

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

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## TABLE OF CONTENTS

OVERVIEW .....	2
PART I – STATEMENT OF FACTS.....	4
A. Procedural history .....	4
B. Canada’s compliance through negotiations and operational development.....	6
Negotiations to respond to the Merits Decision and implement long-term reform .....	6
ISC’s operational developments to respond to Jordan’s Principle decisions .....	8
C. Achievements through Jordan’s Principle .....	10
D. Unintended consequences: the backlog .....	11
Back-to-Basics has led to redirection into Jordan’s Principle .....	13
Back-to-Basics has led to misclassified urgent requests.....	14
E. ISC’s plan to address the backlog.....	15
PART II – POINTS IN ISSUE .....	19
PART III - SUBMISSIONS.....	20
A. Mediation/resolution.....	20
B. A shift in the landscape has already taken place.....	21
C. The parties’ role in Jordan’s Principle administration moving forward.....	22
D. The Tribunal’s continued oversight of daily request management is unnecessary .....	23
E. ISC’s focus is on realistic and practical solutions .....	25
F. The Caring Society’s proposed orders do not create a path forward to better outcomes for First Nations children.....	27
The Caring Society’s proposed urgency presumption could have unintended consequences	28
The Caring Society’s proposed urgency criteria could have unintended consequences .....	29
The Caring Society’s proposed imposition of a complaints mechanism is not warranted .....	30
The Caring Society’s proposed orders regarding the FAA are not warranted.....	30
G. Resolution and moving forward.....	31
PART IV – ORDERS SOUGHT .....	32
PART V – LIST OF AUTHORITIES .....	38
ANNEX A – DEFINITION OF JORDAN’S PRINCIPLE .....	39

## **OVERVIEW**

1. Indigenous Services Canada (ISC) has embraced and made a reality the spirit, purpose and intent of this Tribunal's Jordan's Principle decisions.<sup>1</sup> ISC has implemented the full scope and meaning of Jordan's Principle, as defined by this Tribunal. ISC has established a fair and effective determination system, including an independent Appeals Committee with Federal Court oversight. Since 2016, ISC has approved over 4.4 million products, services and supports for First Nations children through Jordan's Principle, in keeping with substantive equality.

2. Due to the exponential growth in Jordan's Principle requests since 2016, ISC is unable to maintain strict compliance with the Tribunal's timelines. Canada's cross-motion addresses the practical issues arising from the high volume of Jordan's Principle requests, and the unintended consequences of the 2022 Back-to-Basics Approach implemented by ISC. Canada's requested orders are specifically designed to address the issues that led to the backlog, improve upon the ongoing achievements of ISC's Jordan's Principle administration and facilitate greater First Nations involvement in the delivery of services to First Nations children.

3. Canada's requested orders are forward looking. They will benefit First Nations children by: ensuring that urgent and non-urgent requests can be distinguished, prioritized and determined within reasonable timeframes; enabling ISC, in appropriate cases, to refer requestors to community-based and First Nations controlled supports that are better suited to determining and addressing First Nations children's needs; and facilitating reconciliation through greater First Nations' control over Jordan's Principle administration by willing First Nations and First Nations community

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<sup>1</sup> Within this factum, the term "Jordan's Principle decisions" refers to all of the Tribunal's rulings, reasons and orders respecting Jordan's Principle in the context of Tribunal File Number T-1340/7008.

organizations. The flexibility offered by Canada's requested orders is of particular importance to Canada's ability to reach an agreement for long-term reform of Jordan's Principle with the Assembly of First Nations (the AFN), the Chiefs of Ontario (the COO) and the Nishnawbe Aski Nation (the NAN) (collectively the First Nations Parties).

4. ISC's approach should be adopted instead of the First Nations Child and Family Caring Society of Canada's (Caring Society) approach. The Caring Society seeks orders governing ISC's operations in a manner that will not address the backlog and does not facilitate a path for willing First Nations to assume greater control over services to First Nations children, including Jordan's Principle. Their requested orders will not necessarily lead to better outcomes, and may have unintended negative consequences.

5. It is appropriate for the Tribunal to now focus its sights forward, given ISC's broad compliance with the Tribunal's Jordan's Principle decisions directed at the elimination of discrimination, and the tremendous reach of ISC's Jordan's Principle administration overall. Looking forward, willing First Nations and First Nations community organizations may begin to carry out Jordan's Principle themselves, thus reducing federal officials' role in decision-making related to First Nations children. The Caring Society may play a supportive role in this future process, but it will not assume responsibility for Jordan's Principle and does not represent First Nations.

6. The First Nations Parties, the Caring Society and Canada all share a common goal: ensuring that First Nations children have access to products, services and supports in accordance with substantive equality, including through the ongoing success of Jordan's Principle. To help achieve this goal, the Tribunal should dismiss the Caring Society's motion and instead support ISC's carefully considered approach to addressing the backlog, alleviating and avoiding further

unintended consequences, and transitioning to greater First Nations and community-based involvement.

## **PART I – STATEMENT OF FACTS**

### **A. Procedural history**

7. Nearly eight years ago, the Panel released its decision on the merits of the underlying complaint in this matter (the *Merits Decision*).<sup>2</sup> The Panel found that Canada discriminated against First Nations children through inequitable and insufficient funding of child welfare services to First Nations on reserve and in the Yukon, and that Canada's application of Jordan's Principle was too narrow, resulting in service gaps to First Nations children and families. The Tribunal ordered Canada to cease its discriminatory practice, reform the First Nations Child and Family Services Program (FNCFS Program) to reflect its findings in the *Merits Decision*, and cease applying its narrow definition of Jordan's Principle.<sup>3</sup>

8. In 2017 CHRT 35, the Tribunal ordered that Canada's definition and application of Jordan's Principle must be based on five key principles, briefly summarized below:

- i. Jordan's Principle applies equally to all First Nations children;
- ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them;
- iii. When a government service is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or

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<sup>2</sup> *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#) [*Merits Decision*].

<sup>3</sup> *Merits Decision* at paras [381](#), [458](#), [481](#).

any other similar administrative procedure before the recommended service is approved and funding is provided;

- iv. When a government service is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child;
- v. While Jordan's Principle can apply to jurisdictional disputes between governments and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle.<sup>4</sup>

9. In 2017 CHRT 35, by consent, the Tribunal also set out the timelines for Canada to fulfill Jordan's Principle requests:

- i. for individual requests:
  - i. 12 hours for urgent individual requests;
  - ii. 48 hours for all other individual requests; and
- ii. for group requests:
  - i. 48 hours for urgent group requests; and
  - ii. one week for all other group requests.<sup>5</sup>

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<sup>4</sup> Summarized from *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2017 CHRT 35](#) [2017 CHRT 35] at para [10](#), replacing the text from [2017 CHRT 14](#) at para [135](#). For the full definition of Jordan's Principle as set out by the Tribunal, see Annex A to this factum.

<sup>5</sup> [2017 CHRT 35](#) at para [10](#), replacing the text from [2017 CHRT 14](#) at para [135](#).

## **B. Canada's compliance through negotiations and operational development**

10. Canada responded to the Tribunal's orders in two main ways, as detailed below. First, Canada engaged in substantive and meaningful negotiations with the First Nations Parties and the Caring Society, with concrete results. Second, Canada adopted significant operational changes to fully implement the Tribunal's definition of Jordan's Principle.

### **Negotiations to respond to the Merits Decision and implement long-term reform**

11. Canada has engaged in intensive negotiations with the First Nations Parties and the Caring Society regarding long-term reform of the FNCFS Program and Jordan's Principle. In 2021, Canada, the First Nations Parties and the Caring Society agreed to high-level principles regarding a final agreement and commitments from Canada towards immediate reforms. These were captured in a draft Agreement-in-Principle (AIP), executed on December 31, 2021.<sup>6</sup>

12. The purpose of the AIP is to provide a framework for reform of the FNCFS Program and Jordan's Principle, and prevent recurrence of the discrimination found by the Tribunal.<sup>7</sup> The AIP included:

- a. Canada's funding commitment of \$19.807 billion over five years;
- b. immediate measures regarding Jordan's Principle reform, including:
  - i. a requirement that Canada implement the Tribunal's definition and eligibility criteria for Jordan's Principle; and
  - ii. a requirement that professional recommendations be upheld.<sup>8</sup>

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<sup>6</sup> Amended Affidavit of Craig Gideon, affirmed March 22, 2024 [**Craig Gideon Affidavit**] at paras 8–9.

<sup>7</sup> Affidavit of Cindy Blackstock, affirmed January 12, 2024 [**Cindy Blackstock Affidavit**], Exhibit 61 (Summary of AIP) at pdf 784–85; Craig Gideon Affidavit at paras 8 and 10.

<sup>8</sup> Craig Gideon Affidavit at paras 9–10.

13. Pursuant to the AIP, federal funding for the FNCFS Program would flow directly to First Nations and First Nations service providers, including First Nations child and family services agencies established, managed and controlled by First Nations and delegated by provincial authorities to provide prevention and protection services (FNCFS Agencies).<sup>9</sup>

14. Regarding Jordan's Principle, Canada, the First Nations Parties and the Caring Society agreed to discuss options for First Nations to take on a larger a role in approving and delivering products, services and supports under Jordan's Principle. These parties also agreed that following a needs assessment and feedback from First Nations and service providers, they would negotiate an implementation approach for long-term reform of Jordan's Principle.<sup>10</sup>

15. In 2023, Canada secured the \$19.807 billion financial commitment towards the suite of long-term reforms agreed to through the AIP. Canada and the First Nations Parties were hopeful that an agreement could be reached, and engaged with the Caring Society in further negotiations towards a final agreement.<sup>11</sup>

16. On March 15, 2023, the AFN and the Caring Society jointly proposed the *Joint Path Forward* to guide negotiations on long-term reforms. A key element of the *Joint Path Forward* was bifurcation of the long-term reform negotiations regarding the FNCFS Program and Jordan's Principle. Under the *Joint Path Forward*, a final settlement agreement on long-term reform for the FNCFS Program would be completed first, while negotiations towards a final settlement on reforms to Jordan's Principle would be deferred to a later date. The AFN has also stated that these extended timelines created more time for them to engage with First Nations on their priorities for child and family services and Jordan's Principle.<sup>12</sup>

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<sup>9</sup> Cindy Blackstock Affidavit, Exhibit 61 (Summary of AIP) at pdf 785 and 787.

<sup>10</sup> Cindy Blackstock Affidavit, Exhibit 61 (Summary of AIP) at pdf 793.

<sup>11</sup> Craig Gideon Affidavit at paras 33–34.

<sup>12</sup> Craig Gideon Affidavit at paras 33–34 and 36–37.



17. Following delivery of the *Joint Path Forward*, Canada required and secured a revised negotiation mandate.<sup>13</sup>

18. In December 2023, the Caring Society advised Canada and the First Nations Parties that it would not be bound by the AIP or the *Joint Path Forward*.<sup>14</sup> Although Canada, the AFN, the COO and the NAN remain actively and intensively engaged at the negotiation table towards long-term FNCFS Program reforms, the Caring Society ceased actively participating in the negotiations and has instead chosen to pursue this adversarial non-compliance motion against ISC.<sup>15</sup>

**ISC's operational developments to respond to Jordan's Principle decisions**

19. ISC has made tremendous progress in implementing the purpose and intent of the Tribunal's Jordan's Principle decisions. ISC's Jordan's Principle operations directly support ISC's legislative mandate of working collaboratively with Indigenous partners to improve access to high quality services for First Nations, Inuit, and Métis peoples. ISC's vision is to support and empower Indigenous peoples to independently deliver services and address the socioeconomic conditions in their communities, including through Jordan's Principle.<sup>16</sup>

20. Since 2016, ISC has made fundamental, foundational operational changes towards ending systemic discrimination experienced by First Nations children in accordance with the Tribunal's Jordan's Principle decisions.<sup>17</sup> ISC has established an entire operational sector within ISC to administer and support Jordan's Principle delivery. This includes the development of:

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<sup>13</sup> Craig Gideon Affidavit at para 38.

<sup>14</sup> Craig Gideon Affidavit at para 39.

<sup>15</sup> Craig Gideon Affidavit at para 39; Letter dated April 5, 2024, from AFN to Canadian Human Rights Tribunal [**CHRT**]; Letter dated April 8, 2024, from COO to CHRT; Email dated April 8, 2024, from NAN to CHRT; and Email dated April 8, 2024, from Canada to CHRT; Letters dated April 10 and 12, 2024, from AFN to CHRT.

<sup>16</sup> Affidavit of Valerie Gideon, affirmed March 14, 2024 [**Dr. Valerie Gideon Affidavit**] at paras 32–34.

<sup>17</sup> Dr. Valerie Gideon Affidavit at para 33.

- a. a nation-wide intake process that operates 24 hours a day, seven days a week; and<sup>18</sup>
- b. a comprehensive determination process that implements the Tribunal's definition of Jordan's Principle and respects the administrative law principles of natural justice and procedural fairness, including:
  - i. initial determination by Regional Focal Points or, where necessary, a National Review Team;
  - ii. a re-review process;
  - iii. a formal appeals process based on the principles of transparency, accessibility, fairness and independence; and
  - iv. ultimate oversight of ISC's Jordan's Principle administration through the Federal Courts.<sup>19</sup>

21. In addition, ISC has established service standards for payment of approved Jordan's Principle requests and a variety of mechanisms to process payments. These include direct payments to vendors, acquisition cards, gift cards and contribution agreements. In some regions, ISC has also partnered with third parties to improve payment processing.<sup>20</sup>

22. ISC also works collaboratively with regional and First Nations partners to support First Nations-led service coordination of Jordan's Principle requests. The Jordan's Principle service coordination function is delivered by one of several service delivery organizations regionally (for

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<sup>18</sup> Dr. Valerie Gideon Affidavit at paras 35–46.

<sup>19</sup> Dr. Valerie Gideon Affidavit at paras 47–64; Affidavit of Candice St-Aubin, affirmed March 14, 2024 [**Candice St-Aubin Affidavit**] at paras 24–29; *Federal Courts Act*, [RSC, 1985, c F-7](#) [**Federal Courts Act**] at ss [18](#) and [18.1](#).

<sup>20</sup> Dr. Valerie Gideon Affidavit at paras 65–74.

example, First Nations communities, Tribal Councils, Health Authorities and Indigenous Non-governmental Organizations), funded through almost 600 separate contribution agreements with ISC.<sup>21</sup>

### C. Achievements through Jordan's Principle

23. Jordan's Principle has been far more impactful than was likely imagined in 2016. Between July 2016 and January 31, 2024, ISC approved over 4.4 million products, services and supports through Jordan's Principle, representing over \$4B in funding, to address the unmet needs of thousands of First Nations children pursuant to substantive equality.<sup>22</sup> The Jordan's Principle initiative assists First Nations children in having an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have.<sup>23</sup>

24. Jordan's Principle requests have grown exponentially since the Tribunal rendered its *Merits Decision*, from 15,887 requests in the 2018-19 fiscal year to 104,193 requests in the first three quarters of the 2023-24 fiscal year alone.<sup>24</sup> In accordance with the Tribunal's previous orders, Canada, the First Nations Parties and the Caring Society have successfully raised awareness of Jordan's Principle, resulting in an extraordinary increase in the number of requests.<sup>25</sup> The growth in requests may also be due to needs arising during and after the COVID-19 pandemic, increases in the cost of living and public safety emergencies such as wildfires.<sup>26</sup>

25. ISC approved 1,593,787 products, services and supports through Jordan's Principle in the first three quarters of the 2023-2024 fiscal year, compared to 140,332 products, services and support

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<sup>21</sup> Dr. Valerie Gideon Affidavit at paras 75–82.

<sup>22</sup> Candice St-Aubin Affidavit at para 70; Dr. Valerie Gideon Affidavit at para 6.

<sup>23</sup> *Canadian Human Rights Act*, [RSC, 1985, c H-6](#) at s [2](#). Dr. Valerie Gideon Affidavit at para 5.

<sup>24</sup> Dr. Valerie Gideon Affidavit at paras 5 and 6.

<sup>25</sup> Dr. Valerie Gideon Affidavit at para 7.

<sup>26</sup> Dr. Valerie Gideon Affidavit at para 7.

in the entire 2018-19 fiscal year, demonstrating exponential growth.<sup>27</sup> Due to this increase, ISC has added over 400 additional full-time-equivalent staff to Jordan's Principle since 2018, and has implemented and enhanced the Jordan's Principle Case Management System to accelerate data entry and processing. ISC now determines more requests on an annual and daily basis than ever before.<sup>28</sup>

26. While the Caring Society has provided a list of individual cases in which it contacted ISC to raise backlog issues,<sup>29</sup> in many of those cases ISC had already addressed the inquiry or request, and provided requested products, services or supports before the intervention.<sup>30</sup> Pursuant to the *Privacy Act*, ISC is not always able to communicate the steps it has taken regarding individual requests with third parties like the Caring Society.<sup>31</sup> Moreover, in the demanding Jordan's Principle operational environment, such communications focus attention away from request determination and onto providing information to third parties. It may be that the Caring Society was simply unaware of the steps taken by ISC to address these requests.

#### **D. Unintended consequences: the backlog**

27. As noted above, there has been a significant increase in correspondence and requests to ISC's Jordan's Principle operations as a result of multiple factors, including successful awareness campaigns, impacts related to the COVID-19 pandemic, increased costs of living, and public safety emergencies.<sup>32</sup> Despite the substantial growth and efficiency of ISC's Jordan's Principle operations

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<sup>27</sup> Dr. Valerie Gideon Affidavit at para 12.

<sup>28</sup> Dr. Valerie Gideon Affidavit at paras 6–7, and 11–12.

<sup>29</sup> Affidavit of Brittany Mathews, affirmed January 12, 2024 [**Brittany Mathews Affidavit**], Exhibit 9.

<sup>30</sup> Candice St-Aubin Affidavit, Exhibit A.

<sup>31</sup> *Privacy Act*, [RSC, 1985, c P-21](#) at s 8.

<sup>32</sup> Dr. Valerie Gideon Affidavit at para 7; ISC's Response to Request for Information, Appendix A at 7 and 9.

and corresponding funding, ISC has been unable to maintain strict compliance with the timelines set out in the Tribunal's Jordan's Principle decisions.<sup>33</sup>

28. As further detailed below, the Back-to-Basics Approach has resulted in the redirection of requests into Jordan's Principle and the misclassification of Jordan's Principle requests as urgent. This has added to and complicated a backlog of correspondence and requests.<sup>34</sup> The Back-to-Basics Approach was co-developed by Canada and the Caring Society, with comments from the AFN.<sup>35</sup> It provides guidelines beyond the Tribunal's Jordan's Principle decisions, replaces ISC's former Standard Operating Procedures (SOPs), and was intended as an interim measure to reduce the administrative burden on families seeking support through Jordan's Principle pending a final agreement on a long-term approach for Jordan's Principle.<sup>36</sup>

29. Pursuant to the Back-to-Basics Approach, ISC's operational model takes the following approach:

- a. ISC starts with a presumption that substantive equality applies when a request is submitted;
- b. ISC does not deny requests on the basis of normative standards;
- c. ISC's determination of requests centers on the needs and best interests of the child, including consideration of distinct community circumstances; and

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<sup>33</sup> Dr. Valerie Gideon Affidavit at paras 6, 12, 29–74; St-Aubin Affidavit at para 8.

<sup>34</sup> Dr. Valerie Gideon Affidavit at paras 14, 17 and 20–25.

<sup>35</sup> Craig Gideon Affidavit at para 18; Amended AFN Factum dated May 21, 2024 at para 25.

<sup>36</sup> Dr. Valerie Gideon Affidavit at paras 17–18.

- d. the inclusion of costing information with the request is not required and there are no predetermined caps on the cost of a product, service or support.<sup>37</sup>

**Back-to-Basics has led to redirection into Jordan's Principle**

30. The Back-to-Basics Approach has led to requests for services accessible through existing government programs being directed instead to Jordan's Principle. Back-to-Basics, read with the Tribunal's Jordan's Principle decisions, situates Jordan's Principle as a preferred and accessible option for requests for funding for services for First Nations children that may otherwise be available and accessible under other government programs. Back-to-Basics' minimal documentation requirements, individual needs-based approach for each individual child, rapid determination timelines, and prohibition against clinical case conferencing are factors that make Jordan's Principle a particularly attractive option, even when accessible government services already exist.<sup>38</sup>

31. The government department of first contact must pay for the services without engaging in administrative case conferencing or service navigation.<sup>39</sup> Therefore, ISC is not permitted to redirect requestors to existing accessible services, even when that service is available in First Nations communities or through an existing approved group request administered by First Nations partners and community organizations via a contribution agreement with ISC.<sup>40</sup> Redirection into Jordan's Principle may also result in ISC duplicating funding in some instances, because ISC cannot service navigate requestors to existing programs such as Non-Insured Health Benefits, on-reserve income assistance or education programing.<sup>41</sup> Being unable to redirect requestors to existing accessible

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<sup>37</sup> Dr. Valerie Gideon Affidavit at para 18.

<sup>38</sup> Dr. Valerie Gideon Affidavit at paras 27–28.

<sup>39</sup> [2017 CHRT 35](#) at para [10](#).

<sup>40</sup> Dr. Valerie Gideon Affidavit at paras 27–28.

<sup>41</sup> ISC's Response to Request for Information, Appendix A, Table 3.

services contributes to the backlog for Jordan's Principle correspondence and requests. Instead of determining requests that require products, services or supports through the Jordan's Principle initiative, ISC must spend time servicing requests that could be addressed through other programs.

**Back-to-Basics has led to misclassified urgent requests**

32. The Back-to-Basics Approach also changed how ISC intake officers identify requests as urgent or not. Under the SOPs previously in place, urgency was based on an initial assessment by the regional focal point, and urgent requests were defined as “a child requires urgent assistance, is in palliative care, or a risk of irremediable harm is reasonably foreseeable.”<sup>42</sup>

33. Pursuant to the Back-to-Basics Approach, however, the intake officer is required to accept the requestor's identification of the request as urgent, and is not permitted to reassign the request to a lower level of urgency notwithstanding the circumstances.<sup>43</sup> Under the Back-to-Basics Approach, the classification of urgent requests has expanded to include requests that do not align with what the Tribunal originally intended.

34. The importance of prioritizing and urgently determining a request for a child in palliative care, who may suffer adverse impacts should they not receive medical products, services or supports as soon as possible, is clear. However, it is difficult to imagine that there is a serious and immediate risk to a child should ISC take longer than 12 hours, or even 48 hours, to determine requests received in the summer for school supplies, hockey equipment and winter gear.<sup>44</sup> A number of examples of requests identified as urgent can be found in the affidavit materials.<sup>45</sup> Many of them do not involve

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<sup>42</sup> Dr. Valerie Gideon Affidavit at para 19.

<sup>43</sup> Dr. Valerie Gideon Affidavit at para 20.

<sup>44</sup> Candice St-Aubin Affidavit, Exhibit A, rows 95 and 96 at pdf 43.

<sup>45</sup> Dr. Valerie Gideon Affidavit at paras 24–25, Exhibit C; see also Candice St-Aubin Affidavit at para 16, Exhibit A.

circumstances where the child had a need for a product, service or support within either a 12 or 48 hour timeframe.<sup>46</sup>

35. Since the implementation of the Back-to-Basics Approach, there has been a rapid increase in the number of Jordan's Principle requests labelled as urgent. Urgent requests grew by over 900% between the 2021-22 and 2022-23 fiscal years, compared to non-urgent requests which only grew by 88%.<sup>47</sup> The number of urgent requests has continued to increase at a pace far greater than that of non-urgent requests.<sup>48</sup> Due to the increased number and complexity of requests, most of which have arisen since the introduction of Back-to-Basics,<sup>49</sup> a backlog has developed. As a result, ISC must reconsider how best to ensure that First Nations children's ongoing needs can be determined, with a particular focus on those whose individual circumstances are truly and objectively urgent.

36. Notwithstanding the backlog, those First Nations children with urgent needs continue to receive products, services and supports that they need. ISC has made and will continue to make every effort to ensure the safety and protection of each and every First Nations child in a culturally safe and appropriate manner informed by experts and especially First Nations.

#### **E. ISC's plan to address the backlog**

37. ISC has proposed a number of measures in its cross-motion, supported by the affidavit evidence,<sup>50</sup> which are necessary to address the backlog. These include a proposal for the collaborative development of an objective definition of the word urgent in the context of Jordan's

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<sup>46</sup> Candice St-Aubin Affidavit, Exhibit A, rows 1, 31, 43, 60, 108, 129, 131, 147, 150 and 165 at pdf 26, 31, 33, 37, 45, 50, 53–54 and 56.

<sup>47</sup> Dr. Valerie Gideon Affidavit at para 21.

<sup>48</sup> Dr. Valerie Gideon Affidavit at para 22.

<sup>49</sup> Candice St-Aubin Affidavit at para 11.

<sup>50</sup> Dr. Valerie Gideon Affidavit; Candice St-Aubin Affidavit, and Supplemental Affidavit of Candice St-Aubin, affirmed April 22, 2024.



Principle requests, and additional time to make determinations on requests for which a longer determination time will not have an immediate adverse impact on the child.

38. ISC has implemented ongoing operational initiatives in an effort to address the backlog, which have led to significant progress. These include:

- a. **Call volume initiatives:** ISC has updated the National Call Centre's technological systems, including by implementing an automated callback system and a separate urgent callback queue with an average callback time of 20 minutes.<sup>51</sup> National Call Centre agents now enter all requests into ISC's Jordan's Principle Case Management System, and Quality Assurance team evaluates calls and provides surge support.<sup>52</sup> Further call tree enhancements are planned for the 2024-25 fiscal year to shorten the call tree and redirect callers to live agents as needed.<sup>53</sup> ISC is also consolidating all ISC regional offices (or focal points) into the National Call Centre's toll-free number in 2024. This will allow warm transfers and is expected to reduce the administrative burden on requestors.<sup>54</sup> ISC has also increased staffing for the 24/7 Call Centre shift schedule.<sup>55</sup>
- b. **Updated contact information:** As recommended by the Caring Society, ISC has already updated its website to include contact phone numbers, e-mail addresses and hours of operation for regional offices and headquarters, for both requests and payment inquiries.<sup>56</sup>

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<sup>51</sup> Candice St-Aubin Affidavit at paras 50–51.

<sup>52</sup> Candice St-Aubin Affidavit at para 52.

<sup>53</sup> Candice St-Aubin Affidavit at para 53

<sup>54</sup> Candice St-Aubin Affidavit at para 54.

<sup>55</sup> Candice St-Aubin Affidavit at para 66.

<sup>56</sup> Candice St-Aubin Affidavit at para 56.

- c. **Additional staffing:** From ISC's perspective, there is no readily available formula that can determine the number of sufficient staff required to administer ISC's Jordan's Principle initiative, given the constantly fluctuating level of complexity and volume of incoming requests.<sup>57</sup> Nonetheless, ISC has grown from 65 full-time-equivalent staff in the 2018-19 fiscal year to approximately 476 full-time-equivalent staff administering Jordan's Principle in the 2023-24 fiscal year.<sup>58</sup> This is an increase of over 600%. Each staff member must receive the training necessary to fulfill their job responsibilities with compassion and cultural sensitivity, and all hiring must be done in accordance with the *Public Service Employment Act*, applicable bargaining agreements and departmental hiring policies.<sup>59</sup>
- d. **Surge team support:** ISC has and will continue to mobilize surge teams, consisting of existing staff within ISC and the Department of Crown Indigenous Relations and Northern Affairs Canada, to assist with the backlog, facilitate faster determinations and provide ongoing support to ISC's regional offices. Surge teams review backlogged correspondence and provide data entry support so that regional offices can focus their efforts on determining requests and other matters that require their greater knowledge and expertise.<sup>60</sup> Surge teams have been making progress in addressing the backlog and will continue to do so moving forward.<sup>61</sup>

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<sup>57</sup> Candice St-Aubin Affidavit at para 59(a).

<sup>58</sup> Candice St-Aubin Affidavit at para 57.

<sup>59</sup> Candice St-Aubin Affidavit at para 59(c).

<sup>60</sup> Candice St-Aubin Affidavit at para 60.

<sup>61</sup> Candice St-Aubin Affidavit at para 61; ISC's Response to Request for Information No 4 (arising from the cross examination of Candice St-Aubin), Amended Appendix B, Table 2.

- e. **Staff retention initiatives:** ISC's Jordan's Principle operating environment is extremely difficult and emotional. To address the high rate of employee turnover, ISC has approved 100% remote work for Call Centre staff and has introduced new technological system capabilities.<sup>62</sup>
- f. **Technology initiatives:** ISC has launched a series of operational initiatives to improve the intake process, including implementation of enhancements to the Jordan's Principle Case Management System to accelerate data entry and processing, which represents 80% of frontline staff workload.<sup>63</sup> By fall 2024, ISC expects that its notification process will be enhanced to provide requestors with automated updates on the status of their requests.<sup>64</sup> ISC is also working to develop new technological solutions, including automatic entry of request forms sent by fax or email, web-based request submission, status updates for community service providers and interoperability between ISC's financial systems and the Jordan's Principle Case Management System.<sup>65</sup> ISC is undertaking a comparative analysis of regional implementation methodologies to identify best practices and improve timeliness, consistency and effectiveness.<sup>66</sup> ISC is also streamlining payment processes across regions to facilitate automation.<sup>67</sup> In addition, ISC is working on automating determinations.<sup>68</sup>

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<sup>62</sup> Candice St-Aubin Affidavit at para 66.

<sup>63</sup> Candice St-Aubin Affidavit at para 67(a).

<sup>64</sup> Candice St-Aubin Affidavit at para 67(b).

<sup>65</sup> Candice St-Aubin Affidavit at para 67(c).

<sup>66</sup> Candice St-Aubin Affidavit at para 67(d).

<sup>67</sup> Candice St-Aubin Affidavit at para 67(e).

<sup>68</sup> Candice St-Aubin Affidavit at para 68.

39. ISC's proposals and initiatives have been carefully developed to ensure that they are consistent and supported by existing government structures, including policies, practices and procedures, so as to reduce the risk that they might adversely affect ISC's ability to support Jordan's Principle. In addition to proposals for an order that Canada, the First Nations Parties and the Caring Society attempt to co-develop objective criteria to identify urgent Jordan's Principle requests and that reasonably extend the timelines for determination of requests, Canada seeks orders that permit service navigation in appropriate circumstances, and orders to facilitate the transfer of control over Jordan's Principle administration and other services to willing First Nations and First Nations community organizations.

## **PART II – POINTS IN ISSUE**

40. Looking forward, and taking into account the significant shift in the factual landscape that has taken place in the nearly eight years since the Tribunal's *Merits Decision*, the issues are:

- a. Whether the Tribunal should support ISC's ongoing and meaningful approach to the implementation of Jordan's Principle, which emphasizes substantive equality, by ordering that:
  - i. Canada, the First Nations Parties and the Caring Society seek to co-develop objective criteria to identify urgent Jordan's Principle requests, such that ISC can ensure that urgent requests are quickly identifiable and prioritized;
  - ii. the timelines set out in 2017 CHRT 35 be extended to support ISC's reasonably timely determination of requests;

- iii. when ISC is the government department of first contact, Canada may refer requestors in certain appropriate circumstances, as set out in Canada's cross-motion; and
  - iv. where Canada enters into a contribution agreement with any First Nation or First Nation community organization to administer services to First Nations children, including Jordan's Principle, 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; or
- b. whether the Caring Society's requested orders are the only solution to the backlog, despite its stated openness to other solutions proffered by ISC.

### **PART III - SUBMISSIONS**

#### **A. Mediation/resolution**

41. Canada suggests that ISC, the First Nations Parties and the Caring Society seek to resolve the issues raised in these proceedings through mediation, with the Tribunal's assistance. Towards that end, Canada seeks Tribunal-assisted mediation, in which the Chairperson or another member of the Tribunal, other than those Panel members seized of this complaint, act as mediator. The Chairperson and members of the Tribunal have the specific and necessary knowledge of the *Canadian Human Rights Act* and the Tribunal's past rulings to do so, without the responsibility of determining the merits of these motions. To further facilitate a mediation, the mediator could rely on the filed materials as opposed to separate mediation briefs, therefore simplifying the process for all parties.

42. Absent a mediated settlement, the Tribunal should dismiss the Caring Society's non-compliance motion and grant the relief sought in Canada's cross-motion.

**B. A shift in the landscape has already taken place**

43. The Tribunal recently issued a direction in which it considered a "shift in the proceedings".<sup>69</sup> In fact, a broad shift in the landscape has already taken place, including Jordan's Principle. ISC has rectified its narrow application of Jordan's Principle as identified by this Panel in the *Merits Decision*.<sup>70</sup> In implementing the Panel's Jordan's Principle decisions, ISC has been directly responsive to this Panel's findings. As predicted by the Panel, this process took time, but has been valuable in addressing systemic issues pending an agreement with respect to long-term reform.<sup>71</sup>

44. The Panel's goals with respect to Jordan's Principle have been accomplished.<sup>72</sup> The Panel ordered that Jordan's Principle would have a wider scope of eligibility and implementation. This has been achieved through ISC's policy choices.<sup>73</sup> As a result of the Panel's Jordan's Principle decisions, thousands of First Nations children have obtained substantively equal access to essential products, services and supports.<sup>74</sup> Further orders as requested by the Caring Society, involving the

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<sup>69</sup> Direction on "Options" to the Parties dated April 8, 2024.

<sup>70</sup> Dr. Valerie Gideon Affidavit at para 5.

<sup>71</sup> See for example, *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2021 CHRT 41 \[2021 CHRT 41\]](#) at para [22](#): "Similarly, the Panel's focus is not on making orders determining whether [Canada has complied with previous orders \(2017 CHRT 14\)](#). Instead, the focus of the retained jurisdiction is to ensure the Panel's orders are effective and rectify the adverse effects of the discriminatory practices identified in the *Merit Decision*. Furthermore, the Panel's objective is to ensure that Canada's implementation of its orders is sufficiently responsive to the systemic discrimination detailed in the Tribunal's findings. That process will take time and it is valuable to address as many issues as possible immediately while awaiting the evidence to support long-term reform".

<sup>72</sup> Dr. Valerie Gideon Affidavit at paras 5, 7, 13, and 32–34.

<sup>73</sup> [Merits Decision](#) at para [481](#).

<sup>74</sup> Dr. Valerie Gideon Affidavit at para 12.

details of ISC's program and policy design, are not required.<sup>75</sup> Canada continues to move forward; it is not repeating history.

### **C. The parties' role in Jordan's Principle administration moving forward**

45. Going forward, and working with First Nations partners, ISC's role is to administer Jordan's Principle requests in accordance with this Tribunal's definition and criteria within existing government structures, pending a final settlement agreement on long-term reform. To do so successfully, ISC requires the flexibility to respond to operational challenges that may develop, in consultation with First Nations partners.

46. The AFN, the COO and the NAN represent First Nations communities in Canada. The AFN is a national advocacy organization representing First Nations citizens in Canada, including 634 First Nations communities.<sup>76</sup> The COO represents 133 First Nations in the Province of Ontario.<sup>77</sup> The NAN represents 49 First Nation communities located in Northern Ontario.<sup>78</sup>

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<sup>75</sup> See for example, [2021 CHRT 41](#) at para [31](#): "In crafting its orders, the Panel is not interested in becoming involved in the details of program or policy design by for example choosing between policies as long as systemic discrimination is eliminated. The Panel's objective in the remedial orders is to ensure that discriminatory policies cease to be used and the discrimination is remedied. The Panel is willing to make further orders if the discriminatory practices continue. Not to do so would be unfair to the successful parties. It is important to distinguish policy choices made by Canada that satisfactorily address the discrimination, in which the Panel refrains from intervening, from policy choices made by Canada that do not prevent the practice from reoccurring. To explain this, if the Panel finds that Canada is repeating history and choosing similar or identical ways to provide child welfare services that amounted to discrimination, the Panel has justification to intervene. While the Panel is willing to make further orders if Canada implements policies that fail to address the discrimination, it will not intervene if [Canada implements policies that address the discrimination \(2018 CHRT 4\)](#)".

<sup>76</sup> Craig Gideon Affidavit at para 3.

<sup>77</sup> [Merits Decision](#) at para [13](#).

<sup>78</sup> *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 11](#) at para [1](#).

47. The Caring Society primarily advocates on behalf of FNCFS Agencies, but does not represent First Nations communities.<sup>79</sup> Although the AIP contemplates a significant role for FNCFS Agencies,<sup>80</sup> the Caring Society has ceased actively participating in negotiations with Canada and the First Nations Parties towards long-term FNCFS Program reform<sup>81</sup> in favour of this non-compliance motion respecting Jordan's Principle.

48. In accordance with the AIP, Canada is working towards a future in which willing First Nations and First Nations community organizations assume greater control over Jordan's Principle administration.<sup>82</sup> Realizing this goal will require collaboration, not only with the AFN, the COO and the NAN, but also with individual First Nations and regional First Nations organizations that are not parties to the underlying complaint (for example, the Assembly of Manitoba Chiefs). Flexibility will be required to develop region-specific solutions.

49. As the Caring Society does not speak on behalf of First Nations, its views on Jordan's Principle should not eclipse the views and preferences of First Nations and the organizations who represent them. The Caring Society's submissions may be helpful in identifying emerging issues in Jordan's Principle from time to time, but these matters are more properly resolved through discussion and not adjudication.

**D. The Tribunal's continued oversight of daily request management is unnecessary**

50. ISC has implemented the substance of all of the Tribunal's Jordan's Principle decisions, working hard to build upon these decisions and find as many ways as possible to support First

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<sup>79</sup> *Merits Decision* at paras [12](#), [13](#).

<sup>80</sup> Cindy Blackstock Affidavit, Exhibit 61 (Summary of AIP) at pdf 785 and 787.

<sup>81</sup> Craig Gideon Affidavit at para 39.

<sup>82</sup> Cindy Blackstock Affidavit, Exhibit 61 (Summary of AIP) at pdf 793.



Nations children and ensure substantive equality. Canada's cross-motion is evidence of the evolving and on-going evaluations ISC continues to conduct in respect to its implementation and administration of Jordan's Principle.

51. The Caring Society's complaint is fundamentally about the definition of urgent in the context of Back-to-Basics. The Back-to-Basics Approach is an interim agreement that goes well beyond the Tribunal's Jordan's Principle decisions. The Caring Society's motion does not focus on whether First Nations children are receiving the products, services and supports they need pursuant to substantive equality. Rather, the Caring Society's motion is largely focused on the speed at which ISC is addressing urgent Jordan's Principle requests, regardless of whether they meet an objective definition of urgent.

52. To the extent that the Caring Society is asking the Tribunal to consider the merits of ISC's determination of any particular individual or group request, it is the Federal Court's role to adjudicate these matters pursuant to its judicial review oversight.<sup>83</sup> The Tribunal's intervention in these determinations on a case-by-case basis is therefore not required.

53. There is no question that Jordan's Principle will encounter growing pains from time to time. ISC will need to react flexibly, with a view to adjusting its processes to ensure continued implementation of substantive equality. However, this does not mean that Canada has not complied with the Tribunal's definition of Jordan's Principle. Rather, it is a reflection of how far ISC's Jordan's Principle initiative has developed and what has been achieved since June 2016.

54. Given that the orders requested by the Caring Society are unnecessary and risk further unforeseen adverse outcomes, it is time for a new path. That new path requires that Canada, the

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<sup>83</sup> [Federal Courts Act](#) at s [18.1](#).

First Nations Parties and the Caring Society co-develop solutions to problems, including with non-party First Nations and the organizations that represent them.

**E. ISC's focus is on realistic and practical solutions**

55. Canada's cross-motion seeks to ensure that urgent requests can be properly identified and prioritized by applying objective criteria, and that all requests are determined within reasonable timeframes. It is aimed at ensuring the wellbeing of First Nations children by allowing ISC to refer requestors to applicable community-based supports that are better suited to determining and addressing First Nations children's needs.

56. The issues raised by the Caring Society include practical problems that require practical solutions. One of the practical issues is in the context of Back-to-Basics, in which requestors self-identify whether a particular request is urgent.

57. Canada strongly supports an approach in which the parties co-develop objective criteria to identify urgent Jordan's Principle requests. Co-development is consistent with Canada's approach to reconciliation with Indigenous people and ensures a focus on solutions. Co-developed solutions also reduce the risk that any one party's proposal would have adverse unintended outcomes.

58. Cooperatively achieving a functional definition of urgent would be a significant step towards addressing the backlog and reducing unforeseen consequences. It may require compromise, but Canada is optimistic that the parties can agree on practical criteria to identify urgent requests within 60 days of an order, to support ISC in its ongoing efforts to address the backlog.

59. The Caring Society has offered constructive critiques of what is, in its opinion, not working in the Jordan's Principle context. However, the Caring Society has not identified practical solutions that ISC could reasonably implement without further increasing the backlog.

60. Some of the issues raised in the Caring Society's submissions are indirectly related to the backlog problem, such as reimbursement. In some cases, requestors pay for a product, service or support upfront, while in other cases ISC pays vendors directly or purchases gift cards for requestors. While requestors or vendors may have to wait for the reimbursement process to be completed, that issue is separate and apart from the issue of whether the child has received the product, service or support under Jordan's Principle.

61. ISC paying in advance for certain products, supports or services and seeking receipts or other documentation from the requestor later fully complies with this Tribunal's decisions, which have focused on ensuring that administrative requirements do not prevent a child from receiving the support in a timely manner.<sup>84</sup> ISC is permitted to seek information from requestors after the fact, to confirm that payments made by ISC resulted in the child obtaining the approved product, service or support.

62. The importance of having reasonable criteria for what is designated urgent is not just a matter of reducing the backlog or efficiency, but also of maintaining the integrity of Jordan's Principle. Jordan's Principle is relied on by First Nations children, families and communities to provide products, supports and services they need in an urgent manner, when needed urgently, such as the palliative care situation described above. Indigenous peoples in Canada, and non-Indigenous people, trust that Jordan's Principle is being administered in a way that is fair, equitable, and prioritizes urgent situations appropriately. Maintaining that trust and integrity in the system requires practical and realistic criteria so that those who seek urgent help are able to rely on Jordan's Principle, and not have a non-urgent request take precedence over their potentially life threatening situation.

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<sup>84</sup> [2017 CHRT 35](#) at para [10](#), replacing the text from [2017 CHRT 14](#) at para [135](#).

**F. The Caring Society's proposed orders do not create a path forward to better outcomes for First Nations children**

63. While the Caring Society has sought a number of orders that in their view would resolve the backlog, their requested relief would simply add to existing administrative complexities, expanding the backlog further. This will not benefit First Nations children who require products, services and supports through Jordan's Principle. Such an outcome would be counter-productive to a solutions-based and forward-looking approach. Moreover, it is not difficult to conceive of scenarios in which their requested orders might have unintentional consequences.

64. ISC's proposed solutions should be preferred over the Caring Society's requested orders. ISC is the only party with experience in administering Jordan's Principle requests within the existing government structures that facilitate administration, including policies, practices and procedures.

65. In considering the Caring Society's proposed solutions, the Tribunal should consider whether ISC has the ability to both triage and determine all requests labeled as urgent within the prescribed timelines (particularly given the high number of requests labelled as urgent since the Back-to-Basics approach was adopted). In the first three quarters of the 2023-24 fiscal year alone, ISC determined 20,715 urgent individual and group requests and 83,478 non-urgent individual and group requests.<sup>85</sup> That breaks down to approximate averages of:

- a. 6,905 urgent requests and 27,826 non-urgent requests every quarter; or
- b. 2,301 urgent requests and 9,275 non-urgent requests every month; or

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<sup>85</sup> Dr. Valerie Gideon Affidavit at para 21.

- c. 77 urgent requests and 309 non-urgent requests every day, for a total of 386 determinations every day.

66. Each one of these requests required a thoughtful, compassionate and culturally sensitive review and determination. Many of these requests were complex and required escalation and discussion. Each First Nations child was deserving of and received individual consideration, taking into account their distinct needs and circumstances. Determining Jordan's Principle requests is not a simple matter of receiving standard data and ticking off a box.<sup>86</sup>

67. The Caring Society's proposed solutions to triaging urgent requests are not practical or feasible. In the current circumstances, including ISC's inability to reassign potentially miscategorized urgent requests to a lower level of priority, the only practical way for ISC to manage urgent requests is to consider them in the order in which they were received. With ISC determining an average of 386 requests per day, it is not feasible for ISC to both triage *and* determine urgent requests, based on individual or group circumstances, within 12 or 48 hours, while continuing to process non-urgent requests.

68. The Caring Society's proposed solutions are also not forward-looking, in that they do not contemplate a role for First Nations' involvement in community-based service delivery to First Nations children.

***The Caring Society's proposed urgency presumption could have unintended consequences***

69. The Caring Society's proposal for a rebuttable presumption of urgency is unlikely to benefit First Nations children and is not a workable solution. Pursuant to the Back-to-Basics Approach,

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<sup>86</sup> Dr. Valerie Gideon Affidavit at paras 13–14, 21–22, 35–36 and 47–51.

ISC is not permitted to reassign requests to a lower level of urgency.<sup>87</sup> Therefore, the urgency presumption could not be rebutted, resulting in *all* requests being considered urgent, notwithstanding the circumstances. This could have unintended consequences. For example, a request for a socially prescribed bicycle would need to be considered in the same 12-hour timeframe as a request for immediate medical support for a child in palliative care.

70. Even if ISC could reassign requests to a lower level of priority, ISC would require sufficient information from requestors to rebut the presumption of urgency. At a minimum, this would be a time-consuming process that would place an administrative burden on requestors and cause delay. This would also be contrary to the spirit of this Tribunal's Jordan's Principle decisions, which focus on the need for administrative efficiency.<sup>88</sup>

71. In any event, with the current volume of requests and lack of any objective criteria to identify urgent requests, triaging and determining all urgent individual and group requests within the prescribed timelines is unattainable. Canada therefore seeks reasonable and practical solutions to address these issues with a view to benefitting First Nations children.

***The Caring Society's proposed urgency criteria could have unintended consequences***

72. Canada recognizes that circumstances around local states of emergency and caregiver death can be very distressing to First Nations children. However, using these criteria to identify urgent requests could have unintended consequences, in that not all requests for products, services or supports requested through Jordan's Principle for children in these circumstances are necessarily linked to the public emergency or caregiver death. For example, a request for driver training for a

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<sup>87</sup> Dr. Valerie Gideon Affidavit at para 20.

<sup>88</sup> See for example [2017 CHRT 35](#) at para [10\(1\)\(b\)\(iii-iv\)](#).

youth from an evacuated community would need to be considered in the same 12-hour timeframe as a request for counselling for a child who was traumatized by that same evacuation process.

**The Caring Society's proposed imposition of a complaints mechanism is not warranted**

73. The Caring Society desires a complaints mechanism, not for appellate purposes, but for people to raise complaints about requests that have not yet been determined. If such a mechanism is to be developed, broader First Nations' collaboration would be required.<sup>89</sup> The imposition of a new mechanism without this collaboration could have unintended consequences, such as further levels of bureaucracy, backlog and delay in Jordan's Principle administration.

**The Caring Society's proposed orders regarding the FAA are not warranted**

74. There is no evidence of a conflict between this Tribunal's orders and the *Federal Administration Act (FAA)*. The Caring Society's requested orders respecting the *FAA* are therefore unwarranted. The Caring Society seeks these unnecessary orders on an anticipatory basis and notwithstanding the legitimate need for accountability for public spending.

75. The *FAA* is a statute of general application, which establishes general rules common to all departments, governing their financial administration. This includes how federal departments make payments to meet the needs of the Government of Canada, which includes complying with this Tribunal's decisions, and all other court decisions.

76. The *FAA* has not been an obstacle to providing payments in multiple ways, so as to meet the needs of each situation, as set out above. There is no evidence the *FAA* is impacting ISC's compliance with determining Jordan's Principle requests in accordance with substantive equality. The evidence in fact demonstrates ISC's commitment to Jordan's Principle and First Nations

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<sup>89</sup> Cindy Blackstock Affidavit, Exhibit 61 (Summary of AIP) at pdf 781–97.

children. ISC has approved requests at a high rate, with over 329,000 requests approved between April 1, 2018 and December 2023, representing over 4.4 million products, services and supports.<sup>90</sup>

77. ISC takes a holistic approach, working to maintain compliance with the Tribunal's Jordan's Principle decisions and all applicable legislation, including the *FAA*. ISC's approach recognizes the need for public accountability while at the same time implementing substantive equality. There is no evidence this approach has resulted in discrimination in any individual or group's case, nor are these competing interests. Further, to the extent that any requestor believes there is a true conflict between the *FAA* and this Tribunal's orders, that is a matter for determination by the Federal Courts.

#### **G. Resolution and moving forward**

78. Canada reiterates its position that resolving the issues raised in these motions by way of mediation or collaboration is preferable to adjudication. As ISC's Jordan's Principle operations continue to evolve, it is all the more important that the parties, especially those who represent First Nations, be afforded an opportunity to work together to find the best possible solutions for moving forward with Jordan's Principle administration.

79. Since the *Merits Decision* in 2016, ISC has focused on forward-looking changes that assist First Nations children and facilitate greater First Nations' involvement and control over service delivery. ISC has approved hundreds of thousands of requests and implemented an administrative review process with Federal Court oversight, while simultaneously negotiating towards long-term FNCFS Program reform. The big picture is compelling, and demonstrative of the success Jordan's Principle has achieved since the *Merits Decision*.

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<sup>90</sup> Dr. Valerie Gideon Affidavit at para 6.



80. The Panel's focus should now shift to allowing ISC to continue implementing Jordan's Principle through its administrative process in a reasonable manner – not the operational intricacies raised in the non-compliance motion, and over which the Caring Society has no practical experience. The Caring Society's interventions, while well intended, would remove ISC's focus from working directly with First Nations.

81. When one looks back to 2016, it is evident the parties are much further ahead today due to significant changes implemented through collaboration. ISC has followed and been responsive to the Panel's decisions, implementing the full scope and eligibility criteria required by the Tribunal. ISC continues to look forward to taking practical steps aimed at improving the administration of Jordan's Principle.

#### **PART IV – ORDERS SOUGHT**

82. In support of reconciliation, to support the wellbeing of First Nations children, and to respect First Nations self-determination, Canada seeks the following orders from the Tribunal. These orders are designed to reduce the backlog, ensure that urgent requests can be properly identified and prioritized, facilitate requestors' access to applicable community-based supports that are better suited to determining First Nations children's needs, facilitate greater First Nations' control over Jordan's Principle moving forward and provide ISC with needed flexibility to address operational challenges as they arise. Canada requests:

- a. An order requiring that Canada, the First Nations Parties and the Caring Society seek to co-develop objective criteria, within sixty (60) days of the order, to be used to identify urgent Jordan's Principle requests.

- b. An order supporting ISC's approach to ensuring that urgent Jordan's Principle requests are quickly identifiable and prioritized accordingly.
- c. An order extending the timelines set out in the Tribunal's order in 2017 CHRT 35, subparagraph 135(2)(A)(ii) and (ii.1):
  - i. for individual requests:
    - 1. from 12 hours to 48 hours for urgent individual requests, or such other timeline as Canada and the First Nations Parties may from time to time agree;
    - 2. from 48 hours to without unreasonable delay for all other individual requests, or such other timeline as Canada and the First Nations Parties may from time to time agree; and
  - ii. for group requests:
    - 1. from 48 hours to one week for urgent group requests, or such other timeline as Canada and the First Nations Parties may from time to time agree; and
    - 2. from one week to without unreasonable delay for all other group requests, or such other timeline as Canada and the First Nations Parties may from time to time agree.

- d. An order that, when ISC is the government department of first contact, Canada may refer requestors:
- i. to an existing and applicable Jordan's Principle group request that has already been approved and that is being administered by a First Nation or First Nation community organization pursuant to a contribution agreement with Canada; or
  - ii. to an applicable First Nation or First Nation community organization engaged in the administration of Jordan's Principle pursuant to a contribution agreement with Canada;
  - iii. however, where a request is deemed urgent in accordance with the objective criteria identified by Canada, the First Nations Parties and the Caring Society, ISC will first take into account whether or not referring the requestor will enable faster access to the requested product, service or support.
- e. 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.

f. An order dismissing the Caring Society's non-compliance motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED** at the City of Winnipeg, in the Province of Manitoba, this 24<sup>th</sup> day of May, 2024.

**Deputy Attorney General of Canada**



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**PART V – LIST OF AUTHORITIES**

	<b>Statutes and Regulations</b>
1	<i>Canadian Human Rights Act</i> , <a href="#">RSC, 1985, c H-6</a>
2	<i>Federal Courts Act</i> , <a href="#">RSC, 1985, c F-7</a>
3	<i>Privacy Act</i> , <a href="#">RSC, 1985, c P-21</a>
	<b>Case Law</b>
4	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , <a href="#">2016 CHRT 2</a>
5	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , <a href="#">2016 CHRT 11</a>
6	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2017 CHRT 14</a>
7	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2017 CHRT 35</a>
8	<i>First Nations Child &amp; Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2018 CHRT 4</a>
9	<i>First Nations Child &amp; Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , <a href="#">2021 CHRT 41</a>

**ANNEX A – DEFINITION OF JORDAN’S PRINCIPLE**

From [2017 CHRT 35](#), paragraph [10](#):

135.

A. **As of the date of this ruling**, Canada’s definition and application of Jordan’s Principle shall be based on the following key principles:

- vi. Jordan’s Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.
- vii. Jordan’s Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.
- viii. When a government service, **including a service assessment**, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in **administrative case conferencing**, policy review, service navigation or any other similar administrative procedure before **the recommended service is approved and funding is provided**. **Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor’s clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child’s case, Canada will consult those**



**professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available.** After the **recommended** service is **approved and funding is** provided, the government department of first contact can seek reimbursement from another department/government;

- ix. When a government service, **including a service assessment**, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. Where such services are to be provided, the government department of first contact will pay for the provision of the services to the First Nations child, without engaging in **administrative case conferencing**, policy review, service navigation or any other similar administrative procedure before **the recommended service is approved and funding is provided.** **Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii).** **Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable**

**effort to ensure funding is provided as close to those timeframes where the service is not available.** After the recommended service is provided, the government department of first contact can seek reimbursement from another department/government.

- x. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e., between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle.

[emphasis in original]