



## Canada's May 24, 2024 Factum Information Sheet

On May 24, 2024, Canada filed its factum on the Caring Society's non-compliance motion and its own cross-motion with the Tribunal. To be clear, Canada opposes the Caring Society's non-compliance motion and requests that the Tribunal dismiss the Caring Society's motion and instead support its own approach. Canada seeks orders from the Tribunal that, in its view, aim to reduce backlogs, properly identify and prioritize urgent cases, facilitate connecting families to existing community-based supports, enable greater First Nations control over the delivery of Jordan's Principle, and offer Indigenous Services Canada (ISC) greater flexibility to respond to operational challenges as needed.<sup>1</sup>

While Canada acknowledges that Jordan's Principle has positively impacted First Nations children and families,<sup>2</sup> it attributes the ongoing backlogs in processing requests in part to "the exponential growth in Jordan's Principle requests since 2016", "the unintended consequences of the 2022 Back-to-Basics Approach implemented by ISC" such as "the redirection of requests into Jordan's Principle and the misclassification of Jordan's Principle requests as urgent", and the "significant increase in correspondence and requests to ISC's Jordan's Principle operations as a result of multiple factors"<sup>3</sup>. Canada is of the view that the Caring Society's orders sought regarding the backlogs and urgency will have "unintended consequences" and that its orders sought regarding the complaints mechanisms and the *Financial Administration Act* are unwarranted.<sup>4</sup>

Canada submits that the "flexibility" offered by its "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)".<sup>5</sup>

This information sheet provides a summary of Canada's

positions.

This information sheet contains general information and is ***not legal advice***. Consult with your legal counsel to seek advice and guidance about your own needs and circumstances.

### Orders sought by Canada

In its May 24, 2024 submissions, Canada requests from the Tribunal:<sup>6</sup>

- 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.
- An order supporting ISC's approach to ensuring that urgent Jordan's Principle requests are quickly identifiable and prioritized accordingly.
- An order extending the timelines set out in the Tribunal's order in 2017 CHRT 35:

#### For individual requests:

- From 12 hours to 48 hours for urgent individual requests, or such other timeline that Canada and the First Nations Parties may from time to time agree;
- From 48 hours to without unreasonable delay for all other individual requests, or such other timeline that Canada and the First Nations Parties may from time to time agree; and

#### For group requests:

- From 48 hours to one week for urgent group requests, or such other timeline that Canada and the First Nations Parties may from time to time agree; and

<sup>1</sup> Canada's May 24, 2024 factum at para 82.

<sup>2</sup> Canada's May 24, 2024 factum at para 23.

<sup>3</sup> Canada's May 24, 2024 factum at paras 2, 27-28.

<sup>4</sup> Canada's May 24, 2024 factum at paras 63-77.

<sup>5</sup> Canada's May 24, 2024 factum at para 3.

<sup>6</sup> Canada's May 24, 2024 factum at para 82.

- From one week to without unreasonable delay for all other group requests, or such other timeline that Canada and the First Nations Parties may from time to time agree.
- An order that, when ISC is the government department of first contact, Canada may refer requestors:
  - 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
  - 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;
  - 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.
- 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.
- An order dismissing the Caring Society's non-compliance motion.

## Canada's submissions:

Canada makes submissions related to: i) mediation/resolution; ii) a shift in the landscape has already taken place; iii) the Parties' role in Jordan's Principle administration moving forward; iv) the Tribunal's continued oversight of daily request management is unnecessary; v) ISC's focus is on realistic and practical solutions;

<sup>7</sup> Canada's May 24, 2024 factum at para 41.

<sup>8</sup> Canada's May 24, 2024 factum at para 42.

<sup>9</sup> Canada's May 24, 2024 factum at para 43.

<sup>10</sup> Canada's May 24, 2024 factum at para 43.

<sup>11</sup> Canada's May 24, 2024 factum at para 43.

vi) the Caring Society's proposed orders do not create a path forward to better outcomes for First Nations children; and vii) resolution and moving forward.

## Mediation/resolution

Canada submits that ISC, the First Nations Parties and the Caring Society seek to resolve the issues raised in the non-compliance motion through Tribunal-assisted mediation, with the Chairperson or another member of the Tribunal (other than the Panel seized of this complaint) acting as mediator.<sup>7</sup> Further, Canada is of the view that in the absence of a mediated settlement, the Tribunal should dismiss the Caring Society's non-compliance motion and grant the relief sought in Canada's cross-motion.<sup>8</sup>

## A shift in the landscape has already taken place

Canada submits that a shift in the landscape has taken place, including with respect to Jordan's Principle.<sup>9</sup> Canada submits that ISC has been "directly responsive"<sup>10</sup> to the Tribunal's findings and "has rectified its narrow application of Jordans Principle".<sup>11</sup> This shift in the landscape has taken time but it has been "valuable in addressing systemic issues" pending a long-term reform agreement.<sup>12</sup> As a result, Canada submits that the Tribunal's goals with respect to Jordan's Principle have been accomplished<sup>13</sup> and further orders seeking to govern ISC's policies and programming are not required.<sup>14</sup>

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

Pending a final settlement agreement on long-term reform, Canada submits that its role is to administer Jordan's Principle requests in accordance with the Tribunal's "definition and criteria within existing government structures" while working with First Nations partners.<sup>15</sup> To do so, Canada submits that ISC requires the "flexibility to respond to operational challenges", in consultation with First Nations partners.<sup>16</sup>

## The Tribunal's continued oversight of daily request management is unnecessary

Canada submits that ISC has implemented the substance of all

<sup>12</sup> Canada's May 24, 2024 factum at para 43.

<sup>13</sup> Canada's May 24, 2024 factum at para 44.

<sup>14</sup> Canada's May 24, 2024 factum at para 44.

<sup>15</sup> Canada's May 24, 2024 factum at para 45.

<sup>16</sup> Canada's May 24, 2024 factum at para 45.

the Tribunal's orders and that ISC's March 15, 2024 cross-motion is evidence of its ongoing evaluation of its implementation of Jordan's Principle.<sup>17</sup> Canada also submits that ISC should have the ability to react flexibly to ensure the continued implementation of substantive equality, which should not be seen as non-compliance with the Tribunal's orders.<sup>18</sup>

### ISC's focus is on realistic and practical solutions

Canada submits that its 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.<sup>19</sup> Canada submits that the self-identification of urgent requests under Back-to-Basics is an example of a practical problem that requires a practical solution.<sup>20</sup> In Canada's view, the Caring Society's requested orders are not practical and would not assist with the backlog.<sup>21</sup> Canada supports an approach where the parties co-develop objective criteria to identify what constitutes an urgent request. Add footnote: Canada's May 24, 2024 factum at para 57.

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

Canada submits that the orders sought by the Caring Society would increase existing administrative complexities at ISC, thereby further increasing the backlog of requests.<sup>22</sup> Canada asserts that its proposed solutions should be preferred over the Caring Society's requested orders as 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".<sup>23</sup> Canada further asserts that, when 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".<sup>24</sup>

Canada submits that the Caring Society's proposed urgency

presumption could result in all requests being treated as urgent, delaying supports to children in life-threatening situations.<sup>25</sup> Similarly, Canada submits that the Caring Society's proposed urgency criteria (regarding states of emergency and the death/reasonably anticipated death of a caregiving family member, biological parent(s), and/or siblings) could have unintended consequences.<sup>26</sup>

Canada submits that the Caring Society's request for a complaints mechanism is unwarranted.<sup>27</sup> Canada asserts that further First Nations collaboration would be required to develop such a mechanism to avoid unintended consequences such as additional bureaucracy, delays and backlogs in Jordan's Principle administration.<sup>28</sup>

As well, Canada submits that the Caring Society's requested orders concerning the Financial Administration Act (FAA) are unwarranted, as "[t]here is no evidence the FAA is impacting ISC's compliance with determining Jordan's Principle requests in accordance with substantive equality",<sup>29</sup> and that it has not been "an obstacle to providing payments in multiple ways".<sup>30</sup> Canada asserts that it must comply with the Tribunal's orders and applicable legislation, including the FAA, and that ISC's approach balances the need for public accountability while implementing substantive equality.<sup>31</sup> Canada maintains that if a requestor truly believes that there is a conflict between the FAA and the Tribunal's orders on Jordan's Principle, then that is a matter for the Federal Courts.<sup>32</sup>

### Resolution and moving forward

Canada makes clear that in its view, mediation or collaboration is preferable to adjudication.<sup>33</sup> Canada submits that the Tribunal should allow ISC to "continue implementing Jordan's Principle through its administrative process in a reasonable manner - not the operational intricacies" raised in the Caring Society's requested orders, which, in Canada's view, would detract from ISC focus on working directly with First Nations.<sup>34</sup>

<sup>17</sup> Canada's May 24, 2024 factum at para 50.

<sup>18</sup> Canada's May 24, 2024 factum at para 53.

<sup>19</sup> Canada's May 24, 2024 factum at para 55.

<sup>20</sup> Canada's May 24, 2024 factum at para 56.

<sup>21</sup> Canada's May 24, 2024 factum at para 59.

<sup>22</sup> Canada's May 24, 2024 factum at para 63.

<sup>23</sup> Canada's May 24, 2024 factum at para 64.

<sup>24</sup> Canada's May 24, 2024 factum at para 65.

<sup>25</sup> Canada's May 24, 2024 factum at para 69.

<sup>26</sup> Canada's May 24, 2024 factum at para 72.

<sup>27</sup> Canada's May 24, 2024 factum at para 73.

<sup>28</sup> Canada's May 24, 2024 factum at para 73.

<sup>29</sup> Canada's May 24, 2024 factum at para 76.

<sup>30</sup> Canada's May 24, 2024 factum at para 76.

<sup>31</sup> Canada's May 24, 2024 factum at para 77.

<sup>32</sup> Canada's May 24, 2024 factum at para 77.

<sup>33</sup> Canada's May 24, 2024 factum at para 78.

<sup>34</sup> Canada's May 24, 2024 factum at para 80.

## Background

On December 12, 2023, [the Caring Society filed a non-compliance motion](#) with the Tribunal regarding Canada's chronic and wilful failure to adhere to the Tribunal's orders on Jordan's Principle.

To get a complete picture of the Caring Society's and Canada's legal arguments, as well as the other parties, please review the key dates and submissions:

- December 12, 2023: [Caring Society's non-compliance motion](#)
- January 12, 2024: [Caring Society's affidavits](#)
- March 15, 2024: [Canada's cross-motion and affidavits](#)
- March 27, 2024: [Caring Society's reply affidavits](#)
- April 2-3, 2024: Cross-examination of two senior ISC officials
- April 12, 2024: [Canada's response to requests for information](#)
- April 19, 2024: [Caring Society's factum](#)
- May 10, 2024: [Commission's factum](#); NAN and [COO reply](#)
- May 17, 2024: [AFN's factum](#)
- May 24, 2024: [Canada's factum](#)
- June 7, 2024: [Caring Society's reply factum](#)
- June 28, 2024: Caring Society/AFN/Commission/COO/NAN response to Canada's cross-motion factum (paused pending FNLC interested party motion)
- July 19, 2024: Canada reply factum (paused pending FNLC interested party motion)

The Tribunal has indicated that a hearing will take place no later than August 2024, but the schedule has been put on hold pending the Tribunal's ruling on the FNLC's motion.

For the latest information, visit [fnwitness.ca](https://fnwitness.ca).