



Department of Justice
Canada

Ministère de la Justice
Canada

Prairie Regional Office
(Winnipeg)
National Litigation Sector
601-400 St. Mary Avenue
Winnipeg, MB R3C 4K5

Bureau régional des Prairies (Winnipeg)
Secteur national du contentieux
400, avenue St. Mary, pièce 601
Winnipeg (Manitoba) R3C 4K5

Telephone/Téléphone: 204-294-5593
Fax /Télécopieur: 204-983-3636
Email/Courriel: Dayna.Anderson@justice.gc.ca

Via Email

Our File Number: LEX-500219273

June 18, 2026

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A1J4

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

This letter provides Canada's response to the Tribunal's June 12, 2026, Direction (**Direction**).

1. Procedural Fairness Concerns

Canada respectfully raises concerns regarding procedural fairness arising from the process set out in the Direction.

The Direction appears to adopt, in substance, the process proposed by the First Nations Child and Family Caring Society of Canada (**Caring Society**) during the June 5, 2026, Case Management Conference Call (**CMCC**). However, this is not consistent with Canada's understanding of how next steps would unfold following the CMCC.

By the conclusion of the CMCC, Canada understood that:

- First, the Caring Society would provide one or two letters:
 - outlining its question regarding interested party motions in the context of long-term First Nations Child and Family Services (**FNCFS**) Program reform; and
 - setting out its proposed process for addressing interim Jordan's Principle issues.
- Second, all parties would have an opportunity to indicate whether they wished to make submissions in response and provide submissions on next steps.

Canada 

- Third, only after receiving those materials and any responding submissions would the Tribunal determine an appropriate process.

While the Tribunal is master its own procedure, the Direction establishes a detailed and binding process that appears to relate to issues beyond those arising from 2025 CHRT 6, and without first affording Canada or other parties an opportunity to respond to the Caring Society’s proposed approach. Moreover, Canada notes that, aside from the Assembly of First Nations (**AFN**), no parties had prior notice of the Caring Society’s proposed process before the CMCC.

In these circumstances, Canada is concerned that the process now imposed by the Panel does not afford parties a meaningful opportunity to be heard on the structure of the process itself, contrary to the principles of procedural fairness.

2. Scope of the CMCC and Focus on Backlog Issues

Canada also understood that any process flowing from the June 5, 2026 CMCC would be directed toward addressing the existing backlog of Jordan’s Principle requests—particularly the reduction of the non-urgent backlog—and identifying potential near-term measures to support timely service delivery.

At the April 30, 2026 CMCC, the Panel asked Canada’s counsel questions arising from the Panel’s review of Canada’s March 23, 2026 letter, including whether the Tribunal should adjudicate issues concerning eligibility and operational parameters. With respect to that question in particular, Canada’s counsel advised that:

- we did not have instructions;
- the “unclear decision-making parameters” referred to in Canada’s March 23, 2026 correspondence related to the challenge and time required to apply an individualized substantive equality analysis to a large volume of requests; and
- ISC’s operational practices cannot be easily adjudicated in the interim, but are more appropriately addressed through long-term reform.

For clarity, Indigenous Services Canada’s (**ISC**) operational challenge is not in understanding the legal principles of substantive equality as outlined in Supreme Court of Canada jurisprudence. Rather, it is in *applying* the principles to hundreds of thousands of requests, with minimal supporting documentation, within short timeframes. As stated in Canada’s March 23, 2026 correspondence: “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 reform occurs, further operational orders alone will not resolve the backlog or underlying issues, whether through adjudication or consent.”

The Tribunal’s request for a formalized “operational definition” of substantive equality and a “decision matrix” suggest that Panel may be shifting from considering interim, backlog-related issues toward examining broader, long-term policy and design issues. Canada is

concerned that this shift goes beyond the immediate backlog-related issues identified in 2025 CHRT 6 and discussed at the CMCC, and risks expanding the scope of the process into systemic or forward-looking matters, without prior notice to the parties or an opportunity to make submissions on how such issues should be addressed within the current proceedings.

3. Substantive Equality

Notwithstanding the concerns outlined above, Canada provides the following information in response to the Tribunal’s Direction.

ISC strives to apply substantive equality in accordance with well-established jurisprudence of the Supreme Court of Canada, which recognizes that:

- substantive equality requires consideration of the actual circumstances and needs of individuals and groups, rather than formal equality alone;
- there is a need to account for historic disadvantage, systemic discrimination, and distinct needs; and
- equality analysis is inherently contextual, fact-specific and comparative.¹

Consistent with this jurisprudence, ISC has been making every effort to apply substantive equality on an individualized basis to Jordan’s Principle requests, taking into account the unique circumstances of the child, their needs, and the context in which the request arises, as outlined in the Panel’s previous orders. However, substantive equality does not lend itself to a rigid or exhaustive definition outside of a particular factual context.² Given the inherently contextual nature of the application of substantive equality, Canada does not have a definitive ‘operational definition of substantive equality’ publicly available on Indigenous Services Canada’s website.

Rather than any uncertainty in the legal meaning of substantive equality, the complexity of *applying* substantive equality to a large volume of individual and group circumstances contributes to operational pressures, including the non-urgent request backlog. ISC receives a wide range of requests for products, services, and supports spanning the health, education, and social sectors.

Canada respectfully submits that any prescriptive direction from the Tribunal regarding how ISC must apply substantive equality in defined, but disparate categories of cases raises

¹ See, for example, *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143; *R. v. Kapp*, 2008 SCC 41; *Quebec (Attorney General) v. A*, 2013 SCC 5.

² *Withler v. Canada (Attorney General)*, 2011 SCC 12 at para. 66, per Abella J. and McLachlin C.J. for the Court: “The particular contextual factors relevant to the substantive equality inquiry at the second step will vary with the nature of the case. A rigid template risks consideration of irrelevant matters on the one hand, or overlooking relevant considerations on the other”; *Centrale des syndicats du Québec v. Québec (Attorney General)*, 2018 SCC 18 at para. 25 per Abella J. for the majority on s. 15, where she describes “formal equality” as “an approach expressly rejected by this Court in *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, where the Court refused to apply a rigid Diceyan analysis and declared, instead, that substantive equality is the premise underlying s. 15.”

concerns not only of discretion, but of institutional role. It is well established that statutory decision-makers are responsible for exercising their discretion in light of the particular facts before them. Substantive equality is inherently contextual and fact-specific. Any orders that dictate how ISC must apply substantive equality across heterogeneous categories of cases risks transforming that contextual analysis into a set of rigid rules, and in doing so, risks displacing ISC's role as the decision-maker responsible for applying the law in the first instance.

More broadly, such rules-based orders risk moving the Tribunal beyond its adjudicative function and into the design and ongoing management of independent administrative decision-making processes. While the Tribunal has retained a remedial role respecting the Merit Decision (2016 CHRT 2), the assessment of Jordan's Principle requests remains within ISC's statutory and operational mandate. Canada recognizes the importance of accountability and review mechanisms in individual cases. Existing avenues including section 18.1 of the *Federal Courts Act* remain available where the application of substantive equality in any given case raises concerns.

4. "Decision Matrix"

Canada acknowledges the Tribunal's request regarding a purported "decision matrix" used to process Jordan's Principle requests. This request raises the same procedural fairness concerns as outlined above. While the Minister of Indigenous Services has publicly discussed the potential development of a "matrix approach" to support federal decision-making, this approach has not been developed. Had Canada been afforded the opportunity to respond to the Caring Society's proposed approach, we could have clarified any assumptions in this regard.

5. Questions and Submissions Process

Canada seeks clarification regarding the purpose and scope of the Tribunal's questions-and-submissions process set out in the Direction.

While the Direction indicates that the Tribunal seeks "solutions," it does not identify:

- the specific issues the Tribunal intends to determine;
- the legal or factual determinations that may result; or
- how the questions and responses will inform the Tribunal's decision-making.

Canada is further concerned that it is required to respond within a two-week period to an undefined and unrestricted set of questions and submissions relating to its operations. The process, as framed, may become open-ended in scope, effectively resembling a broad inquiry into Canada's administration of Jordan's Principle without defined parameters.³

³ *Richards v Correctional Service Canada*, 2025 CHRT 57 at paras 46–49.

In Canada's respectful view, the questions-and-submissions process raises procedural fairness concerns. In particular:

- parties should have clarity regarding the issues to be determined and the purpose of the process; and
- timelines should be proportionate to the scope and complexity of the information sought.

Canada therefore respectfully requests that the Tribunal:

- clarify the objectives and intended outcomes;
- identify, to the extent possible, the issues it seeks to resolve; and
- reconsider the timelines and structure of the process to ensure fairness to all parties while remaining mindful of the important interests at stake.

Canada is of the view these requests will assist the Tribunal in proportionally managing these proceedings and prevent devolution into a commission of inquiry.⁴

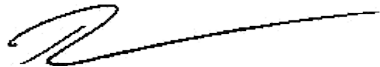
6. Conclusion

Canada remains committed to the best interests of First Nations children and working constructively to achieve timely and effective solutions to the backlog of requests, placing First Nations children at the centre of these proceedings. This is reflected in the significant progress that Canada has made in reducing the backlog to date.

At the same time, Canada respectfully submits that any further adjudication of Jordan's Principle requires a process that is transparent, proportionate, and procedurally fair.

Canada would welcome further guidance from the Tribunal addressing the concerns outlined above.

Sincerely,



Dayna Anderson
Senior General Counsel

⁴ *Richards v Correctional Service Canada*, 2025 CHRT 57 at paras 46–49.

CC:

David Taylor and Kiana Saint-Macary
 Conway Baxter Wilson LLP
 400-411 Roosevelt Avenue
 Ottawa, Ontario K2A 3X9
 Email: dtaylor@conwaylitigation.ca
ksaintmacary@conwaylitigation.ca

Counsel for the Complainant, First Nations
 Caring Society of Canada

Sarah Clarke
 Clarke Child and Family Law
 36 Toronto Street, Suite 950
 Toronto, Ontario M5C 2C5
 Email: sarah@childandfamilylaw.ca

Counsel for the Complainant, First Nations
 Caring Society of Canada

Peter N. Mantas, Gabrielle Cyr and Clive
 Ngan
 Fasken Martineau DuMoulin LLP
 55 Metcalfe Street, Suite 1300
 Ottawa, Ontario K1P 6L5
 Email: pmantas@fasken.com
gcyr@fasken.com
cngan@fasken.com

Counsel for the Complainant, Assembly of
 First Nations

Anshumala Juyal and Khizer Pervez
 Canadian Human Rights Commission
 344 Slater Street, 8th Floor
 Ottawa, Ontario K1A 1E1
 Email: Anshumala.Juyal@chrc-ccdp.gc.ca
khizer.pervez@chrc-ccdp.gc.ca

Counsel for the Complainant, Assembly of
 First Nations

Maggie Wente, Jessie Stirling-Voss,
 Ashley Ash, Katelyn Johnstone and
 Jenna Rogers
 Olthuis Kleer Townshend LLP
 250 University Avenue, 8th Floor
 Toronto, Ontario M5H 3E5
 Email: mwente@oktlaw.com
jstirling@oktlaw.com
aash@oktlaw.com
kjohnstone@oktlaw.com
jrogers@oktlaw.com

Counsel for the Interested Party,
 Chiefs of Ontario

Julian N. Falconer, Asha James,
 Shelby Percival and Meghan Daniel
 Falconers LLP
 10 Alcorn Avenue, Suite 204
 Toronto, Ontario M4V 3A9
 Email: julianf@falconers.ca
ashaj@falconers.ca
shelbyp@falconers.ca
meghand@falconers.ca

Counsel for the Interested Party,
 Nishnawbe Aski Nation

Justin Safayeni and Stephen Aylward
 Stockwoods LLP
 TD North Tower
 77 King Street West, Suite 4130
 Toronto, Ontario M5K 1H1
 Email: justins@stockwoods.ca
stephenA@stockwoods.ca

Counsel for the Interested Party, Amnesty
 International

Harold Cochrane and Alyssa Cloutier
 Cochrane Sinclair LLP
 Swan Lake First Nation
 115-300 Alpine Way
 Headingley, Manitoba R4H 0E1
 Email: hcochrane@cochranesinclair.ca
acloutier@cochranesinclair.ca

Counsel for the Interested Party, Southern
 Chief's Organization

Daniel Goudge and Alexandra Heine
 Stockwoods LLP
 TD North Tower
 77King Street W, Suite 4130
 Toronto, Ontario M5K 1H1
 Email: dang@stockwoods.ca
alexandrah@stockwoods.ca

Counsel for the Interested Party, Our
 Children Our Way

Pierre-Simon Cleary, Sophie Gagne and
 Marc-Olivier Brousseau
 First Nations of Quebec and Labrador
 Health and Social Services Commissions
 250, place Chef Michel Laveau, local 102
 Wendake, Quebec G0A 4V0
 Email: pcleary@csssbnql.com
lbmouellet@csssbnql.com
mobrousseau@csssbnql.com

Counsel for the Interested Party, First
 Nations of Quebec and Labrador Health
 and Social Services Commission
 (FHQLHSCC) and the Assembly of First
 Nations Quebec Labrador (AFNQL)

Carly Fox and Jasen Erbeznik
 Fox LLP
 79 Redwood Meadows Drive
 Redwood Meadows, Alberta T3Z 1A3
 Email: cfox@foxllp.ca
jcurrie@foxllp.ca

Counsel for Interested Party, Assembly of
 Manitoba Chiefs

Scott Smith, Alexander DeParde and
 Taskeen Nawab
 Aird & Berlis LLP
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, Ontario M5J 2T9
 Email: ssmith@airdberlis.com
adeparde@airdberlis.com
tnawab@airdberlis.com

Counsel for the Interested Party, National
 Children's Chief's Commission

Liam A. Smith and Tuma T. W. Young, KC,
NWL, IPC
Smith Law Droit Inc.
P.O. Box 8010 Membertou PO
Membertou First Nation, Nova Scotia
B1S 2N0
Email: liam@smithlawinc.com
tuma@smithlawinc.com

Counsel for the Interested Party, National
Children's Chief's Commission