

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

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

Respondent

And

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION

Interested Parties

**NOTICE OF CROSS MOTION
OF THE ATTORNEY GENERAL OF CANADA**

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NOTICE OF CROSS MOTION

THE RESPONDENT, THE ATTORNEY GENERAL OF CANADA (Canada), will make a cross motion before a panel of the Canadian Human Rights Tribunal on June 3, 2024, or as soon thereafter as the motion can be heard, at 240 Sparks Street, 6th floor West, Ottawa, Ontario.

THE PURPOSE OF THIS CROSS MOTION is in support of reconciliation and with a specific view to reducing the existing backlog in Jordan's Principle requests received by Indigenous Services Canada (ISC), while also ensuring that urgent requests can be properly identified and prioritized by applying objective criteria. It is also in support of ensuring the wellbeing of First Nations children by allowing Canada to refer requestors to applicable community-based supports that are better suited to determining First Nations children's needs.

THE MOTION IS FOR:

1. An order requiring that the complainants, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations, the respondent Attorney General of Canada, and the interested parties including the Chiefs of Ontario and Nishnawbe Aski Nation, seek to co-develop objective criteria, within sixty (60) days of the order, to be used to identify "urgent" Jordan's Principle requests, for example those requests for products, services and supports directly linked to the needs of a First Nations child who requires urgent medical assistance or is at risk of reasonably foreseeable irremediable harm.
2. An order supporting ISC's approach to ensuring that urgent Jordan's Principle requests are quickly identifiable and prioritized accordingly.
3. An order extending the timelines set out in the Tribunal's order in 2017 CHRT 35, subparagraph 135(2)(A)(ii) and (ii.1):
 - a. for individual requests:
 - i. from 12 hours to 48 hours for urgent individual requests;

- ii. from 48 hours to without unreasonable delay for all other individual requests; and
 - b. for group requests:
 - i. from 48 hours to one week for urgent group requests; and
 - ii. from one week to without unreasonable delay for all other group requests.
- 4. An order that, when ISC is the government department of first contact, Canada may refer requestors:
 - a. to an existing and applicable Jordan's Principle group request that has already been approved and that is being administered by a First Nation or First Nation community organization pursuant to a contribution agreement with Canada; or
 - b. to an applicable First Nation or First Nation community organization engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada;
 - c. however, where a request is deemed urgent in accordance with the objective criteria identified by the parties, Canada will first take into account whether or not referring the requestor will enable faster access to the requested product, service or support.
- 5. For greater clarity, an order that where Canada enters into a contribution agreement with any First Nation or First Nation community organization to administer Jordan's Principle, whether through a group request or otherwise, that First Nation or First Nation community organization is not bound by the procedural terms of any of the Tribunal's Jordan's Principle orders that are directed at Canada.
- 6. Such further and other relief that the circumstances may require and this honourable Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Canada's ongoing commitment to ensuring that all First Nations children are able to access products, services and supports in accordance with Jordan's Principle and its underlying norms of substantive equality, the best interests of the child, and ensuring culturally appropriate services.
2. Canada's administration of the Jordan's Principle initiative has undergone exponential growth since the Tribunal issued its order in 2017 CHRT 35. The number of Jordan's Principle requests received by Canada's has increased from 15,887 requests in the 2018-19 fiscal year to 110,033 requests in the 2022-23 fiscal year.
3. The Back-to-Basics approach to implementation of the Tribunal's orders, agreed to by the parties in 2021 and implemented in early 2022, has had unintended consequences on Canada's capacity to effectively triage matters and provide support for those individuals facing more serious circumstances.
4. In particular, the number of requests identified as "urgent" has substantially increased, from 766 urgent requests in the 2018-19 fiscal year to 20,715 urgent requests in the first three quarters of the 2023-24 fiscal year alone.
5. Pursuant to the Back-to-Basics approach, the requestor identifies whether a request is urgent and Canada may not re-assign the request to a lower level of urgency. Canada treats all self-identified urgent requests with the same level of priority.
6. While Canada considers all requests in support of First Nations children to be of the highest priority, a large number of urgent requests since the implementation of the Back-to-Basics approach are more properly characterized as non-urgent. These include requests for sports equipment and the purchase of electronics, including warranties and accessories. Canada has identified, as at the time of filing, over 5,800 self-identified urgent requests that may not meet objective criteria for urgency.
7. Despite over \$5 billion in Jordan's Principle expenditures by Canada since 2016, and the development of ISC's Jordan's Principle operations in collaboration with the parties,

Canada cannot determine all Jordan's Principle requests within the consent timelines set out in 2017 CHRT 35: 12 hours for urgent individual requests; 48 hours for all other individual requests; 48 hours for urgent group requests; and 1 week for all other group requests. Current circumstances have led to a backlog of Jordan's Principle correspondence, including requests.

8. To ensure the best interests of First Nations children are met in a proper and timely way, Canada requires the ability to reassign the priority of requests to meet the most objectively urgent needs.
9. Going forward, with the implementation of objective criteria to define "urgent" requests and the continued implementation of mechanisms Canada has identified to facilitate operations, Canada anticipates it can determine urgent individual requests within 48 hours, urgent group requests within one week and all other requests without unreasonable delay.
10. Canada's practical experience in responding to Jordan's Principle requests to date supports that it is well-positioned to triage requests into urgent and non-urgent, and determine them within reasonable timelines.
11. There are certain Jordan's Principle group requests that have already been addressed pursuant to a contribution agreement and/or through funding agreements with First Nations or First Nations organizations, and/or certain First Nations and First Nations organizations who may wish to be engaged in the administration of Jordan's Principle pursuant to contribution agreements with Canada, making referral more appropriate and efficient for the requestor in those cases than the determination of the requests by ISC.
12. The prohibition against service navigation and administrative case conferencing in the Tribunal's order in 2017 CHRT 35 prevents ISC from appropriately referring requests to applicable approved group request administrators and/or applicable First Nations and First Nations organizations engaged in (or who become engaged in) the administration of Jordan's Principle pursuant to contribution agreements with Canada.
13. Canada anticipates that the relief requested in this cross-motion will benefit First Nations children by ensuring that urgent and non-urgent requests can reasonably be distinguished,

as contemplated by this Tribunal in 2017 CHRT 35, thereby allowing determination within a reasonable time; and by allowing Canada, in appropriate cases, to refer requestors to community-based and First Nations controlled supports that are better suited to determining the children's needs.

14. Such further and other grounds as counsel may advise and this honourable Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the cross motion:

1. The contents of Tribunal File No. T1340/7008, including ruling 2017 CHRT 35.
2. The Affidavit of Valerie Gideon, affirmed on March 14, 2024.
3. The Affidavit of Candice St-Aubin, affirmed on March 14, 2024.
4. Such further and other material as counsel may advise and this honourable Tribunal may permit.

DATE: March 15, 2024

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