of the NCCC;
- b) the work of the NCCC on this matter so far; and
- c) the NCCC's views on the Caring Society's January 14, 2025 motion to the CHRT.

II. Discussion

a) Mandate, structure, and purpose of the NCCC

As described in more detail below, the NCCC was established by the First Nations-in-Assembly and provided with a mandate to oversee and move forward with further negotiations in relation to the LTR Agreements. Fundamentally, the NCCC's purpose and role is to assist in acting on the will of the First Nations-in-Assembly to take a fresh approach toward negotiations for the LTR Agreements.

The First Nations-in-Assembly established the NCCC by way of [Resolution No. 60/2024](#), which was passed at the Special Chiefs Assembly in October 2024 concurrently with the

rejection of the *Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program*. Through Resolution No. 60/2024, the First Nations-in-Assembly expressed the desire to adopt a new negotiation approach in relation to the LTR Agreements. In particular, in Article 2 of that Resolution under the heading “Governance and Transparency of the LTR Agreements for the FNCFS Program and Jordan’s Principle”, the First Nations-in-Assembly directed the AFN Executive Committee “to adopt the following approach to the LTR Agreements negotiations”:

- a) establish the NCCC, which is to have representation appointed by every region, to “provide strategic direction and oversight of the LTR Agreements negotiations, reporting back to the First Nations-in-Assembly”;
- b) direct the NCCC to establish a regionally-representative negotiation team responsible for carrying out the negotiations under the direction of, and reporting to, the NCCC;
- c) require the NCCC to provide the terms of reference for the negotiation team to the First Nations-in-Assembly by December 2024; and
- d) require the NCCC to report to the First Nations-in-Assembly in December 2024 about its anticipated timeframes for the completion of negotiations.

Resolution No. 60/2024 also sets out the following aspects of the NCCC’s mandate and consequential changes to the negotiation direction of the AFN:

- **Article 3:** the AFN Executive Committee and the NCCC must ensure that governance structures set out in a new agreement will “uphold the sacredness of children, youth, and families, be transparent, open, and accountable to First Nations, preserve First Nations decision-making, and include the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts”;
- **Article 4:** the AFN Executive Committee and the NCCC must develop an open and transparent process for the First Nations-in-Assembly to suggest and make changes to new agreements before they are put to a vote;
- **Article 5:** the NCCC must provide a detailed report to the First Nations-in-Assembly on suggested amendments, the decisions made on amendments, and negotiation outcomes, before the First Nations-in-Assembly proceed with any decision-making to approve further agreements;
- **Article 6:** going forward, the AFN must refrain from making efforts to procure support from First Nations leadership on any agreement, arrangement, protocol, or similar instrument that has not been approved by First Nations-in-Assembly;

- **Article 7:** the AFN Executive Committee and the NCCC must take “positive and effective measures” throughout the negotiation, review, and approval process for a new draft agreement to seek out and incorporate the expertise of: First Nations, child and family service providers, Jordan’s Principle experts, Elders and Youth, the National Advisory Committee, the Jordan’s Principle Operations Committee, and regional experts; and
- **Article 10:** calls on Canada “to obtain a new negotiation mandate to address the matters in this resolution.”

I have included Resolution 60 as **Schedule “A”** to this letter for ease of reference.

[Resolution 61/2024](#), which was also passed by the First Nations-in-Assembly in October 2024, provides more detailed negotiation directions from the First Nations-in-Assembly to the NCCC as to the content of new LTR Agreements, calls upon Canada “to obtain a new negotiation mandate to address the matters in this resolution” (including fully and unconditionally implementing the principle of predictable, stable, sustainable, needs-based funding), and directs the NCCC to ensure that any further draft agreement does not abrogate or derogate from First Nations’ title or treaty rights, or in any way diminish Canada’s duty to consult, fiduciary obligations to First Nations, or the honour of the Crown.

I have included Resolution 61 as **Schedule “B”** to this letter for ease of reference.

The First Nations-in-Assembly also [passed additional, related resolutions](#) at the December 3-5, 2024 Special Chiefs’ Assembly, which also have a bearing on the mandate of the NCCC, as follows:

- Resolution No. 88/2024: calling on Canada to “publicly and fully commit to respecting” the rejection of the draft agreement and the new direction represented by Resolutions 60 and 61/2024 (among other things);
- Resolution No. 89/2024: supporting the NCCC in establishing its negotiating team, approving in principle the draft terms of reference for the NCCC and the negotiation team, and directing the NCCC to report to First Nations-in-Assembly at every Assembly until its work is complete (among other things); and
- Resolution No. 90/2024: directing Canada to obtain a new negotiation mandate within 30 days “in full alignment with” Resolutions 60 and 61/2024, and supporting the NCCC in legal proceedings, including before the CHRT, to ensure First Nations children, youth and families receive the full benefit of existing CHRT orders, and to seek additional remedies as required (among other things).

I have included Resolutions 88, 89, and 90 as **Schedule “C”, “D”, and “E”** to this letter for ease of reference.

b) Work of the NCCC to date

Consistent with the resolutions of the First Nations-in-Assembly summarized above, the following steps have been taken to establish the NCCC structure and to get it up and running:

- Commissioners of the NCCC from every region (other than Ontario, whose First Nations leadership is pursuing a separate negotiation strategy) have been appointed, consistent with Article 2(a) of Resolution 60/2024;
- the NCCC is the process of establishing a regionally-representative negotiation team with legal support, consistent with Article 2(b) of Resolution 60/2024;
- the terms of reference for the NCCC and the negotiation team were conditionally approved by the First Nations-in-Assembly in December 2024; and
- the NCCC has met several times and is getting up to speed on the Commission's mandate, and it is now in the process of attempting to plan meetings with the AFN Executive Team to coordinate efforts.

c) The NCCC's views on the January 14, 2025 motion

The NCCC has reviewed the Caring Society's January 14, 2025 motion materials.

The NCCC fully supports the Caring Society moving the motion forward to get Canada back to the table, and shares the Caring Society's concern that Canada has expressed it no longer has a mandate to negotiate a national final settlement agreement for long-term reform. The NCCC's view is that Canada is yet again flouting its legal and constitutional obligations toward First Nations children, in clear violation of the CHRT's numerous orders and the honour of the Crown.

In particular, Canada's decision to abruptly and unilaterally withdraw from the national LTR Agreement negotiations is inconsistent with:

- the clear order of the CHRT that Canada is required to "consult not only with the Commission, but also directly with the AFN, the Caring Society, the [Chiefs of Ontario], and the [Nishinawbe Aski Nation] on the orders made in this ruling, the [merits decision], and its other rulings", as well as to enter a consultation protocol with the above-noted parties "to ensure that consultations are carried out in a manner consistent with the honour of the Crown and to eliminate the discrimination substantiated in the [merits decision]" (2018 CHRT 4 at para. 400); and, relatedly,
- the terms of the consultation protocol itself, developed pursuant to the CHRT's direction. In particular, Article 18 of the consultation protocol makes explicit that "[t]he purpose and objectives in this Protocol, as well as the principles and parameters [described therein] apply equally to mid and long term relief." Canada

has unlawfully gutted the consultation protocol by withdrawing entirely from national negotiations for LTR Agreements.

The NCCC is therefore of the view that the CHRT should grant the relief sought by the Caring Society. In addition to being clearly compelled by the CHRT's past rulings and the terms of the consultation protocol, it is consistent with the directions of the First Nations-in-Assembly surrounding the establishment of the NCCC summarized above. Those directions repeatedly call for Canada to acknowledge the new negotiation direction of the first Nations-in-Assembly expressed in Resolutions 60 and 61/2024, and to obtain a new mandate accordingly.

III. Closing and Next Steps

The NCCC looks forward to working with the Caring Society and the other parties to advance work on these important matters.

Please feel free to share this letter with the CHRT and/or the other parties to the CHRT proceedings.

Sincerely,

National Children's Chiefs Commission

A handwritten signature in black ink, appearing to read 'Pauline Frost', with a stylized, cursive script.

Chief Pauline Frost, Chair

c: NCCC
AFN Executive
Scott A. Smith and Liam A. Smith, interim legal counsel to the NCCC