

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

Ottawa, Canada K1A 1J4

April 8, 2024

**By e-mail**

(See Distribution List)

Dear Parties,

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

The Panel (Chair Marchildon and Member Lustig) wishes to provide the following direction to the parties.

Following the Panel chair's remarks made at the cross-examination hearing and in keeping with the Tribunal's retained jurisdiction and dialogic approach affirmed by the Federal Court, the Panel proposes a shift in these proceedings. This shift is appropriate in the remedial stage of these proceedings and is case specific. The Panel was assigned to this case in 2012 and has rendered numerous procedural rulings and substantive decisions and rulings and has observed several issues over the years that now inform the Panel's decision to shift these proceedings. The Panel believes that in the absence of a consent order request and in the current situation involving two co-complainants who do not fully agree and other parties who are either opposing or did not take a position on the motions, this shift will serve the parties, First Nations children and families and will also greatly assist the Panel in determining the issues before it.

Since the beginning of this case, the Panel has been assisted by the parties appearing before the Tribunal. The Panel has recognized their expertise and knowledge, and this has informed the orders made by this Panel.

The Panel made its orders supported by the evidence before it, at the time that it rendered its rulings.

Furthermore, many significant orders made by this Tribunal were accepted by all the parties and some were made on consent of the parties. The Panel has accepted to clarify its orders on many occasions and oftentimes, the wording included in its orders reflected the parties' own suggestions and, on some occasions was provided on consent of the parties.

After reviewing the requested orders in both motions before the Panel and bearing in mind that the AFN will bring a motion in response to Canada's cross-motion, the Panel requests the parties' assistance to generate the best options / scenarios possible in terms of requested orders to ensure

that they are in line amongst other things with: First Nations children and families' rights including human rights, First Nations rights including self-government, the best interest of the child viewed through an Indigenous lens, substantive equality, cultural safety and culturally appropriate service standards, best practices in services provided to First Nations children supported by the evidence and meet the spirit of the Tribunal's findings, reasons and orders without displacing Canada's legal obligations unto First Nations.

The Panel requests the Caring Society and Canada to review their motion and cross-motion and requested orders to include the different options / scenarios explained below. The Panel requests the AFN to include the Panel's direction in their upcoming motion and requested orders. The Panel invites the other parties who wish to bring a motion and requested orders to do so including the Panel's direction below.

The Panel requests the parties to draft a plan and requested orders that include more than one option /scenario and with the following parameters.

Option /scenario 1- The Panel requests the parties to put forward their **Dream scenario**, an ideal scenario in their view with requested orders that fall within what is permissible by law in Canada. This applies to all options/scenarios. The Panel encourages parties to think outside the box and to be creative for all options /scenarios.

Option / scenario 2- The Panel requests the parties to put forward their second-best scenario. While not their ideal option, this scenario and related requested orders are acceptable in their view.

Option 3- The Panel does not limit the number of other options /scenarios.

The Panel requests the parties to consider their proposed wording and definitions to look at all angles to anticipate when this could be interpreted in an overly broad or overly narrow manner depending on the party's approach.

The Panel requests the parties to provide, for each requested option / scenario a clear, concrete plan with timely and reasonable deadlines attached to their plan and also demonstrating how their requested orders meet the spirit of the Tribunal's orders without separating the orders from the findings justifying the orders, First Nations children and families' human rights including substantive equality, the best interest of the child viewed through an Indigenous lens, culturally safe and culturally appropriate service standards, First Nations rights including self-government without displacing Canada's legal obligations unto First Nations. The evidence and best practices in services provided to First Nations children must inform the requested options / scenarios.

The Plan should clearly explain how to manage risks under the requested orders in each requested option / scenario.

The options/ scenarios must demonstrate with supporting evidence how at this time, while complete reform of Jordan's Principle is underway, their requested options/ scenarios contribute to effectively eliminating the systemic and racial discrimination found by this Tribunal and prevents it from recurring.

The parties are asked to propose a timely yet reasonable schedule to respond to the Panel's direction.

The parties will provide their views on the procedural aspect of the above no later than April 11, 2024. The Panel invites the parties to consult with each other on this procedural aspect.

The Panel reserves the right to refine this direction as it sees fit and will always provide an opportunity to each party to provide submissions.

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

Yours truly,

Judy Dubois  
Registry Officer

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