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Via Email

Our File Number: LEX-500219273

March 23, 2026

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**

Thank you for the opportunity to respond to the First Nations Child and Family Caring Society (Caring Society) March 6, 2026, correspondence and for the extension to March 23, 2026.

This response is provided in advance of an upcoming case management conference. If the Tribunal plans to issue a further ruling on Jordan's Principle, we request notice of the issues to be decided and an opportunity for the parties to file evidence and written submissions.

I. THE CONSULTATION PROTOCOL

The 2018 Consultation Protocol, agreed to by all parties, provides that Indigenous Services Canada (ISC) will fund consultation activities related to Jordan's Principle and the First Nations Child and Family Services (FNCFS) Program, but not litigation costs. The Protocol also anticipates funding based on an agreed-upon workplan and annual budget.

From 2018 to 2024, at the Caring Society's request, ISC took a flexible approach and funded the Caring Society through uncapped reimbursement, without a workplan, budget, contribution agreement, or detailed documentation. During this period, the Caring Society received at least \$7.6 million in funding.¹

The Caring Society's 2024 decision to withdraw from long-term reform negotiations and oppose the draft Final Agreement on Long-term Reform of the FNCFS Program, while

¹ Affidavit of Duncan Farthing-Nichol, affirmed March 13, 2025 (**Farthing-Nichol Affidavit**) at paras 84-86.

advancing its positions primarily through litigation on both the Program and Jordan's Principle, made it increasingly difficult for ISC to determine whether claimed expenses were eligible consultation costs. Despite these challenges, ISC continued to fully reimburse the Caring Society in 2024-25 in the approximate amount of \$1M.

Given these difficulties, and to align with the Consultation Protocol and ensure fiscal accountability and transparency, ISC reset its administrative approach on February 6, 2025. Uncapped reimbursement is no longer available, and consultation funding now requires an agreed-upon workplan and annual budget.² This is a basic expectation for stewardship of public funds and was agreed to in the Consultation Protocol.

The Caring Society sought judicial review of this decision on March 10, 2025.³ The matter remains before the Federal Court and has been held in abeyance while resolution was discussed. After a year without progress, ISC agreed—at the Caring Society's request—to pause the matter again so it could be brought to the Tribunal in March 2026.

Canada remains willing to fund eligible consultation activities under the Consultation Protocol. But in accordance with the Protocol's terms, Canada requires that an agreed-upon workplan and annual budget be put in place, with funding to flow through a standard contribution agreement.⁴

II. JORDAN'S PRINCIPLE UPDATE

This letter provides a brief update on the implementation of Jordan's Principle, including 2025 CHRT 6. Additional information can be provided upon request.

Since the last update in 2025, Canada has reviewed the 2025 IFSD needs assessment and completed an internal audit of Jordan's Principle. Both reports found that the current approach is not sustainable. Their key findings, summarized below, show the need for a more structured framework and changes to how Jordan's Principle is delivered to support long-term stability.

IFSD Needs Assessment

In 2022 CHRT 8, with the consent of all parties, the Tribunal ordered Canada to fund Jordan's Principle research by the Institute for Fiscal Studies and Democracy (IFSD), including a data assessment and a needs assessment.⁵ The Caring Society held the contracts with IFSD, and

² Farthing-Nichol Affidavit at para 85.

³ Federal Court File Number T-814-25.

⁴ A model contribution agreement can be found at: [Funding Agreement Template](#).

⁵ 2022 CHRT 8 at para 171.

the research was intended to support negotiations on long-term Jordan's Principle reform.⁶ The data assessment was completed in September 2022.⁷

Even after the Caring Society withdrew from long-term reform negotiations in early 2024, ISC continued to fund the IFSD needs assessment. It was to examine existing programs and services, identify gaps, estimate the cost of closing those gaps, and provide recommendations for improving the delivery and sustainability of Jordan's Principle.⁸

IFSD's *Considerations for the Sustainability of Jordan's Principle* was completed in August 2025.⁹ IFSD found that, based on available data, it was not possible to identify service gaps for children or determine whether needs caused by jurisdictional or service gaps are being met.¹⁰ For example, data is not systematically collected on why a child seeks Jordan's Principle support, such as a refusal from an existing federal program or a lack of available service.

IFSD concluded that major reform is needed to ensure the effectiveness and long-term sustainability of Jordan's Principle.¹¹ It found that the current model does not allow the government to identify service gaps or unmet needs. IFSD made seven recommendations, including restructuring Jordan's Principle, improving data collection and performance tracking, stabilizing funding during a transition period, and maintaining the Regional Working Group.¹²

ISC is considering these recommendations as it continues to improve the current interim Jordan's Principle model to ensure it can meet its legal obligations towards First Nations children.

Jordan's Principle Audit

ISC also completed an internal audit of Jordan's Principle, released in May 2025.¹³ Like the IFSD needs assessment, the audit found that the current model is not sustainable. Key reasons include growing demand, unclear eligibility rules, and an expanding range of funded products and services.¹⁴

The audit noted that while 2016 CHRT 2 set out the core elements of Jordan's Principle, later Tribunal orders, including by consent, added detailed operational requirements. This has

⁶ Farthing-Nichol Affidavit at paras 78-79.

⁷ [Data Assessment and Framing of an Analysis of Substantive Equality through the Application of Jordan's Principle](#), dated September 2022, filed with the Tribunal in November 2022.

⁸ Farthing-Nichol Affidavit at para 79

⁹ IFSD, [Considerations for the sustainability of Jordan's Principle](#) (August 2025) (IFSD Needs Assessment).

¹⁰ IFSD Needs Assessment at pages 4-5 and 10.

¹¹ IFSD Needs Assessment at pages 19, 26, 36 and 55.

¹² IFSD Needs Assessment at pages ii-iii and 55-56.

¹³ [Audit of Jordan's Principle, Internal Audit Report prepared by: Audit and Assurance Services Branch \(Audit Report\)](#).

¹⁴ Audit Report at page iii.

led to a reactive, process-heavy model that limits ISC’s ability to manage the initiative effectively and sustainably within the government context.¹⁵

The audit identified ways to improve implementation, including supporting long-term sustainability, improving consistency and efficiency, and streamlining access to supports. It recommended that ISC:

- put in place clear roles, responsibilities, and management controls;
- improve processing efficiency, including through technology where appropriate;
- reduce overlap with other ISC programs and provincial or territorial services; and
- clarify how Jordan’s Principle fits within ISC’s broader programs and develop guidance for consistent implementation.¹⁶

ISC is working to address these findings and recommendations.

Need for Operational Reform

Since 2016, when the Tribunal ordered that ISC fully implement Jordan’s Principle,¹⁷ significant progress has been made. Following multiple Tribunal orders, ISC has approved funding for millions of services for First Nations children and families.¹⁸

Canada has also confirmed that \$1.55 billion will be available to support Jordan’s Principle requests from April 2026 to March 31, 2027, including \$775 million in new funding.

However, the current approach to delivering Jordan’s Principle is not sustainable and has contributed to the growing backlog. Based on IFSD’s research and ISC’s experience delivering the initiative under Tribunal orders and Federal Courts decisions, a new operational approach is needed. This approach must respect the intent of Jordan’s Principle, while ensuring it can be delivered effectively, sustainably, and without the continued provision of products, services and supports that are “a thousand miles away from the normative standard”.¹⁹

Improvements are needed to stabilize funding and move from an unpredictable model to one that can be managed reliably within the government context.

2025 CHRT 6

Although ISC believes a new operational approach is needed, it has continued to make best efforts to implement the Tribunal’s orders, including 2025 CHRT 6.

¹⁵ Audit Report at pages 2-3.

¹⁶ Audit Report at pages 17, 34, 34, 38 and 40.

¹⁷ 2016 CHRT 2 at para 481.

¹⁸ 2025 CHRT 6 at para 360.

¹⁹ 2025 CHRT 6 at para 55.

Canada engaged in good-faith consultations under 2025 CHRT 6 to try to reach operationally workable solutions with the parties. These efforts included a lengthy Tribunal-assisted mediation with Member Harrington, which the Tribunal ended in September 2025. Canada then funded private mediation with the Honourable Gerald Morin, a highly respected jurist and eminent First Nations leader, but this process also did not lead to resolution.

During these mediations, ISC continued work on the other requirements of 2025 CHRT 6. Key progress includes:

- ISC applied the Tribunal’s interim definition of “urgent” in 2025 CHRT 6²⁰ and triaged and prioritized those requests, reducing the urgent backlog from 25,000 in December 2024 to 240 as of March 11, 2026;
- As urgent requests were largely addressed, ISC increased efforts to reduce the non-urgent backlog, including contacting families for missing information and cleaning data in its systems;
- ISC prioritized direct payments to service providers and advance funding arrangements to minimize the need for families to incur costs directly. In 2024-25, the vast majority of funding (over 88%) was delivered either through contribution agreements or direct payments to vendors.
- In February 2025, ISC issued a Jordan’s Principle Operational Bulletin to improve clarity and efficiency and to better define what types of requests are appropriate.²¹ The Bulletin sets documentation requirements and notes that certain requests—such as new homes, elite sports, international travel without exceptional medical need, and non-medical supports like child care, furniture, or vehicles—will generally not be approved unless required for substantive equality. In the meantime, ISC continues to assess requests individually in line with Tribunal orders for substantive equality, best interests of the child and access to culturally appropriate services.

Despite these efforts, high demand and unclear decision-making parameters mean a large backlog remains. As of March 11, 2026, 119,736 requests had not yet been decided. New requests continue to be received daily, and although volumes are decreasing, they remain high.

Additional challenges have also emerged, including difficulty staffing the External Expert Review Committee, despite multiple procurement efforts.

While Jordan’s Principle has helped meet many needs, delivering it through iterative orders, without clear operational rules, has led to an unsustainable system. ISC is of the view that lasting solutions require broader policy reform outside this complaint process. Until such

²⁰ 2025 CHRT 6 at paras 153, 155–56, 161, 165: there are two levels of urgent services, including urgent cases involving reasonably foreseeable irreparable harm (requiring immediate response) and urgent cases requiring action within 12 hours. Urgent cases may include “life-threatening cases”, end-of-life/palliative care, risk of suicide, risk to physical safety, no access to basic necessities, risk of entering the child welfare system, caregivers and children fleeing from domestic violence, and bereavement in some cases.

²¹ ISC, [Jordan’s Principle Operational Bulletin](#) (February 10, 2025).

reform occurs, further operational orders alone will not resolve the backlog or underlying issues, whether through adjudication or consent.

III. **MONTHLY UPDATES**

In 2025 CHRT 80, the Tribunal required monthly updates on progress toward long-term FNCFS reform plans outside Ontario. Canada understood this requirement to apply only until the plans were filed, after which the Tribunal would set a fair adjudication process. Canada has made several attempts to agree on a simple and fair schedule with the Caring Society and the AFN, but those proposals were rejected.

Despite this, the Caring Society has continued to file monthly updates. These updates challenge Canada's evidence, include unsworn and hearsay information, and make extensive arguments. This raises concerns about procedural fairness. Evidence should be tested through cross-examination, and arguments should be made through formal written and oral submissions.

While we recognize that the Tribunal is not a court, this proceeding involves significant remedial powers and, in these circumstances, requires a high degree of procedural fairness. Canada therefore respectfully asks the Panel to clarify whether monthly updates are still required and whether it intends to consider the Caring Society's updates dated January 29, 2026, and March 6, 2026.

Sincerely,



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