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Via Email

Our File Number: LEX-500219273

September 25, 2025

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Members Marchildon and Lustig:

**Re: First Nations Child and Family Caring Society of Canada et al. v.
the Attorney General of Canada et al.
Tribunal File: T1340/7008
2025 CHRT 80 - Update**

This letter constitutes the Attorney General of Canada's monthly update, as ordered in 2025 CHRT 80. This is also our response to the Panel's request for additional information as set out in the Panel's letter dated September 12, 2025. More specifically, the Panel sought clarification regarding the scope of the *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (the AIP) and the parties' positions respecting the scope of long-term reform of the First Nations Child and Family Services Program (FNCFS Program).

1. The Scope of the AIP

As the Panel is aware, the AIP was finalized on December 31, 2021 by Canada, the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). A publicly available summary of the AIP was previously filed with the Panel.¹

On March 13, 2025, the Attorney General of Canada (AGC) filed the Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025, in response to the Caring Society's consultation motion (the Farthing-Nichol Affidavit). The AGC further referenced the Farthing-Nichol Affidavit in its March 17, 2025 response to the Tribunal respecting long-term FNCFS Program reform.

¹ Exhibit 61 of the Affidavit of Cindy Blackstock, affirmed January 12, 2024.

The scope of the AIP was set out in the Farthing-Nichol Affidavit:

i. The AIP

32. With the assistance of the late Honourable Murray Sinclair, in fall 2021, Canada, the Caring Society, the AFN, COO and NAN (collectively the **AIP Parties**) negotiated a detailed outline of a reformed FNCFS Program, high-level principles and process for long-term reform of Jordan's Principle, and commitments from Canada towards immediate reforms. These were captured in the AIP. While the AIP itself is confidential and subject to settlement privilege, publicly available information on the AIP, including a publicly available summary, was previously filed with the Tribunal in Exhibit 61 of the January 12, 2024 Affidavit of Cindy Blackstock.

33. As part of the AIP negotiations, ISC committed to immediate reforms of the FNCFS Program and measures related to Jordan's Principle. Those reforms and measures, which were incorporated into 2022 CHRT 8 on consent, include:

- a) FNCFS Program funding for prevention and post-majority support services, which began to flow in the 2022-23 fiscal year;
- b) funding for Jordan's Principle research, including a data assessment and a needs assessment from IFSD;
- c) funding for IFSD's FNCFS Program Phase 3 and non-agency First Nations research;
- d) creation of the EAC; and
- e) consultation with the Parties on mandatory cultural competency training and performance commitments for employees within ISC.

34. Though not part of 2022 CHRT 8, ISC also began in the 2022-2023 fiscal year to implement the AIP's commitment to fund First Nation Representatives Services across the country, rather than just in Ontario.

35. In the 2023-2024 fiscal year, outside the FNCFS Program, ISC began distributing to First Nations the \$2 billion over five years committed in the AIP and announced in Budget 2022 to support the purchase, construction, and renovation of housing units in their communities. That time-limited funding assists First Nations in addressing housing as a cause of children coming into care and remaining in care.

36. Regarding Jordan's Principle, the AIP Parties agreed to discuss options for First Nations to take on a larger role in approving and delivering products, services and supports under Jordan's Principle. The AIP Parties also agreed that, following a needs assessment and feedback from First Nations and service providers, they would negotiate towards a long-term approach to Jordan's Principle.

37. The AIP established the foundation for long-term reform of both the FNCFS Program and Jordan's Principle. Based on this foundation, the AIP Parties engaged in negotiations starting in 2022 towards long-term reform of both Jordan's Principle and the FNCFS Program in accordance with the AIP approach.

The Affidavit of Amber Potts, affirmed March 3, 2025 and filed by the AFN in response to the consultation motion, further states that the AIP did *not* include:

- funding for children residing off-reserve;
- the indefinite continuation of the actuals process for a variety of the funding streams beyond the recommendations of the Institute for Fiscal Studies and Democracy; or
- the retention of oversight of the CHRT with respect to the implementation of any Final Agreement.²

2. The Co-Complainants' Position

In Canada's factum in response to the Caring Society's consultation motion, Canada took the position that there is no practical utility in additional consultations or negotiations with the co-complainants.³ We confirm that this position was based on the co-complainants' and NCCC's significant expansion of relief sought beyond the scope of the complaint, as well as the disappointing results of Canada's significant, repeated efforts at resolving this matter.

We have clearly and consistently stated Canada's position that ideally the complaint should be resolved through negotiation and agreement of all parties. However, since the rejection of the Draft Final Agreement by the First Nations-in-Assembly, the co-complainants have sought increasingly expansive relief that is well outside the scope of the AIP, and more importantly beyond the scope of the complaint and this Panel's previous findings and orders.

Canada's position on this point is explained and supported by the evidence and submissions filed in response to the Caring Society's consultation motion.⁴ The evidence can be summarized as follows:

- On October 18, 2024, the Chiefs-in-Assembly adopted Resolution 60/2024 and Resolution 61/2024, which:

² Affidavit of Amber Potts, affirmed March 3, 2025 [**Potts Affidavit**] at para 34.

³ Factum of the Attorney General of Canada, dated May 15, 2025 [**Canada's Factum**].

⁴ Potts Affidavit, at paras 33–38; Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025 [**Farthing-Nichol Affidavit**]; Canada's Factum cited to Resolution 61/2024, art 1(i), citing *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 36 which indicates that for the purposes of Jordan's Principle, a First Nations child includes children off-reserve, *contra* *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 20 at para 280; Resolution, 61/2024, art 1(o). The Caring Society filed a copy of these resolutions with the Tribunal on January 3, 2025. They were subsequently filed in evidence as Exhibit E to the Potts Affidavit.

- rejected the Draft Final Agreement and called on Canada to renegotiate through a public negotiation process that would include the Caring Society and the National Children’s Chiefs Commission (NCCC);⁵
- directed the NCCC “to renegotiate the draft [Final Settlement Agreement] FSA” in line with a list of directions⁶ which include:
 - ensuring funding is made available for children residing off-reserve;⁷
 - the indefinite continuation of the actuals process for a variety of the funding streams, beyond the recommendations of the Institute for Fiscal Studies and Democracy; and
 - the retention of the Tribunal’s oversight with respect to the implementation of any new final agreement.⁸
- On December 5, 2024 the First Nations-in-Assembly adopted Resolution 90/2024, stating in part that the First Nations-in-Assembly confirm that the \$47.8 billion committed through the rejected Draft Final Agreement is only the floor for negotiations on long-term reform of the FNCFS Program.⁹
- The Caring Society, the AFN and the NCCC all subsequently wrote to Canada, expressly seeking that Canada obtain a new negotiation mandate to publicly (without negotiation privilege) negotiate towards long-term reform on the terms approved by the First Nations-in-Assembly.¹⁰
- On February 21, 2025, the NCCC provided Canada with its list of ten “outstanding issues with the LTR [long-term FNCFS Program reform] Agreement which must be addressed before the LTR Agreement is finalized”.¹¹ The list of outstanding issues includes proposed expansions to the Draft Final Agreement, including providing FNCFS Program

⁵ Farthing-Nichol Affidavit, para 62.

⁶ Potts Affidavit, para 35 and Exhibit E.

⁷ One of those directions was to “[e]nsure that the definition of ‘First Nations child’ as defined in 2020 CHRT 36 is considered and incorporated into the FSA.”: Potts Affidavit, Exhibit E; Resolution 61/2024, art 1(i), citing *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 36 which indicates that for the purposes of Jordan’s Principle, a First Nations child includes children off-reserve; see also statements of Dr. Cindy Blackstock on December 4, 2024, at the Assembly of First Nations Special Chiefs Assembly, wherein she publicly indicated that the intent behind defining ‘First Nations child’ according to 2020 CHRT 36 was to expand the FNCFS Program to children off-reserve: Dr. Cindy Blackstock delivered at the Assembly of First Nations Special Chiefs Assembly (December 4, 2024), online: <cpac.ca/public-record/episode/assembly-of-first-nations-special-chiefs-assembly--december-4-2024?id=35640966-d27b-414c-bfc4-4bc8384a4bd8> at 7:32:00.

⁸ Farthing-Nichol Affidavit, para 62; Potts Affidavit, para 34.

⁹ Farthing-Nichol Affidavit, para 63; Quintana-James Affidavit, Exhibit D.

¹⁰ Farthing-Nichol Affidavit, para 64 and Exhibit F; Potts Affidavit, Exhibit F; Quintana-James Affidavit, Exhibits E, F and H.

¹¹ Farthing-Nichol Affidavit, para 64 and Exhibit F [our emphasis].

services to First Nations children and families off-reserve and lengthy retention of CHRT jurisdiction.¹²

Since the filing of the evidence noted above, the co-complainants and the NCCC have further expanded the relief sought beyond the scope of the complaint. For example, on August 21, 2025, the NCCC wrote to Canada to affirm their “unwavering commitment to ensure the fair and equitable inclusion of the Northwest Territories (NWT) in the reform of First Nations child and family services...” (enclosed). The funding of child and family services in the Northwest Territories, where the FNCFS Program does not operate, has always been outside the scope of the complaint.

3. Canada’s Position

For clarity, Canada has not yet determined the path forward with respect to long-term FNCFS Program reform outside Ontario, following the rejection of the Draft Final Agreement and the expansive new proposals made by the co-complainants and NCCC.

Canada understands and shares the Tribunal’s concern on whether there is a lack of consensus amongst First Nations on a national long-term reform approach. Following the rejection of the Draft Final Agreement by the First Nations in Assembly, and the subsequent negotiation of the Ontario Final Agreement, several First Nations have communicated with the Minister of Indigenous Services and various ISC officials to indicate their interest in negotiating their own regional agreements.

We hope this information is of assistance.

Sincerely,



Dayna Anderson
Senior General Counsel

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¹² Farthing-Nichol Affidavit, para 64(i) and Exhibit F.

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From: Tracy Lavin <Tracy.Lavin@ourchildrenourway.ca>
Sent: Wednesday, August 27, 2025 8:51 AM
To: MinistreSA / MinisterIS
Cc: pauline.frost@vgfn.ca; kakfwistephen; Helen Henderson; debfoxcroft@gmail.com; Kelsey.jacko@clfn.com; desmondb@louisbulltribe.ca; erica.beaudin@cowessessfn.com; ivan.sawan@loonriver.ab.ca; crystal.okemow@luckymancree.com; davidmonias@gmail.com; angela.levasseur@ncncree.com; Heidi.Cook@misipawistik.com; tfnchief@atfn.ca; fortfolly@fortfolly.ca; ross.perley@neqotkuk.ca; michelleglasgow@sipeknekatik.ca; frontdesk@acadiaband.ca; kcoade@mcpei.ca; j.brake@qalipu.ca; bbenoit@mfn.gov.ca; corinne.dyment@lennoxisland.com
Subject: MIN-A32750 - Fair and equitable inclusion of the NWT in FNCFS and Jordan's Principle reform
Attachments: 2025 Aug 21 Inclusion of NWT.pdf
Categories:

COURRIEL EXTERNE - FAITES PREUVE DE PRUDENCE / EXTERNAL EMAIL - USE CAUTION

Dear Minister Gull-Masty,

Please find attached a letter from Chief Pauline Frost, Chair of the National Children's Chiefs Commission.

Regards,
Tracy



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August 21, 2025

By email

The Honourable Mandy Gull-Masty
Minister of Indigenous Services Canada
10 rue Wellington
Gatineau, QC K1A 0H4

Re: Fair and equitable inclusion of the NWT in FNCFS and Jordan's Principle reform

Dear Minister Gull-Masty,

On behalf of the National Children's Chiefs Committee (NCCC), I am writing to affirm our unwavering commitment to ensuring the fair and equitable inclusion of the Northwest Territories (NWT) in the reform of First Nations child and family services and Jordan's Principle. This commitment was clearly articulated in Assembly of First Nations (AFN) Resolution No. 87/2024, which received overwhelming support—over 98%—from the AFN Chiefs in Assembly.

It is imperative that Canada support our efforts to improve the lives and outcomes of First Nation children and families living on reserve, in the Yukon and in the Northwest Territories by addressing the longstanding and systemic inequities in First Nations child and family services and the implementation of Jordan's Principle.

In our collective pursuit of justice and equitable treatment, we wish to emphasize the critical importance of directing substantively equitable resources to First Nations and their communities. We believe that provincial and territorial governments should not act as intermediaries, controlling the allocation of funds according to their own priorities. Instead, funding must flow directly to First Nations, ensuring that our communities have the necessary resources to address their unique needs and priorities effectively.

The NCCC urges you and your department to take swift action to ensure that the principles outlined in AFN Resolution No. 87/2024 inform your decisions moving forward. Together, we can work toward meaningful reconciliation and reforms that will ultimately transform the lives of First Nations children and families across Canada.

The NWT region stands firmly supported by the NCCC and the AFN Chiefs in their efforts to achieve full and equitable inclusion in all aspects of FNCFS and Jordan's Principle reform.

Thank you for your attention to this urgent matter. We look forward to your continued collaboration as we strive for a brighter future for all First Nations children.

Sincerely,

A handwritten signature in black ink, appearing to be 'Pauline Frost', with a stylized, cursive script.

Chief Pauline Frost
Chair, National Children's Chiefs Committee