

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(Representing the Minister of Indigenous Services Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL and
NISHNAWBE ASKI NATION**

Interested Parties

AFFIDAVIT OF CINDY BLACKSTOCK

I, Cindy Blackstock, of the City of Ottawa, in the Province of Ontario, SOLEMNLY AFFIRM THAT:

1. I am Gitxsan, a professor at McGill University’s School of Social Work, and the Executive Director of the complainant, the First Nations Child and Family Caring Society of Canada (“**the Caring Society**”). As such, I have personal knowledge of the matters hereinafter deposed to save and except for those matters stated to be on information and belief and where so stated, I believe them to be true.

Recognition of This Moment

1. At Jordan River Anderson's memorial service, I promised his family that I would do everything I could to ensure that Jordan's Principle was honoured so that no other child had to suffer as he did. Eighteen years later, I am still trying to keep that promise.
2. Jordan's baby blanket has pride of place in our office to remind us, and others, of the sacred obligation we share to honour Jordan's legacy, and that of his family, by ensuring that Canada implements the full and proper definition of Jordan's Principle.
3. I recognize Jordan's family, the Assembly of First Nations, Chiefs of Ontario, Nishnawbe-Aski Nation, the Canadian Human Rights Commission, Amnesty International, and most importantly First Nations and First Nations Jordan's Principle service providers for their incredible dedication to Jordan's Principle. I also recognize the life changing and positive results for children when Canada implements the Tribunal's orders.
4. January 26, 2024, marks eight years since this Tribunal released 2016 CHRT 2 ("**Merits Decision**"). The Merits Decision addressed how Canada's past and current discriminatory conduct in First Nations child and family services and Jordan's Principle impacted and continues to impact First Nations children, youth, their families, and their communities. Since the Merits Decision and throughout this sacred and important case for First Nations children, youth, and families, this Tribunal has always remained focused on the necessity of substantive equality to ensure they have "an equal opportunity to live the lives they are able and wish to have free of discrimination." The right to substantive equality has also been enshrined in the *Act Respecting First Nations, Inuit and Metis Children, Youth and Families*, with the specific prohibition on jurisdictional disputes resulting in gaps in child and family services for Indigenous children being particularly relevant to Jordan's Principle.
5. The need to for Canada to address jurisdictional disputes was noted in the *Joint National Policy Review* (2000) authored by consultants retained by the Assembly of First Nations and commissioned by Canada. I participated in the report as the British Columbia Region representative. Recommendation 4 reads as follows:

DIAND, Health Canada, the provinces/territories and First Nations agencies must give priority to clarifying jurisdiction and resourcing issues relating to responsibility for programming and funding for children with complex needs, such as handicapped children and children with emotional and/or medical needs. Services provided to these children must incorporate the importance of cultural heritage and identity.

A true copy of page 120 of the *First Nations Child and Family Services Joint National Policy Review: Final Report* is attached as **Exhibit “1”** to my affidavit. The entire Joint National Policy Review report can be found at Tab 3 of the Canadian Human Rights Commission’s Book of Documents from the hearing on the merits.

6. Canada’s choice not to implement the *Joint National Policy Review* Recommendation 4 shaped the tragic experience of Jordan River Anderson of Norway House Cree Nation (“**Norway House**”). Jordan was born on October 22, 1999 and had to remain in the hospital for the first two years of his life for medical reasons. When he was two years old, doctors cleared Jordan to live in a specialized foster home with at home supports located near the hospital as part of a transition plan for Jordan to return to his family in Norway House. The governments of Canada and Manitoba disagreed on which government or government department (Health Canada or DIAND) should pay for Jordan’s in-home care, given his on-reserve First Nations status. As a result of this disagreement, Jordan remained in a hospital room unnecessarily for over 2 years before tragically passing away on February 2, 2005 at the age of five, never having the opportunity to live in a family home.

7. The *Wen:de: We are Coming to the Light of Day* (2005) report (Tab 5 of the Commission’s Book of Documents), which was commissioned by Canada and overseen by the National Advisory Committee of the Assembly of First Nations, of which I was a principle investigator, is dedicated to Jordan. The dedication reads (see page 3 of the report):

The moments of your life live strong in the hearts and minds of all who knew you and many who were inspired by you. We join hands with your loving family and community to ensure that when decisions are made for children- the child really does come first.

8. The *Wen:de: We are Coming to the Light of Day* (2005) report cites the numerous studies, inquests and reports that preceded it documenting the need to resolve the serious and adverse

effects of jurisdictional disputes and concludes with this quote from Andrew Webster (2005) (see page 106 of the report):

It seems inconsistent with a modern Western industrial democracy that the welfare of hundreds of thousands of people is a matter of intergovernmental avoidance.

9. The *Wen:de* reports found (for example, at page 17 of *Wen:de: We are Coming to the Light of Day* (2005)) that the most frequent form of jurisdictional disputes were between federal government departments (36%), followed by jurisdictional disputes between two provincial departments (27%) and between federal and provincial governments (14%). This finding supported the recommendation in those reports that when a First Nations child needed a service, the government or government department (provincial or federal) must provide the service and resolve the jurisdictional dispute later (also at page 17).

10. In the evening of December 12, 2007, I accompanied Jordan's father, Ernest Anderson, his family, as well as Chief Marcel Balfour (then Chief of Norway House), and other members of Norway House leadership as well as families affected by the jurisdictional disputes to watch Parliament's unanimous adoption of Jordan's Principle, in a standing vote on then Member of Parliament's Jean Crowder's Motion 296. On the day that day, I heard Ernest Anderson say: "don't let the good being done in my son's name just be a moral victory." While the litigation before this Tribunal has resulted in significant advances, Canada's ongoing serious breaches of Jordan's Principle required the Caring Society to file a non-compliance motion on December 12, 2023.

11. When Canada obliges and implements Jordan's Principle, children thrive and the suffering ends. So many First Nations children and families have told me how Jordan's Principle changed their lives and saved their lives. Most families need only a small dollar value of support, but the benefits are priceless. I want to say, without equivocation, that Jordan's Principle must continue. The problems are not with Jordan's Principle; they are with Canada's conduct. Jordan's Principle must be robustly implemented because, in my view, it has been one of the most meaningful and positive things to happen to First Nations children, youth and families since Confederation.

12. While there have been improvements in the federal government's implementation of Jordan's Principle flowing from the Tribunal's orders, the Caring Society continues to receive heartbreaking reports that suggest wide and systemic non-compliance with the Tribunal's orders

resulting in serious harms for children, youth and families. In my view, Canada clutches its old mindset by choosing not to avail itself of multiple opportunities to address non-compliance and allowing problems fester to crisis levels, after which it tries to use that crisis to narrow Jordan's Principle or legitimize its non-compliance. The problem is, and always was, that the tragic price of Canada's non-compliance is borne by First Nations children. This affidavit recounts a wide array of Canada's non-compliance such as: calls to the 24 hour Jordan's Principle line or regional phone lines routinely go to voicemail and go unanswered, thousands of requests remain unopened, and there are serious delays in processing cases (at the approval, appeal, or and payment stages) that perpetuate discrimination.

13. I am especially concerned that ISC does not disclose serious systemic non-compliance to the Caring Society and to First Nations and First Nations service providers in the early stages so that we can help them address the problem(s). For example, the Caring Society learned of the thousands of unopened Jordan's Principle requests from a First Nations service provider. Canada had not disclosed any concerns about backlogs to the Caring Society or to the First Nations experts at the Jordan's Principle Operation Committee (JPOC). This is despite Canada having nearly daily contact with the Caring Society regarding Jordan's Principle. By the time the backlog problem came to light, it had reached a crisis for children as ISC's non-compliance effectively denied or delayed receipt of the services, products and supports that children needed when they needed them. This is particularly concerning in urgent cases that remain unopened or are not processed within the Tribunal's timelines as by definition these children are in palliative care or at reasonable risk of foreseeable harm.

14. Canada attributes these problems to the growing number of Jordan's Principle requests, as it indicated at pages 6-8 of its June 12, 2023 submissions to the Tribunal. A true copy of Canada's June 12, 2023 Annexed Responses to the Parties' May 10 and 24, 2023 Correspondence to the Panel is attached as **Exhibit "2"** to my affidavit.

15. The Caring Society recognizes that more First Nations children received help after the Tribunal's successive non-compliance orders forced Canada to better respect the full intent and meaning of Jordan's Principle and ensure all First Nations children were eligible . For example, 2017 CHRT 35 sparked a profound increase in the services, products, and supports requested by

First Nations children, youth, and families, particularly after the partial implementation of the Back to Basics approach in 2022. The most current information the Caring Society has available is that, as of November 30, 2023, ISC had approved 4.2 million services for First Nations children pursuant to Jordan’s Principle. Based on statistics received as part of the Caring Society’s work at the Jordan’s Principle Operations Committee (“JPOC”), discussed in detail below, I understand that the annual breakdown of approvals is as follows:

- a. 2016/17: 4,940 approvals
- b. 2017/18: 76,891 approvals
- c. 2018/19: 140,332 approvals
- d. 2019/20: 350,078 approvals
- e. 2020/21: 339,654 approvals
- f. 2021/22: 513,242 approvals
- g. 2022/23: 1,274,140 approvals

These figures are based on information contained in ISC’s Jordan’s Principle Deep Dive National Package Tables for fiscal year 2021-2022, a true copy of which is attached to my affidavit as **Exhibit “3”**, and ISC’s Jordan’s Principle August 2023 Monthly Report, a true copy of which is attached to my affidavit as **Exhibit “4”**.

16. I do not have access to statistics indicating the total approvals from April 1, 2023 to November 30, 2023; however, I infer that this number would be approximately 1.5 million, given ISC’s public statement that it has approved 4.2 million services as of November 30, 2023 and given that the total approvals from April 1, 2016 to March 31, 2023 is 2,699,277.

17. However, we remind Canada that we anticipated such an increase given the adverse effect of its previous non-compliant definitions and approaches to Jordan’s Principle. We saw the increase coming and repeatedly alerted Canada. In fact, Canada saw the increase coming as well, as ISC’s 2023-24 Department Plan, a true copy of which is attached to my affidavit as **Exhibit “5”**

notes (at page 39) that “there is also a risk that the increase in volume of incoming requests for health and social programs may affect the department’s ability to process them and make decisions within the compliance timelines for Jordan’s Principle ordered by the Canadian Human Rights Tribunal in 2017.” ISC’s 2023-24 Department Plan goes on to state that “[t]o mitigate this, continuous monitoring and assessment of request trends is being conducted to increase efficiency and effectiveness of service provision and seek off-cycle resources when needed to meet our legal obligations.” However, Canada did not take sufficient or proactive measures to ensure it would continue meeting those legal obligations, leading to this motion. In any case, we remain concerned about Canada’s non-compliance with the full meaning and scope of Jordan’s Principle.

18. Given ISC’s 2023-24 Department Plan’s acknowledgment of the anticipated and predictable increase in incoming requests for services, I was very surprised and concerned to hear about planned spending reductions to the tune of billions at the department. Indeed, ISC’s 2023-24 Department Plan notes (at pages 118 and 122) “a sunset of funding for the continued implementation of Jordan’s Principle (at the end of 2024-25)”. To similar effect, I attach a true copy of an infographic from the Treasury Board of Canada as **Exhibit “6”** to my affidavit. This infographic notes that ISC’s spending is planned to decrease from \$22.6 billion to \$16.1 billion by 2025/26. Although it was encouraging to learn that Minister Hajdu has indicated that “it will never be services that I would present as an option for debt reduction”, I still have serious concerns about the impacts of these planned budget cuts on First Nations children, youth, families, and communities. A true copy of an August 15, 2023 CBC News story titled “Public sector union warns of ‘rushed’ plans to cut federal spending” that contains the Minister’s comments noted above is attached as **Exhibit “7”** to my affidavit.

19. For years, the Caring Society had been working with the Assembly of First Nations, the Chiefs of Ontario, and Nishnawbe Aski Nation, and Canada through the Consultation Committee on Child Welfare (established pursuant to this Tribunal’s February 1, 2018 order (2018 CHRT 4). The Agreement-in-Principle (“**AIP**”) came into effect on December 31, 2021, aiming to, among other matters, ensure the full implementation of Jordan’s Principle. However, it was necessary for the Caring Society to cease its involvement in the AIP in December 2023 to bring this non-compliance motion to ensure that Canada fully complies with this Tribunal’s orders respecting

Jordan's Principle and ends the resulting discrimination for First Nations children, youth, and families.

20. Now, in advancing this solutions-oriented non-compliance motion, I hope that Canada will make a serious commitment to following the spirit and intent of the Tribunal's orders by taking immediate and effective action to cease its discriminatory conduct respecting Jordan's Principle, prevent its recurrence, and ensure every First Nations child and youth, can access the products, services, and supports that they need, when they need them.

21. I am deeply humbled and honoured by the many letters I have received from First Nations leadership, community, and service providers in the month since the Caring Society brought this non-compliance motion on December 12, 2023. I am thankful that so many made extraordinary efforts to share their stories, experiences, and challenges despite the busy holiday season. It is another indication of how much First Nations children are loved.

22. Once again, as I sign this affidavit, I honour the teachings of the late Elder Elmer Courchene who urged us all to pursue "Loving Justice" for every child, youth, and family, both past and present, and to ensure that the discrimination never happens again.

My Background

23. I have been the Caring Society's Executive Director since 2002. I have worked in the field of child and family services for over 35 years.

24. I obtained a doctorate in social work from the University of Toronto in 2009. I received a Master of Jurisprudence in children's law and policy from Loyola University Chicago in 2016. I also hold a Master of Management degree from McGill University and a Bachelor of Arts in Psychology from the University of British Columbia.

25. I have received Honourary Doctorates from: Blue Quills First Nations University, the University of Western Ontario, the University of Saskatchewan, Waterloo University, Thompson Rivers University, the University of Northern British Columbia, Mount St. Vincent University, the University of Winnipeg, Ryerson University, Osgoode Hall Law School, St John's College, University of Manitoba, University of Toronto, Memorial University, the University of Ottawa,

Dalhousie University, University of Victoria, McMaster University, Trent University, the University of Lethbridge, Laurentian University, and University of Calgary. In 2022, I was named Chancellor of NOSM University (formerly known as the Northern Ontario School of Medicine).

26. I was honoured to receive the World Children’s Prize in 2023. It is a particularly humbling recognition, as this award is voted on by tens of millions of children around the world who learned about our collective efforts to end discrimination and ensure culturally based substantive equality of First Nations children, youth, and families. In 2019, I was named an Officer of the Order of Canada. In 2017, I received Amnesty International’s Ambassador of Conscience Award and the Law Society of Upper Canada’s Human Rights Award, and I was awarded the Janusz Korczak Medal for Children’s Rights Advocacy. In 2018, I was the inaugural recipient of the Children’s Aid Foundation of Canada’s Lynn Factor Stand Up for Kids National Award. In 2019, I was also awarded the Canadian Public Health Association’s National Public Health Hero Award and, in 2020, I was admitted as an Honorary Member to the Canadian Paediatric Society and received the National Indian Child Welfare Association (U.S.A.) Champion for Native Children Award. In 2021, I received the Canadian Psychological Association’s Humanitarian Award. In 2022, I received the Social Sciences and Humanities Research Council’s Impact Awards Gold Medal.

27. I affirm this affidavit in support of the non-compliance motion brought by the Caring Society, seeking orders to redress and close gaps in Canada’s compliance with this Tribunal’s orders under Jordan’s Principle.

Pathway to This Non-compliance Motion

28. Consistent with the fact pattern leading to the Caring Society and the Assembly of First Nations filing this complaint, the Caring Society brings this motion only after having exhausted all reasonable efforts to raise and seek redress of the serious, systemic, and urgent concerns contained within this Jordan’s Principle non-compliance motion. Despite our repeated efforts to support Canada’s voluntarily compliance with the Tribunal’s orders over a period of years, First Nations children and youth continue to suffer, sometimes resulting in irremediable harms, and the frequency and severity of the non-compliance has escalated such that we have no choice but to bring this motion.

29. More specifically, the Caring Society alerted Canada to its non-compliance and suggested remedies in a multiple of formats over long periods of time including, but not limited to:

- a. by repeatedly proposing constructive solutions to systemic issues for over half a decade through its concerns document (“**Jordan’s Principle Concerns Document**”), which has been updated since I originally wrote it in 2018.
- b. by engaging in years-long good faith negotiations about measures to ensure compliance with existing orders and the long-term reform of Jordan’s Principle with Canada and the other Parties to this complaint;
- c. by working with the Parties to develop the Jordan’s Principle Workplan annexed to the AIP to improve outcomes under Jordan’s Principle and ensure Canada’s compliance with the Tribunal’s orders;
- d. by engaging in discussions with Canada and the Assembly of First Nations about the creation and implementation of the Back to Basics Approach;
- e. by engaging the mediation process under the AIP which was put in abeyance in its early stages given the resignation of the Eminent First Nations Person;
- f. by participating, in the Jordan’s Principle Operations Committee (“**JPOC**”) and providing expert guidance about the implementation of Jordan’s Principle;
- g. by escalating hundreds of concerns heard over multiple years from families, First Nations, service providers, and service coordinators/navigators in writing and/or verbally to regional focal points and senior ISC officials;
- h. by conveying the Caring Society’s willingness to engage in mediation-arbitration with this Tribunal both to the Parties and to this Tribunal, including in November 2023; and
- i. by raising its concerns with Canada’s non-compliance with Jordan’s Principle in letter submissions to this Tribunal, including most recently in May 2023 and in October 2023.

30. In many cases, when taking the actions noted above, the Caring Society has repeatedly raised the same issues, only to receive assurances that the identified problem(s) has been, or will be, fixed (see, for example, my description of the Caring Society's concerns with ISC's 24-hour Jordan's Principle contact line below). Unfortunately, in the vast majority of circumstances Canada's assurances do not translate into it taking sufficient and timely measures to remedy its discriminatory conduct towards First Nations children, youth and families.

31. Notably, the Caring Society has been raising concerns about Canada's non-compliance with Jordan's Principle for years. In August 2018, I wrote the Jordan's Principle Concerns Document to capture the CHRT compliance-related concerns the Caring Society was hearing from families, Jordan's Principle Service Coordinators/Navigators, and service providers as they experienced difficulty in accessing Jordan's Principle. In the spirit of constructive criticism and to assist Canada with complying with the CHRT orders, the Caring Society proposed remed(ies) to each concern. I sent the first version of the Caring Society concerns document to Valerie Gideon on August 21, 2018. A true copy of my August 21, 2018 email to Dr. Gideon attaching the August 2018 Jordan's Principle Concerns document is attached as **Exhibit "8"** to my affidavit.

32. The Caring Society published updated versions of the Jordan's Principle Concerns Document in various iterations over the years and sent them to Canada to keep track of resolved concerns and those that remain unresolved. Canada acknowledged receipt of the Concerns Document on each occasion. The original Jordan's Principle Concerns Document published in August of 2018 was 10 pages long, but as the years went by, the document swelled to 45 pages as of April 2021. A true copy of the April 2021 version of the Jordan's Principle Concerns Document is attached as **Exhibit "9"** to my affidavit.

33. The Caring Society was dissatisfied with the level of impact that the Concerns Document approach had on addressing Canada's discrimination. Accordingly, the Caring Society then shifted to using other methods to try to compel Canada to address the discrimination including, but not limited to, the AIP Workplan, the Back-to-Basics Approach, participating in JPOC, and ongoing discussions with ISC officials.

34. The Caring Society was once again disappointed in Canada's failure to carry out significant components of the AIP workplan that it had agreed to adopt even in the face of credible evidence

of related harms to children, youth, and families. As I made clear in my correspondence to senior ISC officials in November of 2023, I am at a loss as to what else the Caring Society can do to ensure that Canada complies with Jordan's Principle and ends the preventable, and too frequently serious, harms to children, youth, and families. A true copy of a chain of emails between Caring Society staff and ISC officials, containing correspondence from me to L. Gutierrez and C. St-Aubin on November 16, 2023, attached as **Exhibit "10"** to my affidavit.

35. Canada's discriminatory conduct towards children, youth, and families is at a crisis point again, requiring urgent intervention from this Tribunal.

The Caring Society's Involvement in Jordan's Principle Cases

36. The Caring Society has been contacted by families, First Nations leadership, and professionals experiencing difficulties in accessing Jordan's Principle and/or who have concerns about Canada's compliance with Jordan's Principle.

37. The Caring Society is also often in contact with Jordan's Principle Service Coordinators (i.e., community navigators funded by ISC). I understand that Canada enters into funding agreements with service coordinators with the goal of helping First Nations children and their families seek approvals under Jordan's Principle or existing federal and provincial/territorial programs. A true copy of ISC's Terms and Conditions for the Jordan's Principle Service Coordination, provided to me by Candice St-Aubin (ISC's Senior Assistant Deputy Minister responsible for the First Nations and Inuit Health Branch) in July 2023, is attached as **Exhibit "11"** to my affidavit.

38. We began this role as a stop gap measure pending Canada's implementation of effective complaints and quality control measures. While I expected it would take some time for Canada to put these measures into effect, I had no idea that we would have to continue to assist 8 years after the original order and despite Canada having credible and well researched solutions in the March 2022 report "Doing Better for Indigenous Children and Families: Jordan's Principle Accountability Mechanisms Report" authored by Naiomi Metallic, Hadley Friedland and Shelby Thomas, as well as the AIP Workplan drafted in December 2021. The number and severity of

cases coming to our attention because of Canada's non-compliance is at a point where it is putting unsustainable pressure on our small organization, which only has 5 full time staff members.

39. On each occasion, we promptly advise ISC of the concern and will often refer Canada to the relevant sections of the orders or official documents like the AIP workplan or Back to Basics (which is attached to the Affidavit of Brittany Matthews as Exhibit 8). Throughout the years, the Caring Society has used its own revenue to support children, youth, and families in urgent circumstances flowing from Canada's non-compliance and, in some cases, we have been reimbursed by ISC. The number, and severity, of cases brought to our attention has increased over the years, and the Caring Society has started tracking its involvement with Jordan's Principle cases.

40. Sometimes, the Caring Society can provide information on the Jordan's Principle orders or process that resolves the concern. However, on other occasions, the Caring Society escalates concerns to ISC to resolve the matter at the level of the child but also to provide suggestions to address systemic problems.

41. To date, the Caring Society has been involved in hundreds of case interventions regarding Jordan's Principle. Since September 2022 alone, the Caring Society has been involved in over 160 interventions on behalf of families, service providers, and service coordinators. Some matters have been resolved at the level of child, but not at the systemic level, as the same or similar issues continue to arise – even for the same families. If anything, Canada's conduct respecting Jordan's Principle appear to be getting worse, not better. The issues I address below in this affidavit reflect the concerns regularly brought to the Caring Society's attention by Leadership, families, Jordan's Principle Service Coordinators, and service providers regarding Canada's approach to Jordan's Principle.

42. I discuss the following main issues:

- a. The National and Regional Contact Centres;
- b. Urgent cases;
- c. Backlogs;
- d. Reimbursement delays;

- e. The *Financial Administration Act*;
- f. Quality assurance and accountability measures; and
- g. The dialogic approach and the Schedule “A” Jordan’s Principle Workplan.

The National and Regional Contact Centres

Overview

43. In the August 2018 version of the Jordan’s Principle Concerns document (attached as Exhibit 11, above), the Caring Society noted the under identification of urgent cases at the 24-hour call centre and recommended training of focal points and call line personnel. The April 2019 edition, identified concerns regarding the accessibility and staffing of the 24 hour line and proposed further solutions to remedy the problems. A true copy of the April 30, 2019 iteration of the Caring Society’s Jordan’s Principle Concerns Document is attached as **Exhibit “12”** to my affidavit.

44. Through the Caring Society’s participation at JPOC, I also know that ISC has been aware of issues with respect to ISC’s Jordan’s Principle contact centres/points for some time, including issues related to call volumes and effectiveness. A true copy of the Draft JPOC Record of Decision dated December 13, 2022 is attached as **Exhibit “13”** to my affidavit.

45. As detailed below, I have been consistently raising concerns to ISC about the national and regional contact centres since 2018 and since January of 2023 in particular.

46. Being able to access the National and Regional Contact Centres is crucial, particularly for those with urgent requests and those who have sought out contact information for Jordan’s Principle online or been directed to use these resources by navigators and coordinators. For example, Canada makes public representations on how to make a Jordan’s Principle request on its website. This is vital to ensure that First Nations children and families are aware of how to access Jordan’s Principle, pursuant to the Tribunal’s orders, particularly in urgent circumstances. A true copy of ISC’s Jordan’s Principle website as of January 10, 2024 is attached as **Exhibit “14”** to my affidavit.

47. As of January 10, 2024, Canada's Jordan's Principle website included a link titled "Submit a request under Jordan's Principle", under the heading "Services". This leads to a website that advises that ISC is available to take requests 24 hours a day, 7 days a week, that provides contact information for the national Jordan's Principle call centre (1-855-JP-Child (1-855-572-4453)), and that provides a list of "regional focal points" across Canada. A true copy of Canada's "Submit a request under Jordan's Principle" website as of January 10, 2024 is attached as **Exhibit "15"** to my affidavit.

48. Despite Canada's representations that agents are available 24 hours a day, 7 days a week to receive Jordan's Principle requests, calls to these lines often go unanswered. My experience has been that callbacks can take many hours, or that calls are not returned at all. In particular, the Caring Society is extremely concerned over Canada's failure to set up an effective mechanism to receive and determine urgent requests, as the National Call Centre is the only mechanism offered by ISC for families to make an urgent request outside business hours. The Caring Society has identified this concern for many years. Copies of the August 2018, April 2019, and April 2021 iterations of the Jordan's Principle Concerns Documents are found in Exhibits 11, 12, and 9 to my affidavit.

49. Below, I set out some of my specific interactions with ISC officials about the National and Regional Contact Centres throughout 2023, as they are reflective of my longstanding concerns with the National and Regional Contact Centres.

January 2023

50. On January 11, 2023, I called the 24-hour line approximately 6 times within 3 hours, regarding an urgent case. In this instance, a family had my direct contact information which is highly unusual. The family sent me a text at 12:55 a.m. to report that they had no accommodation and were driving around in their car. They advised me that they had called ISC but had been unable to reach anyone overnight. I was sleeping at the time the text was sent but thankfully I awoke early, as is my custom, and upon reading the message I immediately called the 24 hour line.

51. I was not able to reach anyone and instead received a message advising that "all of our agents are currently busy given higher than normal call volumes" that early in the morning. Upon

not getting a call back, I called the 24 hour line multiple times given the urgency of the situation the family was in, and I was unable to leave my number again as I had already left it to call back. At 6:14 in the morning, I taped the call. I never received a call back and at no time was there an option to indicate that the case was urgent. Eventually, I was able to reach ISC staff at headquarters at the beginning of the business day, using email addresses that are not available to the public. During my exchanges with ISC officials, I asked whether the 24-hour line was being staffed and flagged that it did not make sense that I could not reach anyone for around 2 hours and did not receive a return call. A true copy of my email exchanges with ISC on January 11-12, 2023 is attached as **Exhibit “16”** to my affidavit.

52. In further correspondence with ISC officials in January 2023, ISC later revealed that it was not always staffing the national 24-hour. At that time, the daily average amount of time that the line was staffed from Monday to Friday was 83%-87.5% and from Saturday to Sunday was 62.5%-75%. A true copy of my email exchanges with ISC from January 17-27, 2023 is attached as **Exhibit “17”** to my affidavit.

53. As indicated in the email chain in Exhibit 17, ISC also reported taking corrective action to address voicemail and staffing issues in January 2023, including by putting in place National Call Centre Overnight call monitoring on January 12, 2023, and implementing 24/7 call services.

February 2023

54. On February 8, 2023, I was copied on an email from Jennifer King, the Caring Society’s Director of Programs and Operations, to a senior ISC official about issues that C.B. was having in speaking to someone on the phone. C.B. had been waiting to hear back about a Jordan’s Principle requests she had submitted a week or more ago and was also waiting for information from the appeals committee. Ms. King advises me, and I believe, that C.B. was contacting the Caring Society because her call to the 24-hour line simply went to voicemail, and she believed it would take days to receive a callback.

55. After the Caring Society intervened, a senior ISC official indicated that the Ontario Region had connected with C.B. and provided her with a direct line to a focal point. I suggested that ISC HQ should consider doing an audit of all the phone lines for Jordan’s Principle by calling each line

at different times. The Caring Society has conducted several such exercises on its own, as discussed below. A true copy of the Ms. King's and my email exchanges with Ms. Wilson-Clark on February 8 and 9, 2023 is attached as **Exhibit "18"** to my affidavit.

May 2023

56. On Saturday, May 13, 2023, I again called the 24-hour line to report another case requiring ISC's attention. After waiting for a call back for over 4 hours, I sent an email to the regional staff person using email contact information available to the Caring Society (but not the public) and was able to get assistance for the family. The Caring Society was later advised that there had been a system outage that lasted several hours on May 13. Moreover, ISC also advised that, at that time, the 24-hour line had been staffed by 16 agents on a 24/7 shift schedule. A true copy of my correspondence with Ms. Wilson-Clark about this attempt to reach the 24-hour line, sent on May 24, 2023, is attached as **Exhibit "19"** to my affidavit.

57. Nevertheless, during the week of May 15, 2023, the Caring Society was informed by a parent that they had called the 24-hour line and left a message in relation to a request that had been made in January 2023.

September 2023

58. On or about September 29, 2023 I again called the 24-hour line regarding an urgent case during business hours and left a message requesting a call back. In the meantime, we reached out to ISC officials using contact information not available to the public to resolve the case. Approximately 5 hours after I originally placed the call, I received a call back from the 24-hour line. The call said "Likely Spam" on my mobile phone, but I answered it anyway. The agent was courteous but seemed uninformed. When I advised them that I had been able to resolve the case by contacting a senior official overseeing Jordan's Principle they did not seem to know who that person was or what role they had. I communicated my concerns regarding the 24-hour line to Candice St. Aubin verbally on September 29, 2023 and in writing on September 30, 2023. A true copy of my email exchange with Ms. St-Aubin on September 30, 2023 is attached as **Exhibit "20"** to my affidavit.

November 2023

59. In an email on November 16, 2023, I wrote to a senior ISC official about an urgent case and summed up my longstanding concerns regarding the 24-hour line. I reiterated that I had been advising ISC about my serious concerns with the 24-hour line since January 2023. I have raised serious concerns about the call centres being unstaffed, about requestors not receiving calls back, and about requestors not being able to easily flag that their case is urgent to get immediate assistance. I have received multiple assurances from different senior ISC officials that the issues raised regarding the 24 hour line have been addressed but too often I have found that problem(s) remain. A copy of correspondence expressing this concern on November 16, 2023 is found in Exhibit 10.

December 2023

60. On December 12, 2023, I sent the Caring Society's notice of motion to senior ISC officials and reiterated the Caring Society's hope is that Canada will take immediate and effective measures to address longstanding areas of non-compliance. On December 18, 2023, a senior ISC official responded and advised that, during the holiday period, the National Call Centre and Regional Call Centres would ensure sufficient staffing levels, that the National Call Centre would prioritize live calls and urgent calls in the callback queue, and that regions would ensure focal points are on duty and have on-call staff available to address urgent requests. A true copy of my email exchange with ISC and Mr. Castonguay's response on December 18, 2023 is attached as **Exhibit "21"** to my affidavit.

The Caring Society's Phone Audits

61. Given my longstanding concerns with the 24-hour line and regional contact centres and my recommendation that ISC should regularly be conducting audits of same, I instructed staff members at the Caring Society to conduct audits to test ISC's phone lines at various points in 2023.

62. To that end, staff members at the Caring Society have called the 24-hour line approximately 25 times since January 2023. Of these attempts, staff were connected to a live agent only twice: on September 14, 2023, at approximately 8:45 AM ET, and on December 12, 2023, at approximately 8:46 AM ET. A true copy of a table detailing the Caring Society's various attempts

to reach the 24-hour line in 2023, prepared by Molly Rasmussen (the Caring Society's Reconciliation & Research Coordinator) is attached to my affidavit as **Exhibit "22"**. Ms. Rasmussen advises me, and I believe, that she prepared this table based on her notes of her own calls and based on correspondence sent from the Caring Society staff to ISC to note occasions on which they had been unable to reach anyone via the 24-hour line. The calls were made by Ms. Rasmussen, Brittany Mathews (the Caring Society's Director of Reconciliation & Policy), and Jess Raby (the Caring Society's Education & Public Engagement Coordinator).

63. In addition to this audit exercise, Ms. Rasmussen informs me, and I believe, that she received a callback 52 hours after placing an urgent call on June 17, 2023. I have also been informed by Ms. Rasmussen, and believe, that she called the National Call Centre on December 12, 2023, at 9:27 AM ET and selected the option to speak to a live agent in French. Ms. Rasmussen received an automated response after approximately one minute, stating that there were no available agents to take her call, and to leave a callback number. True copies of recordings of Ms. Rasmussen's phone audits on December 12, 2023 are attached as **Exhibits "23A" and "23B"** to my affidavit. Approximately 24 minutes later, at 10:03 AM ET, the call was returned. However, the agent hung up while being transferred from the Caring Society's reception desk to Ms. Rasmussen. There was no further attempt by the Call Centre to return the call.

64. Ms. Rasmussen also attempted an audit of ISC's Jordan's Principle regional phone lines on September 15, 2023. The results of Ms. Rasmussen's audit make it clear that there was, at least at that time, regional variation among the regional call centres with respect to how their call trees were structured. Each of the 7 regional phone lines triaged and managed phone calls differently. During her audit, Ms. Rasmussen only spoke directly to representatives for 2 of 7 regions: the Atlantic Region and Saskatchewan. A true copy of Ms. Rasmussen's September 15, 2023 regional phone audits is attached as **Exhibit "24"** to my affidavit.

Ongoing Concerns Regarding the Contact Centres

65. Considering the foregoing, I remained concerned about the following aspects of the National and Regional Contact Centres, many of which the Caring Society identified in its October 10, 2023, submissions to the Tribunal:

- a. As audits of the National Call Centre on December 12, 2023 and January 5, 2024 demonstrate, there is no obvious and effective option to indicate a call is urgent and speak to an ISC official with authority to determine cases. Ms. Rasmussen's phone audits on December 12, 2023 can be found in Exhibit 23A and Exhibit 23B to my affidavit. A true copy of my attempt to call the National Call Centre on January 5, 2024 is attached as **Exhibit "25A"** to my affidavit, and a true copy of an unofficial transcription of that attempt is attached as **Exhibit "25B"** with personal information redacted;
- b. callers are often unable to reach a live agent after pressing "1" for "submit a request" and then "1" again "if your child could be harmed if services are not delivered quickly" and waiting on hold;
- c. there is no option for callers to the 24 hour line to indicate that an existing case is urgent;
- d. there is no option to leave a message on the 24-hour line. You can only leave your phone number which is added to the call back queue;
- e. in the rare instances where messages have been returned for urgent cases, it often past the 12-hour timeframe for determining an urgent request;
- f. Canada currently only starts the "clock" on the CHRT timeframes for determination from when it is satisfied it has the documentation required as opposed to when the requestor first attempts to contact ISC (such as through an unsuccessful attempt to make contact via the 24-hour line);
- g. callers are unable to leave a callback number on a regional line (as an alternative to the National Call Centre) where a phone number has already been left for a call back from the National Call Centre; and
- h. Canada's website lists the 24 hour call line number for the Quebec and Manitoba regions versus a direct line to the region;

- i. I am unclear as to what training and authority Call Centre Employees receive to ensure they are properly equipped to receive and determine requests, particularly in urgent circumstances.

66. To address these concerns regarding the National and Regional Contact Centres, the Caring Society has proposed a series of remedies and solutions in the Jordan's Principle Workplan, attached as Schedule "A" to the Notice of Motion ("**The Schedule "A" Workplan**"), a true copy of which is attached as **Exhibit "26"** to my affidavit. Nonetheless, the Caring Society welcomes Canada's identification of superior or effective alternative solutions to resolve its non-compliance with this Tribunal's Jordan's Principle orders, to cease the discrimination, and to prevent its recurrence.

Urgent Cases

Overview

67. The Caring Society has been raising concerns about Canada's treatment of urgent cases and proposing possible solutions since as early as 2018. See for example, the August 2018 Jordan's Principle Concerns Document in Exhibit 11 to my affidavit.

68. On November 2, 2017, the Tribunal issued a consent order (amending its May 26, 2017 order (2017 CHRT 14) resolving an earlier non-compliance motion brought by the Caring Society, (and resulting in Canada discontinuing its judicial review of that order) that requires Canada to determine urgent Jordan's Principle requests on the following timelines:

- a. 12 hours for urgent individual requests; and
- b. 48 hours for urgent group requests.¹

69. Pursuant to the Back-to-Basics Approach, examples of "urgency" include all cases involving:

- a. end-of-life/palliative care;

¹ See [2017 CHRT 35](#) (released on November 2, 2017).

- b. mention of suicide;
- c. physical safety concerns;
- d. no access to basic necessities; and
- e. risk of child entering child welfare system.

70. The Back-to-Basics Approach provides that the requestor is best positioned to judge the urgency of their request and that they may self-declare it as such. Focal points and call centre staff are to accept the requestor's self-identification of the urgency of their request, not to arbitrarily re-assign the request a lower level of urgency. Even where the requester may not identify the case as urgent, focal points and call centre staff should use common sense to determine whether a request is urgent or time-sensitive and should advise requestors to contact the call centre if their request becomes urgent over time. The Back-to-Basics Approach also stipulates that ISC must consider the age and vulnerability of children when determining urgency. Crucially, in urgent cases, the child's needs must come first, which means that requests may be determined prior to ISC's having received all documentation. In any case, only a minimum amount of information is required of ISC to adjudicate a request.

71. Through the Caring Society's work at JPOC, I have learned that:

- a. From April 1, 2023 to September 30, 2023, Canada's compliance rate for timely determination of urgent individual requests was 29% and for urgent group requests was 24%. A true copy of ISC's "Jordan's Principle September 2023 Compliance Report" dated October 13, 2023 is attached as **Exhibit "27"** to my affidavit; and
- b. From April 1, 2021 to March 31, 2022, ISC's compliance rate for urgent individual requests was 53% and for urgent group requests was 31%. A true copy of ISC's Jordan's Principle Deep Dive National Package Tables for fiscal year 2021-2022, with Table 71 capturing "Compliance rate by request type, urgency, and month of sufficient information, fiscal year (FY) 2021-22" at page 77, is found in Exhibit 3 to my affidavit.

72. These statistics represent real children, real youth, and real families who by the very definition of being involved in an urgent case are at reasonable risk of irremediable harm or are receiving palliative care. As the Caring Society noted in its October 10, 2023 submissions, 28% of respondents in a study of over 200 Canadian pediatricians (publication pending) reported a negative outcome for a child or family due to delay, such as medical complication, worsened mental health, unnecessary separation from the family, delay of therapy, and prolonged hospitalization. Ms. King and Dr. Ryan Giroux presented these findings at the Canadian Paediatric Society Annual Conference on May 25, 2023. I personally met with Dr. Giroux on July 27, 2023, during which meeting he confirmed those findings. A true copy of Dr. Giroux and Ms. King's presentation is attached to my affidavit as **Exhibit "28"** .

73. I raised concerns about ISC's treatment of urgent cases in correspondence with Ms. Wilson-Clark and Dr. Gideon in June 2022. A true copy of an email thread capturing concerns the Caring Society and I raised about a case involving a mother of two boys with Down Syndrome who required urgent assistance and who had expressed suicidal ideation in May and June 2022 is attached as **Exhibit "29"** to my affidavit. On June 5, 2022, I advised them that ISC's management of urgent cases had left children and families in precarious and sometimes life-threatening situations. A true copy of my correspondence with ISC from June 3-5, 2022 is attached as **Exhibit "30"** to my affidavit.

74. On June 7, 2022, I then provided Ms. Wilson-Clark and Dr. Gideon with a chart of urgent cases in which the Caring Society had intervened since April 2022, raising concerns about ISC's lack of compliance with the CHRT orders, the AIP workplan, and the Back-to-Basics approach. A true copy of my email to Ms. Wilson-Clark and Dr. Gideon on June 7, 2022 with my enclosure is attached as **Exhibit "31"** to my affidavit.

75. Timely response to urgent cases is of the utmost importance. By definition, delay in responding to an urgent case that leaves the underlying need unaddressed can result in irremediable harm to a child or impose serious hardship on families whose children are in palliative care. Indeed, tragically, the Caring Society has heard from families with children in palliative care or who are fleeing from dangerous situations who suffered increased hardship due to the difficulty trying to get a hold of ISC, or related to ISC's non-compliance in determining the request, in having

their child's needs met. In fact, an Elder was so concerned about Canada's lack of knowledge on why her grandchildren should attend a memorial potlatch for their mother and brother who tragically died only months apart that she sent training materials to them. A true copy of an email on which I was copied from Ms. Mathews on May 6, 2022 is attached as **Exhibit "32"** to my affidavit. As previously noted, the Caring Society has been sharing these concerns with ISC and through its Jordan's Principle Concerns Document since 2018.

76. Once again, the Caring Society acknowledges that ISC has approved millions of products, services, and supports under Jordan's Principle. As of November 30, 2023 and as reflected in Exhibit 14 to my affidavit, ISC has approved 4.2 million products, services, and supports. We have heard from many families how these supports have been life changing. However, the CHRT orders make clear that Canada must cease its discriminatory conduct. It is not enough to partially comply with these orders while leaving thousands of others to face the harms related to systemic non-compliance.

77. First Nations, First Nations service providers, and communities have also reached out to advise me of the specific barriers and obstacles they have faced while trying to access Jordan's Principle. I discuss representative examples of the concerns I have heard at the Caring Society below.

Independent First Nations

78. Independent First Nations has advised me, through Executive Chair Chief Roundpoint, that "Urgent requests are taking up to a month to be reviewed" and that in general:

Compliance time-lines are not being adhered to:

a. Urgent files can take up to and over 30 days to get reviewed;

b. Time sensitive files can take over 100 days to get reviewed;

c. Files that are renewals can take over 6 months to get reviewed; and

d. Currently we have over 56% (average) of our requests for 2023-24 still waiting review 10% of our 2022-23 files waiting for review.

A true copy of the letter from Independent First Nations dated December 20, 2023 is attached as **Exhibit "33"** to my affidavit.

Cowessess First Nation

79. The December 19, 2023 Band Council Resolution from Cowessess First Nation, in Southern Saskatchewan, speaks to serious concerns about ISC's conduct of Jordan's Principle in the Saskatchewan region. Cowessess First Nation has identified the adverse impacts of Canada's non-compliance with Jordan's Principle as follows:

Canada's non-compliance with the Canadian Human Rights Tribunal orders continues to have adverse and harmful impacts on children, youth, and families, including:

- a. *Children and families experiencing harms due to Canada's failure to comply with the Tribunal's timelines for determining urgent requests, including children in palliative care not receiving needed supports, families fleeing domestic violence being forced to return to the home of the abuser due to a lack of crisis supports and families fleeing wildfires not having access to basic supports;*
- b. *Children experiencing significant delays or disruptions in professional recommended services and supports, being removed from professional waitlists contributing to further delays, or not receiving any services and supports, due to Canada's reported backlogs and serious determination delays;*
- c. *Families not being able to place urgent requests or report a change in urgency due to Canada's failure to ensure the 24-hour Call Centre is adequately staffed;*
- d. *Children not receiving services, supports, or products due to Canada's failure to adhere to reasonable reimbursement timeframes for approved services; and*
- e. *Service providers no longer being able to provide services to children who are receiving Jordan's Principle supports due to Canada's failure to adhere to reasonable reimbursement timeframes to services providers.*

A true copy of Cowessess First Nation's Band Council Resolution dated December 19, 2023 is attached as **Exhibit "34"** to my affidavit.

Dnaagdawenmag Binnoojiiyag Child & Family Services

80. Dnaagdawenmag Binnoojiiyag Child and Family Services (“**DBCFS**”) is an Ontario-based child well-being agency that has advised me of concerns it has experienced in accessing Jordan’s Principle. With respect to its concerns surrounding urgent Jordan’s Principle applications, DBCFS has advised me that:

- *Urgent Criteria of ISC does not meet the standards of needs of children who require immediate assistance;*
- *Urgent applications are not meeting the timing stated by ISC, they are more in time with general applications or longer. 7 Urgent applications submit[t]ed and 1 was approved within 24 hrs;*
- *An urgent application submit[t]ed on a Thursday was required for accommodation for the weekend, approval was not received until Monday leaving the youth without temporary housing. Not meeting the needs of the child;*
- *Most applications the staff are not identified to the Navigators. This leaves no contact information and emails go directly to the general inbox causing delays in processing time; and*
- *Staff turnover has resulted in lost applications. Correspondence of Staff change came through from an application submit[t]ed June 2021 on December 14, 2023 asking if the application was still needed. That is almost 2 years.*

A true copy of a chart outlining Dnaagdawenmag Binnoojiiyag Child & Family Services’ concerns about Canada’s conduct respecting Jordan’s Principle, which I received on December 19, 2023, is attached as **Exhibit “35”** to my affidavit.

81. Of particular concern to me are indications that ISC is not addressing urgent Jordan’s Principle requests in a way that meets the needs of children nor is it ensuring proper staffing and internal quality control, and effective case management processes.

Indigenous Child and Family Services Directors

82. On January 11, 2024, the Indigenous Child and Family Services Directors, Our Children Our Way Society, advised me of the experiences of member agencies in trying to access Jordan's Principle. One agency has advised as follows:

Ayás Ménmen Child & Family Services [...]

I have urgent dental surgeries for young children waiting months for a file number and approval. Orthodontic treatments that are time sensitive that go up to 6 months or more without review. The only way I can get a file through is to mark it as urgent, but I get in trouble for marking files as urgent because that is supposed to be used for life-or-death situations. Many of my clients apply for food security and emergency services that need to happen immediately. These items are taking up to a month or more, even if marked with an urgent status.

A true copy of the January 11, 2024 letter from Indigenous Child and Family Services Directors, Our Children Our Way Society, is attached as **Exhibit "36"** to my affidavit.

83. I had the honour of working at Ayás Ménmen Child & Family Services in the mid 1990's and it is concerning to know they are facing such serious challenges in having urgent requests processed.

Blood Tribe

84. On January 8, 2024, Chief Fox of the Blood Tribe, a member of the Blackfoot Confederacy in Southern Alberta, advised me of concerns they are facing with ISC's implementation of Jordan's Principle. Chief Fox has advised me, and I believe, that issues surrounding urgency include:

In conclusion, given the impact of opioid deaths in our community, we have many orphaned children who are being raised by their grandparents or other relatives. Therefore, we support the Caring Society's request that familial deaths and First Nations self-identified States of Emergency be included in the Urgent Request category. We also support the Caring Society's December 2023 Motion to the Tribunal.

A true copy of Chief Fox's letter dated January 8, 2024 is attached as **Exhibit "37"** to my affidavit.

M.S.'s case

85. I have been informed by Ms. Rasmussen and believe that, on October 23, 2023, the Caring Society was contacted by a Jordan's Principle Navigator for Pikwakanagan First Nation, on behalf of a parent of M.S., a 6 month old infant, living off-reserve and who had made a request for well repairs that was escalated to HQ on October 16, 2023. The navigator indicated that repairing the well was vital to ensuring that the family would have access to clean drinking water throughout the winter. A true copy of the October 23, 2023 correspondence between Ms. Rasmussen and the navigator is attached as **Exhibit "38A"** to my affidavit.

86. Ms. Rasmussen subsequently followed up with ISC Headquarters on October 24, 2023 and copied me on an email in which she asked that a determination be relayed to the family immediately. A true copy of the correspondence between the Caring Society and ISC from October 24, 2023 to December 6, 2023 is found in Exhibit 10.

87. On October 25, 2023 the family received an email from the Ontario region indicating that a decision was made on October 19, 2023 and that the request was denied on the basis that "Jordan's Principle authorities on off-reserve capital infrastructure are limited". On November 10, Ms. Rasmussen received word from the Senior Assistant Deputy Minister at Jordan's Principle that the request would be re-reviewed, given that the denial rationale was neither personalized nor specific, and therefore precluded the family from making a time-sensitive appeal. A copy of the correspondence between the Caring Society and ISC is found in Exhibit 10.

88. On November 10, 2023 the request was re-reviewed, and an additional denial rationale was provided: *"It was determined that your request for a New Well is not approved, as the request falls beyond the scope of Jordan's Principle. Jordan's Principle's off reserve capital infrastructure authorities are limited. If there are additional products, services and or supports that Jordan's Principle can assist with to ensure your child's nutritional need are met, please reach out to the Jordan's Principle Ontario Region for products/services/supports."* A true copy of the November 10, 2023 denial letter is found in correspondence between the Caring Society and the navigator attached as **Exhibit "38B"** to my affidavit.

89. As a Plan B, a request for an infant bathtub and a water holding tank was submitted, which would still allow the family to remain in their home throughout the winter, even if the well was not fixed. A copy of the Caring Society's correspondence with the navigator is found in **Exhibit "38B"**. The tub was approved, but the water tank was escalated to Headquarters on November 23, 2023. A true copy of correspondence containing the November 23, 2023 decision is attached as **Exhibit "38C"** to my affidavit. On November 28, 2023, Ms. Rasmussen followed up with Headquarters, given the urgency of the request, and the fact that it was still awaiting a determination. A true copy of Ms. Rasmussen's correspondence with Ms. Wilson-Clark on November 28, 2023 is attached as **Exhibit "38D"** to my affidavit. On November 29, 2023, the water tank was denied for the exact same reasons: that ISC's Jordan's Principle off-reserve capital authorities are limited, and that the tank fell beyond the scope of Jordan's Principle. A true copy of correspondence between Ms. Rasmussen and the navigator containing the November 29, 2023 denial is attached as **Exhibit "38E"** to my affidavit.

90. On December 5, 2023, a third request was placed for 6 months of rental support as it was clear the family would not be able to remain in their current home for the winter. The request was approved on December 11, just shy of 2 months after the Caring Society became involved. A true copy of correspondence containing the December 11, 2023 approval is attached as **Exhibit "38F"** to my affidavit.

91. Ms. Rasmussen advises me, and I believe, that she was informed by the navigator that during the two months that M.S.'s family spent attempting to get support through Jordan's Principle, the family had extremely limited access to water. Due to limited water in their well, the family turned on the water once or twice a day to flush their toilet. The family used water from Culligan jugs for cooking and bathing their baby. M.S.'s mother drove to a family member's house to shower and do laundry. A true copy of correspondence between Ms. Rasmussen and the navigator on January 11, 2024 is attached as **Exhibit "38G"** to my affidavit.

J.S.'s Case

92. At 3:00 PM ET on Friday, June 16, 2023, J.S., a parent from a remote community in Northern Ontario contacted the Caring Society regarding an urgent request for medical transportation. J.S. was experiencing complications related to her pregnancy and needed her young

daughter to be able to accompany her, as she was still breastfeeding. J.S. indicated that she had tried to get in touch with someone via the 24-hour Jordan's Principle call centre but was unable to reach anyone. A true copy of email exchanges between Ms. Rasmussen and J.S. is attached as **Exhibit "39A"** to my affidavit.

93. Ms. Rasmussen contacted ISC about the urgent request at 3:17 PM ET and copied me on that message, but she did not receive a response until 5:26 PM ET, in which Canada indicated that someone had contacted J.S. A true copy of the email exchanges between the Caring Society and ISC regarding J.S.'s case is attached as **Exhibit "39B"** to my affidavit.

94. Ms. Rasmussen has informed me, and I believe, that she checked in with J.S. on the morning of Saturday, June 17, 2023 to confirm that J.S. was in touch with someone. J.S. confirmed that aside from an initial phone call the night before, no one had been in touch since to ensure supports were put in place, as shown in Exhibit 39A to my affidavit.

95. Ms. Rasmussen contacted the National Call Centre at 2:15 PM ET that afternoon and pressed "2" to follow up about an existing request. There was no option to indicate that the case was urgent under the existing request option. Ms. Rasmussen was unable to reach a live agent and left a callback number.

96. Approximately 20 minutes later, I called the 24-hour line and pressed "1-1" to make a new, urgent request, as I had realized from my previous calls that the only way to get to the "urgent" option was to indicate it was a new request – even if, as in this case, the urgency dealt with an existing request. This, of course, would not be intuitive to other callers. After waiting for approximately 3 minutes, I hung up, as waiting for an indeterminate amount of time to speak with a live agent was not feasible given the urgent situation that this mom and her child were in.

97. At my direction, Ms. Rasmussen then contacted the On-call Designated Decision Maker through a phone number not available to the public to advise her of the case. Ms. Rasmussen emphasized that at this point, J.S. had been left hanging for nearly 24 hours while dealing with a medical emergency. At 2:45 PM ET, the request was approved by the On-Call Designated Decision Maker.

98. At 6:22 PM ET, J.S. emailed Ms. Rasmussen to let her know that the flights and accommodations had been booked for the following morning, as shown in Exhibit 39A to my affidavit. The total length of time that J.S. waited for a determination for this urgent request was 24 hours.

99. On Monday, June 19, 2023 at 5:58 PM ET, Ms. Rasmussen received a callback from the 24-hour line, 52 hours after she had placed her initial phone call. I did not receive a callback.

100. Ms. Rasmussen informed me, and I believe, that J.S. later disclosed that she miscarried, as noted in Exhibit 39A to my affidavit.

S.W.'s Case

101. I have been informed by Ms. Rasmussen and believe that, on October 30, 2023, the Caring Society was contacted by S.W., a 37-weeks pregnant mother of 4 children who was still breastfeeding her toddler and whose request for a number of items, including to have her children to accompany her on a flight to a different city where she was to give birth was denied. Rather than deal with the “hassle” of asking ISC to review the denied request, she decided to leave her children at home with her partner while she went alone to deliver her baby in a different city. A true copy of the email thread between Ms. Rasmussen and S.W. is attached as **Exhibit “40”** to my affidavit.

102. My concern is that more individuals will decide that the process of accessing Jordan’s Principle or asking for a re-review or appeal of a denied request may find it too difficult or arduous to do so. Like S.W., they may choose not to pursue their Jordan’s Principle request, even during such a sacred time as the birth of their child.

Unopened requests and Backlogs

Overview

103. The Caring Society learned about serious backlogs in ISC’s opening and determining Jordan’s Principle requests in August 2023 at JPOC. During the meeting, at which I was present, a British Columbia First Nations representative advised that, as of July 28, 2023, British Columbia Region had 1,000 requests in queue and 2,000+ requests unopened in the region’s inbox waiting

for review. A true copy of the email exchanges between B. Mathews and R. Hallgren is attached as **Exhibit “41”** to my affidavit.

104. More recently, I was advised by the Jordan’s Principle Enhanced Service Coordination Hub of British Columbia on January 11, 2024, that, among other things:

The following stats for the 2022/23 fiscal were released by ISC BC to the Hub and various partners.

- *113%. Increase in funding from previous fiscal.*
- *An average of 33 requests per day received by ISC. This is an increase of almost 200% over previous fiscal.*
- *ISC BC receives an average of 50 calls a day requesting payments follow up.*
- *3300 requests in ISC queue. This is a back log.*
- *2850 vendor invoices in ISC payment queue. This is a back log.* A true copy of the letter from the Jordan’s Principle Enhanced Service Coordination Hub of British Columbia on January 11, 2023 is attached as **Exhibit “42”** to my affidavit.

105. As is reflected in a number of the letters and communications from First Nations and First Nations service providers that are appended to this to this affidavit, there are thousands of cases that have been unopened in other regions as well as serious delays in determinations and payment for approved services.

106. First Nations community members have also informed me about their experiences in dealing with backlogs in Jordan’s Principle requests and navigators have also said they are often waiting many months for ISC to open cases and determine them requiring the navigator to repeatedly follow up on behalf of families who are becoming increasingly frustrated.

Interlake Reserves Tribal Council

107. In October 2023, the Caring Society became aware of concerns about backlogs in the Manitoba region. One community alone in that region advised me of a backlog of 100+ requests as of October 5, 2023. The Health Director of the Interlake Reserves Tribal Council advised that the backlogged cases included persons in dire need of assistance and indicated that, should the

funding crisis persist, they would be forced to deny vital support to those who are in danger and require immediate respite care services. A true copy of the October 5, 2023 letter from Interlake Reserves Tribal Council is attached as **Exhibit “43”** to my affidavit.

Dnaagdawenmag Binnoojiiyag Child & Family Services (located in Hiawatha, Ontario)

108. DBCFS has advised me of the following concerns with respect to backlogged Jordan’s Principle applications, which are found in Exhibit 35 to my affidavit:

- *Applications are outstanding as far back as 2021. They have been resubmit[t]ed several times without a confirmation of receipt and no response regarding these applications.*
- *18 Applications outstanding that were submit[t]ed between April 2021 and Dec 2022[.]*
- *56 Outstanding application[s] from January 2023-September 1st, 2023[.]*
- *A youth has been waiting since March 2023 for Dental Surgery and approval has not been received as of Dec 14, 2023[.]*
- *An application for counselling in the amount of \$600 took over 6 months to have approved. The child’s services were on hold until the approval was received[.]*
- *The delay in applications is causing an increased financial strain on families and services needed are being delayed by months.*
- *An application for continuation of services was submit[t]ed in full with Let[t]ers of support/Quotes/Request and it has been 6 months without an approval. Application has not been approved as of Dec 2023[.]*
- *Lit[t]le information is provided on processes for specific services and needs of the children. Navigating a Jordan’s Principle application is extensive and confusing for families to access. It is intimidating for simple services such as counselling for youth. Waiting months for approval has deterred many families from applying.*

109. It is very concerning that Jordan's Principle requests from 2021 or 2022 remain outstanding. Frankly, no Jordan's Principle application should be outstanding beyond the Tribunal-ordered determination timelines, and it is particularly concerning to note that DBCFS identifies an increased financial strain on families and delayed services because of ISC's current determination timelines. It is perhaps even more concerning to consider that families have been deterred from submitting Jordan's Principle applications because of these longstanding systemic non-compliance issues.

Carrier Sekani Family Services (located in Prince George, British Columbia)

110. On January 10, 2024, I was advised by Chief Priscilla Mueller, President of Carrier Sekani Family Services, of the challenges they have experienced in operationalizing Jordan's Principle. With respect to determination timelines, I have been advised that:

We have encountered a number of challenges that have also been noted in the Caring Society Report. Processing time is unreasonably long and does not follow CHRT guidelines. CSFS service coordinators have requests that have been waiting 2-4 months to be addressed. Requests that have been escalated to HQ take even longer to be processed, and it is unclear why some requests are sent to HQ when they are clearly not "above normative standards" (e.g. when a child needs a bed).

A true copy of Chief Priscilla Mueller's letter dated January 10, 2024 is attached as **Exhibit "44"** to my affidavit.

111. It is concerning to hear that ISC is routinely failing to meet the timelines for processing requests and that escalations to Headquarters are taking place with some regularity.

Indigenous Child and Family Services Directors (located in British Columbia)

112. In their January 11, 2024 letter to me, the Indigenous Child and Family Services Directors, Our Children Our Way Society, advised me as follows about the experiences of a member agency with processing timelines and delays:

Secwepemc Child & Family Services [located in Kamloops, British Columbia]
In 2023 we supported 16 Jordan's Principle applications. Only six of those were reviewed and approved. Three were approved in a timely manner (4 days, 5 days, 2 weeks, respectively) and the other three after lengthy delays (5 weeks, 7 weeks, 4 months, respectively). The remaining 10 applications are still sitting in the queue—some of them since May.

Reimbursement Delays

Overview

113. The Caring Society has been raising concerns about payment processing delays and proposing possible solutions to fix this issue since 2018. ISC has committed to processing invoices within 15 business days of receiving these invoices. I attach a true copy of an ISC report dated January 11, 2023, and received from ISC on March 2, 2023, regarding Jordan's Principle payment timelines in fiscal year 2022-23 (which notes the 15-business day timeline at page 2) as **Exhibit "45"** to my affidavit.

114. Nonetheless, the Caring Society continues to receive serious concerns from families, service coordinators, and service providers regarding long delays in Canada reimbursing for services that have been approved and provided. Despite the Caring Society's regularly raising reimbursement concerns from families, timelines continue to be a systemic issue.

115. ISC's own data in Exhibit 45 indicates that, for example,

- a. in 2020-2021, ISC processed 82.9% of all payments within 15 business days; and
- b. in 2022-2023, ISC processed 50.7% of all payments within 15 business days.

116. Although the Caring Society acknowledges that the total number of payments made within 15 business days increased from 44,314 payments in 2021-22 to 71,860 payments in 2022-23, that is cold comfort to roughly half of Jordan's Principle requestors who waited beyond the 15-business day standard and did not receive timely reimbursements.

117. ISC data in Exhibit 45 also provides that:

- a. from April to December 2019, ISC processed 62.46% of all invoices within 15 business days;
- b. from April to December 2020, ISC processed 81.9% of all invoices within 15 business days;
- c. from April to December 2021, ISC processed 81.4% of all invoices within 15 business days; and
- d. from April to December 2022, ISC processed 54.9% of all invoices within 15 business days.

118. One key concern is that capacity to meet the 15-business day standard appears uneven across the country. On the one hand, from April 1, 2022 to December 1, 2022, Ontario Region processed 32.8% of payments within 15 business days and Manitoba met that standard in 46.1% of cases. On the other hand, British Columbia region process 82.9% of payments within 15 business days and Quebec processed 93.6%.

119. Once again, those numbers reflect real people with real needs for timely reimbursements for services. The impacts of payment delays to children, youth, and families and those who serve them may be severe. Payment delays are not merely bureaucratic or administrative concerns but instead have real-life impacts on persons who may be financially vulnerable and in need of timely reimbursement for necessary products, supports, and services under Jordan's Principle.

120. In any case, where a First Nations child lives in Canada should not be determinative of whether they are likely to receive timely reimbursement from ISC or not. For the Caring Society, what is driving these differences in performance across ISC regions is still unclear. For example, Statistics Canada data from 2016 indicates that British Columbia has a First Nations population of 172,520, while Manitoba has a First Nations population of 130,510. A true copy of data from the Statistics Canada website is attached as **Exhibit "46"** to my affidavit.

121. Further, I understand that ISC has implemented advance payment options, including the use of gift cards and acquisition cards, to ensure that those families who cannot afford to pay "out of pocket" are still able to access approved services, products, and supports. However, in my

experience, many families and service coordinators raise concerns with ISC's administrative requirements for gift cards. ISC's limitations on the usage of acquisition cards can effectively render them obsolete.

122. For instance, my understanding is that, although acquisition cards are available to ensure payment is not a barrier to accessing services or meeting families' needs, they are rarely used. As of September 2023, my understanding, based on information provided at the September 19, 2023 JPOC meeting, is that there were between 30 and 35 cardholders of acquisition cards across the country but that this varied with staffing levels and turnover. Further, in fiscal year 2022-23, acquisition card transactions only accounted for 1.5% of total operations and maintenance payments. A true copy of JPOC's draft Record of Decision from its September 19, 2023 meeting is attached to my affidavit as **Exhibit "47"**.

123. I discuss some specific concerns raised with me below.

Dnaagdawenmag Binnoojiiyag Child & Family Services

124. With respect to its concerns surrounding reimbursement delays for Jordan's Principle applications, DBCFS has advised me, as reported in Exhibit 33, that:

- *Reimbursements are taking more than year to receive.*
- *Our Organization has 4 outstanding claims that were submitted on the below dates and no payment received as of December 2023:*
 - *26-Jun-23*
 - *20-Oct-22*
 - *15-Mar-23*
 - *15-Mar-23*
- *Service providers have threatened to terminate Respite services due to not receiving payments after 5 months from Submitting the invoice. Children at risk [of] being removed from homes due to non-payment. The ministry reached out to ask for*

assistance of a child in a home that was being evicted in 24 hours if payment was not made. Situation caused stress on family, workers and service providers as the payment was over due by 6 months[.]

- *Parents who paid out of pockets are not getting reimbursed for 6 months to a year.*
- *A reimbursement for daycare to a parent for \$6000 was submitted March 2023 and not received until September 2023 after many emails to ISC. Family was under high stress and working over time to provide for their child while waiting for payment. Daycare was almost cancelled as parents could not afford.*
- *Service provider payments are taking 3 months or longer to receive payment. 3 service providers are submitting invoices monthly and follow up is required after 2 months to receive payment. This has caused service providers to not accept Jordan's Principle as payment and left children without services.*
- *Families are unable to pay for Groceries and needs for their children and submit receipts for reimbursements. This has caused frustration among families with no where to turn to access the funds they were approved.*

125. Unfortunately, DBCFS' experience in many ways captures the concerns that the Caring Society raised in its May 2023 and October 2023 submissions to the Tribunal.

North Shore Mi'kmaq Tribal Council (located in Eel Ground, New Brunswick)

126. The North Shore Mi'kmaq Tribal Council ("NSMTC") has advised me about their experiences in dealing with ISC non-insured health benefits and the Jordan's Principle services that they facilitate. NSMTC has advised that they have concerns about non-compliance with Tribunal-ordered timelines, about the appearance of the desire to case conference, and about ISC sending them clients for enhanced case management support.

127. With respect to reimbursements, NSMTC has indicated in a September 14, 2023 email, a true copy of which is attached as **Exhibit "48"** to my affidavit, that:

Because of the delays within the region of approving both individual and group requests, we have been required to put in services as our children need them (provided everything is on file and an approval is anticipated), we pay for the service, and worry about it later. We were asked by ISC FNIHB Atlantic last week to respectfully cease doing this in regards to educational supports, as it is “not good practice” to put things in before they are approved. ISC is not following timelines, we often wait weeks for approvals, therefore we have done what we need to do to support our children. Group request timeliness compliance is also an issue, where we wait months for an approval or follow up from ISC on our applications.

128. North Shore Mi'kmaq Tribal Council should not be stuck between a rock and a hard place in trying to do what they need to do to support their children while also trying to abide by what ISC views as good practice.

Independent First Nations (located in Ontario)

129. Independent First Nations has advised me through Executive Chair Chief Roundpoint's letter attached above as Exhibit 35, and I believe, that their concerns about financial payments from ISC are as follows:

Financial payments made by ISC are delayed, non-compliant, and create barriers for all families accessing Jordan's Principle

- a. *Valuable suppliers and vendors are opting out of supporting our families due to lack of payments.*
- b. *Families are opting out of requesting continued or needed support and services due to length of time for reimbursement and the resulting financial hardship and interest charges incurred.*
- c. *Attestation requirements impose unreasonable burdens on First Nations, families, service providers and groups.*
- d. *Payment process for grocery cards.*

Carrier Sekani Family Services

130. Chief Priscilla Mueller has advised me through her letter attached as Exhibit 44 above, and I believe, that:

We have also experienced issue with timely payment from ISC. Families and businesses cannot afford to wait months to be reimbursed. Such situations have the potential to negatively impact our relationship with vendors and also puts families at risk when services that are finite in rural and northern communities are not paid and potentially begin to deny service to clients. Challenges to reimbursement, has negatively impacted CSFS as an organization as we have been covering expenses while waiting for reimbursement utilizing internal funds. We are a large organization and this is not something that most First Nations would be able to do, negatively impacting the ability of groups to front funding and thus reduce the number of necessary claims. To date, CSFS Jordan's Principle service coordinators have had no successful orthodontics claims. Two requests (submitted in November 2021 and January 2022) are still waiting decision. One appeal was denied, and one additional request was denied.

131. Reports of families being unable to wait for months for reimbursements and of being at risk in the absence of financing for services is of deep concern to me.

Indigenous Child and Family Services Directors

132. In their January 11, 2024 letter to me, attached as Exhibit 36 above, the Indigenous Child and Family Services Directors, Our Children Our Way Society, advised me, and I believe, that their member agencies have had the following experiences regarding reimbursement delays:

Ayás Méñmen Child & Family Services [located in North Vancouver, British Columbia]

The payments department is incredibly difficult. They have been lagging on payments (for months) and I have lost several dentists as vendors due to this wait. Some dentists have explained that they have waited up to a year for payment. I have also lost a psychiatrist that performs assessments due to the payment lag. They have

also started denying my clients payment stating that Jordans Principle is a reimbursement model. Many of my clients do not have the funds to pre-purchase services/items and then wait 5 months or more for the repayment. Especially the clients requesting emergency assistance for food, or clothing for their children. If they had the money they would not have applied to Jordan's Principle for the assistance.

This system is not doing what it is supposed to do, it is not filling the gaps fast enough. Clients are waiting months for their application to be looked at, months for an approval or denial and months for payment.

Vancouver Aboriginal Child & Family Services Society [located in Vancouver, British Columbia]

Lately we have been contacted by families we support who are informing us that they have made applications to Jordan's Principle and although those funds have been approved, they have been informed by Jordan's Principle that they need to purchase the items and then submit their receipt for reimbursement. This seems to contradict the whole reason one might make an application for funding under the Jordan's Principle in the first place, being that they do not have the financial resources to make such a purchase. These families then have to turn to other support agencies to request support to purchase the items and then that agency needs to try to secure reimbursement, this in turn can cause further delays in meeting the child's needs.

133. The loss of vendors and a psychiatrist is deeply concerning to me. So, too, is the discussion of how the reimbursement model is affecting Jordan's Principle requestors who lack the resources to make purchases and then seek reimbursement.

Blood Tribe (located in Standoff, Alberta)

134. Chief Fox has advised me via the letter attached as Exhibit 37 above, and I believe, that issues surrounding reimbursement in Blood Tribe include:

Due to the long delays in receiving funding for approved Group Requests, our Tribe is covering significant costs until funding is received from ISC. This has resulted in a multimillion-dollar deficit for our Recreation Department which limits their ability to deliver much-needed programs to our child and youth population.

135. That the Blood Tribe has entered a multi-million dollar deficit that has affected its programming is of significant concern to me.

F.D.'s Case

136. The Northwest Territories declared a territorial state of emergency on August 15, 2023 because of the wildfire situation at that time. A true copy of a publication from the Government of the Northwest Territories that discusses the Territorial state of emergency is attached as **Exhibit “49”** to my affidavit.

137. On August 16, 2023, F.D., a single mother with two children aged 3 and 7, contacted ISC with an urgent Jordan's Principle request for food and clothing after being evacuated from the Northwest Territories to Alberta due to wildfires. On August 18, 2023, ISC informed F.D. that she would have to pay for food and clothing out of pocket and then submit a reimbursement request. However, F.D. did not have the financial means to afford to pay out of pocket. F.D. specifically asked to receive a gift card from ISC. Notably, ISC did not offer to pay for the needed food and clothing through acquisition cards. Instead, ISC sent her links to provincial services. I have been informed by Ms. King, and believe, that she raised the use of acquisition cards to meet emergency needs with ISC, including Ms. Wilson-Clark, on August 18, 2023. Later that day, the Caring Society then sent F.D. a Walmart gift card for groceries and clothing so that her children could get through the weekend, noting that F.D.'s urgent request had remained undermined for two days since August 16, 2023. A true copy the Caring Society email exchanges with ISC in August 2023 is attached as **Exhibit “50”** to my affidavit.

138. After receiving the Caring Society gift card, F.D. received ISC-issued gift cards for groceries and clothing. ISC confirmed this on August 21, 2023. However, these supports were accompanied by a list of ineligible items: junk food such as chips, pop, candy, chocolate bars, and energy drinks; fast food; wireless phone cards; batteries; other household items or furniture;

tobacco; and gift cards/credit cards. A true copy of exchanges among the Caring Society, ISC, and F.D. in August-September 2023 is attached as **Exhibit “51”** to my affidavit.

139. Growing up, my father worked for the BC Forest Service, as it then was, and we often lived on Ranger Stations that were the front lines of fighting forest fires. From an early age, I knew what was needed for an emergency kit and the list of ineligible items from ISC appeared to me to exclude many essentials. I therefore went on to the Government of Canada’s website regarding emergency kits and was able to confirm that, indeed, items that ISC rendered ineligible were included in Canada’s emergency kit list. A true copy of a website from the Government of Canada about emergency kits is attached as **Exhibit “52”** to my affidavit.

140. The rationale underlying this list of exclusions is not clear to me as they are categorical in nature. The connection, if any, between the needs of the child, the child’s culture, or the child’s circumstances and the excluded items is also unclear to me. Notably, tobacco is a medicine in many First Nations cultures and is involved in sacred ceremonies used to provide comfort in tumultuous and stressful events.

The Financial Administration Act

Overview

141. Families have raised concerns with the Caring Society that Canada requires them to submit itemized receipts when they purchase grocery cards for approved grocery requests and that they have been questioned for making certain purchases, including socks.

142. Service coordinators and families continue to notify the Caring Society of ISC’s procedure of requiring itemized lists or receipts from families to confirm that approved supports were provided. Families and service coordinators have alerted the Caring Society that this process does not align with a commonsense approach to Jordan’s Principle as outlined in Back-to-Basics. My understanding is that grocery store gift cards are typically issued following ISC approving grocery supports. To many families, it is obvious and clear that they will be using grocery gift cards to purchase groceries.

143. Such an approach is reflective of ISC's old mindset and out of step with this Tribunal's reasoning and guidance in 2021 CHRT 41. It also infringes on families' and children's dignity and is not in keeping with an approach to substantive equality.

Blood Tribe

144. Chief Fox has advised me of, via the letter attached as Exhibit 37 above, and I believe, the experiences of Blood Tribe in dealing with the Alberta Region:

ISC AB-Region has invoked the Financial Administration Act (FAA) as the basis for not approving new requests. Despite the identification of surpluses from prior submissions, ISCAB Region chose not to fund new Group Requests since September 2023. Furthermore, a senior administrator was subjected to intimidation, with a threat of withholding all ISC funding if the matter was not promptly addressed, disregarding our report on surpluses. Such a heavy-handed approach is unacceptable and does not recognize the primacy of the Canadian Human Rights Act over the Financial Administration Act as stated by the Tribunal in 2021 CHRT 41. As a result, our children have been kept from accessing much-needed programs and services since September 2023. This has caused irreparable harm to our children and our families.

145. I take very seriously Chief Fox's concerns about "irreparable harm" done to children and families.

The Caring Society's Interventions

146. On January 9, 2023, Ms. King copied me on an email to ISC about the practice of requiring itemized lists or receipts for purchases made with grocery cards. On January 13, 2023, ISC responded by indicating that gift cards, as advance payments, require itemized receipts for processing and reconciliation as per Treasury Board and ISC departmental policies. On January 24, 2023 Ms. King emailed ISC further questions regarding ISC's financial delegation obligations under the *Financial Administration Act* and specific reporting requirements. ISC responded on April 4, 2023 after Ms. King followed up and indicated that per the *Financial Administration Act*, ISC requires recipients to provide invoices or receipts that confirm the gift card was used for the

approved product, service, or support. ISC confirmed also that they are continuing to explore options to reduce the administrative burden on requestors. A true copy of the email thread between the Caring Society and ISC from January to April 2023 is attached as **Exhibit “53”** to my affidavit.

147. On July 6, 2023, Ms. Rasmussen copied me on an email to ISC outlining concerns raised by L.S., a service coordinator with Independent First Nations, who was told that ISC was unable to process a reimbursement to her organization because the submitted documents did not include an itemized receipt. Ms. Rasmussen pointed out that the Caring Society raised similar concerns in January 2023 and asked for an update on ISC’s commitment to explore options that reduce the administrative burden on requestors. On July 14, 2023, ISC reiterated that, per Treasury Board requirements, gift cards are considered advance payments and for ISC to reconcile, they require invoices or receipts to confirm the card was used for the approved product, service, or support. On July 18, 2023, Ms. Rasmussen asked whether these requirements and policies, given they are underpinned by the *Financial Administration Act*, are being used in a manner that is compliant with the Tribunal’s guidance on the *Financial Administration Act* in 2021 CHRT 41. Ms. Rasmussen raised that ISC’s itemized receipt requirement amounts to an administrative barrier. On September 5, 2023, ISC responded that it continues to find efficiencies and improvements to reduce administrative burden. I intervened to ask ISC whether a specific answer to Ms. Rasmussen’s question was forthcoming, but ISC just reiterated that they are taking the Caring Society’s concerns into review and will be giving additional consideration to the gift card issue. A true copy of the Caring Society’s email exchanges with ISC from July to September 2023 is attached as **Exhibit “54”** to my affidavit.

Quality Assurance and Accountability Measures

Overview

148. The Caring Society has brought this non-compliance motion after having repeatedly proposed, over half a decade, both constructive solutions to systemic Jordan’s Principle implementation issues and effective quality assurance and accountability measures to address those chronic concerns and identify any emerging concerns in the earliest stages so they can be quickly addressed.

149. To date, however, Canada has been unable to get its house in order and put in place such meaningful and effective quality control and accountability measures. Put differently, there is no “immune response” on ISC’s part to the systemic issues plaguing its implementation of Jordan’s Principle. Instead, ISC has been dependent upon third parties, such as the Caring Society, which have acted in a role akin to an outside policy branch or policy shop. Of course, it should not be the Caring Society’s role to do so, but it has done so out of necessity in light of ISC’s inability or unwillingness to implement necessary, meaningful, and effective quality assurance and accountability measures to correct its non-compliance with the Tribunal’s orders on Jordan’s Principle.

150. In my role at the Caring Society, I have advocated for such meaningful change, and I have also been advised by community and leadership of the challenges they face on a regular basis.

Ojibways of Onigaming First Nation (located in Kenora District, Ontario)

151. Chief Jeff Copenace of the Ojibways of Onigaming First Nation has advised me, by way of a letter (the contents of which I believe to be true) dated September 25, 2023, a true copy of which is attached to my affidavit as **Exhibit “55”**, of the serious and urgent concerns facing his community, including many youth suicides, which has been in a state of emergency since October 2014. Among the concerns facing his community while they seek approval for a capital project through Jordan’s Principle is “[a]n overly complex approval process which does not align with the directives of the CHRT related to Jordan’s Principle”. Chief Copenace’s experiences in dealing with Jordan’s Principle speak to high-level or systemic issues in Canada’s implementation of Jordan’s Principle:

We understand that the intent of Jordan's Principle is to ensure all First Nations children living in Canada can access the products, services, and supports they need, when they need them. However, this is not the experience of Onigaming First Nation. The perceived delay tactics and unanswered requests from federal government officials we've met with have only exacerbated the problems in our community and have undoubtedly resulted in numerous lives being lost and the destruction of families.

152. I am deeply concerned by these descriptions of Onigaming First Nation’s experience with Jordan’s Principle, which should ensure that First Nations children receive the services they need, when they need them, without being subjected to an overly complex approval process.

Taku River Tlingit First Nation (located in Atlin, British Columbia)

153. Taku River Tlingit First Nation (“**TRTFN**”) have advised me, by way of a letter dated January 4, 2024 (the contents of which I believe to be true), of their experiences and concerns regarding the Jordan Principle program in their community of Atlin, British Columbia. A true copy of TRTFN’s January 4, 2024 letter is attached to my affidavit as **Exhibit “56”**. TRTFN has pointed to discrepancies and disparities between the operation of Jordan’s Principle in their community as opposed to in Whitehorse, which is approximately two hours away from Atlin. TRTFN has summarized their experiences with Jordan’s Principle as follows:

1. *Long Delays: One of the most significant issues we have faced is the prolonged approval process. For example, our group application took more than a year and required persistent follow-ups to obtain approval. These long delays have resulted in a critical gap in services, leaving the needs of our children unaddressed.*
2. *Mixed Responses on Eligibility: We have received inconsistent responses regarding what the Jordan Principle program can fund. For instance, BC officials have indicated that the program cannot fund Child and Family Services (CFS) positions, whereas such positions are funded in Yukon. Additionally, facility and office space for staff have been deemed ineligible for funding in BC, despite being supported in Yukon. For instance, in the Yukon side of the border, the Jordan Principle program provides capital funding for office rent, supplies, etc. However, the same program in BC does not grant such funding, as indicated in the rejection letter attached. Although the Jordan Principle provided funding to Taku to service citizens in Whitehorse (4 full-time positions were approved), it did not provide funding to support them.*

3. *Short-Term Funding Perception: We have been advised that Jordan Principle is intended as a short-term funding solution, which poses challenges for sustainability and long-term planning.*
4. *Data Loss: On multiple occasions, the BC Jordan Principle office has lost our data, including consent forms and other supporting documentation submitted for our requests.*
5. *Excessive Documentation Requests: The BC Jordan Principle office has requested additional documentation for our requests, such as clan directives, up to 8 to 9 months after our initial submissions.*
6. *Administrative Hurdles: It is our belief that the current administrative processes in BC, particularly in remote communities like Atlin, create unnecessary hurdles that lead to prolonged delays in services, ultimately affecting children and families. Furthermore, these prolonged delays have resulted in a significant gap in services, and the needs of our children have not been adequately addressed.*

154. It is concerning to me that TRTFN’s experience in accessing Jordan’s Principle has been impacted by their remoteness, as well as that their experiences point to discrepancies in how Jordan’s Principle is implemented between two ISC regions. TRTFN experiences regarding excessive documentation requests and administrative hurdles are also suggestive of non-compliance with the Back-to-Basics approach. Lastly, issues surrounding data loss suggest that there are deficient quality assurance measures in place in the British Columbia.

Kasohkowew Child Wellness Society (located in Maskwacis, Alberta)

155. On January 10, 2024, the Director of the Kasohkowew Child Wellness Society advised me of their “deep concern regarding the ongoing challenges faced by many Indigenous families within the Samson Cree Nation, in accessing Jordan's Principle services”. A true copy of this letter is attached to my affidavit as **Exhibit “57”**. Among other considered, I have been advised, and believe, that:

- *It has come to my attention that applications for these critical services are often denied or left unanswered, causing undue hardship and distress to those who rely on them.*
- *Jordan's Principle was created with the noble intention of ensuring that Indigenous children receive the care and support they need without delay, regardless of jurisdictional disputes. However, the current situation in Alberta raises serious questions about the effectiveness of its implementation.*
- *One of the major issues I'd like to address is the denial or non-response to applications for Jordan's Principle services. It has been disheartening to learn that many families, already coping with numerous challenges, are faced with the additional burden of bureaucratic obstacles when seeking help for their children. The denial or lack of response to these applications only exacerbates the health and well-being disparities faced by Indigenous children. [...]*
- *I urge you to take immediate action to address these concerns and ensure that the principles behind Jordan's Principle are upheld in Alberta. It is vital that the application process is streamlined, that resources are distributed equitably, and that Indigenous children receive the care they deserve without further delay or bureaucracy.*

156. These issues surrounding the conduct of Jordan's Principle in the Alberta region are deeply concerning. Of particular concern is the impacts of a lack of access to critical services on the community.

Carrier Sekani Family Services

157. Chief Priscilla Mueller has advised me, via her letter attached as Exhibit 44 above (the contents of which I believe to be true), of longstanding concerns with ISC's quality assurance regarding Jordan's Principle:

The appeal process lacks clarity and transparency. ISC does not provide a time frame for appeals and does not notify the service coordinator or family if there will

be a delay. In one case, the appeal decision was not made until 50 business days after the appeal was submitted, and the appeal was denied without explaining why ISC felt there was “no unmet need”.

It is imperative that ISC implements remedies outlined in the Caring Committee’s report to address unresolved issues/concerns still experience by families and service coordinators today.

The roles and responsibilities between Ottawa (headquarters) and Regions are ambiguous. This results in a “wait and see” approach to processing claims. It would be much easier for Headquarters to delegate more responsibility to regions to expedite processes. Part of the challenges for First Nations has been these blurred lines created by ISC.

Finally, it is imperative that a proper oversight committee is established at the regional level. This committee must have First Nations representation.

158. The indication that there are “blurred lines” between regions and Headquarters and ambiguous roles and responsibilities among them is of particular concern to the Caring Society. So, too, are the concerns raised about the lack of clarity and transparency in the appeals process.

Federation of Sovereign Indigenous Nations Jordan’s Principle Working Group (located in Saskatchewan)

159. On December 14, 2023 the Federation of Sovereign Indigenous Nations (“**FSIN**”) Jordan’s Principle Working Group passed a motion providing in part that:

The Federation of Sovereign Indigenous Nations (FSIN) Jordan’s Principle Working Group (JPWG) calls upon Canada to take immediate and positive measures to publicize that it is Canada that is ultimately responsible for implementing the Canadian Human Rights Tribunal orders and that where it relies on First Nations and First Nations Coordinators to assist with implementation of the orders, Canada must provide adequate resources, capacity, liability and

workplace safety measures that take into account the distinct circumstances arising from First Nations persons providing services in their own communities.

160. A true copy of the December 14, 2023 motion from FSIN's Jordan's Principle Working Group is attached as **Exhibit "58"** to my affidavit.

161. I am concerned to hear that is calling for Canada to take into account the distinct circumstances of First Nations providing services in their own community and to provide adequate resources and capacity for this service delivery.

The Assembly of Manitoba Chiefs (located in Winnipeg, Manitoba)

162. On January 11, 2024, I was advised by Assembly of Manitoba Chiefs of the concerns they have been experiencing regarding Canada's non-compliance with Jordan's Principle and its implementation of the Back-to-Basics Approach. A true copy of the January 11, 2024 letter from the Assembly of Manitoba Chiefs is attached as **Exhibit "59"** to my affidavit.

163. As the Assembly of Manitoba Chiefs has advised,

The following concerns have been identified by First Nations in Manitoba in relation to the non-compliance motion respecting Canada's approach to Jordan's Principle:

- a. *ISC's practice of having First Nations and First Nations service coordinators accept and fund Jordan's Principle cases without providing adequate resources at the local level;*
- b. *ISC's non-compliance places serious pressure on First Nations and First Nations service coordinators as families are not having their child(ren)'s needs met regardless of where they live;*
- c. *ISC's non-compliance has resulted in families losing confidence in their First Nation and First Nations service coordinators as they ultimately do not understand that it is Canada's non-compliance that is placing service coordinators in a position of not being able to meet the child(ren)'s needs in a timely manner;*

- d. *ISC does not proactively fund liability coverage for all First Nations and First Nations coordinator organizations, placing individual employees, First Nations organizations and First Nations at serious risk;*
- e. *Children experiencing significant delays or disruptions in professional recommended services and supports, or not receiving any services and supports due to limited access as a result of remoteness and/or human resources and;*
- f. *Children not receiving services, supports or products due to Canada's failure to adhere to reasonable timeframes for approved services, which appears to be exacerbated by ISC's implementation of Back to Basics.*

164. With respect to the implementation of Back-to-Basics, the Assembly of Manitoba Chiefs have advised me as follows:

ISC implemented the Back to Basics (B2B) approach in early 2022. Some AMC member First Nations feel that B2B has been exclusively defined by ISC without local consultation and many feel ISC has overstepped, undermining local efforts. In Manitoba, Jordan's Principle has developed in each First Nation as a locally defined program, with funding directly provided to each Nation with a service coordinator guiding the development. As a result of B2B, there has been an observed decrease in the service coordinator's involvement at the local level, as many families are not connecting at the local level and are contacting ISC directly for requests. First Nations service coordinators feel the Manitoba approach to B2B is diminishing their role and impacting local autonomy in decision-making. It is felt that B2B is creating increased dependence on the government. B2B has impacted local Jordan's Principle programs in Manitoba by shifting the focus of the supports and services. B2B has created many more requests, altering the role and responsibilities of First Nations service coordinators and contributing to Canada's failure to adhere to reasonable timeframes for approved services.

165. It is concerning to read these experiences that the Assembly of Manitoba Chiefs' member First Nations are experiencing in their communities.

Jordan's Principle Enhanced Service Coordination Hub

166. I have been advised by the Jordan's Principle Enhanced Service Coordination Hub of British Columbia, in their letter attached as Exhibit 42 above (the contents of which I believe to be true), that they have experienced the following quality control issues:

Regional disparities in approvals.

It is generally known that BC Region, and other regions in Canada, do not share the same adjudication 'criteria.' Communication has expanded between the various delivery regions of Jordan's Principle and there is solid evidence that each region 'approves' uniquely. This is a concern because the argument of 'unique' regional differences has been used to justify not approving items or services that have been recommended and that have been approved in other regions.

167. This experience of disparities and regional differences is concerning to me.

Blood Tribe

168. Chief Fox has advised me, via the letter attached as Exhibit 37 above (the contents of which I believe to be true), of various concerns about ISC's internal quality assurance and accountability measures, including that:

The internal review system employed by ISC AB-Region needs to be improved. Presently, the Focal Point collects Group Request-related information and presents it to the Adjudication Committee. In cases where immediate approval is not granted, the committee often poses additional queries, necessitating further communication with the Focal Point. These additional questions are far too detailed and assume that the Tribe does not know what is in the best interest of the children. Further, this iterative process results in prolonged delays and extended processing timelines. [...]

The establishment of arbitrary approval limits for specific items such as laptops (\$750), clothing (\$500), and food (\$250/month) raises concerns regarding their alignment with the best interests of our children, particularly considering the

escalating costs associated with essential goods and services. The predetermined amounts are unrealistic and inadequately address the comprehensive needs of our children. This warrants a reconsideration of the existing limits to ensure they align more effectively with the current economic realities and the well-being of our children. [...]

Multiple referrals to Headquarters which adds time to the processing and often means we accept lesser amounts than requested. For example, we asked for \$1000 in clothing for our children, but may only be approved for \$500/child.

Asking for a second Support Letter when a Support Letter has been provided by an Elder or Council member. [...]

To address some of these issues, we have asked ISC-AB Region to increase their Jordan's Principle staffing and to better train their Jordan's Principle staff on the principles of Substantive Equality, Best Interest of the Child, Community Circumstances, and cultural sensitivity.

December 2023 Commitment from ISC

169. On December 1, 2023, I met with senior ISC representatives to discuss how families, service coordinators, and First Nations community representatives contact the Caring Society about the difficulties they have faced in accessing Jordan's Principle and come to the Caring Society for assistance in navigating Jordan's Principle. During that meeting, ISC made a commitment to me that they would identify a staff contact person at ISC to whom the Caring Society could direct folks who reach out to the Caring Society in this way such that their difficulties could be resolved in a Tribunal-compliant manner. In essence, that commitment was for ISC to establish a role akin to that which the Caring Society has been playing in escalating and aiding to resolve Jordan's Principle implementation and non-compliance issues.

170. By December 14, 2023, I had not heard anything further from ISC in this respect. That day, I directed my colleague, Ms. Mathews, to inform ISC that the Caring Society will be directing persons who raise concerns with the Caring Society to a particular high-level ISC official. A true copy of the email Ms. Mathews sent to Ms. St-Aubin is attached as **Exhibit "60"** to my affidavit.

171. As of January 12, 2024, I have not heard anything further from ISC about this contact person or of ISC assuming the role that has been played by the Caring Society. I look forward to receiving a timely update from ISC.

The Dialogic Approach and the Schedule “A” Jordan’s Principle Workplan

172. Over a period of years, the Caring Society has engaged with Canada, including senior ISC officials, in dialogue in multiple fora to ensure Canada’s compliance with Jordan’s Principle, eliminating the discrimination, and preventing its recurrence. This years-long campaign has been rooted in the Caring Society’s deep commitment to Jordan’s spirit, Jordan’s family, Maurina Beadle, Zacheus Trout, and many others who are dedicated to ensuring that the serious hardship they endured because of Canada’s conduct is not experienced by future generations of children.

173. Some of the key milestones and agreements reached with Canada (and the Parties) designed to ameliorate non-compliance issues with Jordan’s Principle in both the short and long term have included:

- a. the AIP on the long-term reform of the FNCFS Program and Jordan’s Principle;
- b. Appendix “B” to the AIP, which is “The Work Plan to Improve Outcomes under Jordan’s Principle based on Indigenous Services Canada’s Compliance with the Tribunal’s Orders” and pursuant to which Canada was to take urgent steps to implement the measures contained within the work plan in order to improve outcomes under Jordan’s Principle (a true copy of a summary of the AIP, posted online by ISC, is attached to my affidavit as **Exhibit “61”**); and
- c. The Back-to-Basics Approach to Jordan’s Principle, the objective of which is “to apply a Canadian Human Rights Tribunal order compliant ‘back to basics’ approach for implementing Jordan’s Principle that is non-discriminatory, centers the needs and best interests of the child, takes into consideration the distinct circumstances of their community, is simple to access, timely, and minimizes the administrative burden on families”.

174. Regrettably, Canada has not fulfilled its obligations in these agreements, and systemic non-compliance with the Tribunal's orders respecting Jordan's Principle continues.

175. The Caring Society has previously conveyed to this Tribunal its serious concerns about Canada's slow and haphazard implementation of the workplan contained in Appendix "B" to the AIP as well as with the Back-to-Basics Approach through its letter submissions in May 2023 and October 2023.

176. As a result of these concerns, I met with ISC Deputy Minister Gina Wilson on December 1, 2023 and advised her that, after having exhausted all other reasonable options, the Caring Society would be filing a non-compliance order on Jordan's Principle. I mentioned the Caring Society's proposal that Canada presumptively approve requests valued below \$500 that are supported by a letter from a relevant professional/Elder or knowledge holder as analysis from the Institute of Fiscal Studies and Democracy ("**IFSD**") had estimated, based on publicly available data, that ISC's unit cost to process each Jordan's Principle request was \$536, while 40% of requests made in 2020/21 were valued at less than \$1,000 (see Figure 28 on page 40). A true copy of the Institute of Fiscal Studies and Democracy's analysis of the unit cost of each request is attached as **Exhibit "62"** to my affidavit, while a true copy of IFSD's Jordan's Principle Final Report Dated August 2022 is attached as **Exhibit "63"** to my affidavit.

177. I made it clear the priority was resolving the concerns so that children and families would not suffer the burden of Canada's non-compliance and that I hoped that Canada would take effective and positive measures to fix the problems (particularly unopened cases, delayed determinations, and the repeated problems with the 24-hour line).

178. Now, the Caring Society has taken urgent action through this non-compliance motion to propose further solutions to Canada's years-long non-compliance issues.

179. In keeping with the Caring Society's good faith solutions-oriented approach, we have provided constructive recommendations to Canada on how to remedy its non-compliance. I have also repeatedly advised ISC officials that they are welcome to supplant our ideas with effective remedies they design, so long as the problem is fixed. In fact, having Canada do better for children

when it knows better is all we have ever wanted, because when problems are remedied, children thrive and the suffering ends.

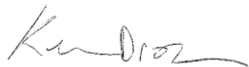
180. During the pandemic, I was very impressed by how Canada effectively developed and rolled out emergency financial relief to millions of people and thousands of businesses, while simultaneously working with First Nations, the provinces, and other Indigenous peoples to ensure that every person had an opportunity to access the vaccine against COVID-19. Governments respond to unpredictable events and do complex and necessary things all the time. I commend them, but do not understand why Canada does not marshal the same “can do” approach to honouring its legal obligations to First Nations children.

181. Jordan’s family asked that I write some words for his memorial service. Here is part of what I said: “Jordan could not talk, yet people around the world hear his message. Jordan could not breathe on his own, yet he has given the breath of life to other children. Jordan could not walk, but he has taken steps that governments are now just learning to follow.”

182. Jordan’s Principle is sacred, and it has uplifted and transformed the lives of thousands of children and families. A few months ago, the Caring Society received a message from a young man who was ready to drop out of school, before Jordan’s Principle helped him get the learning assistance he needed. He had just graduated and was off to university. That is the magic of Jordan’s Principle.

183. Canada needs to honour its sacred obligations to Jordan and his family and follow the law because as Residential School Survivors and the children who were lost have taught us Every Child Matters.

AFFIRMED BEFORE ME over video)
teleconference on this 12th day of)
January 2024, in accordance with)
O. Reg. 431/20, *Administering Oath or*)
Declaration Remotely. The Commissioner)
was in Ottawa, Ontario and the affiant was)
in Ottawa, Ontario)



_____)
Commissioner for taking affidavits)

Kevin Steven Gerard Droz
LSO #82678N



_____)
CINDY BLACKSTOCK