

December 9, 2024

VIA EMAIL

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

RE: FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL V ATTORNEY GENERAL OF CANADA – T#1340/7008
OUR MATTER ID: 5204-002

I write further to the Panel's direction in its November 21, 2024 letter decision (the "Letter Decision") to provide the Caring Society's views regarding the three options for determining parameters around Canada's referral of Jordan's Principle requests 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. This letter also responds to the Panel's December 5, 2024 direction to provide, by December 13, 2024, the Caring Society's views on Canada's December 4, 2024 request regarding possible amendments to the timelines in the Letter Decision. As directed by the Panel on December 9, 2024, this letter also responds to the AFN's December 9, 2024 request regarding the timelines under the Letter Decision and provides the Caring Society's availability for a Case Management Conference between December 17-20, 2024.

AFN's request to suspend all deadlines until March 31, 2025

The Caring Society does not consent to the AFN's request, which would effectively stay or adjourn this proceeding until March 31, 2025. The Caring Society notes that the AFN's position on the non-compliance motion and Canada's cross-motion was that any relief ordered should apply only until March 31, 2025. The Tribunal has already rejected that date in making the orders found in the Letter Decision.

The Caring Society also does not agree with the characterization of the decisions made by the First Nations-in-Assembly in October and December 2024. Resolutions 60/2024 and 61/2024 and Draft Resolutions 38/2024 and 41/2024, on their very terms, address the long-term reform of

First Nations Child and Family Services and Jordan's Principle. The Caring Society notes that the last page of Draft Resolution 38/2024 is found at the last page of the PDF sent by Mr. Williamson this morning (and would fit in sequence after page 14 of the PDF).

The items ordered in the Letter Decision all relate to the immediate measures required to address the crisis in Canada's implementation of Jordan's Principle. This is also the situation addressed, in part, by Emergency Draft Resolution 02/2024, which specifically supports the Letter Decision, without calling on any delays in Canada's or any other party's compliance with the timelines and consultation process set out in the Letter Decision, in the following operative provisions:

1. Support the November 21, 2024, Tribunal letter decision on Jordan's Principle to address Canada's non-compliance.

[...]

6. Call on Canada to not seek judicial review of the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle.
7. Call on Canada to take immediate and effective measures to fully implement all Tribunal orders including the November 21, 2024 Tribunal letter decision on Jordan's Principle.

Emergency Draft Resolution 02/2024 was approved by the First Nations-in-Assembly on December 5, 2024 with 148 Chiefs in favour (88%), 9 opposed (5%), and 12 abstentions (7%). This is a strong endorsement of "immediate and effective measures" to implement the Letter Decision directly from First Nations rights holders.

In any event, the direction provided to the AFN by the First Nations-in-Assembly has been outstanding for several weeks. Resolutions 60/2024 and 61/2024 were passed with a strong mandate, and the three additional resolutions passed by the First Nations-in-Assembly reaffirmed that existing direction and did not change it. It is thus unclear to the Caring Society why the AFN now proposes 3.5 months of further delay, when the state of the First Nations-in-Assembly's direction is as it was when the Letter Decision was released 2.5 weeks ago.

Indeed, the request for a 3.5-month adjournment or stay was not raised at a well-attended in-person public dialogue session, hosted by the AFN on December 2, 2024 in the lead-up to the Special Chiefs Assembly, to which Caring Society representatives were invited as members of the Jordan's Principle Action Table. At this session, AFN's legal counsel provided information on the Tribunal's Letter Decision, and did not mention any forthcoming request from AFN to delay proceedings flowing from that decision.

Further delay is also inconsistent with the spirit of the fourth operative provision of Resolution 61/2024, which calls on Canada and the AFN not to seek to set aside any of the Tribunal's orders.

In any event, all but one of the twelve items required by the December 10, 2024 deadline require Canada to provide information. The one exception is for the parties to provide procedural views

on a discrete point (addressed below). Five of the ten items required by the January 9, 2025 deadline are also matters on which Canada is required to provide information. The remaining five items needed to be addressed by January 9, 2025, as well as those for February 12 and 22, 2025, are operations-related matters the parties are to co-develop (or seek Tribunal direction on if consensus is not possible). While the matters raised in the resolutions noted above are of great significance, they do not touch on specific operations.

In any event, the obligations flowing from the Letter Decision are Canada's to implement, not the AFN's. The harms to First Nations children linked to Canada's non-compliance with Jordan's Principle require that Canada's status quo implementation change and that there be effective Tribunal oversight of these changes to ensure that the orders are fully discharged. As the history of this proceeding has shown, these changes must benefit from all parties' contributions and views to be effective. A further 3.5 months of delay due to unsupported assertions related to administrative concerns by AFN will not serve either objective and would be procedurally unfair.

Canada's request to amend timelines

Canada's December 4, 2024 submission includes updated numbers regarding the status of some parts of the backlog, but does not provide the basis for those calculations. The current status of the number of urgent cases is also uncertain, as the nature of the intake backlog is such that there may be unopened cases that have not yet been reviewed for urgency. As a result, the basis for ISC's claims of the number of urgent cases is unclear. Moreover, Canada's communication did not contain a concrete proposal regarding the amount of additional time it is seeking, or the specific deadlines it proposes to delay. It is also entirely unclear what alternatives ISC has considered to its worst-case scenario of redeploying staff from other critical services within ISC (such as engaging First Nations and First Nations service coordinators in the regions).

In order to support any deadline extension, the Caring Society would need to know the evidence base for Canada's position that delays are required, as well as the alternatives considered to these delays.

The Caring Society is providing this information today in the hope that Canada will provide such information with its reports due tomorrow (December 10, 2024).

Options for determining parameters around Canada's referral of Jordan's Principle requests to an applicable First Nation or First Nation community organization involved in the administration of Jordan's Principle

The Tribunal has provided three options for developing parameters for referrals to First Nations or First Nations communities' organizations involved in the administration of Jordan's Principle:

- (1) New guidelines and a new process are developed by the parties and approved by the Tribunal;

- (2) Existing guidelines are examined for compliance with the Tribunal's rulings and may then be approved following written submissions; or
- (3) The parties identify a more expeditious and fair option for addressing referrals.

The Caring Society's key concern with respect to referral guidelines is that they be evidence based and that there be an opportunity to test and validate those guidelines with the communities that they are meant to serve. There must also be an expedient and effective mechanism to identify when First Nations or First Nations community organizations have insufficient resources to meet needs in their communities (whether in terms of funds to support approved requests, or sufficient staff to process incoming requests in a timely manner).

The Caring Society is unaware of any existing guidelines. If such exist, the Caring Society would support proceeding with a combination of Option 1 and Option 2. Any existing guidelines could be the subject of a defined period of discussions among the parties to identify an agreed mechanism or, if agreement is not possible, elements on which there is consensus. The Caring Society would suggest that, where agreement is not possible, the parties would file focused affidavits (with cross-examination if necessary) and written submissions on the areas where there are divergent views, so that the Tribunal can provide the required direction. This is akin to the process followed in 2020 with respect to the Compensation Process through three rounds of submissions on various points as the Compensation Framework evolved. As a result, it would be familiar to both the parties and to the Tribunal in the event consensus is not possible.

The above approach assumes, however, that Canada and the AFN refuse to have productive discussions with the parties regarding the matters listed in the Letter Decision prior to January 9, 2025. If not, the Caring Society confirms that its preference would be to proceed with Option 2, with Canada providing its materials by January 9, 2025 and the timelines for the parties' responses to be established once the volume of material involved is identified.

Availability for Dec 17-20, 2024 Case Management Conference

Further to the Panel's request for availability for a Case Management Conference between December 17 and 20, 2024, the Caring Society would be available as follows:

- i. December 17, 2024 from 9 AM to 4 PM
- ii. December 19, 2024 from 9 AM to 1 PM
- iii. December 20, 2024 from 9 AM to 11:30 AM

If no other dates are available, the Caring Society can be available on December 19, 2024 from 1-4 PM.

In closing, the Caring Society recognizes the serious harms to First Nations children, youth and families that have, and continue to arise, from Canada's non-compliance and failure to

implement the Tribunal's orders on Jordan's Principle. In the best interests of the children and the duly expressed direction of First Nations Leadership that the Tribunal's orders be given full effect, without delay.

Please advise if the Tribunal has any questions or requires further submissions.

Yours truly and respectfully submitted,



David P. Taylor

DPT/jk

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