

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
and ASSEMBLY OF FIRST NATIONS**

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

and

**CHIEFS OF ONTARIO, NISHNAWBE ASKI NATION, and AMNESTY
INTERNATIONAL CANADA**

Interested Parties

**MOTION RESPONSE OF THE ATTORNEY GENERAL OF CANADA
TO JOINT MOTION OF THE FIRST NATIONS CHILD AND FAMILY CARING
SOCIETY OF CANADA, THE ASSEMBLY OF FIRST NATIONS, CHIEFS OF
ONTARIO AND NISHNAWBE ASKI NATION**

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I. OVERVIEW

1. The joint motion of the First Nations Child and Family Caring Society of Canada (**Caring Society**), the Assembly of First Nations (**AFN**), the Chiefs of Ontario (**COO**) and Nishnawbe Aski Nation (**NAN**) (collectively, **Parties**) seeks 39 orders relating to 10 previous Tribunal decisions, including 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14 (as amended by 2017 CHRT 35), 2019 CHRT 7, 2020 CHRT 20, 2020 CHRT 36, 2021 CHRT 41, and 2025 CHRT 6 (**Joint Motion**). Portions of the relief sought extend beyond the issues identified for determination in this process and beyond the scope of the Tribunal's remedial role in these proceedings.

2. First, the Tribunal did not invite the Parties in this process to revisit the complaint or relitigate Tribunal decisions that preceded 2025 CHRT 6. Rather, the Tribunal directed the Parties to address remaining issues from 2025 CHRT 6 and what Canada has implemented since then. The process should remain focused on those matters.

3. Canada has not waited for further orders to address the operational problems identified in these proceedings. It has taken steps to reduce the backlog, apply the Tribunal's interim definition of urgent requests and improve service delivery, while recognizing that significant work remains. The Joint Motion must be considered in light of both that progress and the effect the proposed orders would have on Canada's ability to continue making improvements for First Nations children.

4. Second, the motion should not become a parallel process seeking additional consultation obligations. Canada has adduced evidence and made submissions on consultation issues in response to the Caring Society's Consultation Motion, which remains under reserve. The extensive consultation-related orders now sought risk duplicating issues already before the Tribunal. Canada

has also engaged, and funded, extensive consultation efforts, including more than 10 months of mediated discussions following 2025 CHRT 6, without reaching agreement on consent orders. Canada submits that further overlapping processes would draw time and resources away from implementing improvements in service delivery.

5. Third, many of the proposed orders raise broader questions concerning the distinction between remedies directed at discrimination and enforcing compliance with existing orders and directions prescribing the future administration of Jordan's Principle through the development of public policy. Canada recognizes the Tribunal's remedial authority. It submits, however:

- a. A majority of the orders sought¹ would involve the Tribunal in the design, approval or ongoing supervision of operational frameworks, decision-making structures, accountability mechanisms and policy instruments. Canada submits that further orders, if any, should remain connected to the implementation of 2025 CHRT 6 and enforcement of existing orders, and should not extend into matters more appropriately addressed through policy development and administration, including decisions with significant financial and operational impacts, to successfully implement Jordan's Principle, and Government of Canada operations as a whole.
- b. Even where proposed orders concern matters arguably within the Tribunal's ongoing remedial role,² the Parties' proposed orders are practically unworkable. Taken together, they could impose operational constraints that affect timely and effective support for children. Canada addresses those concerns in its response below.

6. Fourth, several proposed orders risk adding rules and processes that would make decisions less clear or timely. Some would reintroduce elements of the Back-to-Basics approach that have led to significant operational challenges. Canada recognizes that each child's circumstances must be assessed individually. The February 2025 Operational Bulletin was intended to provide a more structured and transparent framework for documentation and decision-making while preserving

¹ Orders sought in Notice of Motion, paras 2, 7–9, 13–19, 22–24, 26–30, 34–39 at pp 3–4, 7–16.

² Orders sought in Notice of Motion, paras 1, 3–6, 10–12, 20–21, 25, 31–33 at pp 3–9, 11–15.

that individual assessment. Canada addresses these issues in greater detail below and responds to each category of proposed relief in turn.

7. Finally, Canada remains committed to implementing the Tribunal's orders and addressing outstanding service problems:

- a. Canada has implemented the Tribunal's interim definition of urgent;
- b. Canada continues to address and make progress with the backlog, including addressing the wide range of service delivery issues.
- c. Canada has developed a National Service Improvement Plan and a Backlog Action Plan.
- d. Canada is also continuing to work with First Nations on improvements to service delivery and, where applicable, with the Parties through existing processes such as the Jordan's Principle Operations Committee (**JPOC**).

8. Canada asks the Tribunal to consider its progress and the work that remains under those orders, including 2025 CHRT 6, and to decline the additional package of orders sought in this motion.

II. FACTS

A. *The Interim Decision*

9. In its November 21, 2024 Letter Decision, which was followed by 2025 CHRT 6, the Tribunal issued its decision on the Caring Society's motion and Canada's cross-motion on interim Jordan's Principle issues (**Interim Decision**). The Tribunal partly granted both the Caring Society's motion and Canada's cross-motion, in part.³

³ *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v AGC* (21 November 2024), Ottawa T1340/7008 (CHRT) (Summary ruling: Motion and Cross-motion on Jordan's Principle implementation); *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v AGC*, [2025 CHRT 6](#) [2025 CHRT 6].

10. The Interim Decision ordered the Parties to enter consultations on a number of issues related to this Joint Motion with the goal of arriving at requests for consent orders (**Consultation Issues**). These consultations were to include co-development of:

- a. objective criteria to identify urgent Jordan's Principle requests;
- b. definition of "no access to basic necessities";
- c. Objective criteria and guidelines for cases involving caregivers and children fleeing from domestic violence;
- d. Guidelines for coordination between Jordan's Principle and other emergency services meant to support fire evacuation, including how to triage and respond to multifaceted requests that involve Jordan's Principle and other services;
- e. objective criteria to determine who is a "qualified professional" with relevant competence and training to identify urgent cases;
- f. solutions to reduce and eventually eliminate the backlog that are efficient, effective and can work within government context;
- g. options supported by rationale and available evidence in regards to timelines for non-urgent Jordan's Principle requests;
- h. guidelines on when the determination clock starts to run, in keeping with 2017 CHRT 14 and 2017 CHRT 35;
- i. interim practical and operational solutions supported by a rationale and available evidence to redress the hardship imposed on individuals and families (requestors) by reimbursement and payment delays;
- j. co-development of options for how to put in place an interim mechanism including a culturally appropriate streamlined risk management system to ensure that requestors referred to First Nations for Jordan's Principle services have their needs met in a timely manner and without barriers such as underfunding, a lack of coordination including of programs or program restrictions; and
- k. options for orders supported by rationale and available evidence to establish an interim independent, non-complex but effective, credible, national Jordan's Principle complaints mechanism.⁴

⁴ [2025 CHRT 6](#).

11. If consent was not possible, the Parties were to return with options for orders on the issues identified. Further, the Interim Decision provided important clarification on the interim definition of urgent services.⁵

B. *Mediation*

12. Canada has discharged its consultation obligations as set out in the Interim Decision and funded or agreed to fund those efforts. In accordance with the Interim Decision, for 10 months, Canada made good faith efforts to consult and reach agreement with the Parties, engaging in extensive Tribunal-assisted mediation on the Consultation Issues. After the Tribunal ended the mediation process, a private mediator was contracted at Canada's expense and meetings occurred during the Fall of 2025 before being paused. Despite these efforts, significant amounts of time, and considerable financial expense to Canada, the Parties were unable to reach consent orders on the Consultation Issues arising from the Interim Decision.

C. *Consultation Motion*

13. During the mediation, in January 2025, the Caring Society filed a motion asking that the Tribunal issue expedited orders for consultation between Canada, the AFN, and the Caring Society on Jordan's Principle, as well as reform of the First Nations Child and Family Services (FNCFS) Program (**Consultation Motion**). Between March and May 2025, the Parties filed affidavit evidence and written submissions on the Consultation Motion.

⁵ [2025 CHRT 6](#) at para [554](#).

14. The affidavit evidence that Canada and the AFN filed on the Consultation Motion detailed how Canada had extensively participated in and funded consultations, negotiations, research and reform efforts aimed at Jordan's Principle, amongst other matters.

15. Canada's efforts included the negotiation and execution of an Agreement in Principle between Canada, AFN, and the Caring Society, COO, and NAN that was intended to lay the foundation for long-term reform of Jordan's Principle and the FNCFS Program.

16. On the Consultation Motion, Canada took the position that it was implementing the full scope and meaning of Jordan's Principle in accordance with the Tribunal's orders, was actively engaged in discharging the Tribunal's consultation orders on interim reforms set out in 2025 CHRT 6 through Tribunal-assisted mediation, had discharged all of the Tribunal's other consultation orders, and had complied with the Consultation Protocol, which Canada had entered into with other Parties in accordance with the Tribunal's orders in 2018 CHRT 4. Canada argued that the Tribunal should not make further consultation orders. The Consultation Motion remains under reserve.

D. August 2026 Direction

17. On August 21, 2026, the Tribunal issued a direction setting out a process for considering the remaining issues from the Interim Decision and what Canada "has implemented since then".

18. On September 9, 2026, the Parties filed a Joint Motion, seeking 39 orders, many of which are new and beyond the Consultation Issues in the Interim Decision.

III. CANADA'S RESPONSE

A. *Many proposed orders extend beyond compliance oversight and raise broader questions of policy development, administration, and implementation*

19. The Tribunal's remedial jurisdiction stems exclusively from its findings of discrimination in the 2016 CHRT 2 (**Merit Decision**), and any retained jurisdiction must be grounded in and flow from those findings. The existence of a gap, delay, or denial, even if established, does not in itself demonstrate the continuation of a discriminatory practice. The Tribunal's jurisdiction and expertise is limited to determining compliance or non-compliance with its orders and crafting remedies directed at the discriminatory practices it has identified. Further, paragraph 53(2)(a) of the *Canadian Human Rights Act* authorizes measures to redress or prevent discriminatory practices; it does not permit the Tribunal or the Parties to direct how limited public funds should be allocated. Such decisions fall within the executive functions of government, not the Tribunal's adjudicative role. While managing public spending and resources cannot be used to justify discriminatory practice, it is not being used here for any such purpose. The funding by Canada bears the essential hallmarks of core government policy: these are functions that balance public policy considerations.

20. Several proposed orders would exceed that jurisdiction and expertise and would require the Tribunal to approve, prescribe, or supervise aspects of policy development, operational administration, funding structures, and governance arrangements. The Tribunal does not have jurisdiction or the expertise to make funding decisions, design or administer policy or government

initiatives, or oversee their implementation. Yet that is effectively what the Parties improperly seek through certain proposed orders that enter directly or indirectly into these unpermitted areas.⁶

21. The finding of non-compliance in 2025 CHRT 6 does not, without more, establish that the impugned action or inaction constitutes discrimination –as found in the Merit Decision. Instead, such a connection must be demonstrated through a link to the finding of discrimination, and the Tribunal does not have the jurisdiction to generally oversee Canada’s policy choices or prescribe them. Accordingly any further orders should be directed toward compliance with existing Tribunal orders and not the ongoing administration of Jordan’s Principle.

22. Canada addresses those proposed orders below and proposes alternative approaches that are more closely tied to the issues properly before the Tribunal. With respect to the remaining proposed orders concerning additional reporting and consultation requirements, Canada addresses those separately below at paragraphs 27–29 and 33–34.

B. The Tribunal may not require that the Respondent demonstrate that it is using or complying with the Attorney General of Canada’s Directive on Litigation

23. Canada notes the Tribunal’s August 21, 2026 Direction, indicating the Tribunal may require Canada to demonstrate compliance with *The Attorney General of Canada’s Directive on Civil Litigation Involving Indigenous Peoples (Litigation Directive)*. The *Litigation Directive* is an in-house set of guidelines to Department of Justice counsel regarding the conduct of litigation. As an internal policy, the *Litigation Directive* does not have the force of law, impose legal obligations on Canada or give rise to legally enforceable rights. Moreover, the central issue before the Tribunal remains whether Canada has complied with the Tribunal's orders and its obligations

⁶ e.g orders sought in Notice of Motion, paras 1–2, 7, 9, 12–22, 24–28, 30–34, 37–38 at pp 3–4, 7–16.

under the *Canadian Human Rights Act*. Internal government directives do not alter the legal test governing the issues before the Tribunal.

C. Canada has complied with the Interim Decision

24. Canada has taken substantial steps to implement the Interim Decision and continues to provide products, services and supports to First Nations children. It recognizes its responsibility to administer Jordan's Principle to its full scope, as well as the operational challenges and outstanding work described in this response. Canada submits that the further prescriptive operational orders sought in the Joint Motion would not resolve those challenges and could constrain improvements already underway.

25. Canada has considered the proposed orders where they present reasonably viable solutions to resolving the dispute between the Parties. Currently, however, the Parties have failed to identify with any degree of particularity which specific orders, or portions thereof, remain unfulfilled. Given the protracted history of this file, expecting Canada to surmise or speculate on the nature of the alleged deficiencies in the absence of clear, substantiated claims is procedurally unfair. While paragraphs 552 to 585 of the Interim Decision set out various orders, the Joint Motion fails to articulate which exact provisions have been breached (or any previous orders, for that matter).

26. Furthermore, the Parties' inability to agree on consent orders does not equate to Canada's non-compliance. The consultations addressed difficult issues on which agreement was not reached. Canada recognizes that service problems remain, but submits that adding the proposed package of requirements to an already complex, national request-based approach would risk making decisions less timely, consistent and responsive to children's needs. It does not warrant a further interim process that will divert from resources used to implement and administer Jordan's Principle. While

Jordan's Principle has been instrumental in addressing needs, its implementation through a succession of iterative orders has resulted in an unsustainable framework. Consequently, no further orders are warranted or required in this matter.

D. *The Complainants' requests for additional consultation orders is an abuse of process and procedurally unfair*

27. COO and NAN did not bring the Consultation Motion. The Caring Society, however, did, and their Consultation Motion already seeks further consultation orders on Jordan's Principle, and the Tribunal remains seized of that unresolved motion where Canada argued it engaged in and funded extensive consultation efforts, including those prior to 2025 CHRT 6, subsequent mediated consultations for more than 10 months thereafter, and without reaching consent orders. As such, the joint request for further consultative orders in the Joint Motion is an abuse of process by re-litigation of a matter that is under reserve.

28. Therefore, the Tribunal should decline to consider or issue further consultation orders on this Joint Motion, as these are already at issue in the Consultation Motion. Issuing such orders, without deciding the Consultation Motion, would be contrary to judicial economy, section 48.9(1) of the *Canadian Human Rights Act*, fairness, consistency, and the integrity of the administration of justice.

29. Accordingly, Canada will not address the 10 orders⁷ contained in the Joint Motion that seek further consultation or co-development. Canada took the position in the Consultation Motion that it was implementing the full scope and meaning of Jordan's Principle in accordance with the

⁷ e.g. orders for further consultation and/or co-development in Notice of Motion, paras 6, 8, 11–12, 23, 29–30, 35–36, 39 at pp 6–9, 11–12, 14, 15–16.

Tribunal's orders, was actively engaged in the consultation process ordered by the Tribunal in respect of interim Jordan's Principle reforms, had discharged all of the Tribunal's other consultation orders, and had complied with the Consultation Protocol, which Canada had entered into with other Parties in accordance with the Tribunal's orders in 2018 CHRT 4. For clarity, Canada pleads and relies upon its evidence and submissions made in the Consultation Motion.

E. Canada's response to and positions on the 39 orders sought by the Parties and Canada's compliance with Jordan's Principle Orders (Order sought at para 1)

30. The Tribunal should not grant the order sought at paragraph 1 of the Joint Motion. Canada recognizes that the best interests of the child and substantive equality are central to assessing Jordan's Principle requests, including consideration of a child's circumstances in their social and historical context. The proposed declaration would repeat principles already reflected in the Tribunal's orders, but would not provide the operational clarity needed to apply them consistently across a wide range of requests.

Order to preclude the requiring of evidence, documentation, or confirmation of previous requests (Order sought at para 2)

31. The Tribunal should not grant the order sought at paragraph 2 of the Joint Motion insofar as it would prevent Canada from requesting information reasonably necessary to assess a Jordan's Principle request. The volume and range of requests, including urgent and non-urgent requests, require decision-makers to understand the child's circumstances, the support sought and any relevant previous decision. An absolute restriction on seeking that information could impair timely and consistent decisions.

32. Canada should, wherever practicable, use information already available to it and avoid asking families to resubmit material unnecessarily. Information requested should be proportionate to what is needed for the decision and responsive to the urgency and circumstances of the child. Clear and consistent records are also needed to understand the nature of requests and identify gaps, delays and denials, as contemplated by the Institute of Fiscal Studies and Democracy's research. The proposed order should not prevent Canada from gathering and maintaining the information needed for sound decisions, continued improvement and stewardship.

Monthly Reports (Orders sought at paras 3-6)

33. The Tribunal should not grant the orders sought at paragraphs 3, 4, 5, and 6 of the Joint Motion. These orders would frustrate Jordan's Principle operations and be inconsistent with the *Privacy Act*.

34. As a starting point, the Parties implicitly acknowledge at paragraph 5 of the Joint Motion that such compliance reporting could delay, reduce, or interfere with Jordan's Principle operations, in specifically seeking an order that such reports be completed without affecting operations. Canada foresees that interruption and interference to operations is a likely result of ordering that such reports be completed on an ongoing basis. That said, Canada will continue to develop its public data strategies, including publicly sharing data on the status of the backlog and other Jordan's Principle statistics on a semi-annual basis for the next two years and revisit this requirement and timeline thereafter. In sharing public data, ISC will identify the team responsible for preparing the reports and provide an institutional contact for questions about the published data.

Substantive equality and decision framework (Orders sought at paras 7-9)

35. The orders sought at paragraphs 7-9 of the Joint Motion serve no practical utility and would improperly transform the Tribunal into a policy making body. These orders should be denied.

36. First, Canada meaningfully engages with the principle of substantive equality, as elaborated in Supreme Court of Canada jurisprudence, in all its decision-making for Jordan's Principle. Consistent with this jurisprudence, it is recognized that: substantive equality, as distinct from formal equality, requires consideration of the actual circumstances and needs of First Nations children and groups; there is a need to account for historic disadvantages and systemic discrimination, and the equality analysis is inherently contextual, fact-specific and comparative. The principle of substantive equality does not lend itself to a rigid or exhaustive definition outside of a particular factual context.

37. A request for an order for an "interim" Tribunal-aligned definition of substantive equality and "interim" Tribunal-aligned decision-making framework to all requests in the backlog and new requests received is inconsistent with that reality. The request also seeks to have the Tribunal improperly prescribe policy notwithstanding the complexities of defining these concepts in a manner that considers the social, political and historical context of the request; the child's individual and group circumstances, including age, culture, vulnerability, remoteness, geography, rural location, and other distinct community circumstances, among other considerations.

38. Canada's decision-making process for determining Jordan's Principle requests already adheres to Supreme Court of Canada jurisprudence and complies with all prior Jordan's Principle Orders. Judicial review lies from any administrative decision that is unreasonable, and through that process the incremental development of law can be appropriately achieved. The requested

order is duplicative of existing processes and adds administrative burdens without any demonstrated utility, inviting further operational confusion.

39. Canada will continue to refine its decision-making processes in line with the Supreme Court of Canada's definition of substantive equality.

Complaints mechanism (Order sought at paras 10-11)

40. The Tribunal should not grant the Parties' orders sought at paragraphs 10-11 of the Joint Motion because they serve no practical utility. ISC relies on complaints processes through various mechanisms, pending long-term reform. Creating an external mechanism in the short-term is not feasible as past efforts to secure the necessary expertise and resources for like purposes have demonstrated. Developing a new complaints mechanism is not operationally feasible as an interim issue. It would divert resources away from dealing with the backlog and its complexities, and from addressing current issues which are causing operational pressures.

41. A report on Canada's interim approach is not needed. ISC continues to receive and promptly address complaints through existing avenues. Presently, requestors can seek status updates on their requests, raise concerns, or make complaints through the Jordan's Principle National Call Centre, Jordan's Principle Regional focal points, services coordinators, direct communications with departmental officials or elected officials.

Appeals process (Order sought para 12)

42. The Tribunal should not grant the Parties' order sought at paragraph 12 of the Joint Motion. The order is outside the scope of this process and duplicates mechanisms already in place.

43. First, the order proposed at paragraph 12 relies on 2018 CHRT 4, not 2025 CHRT 6, and it is outside the scope of what is permitted in this process.

44. Second, further to paragraphs 34 and 35 of Canada's Response above, the order sought would be duplicative of mechanisms already in place, and readily available complaint and appeal processes, which can and should reasonably be utilized, particularly on an interim basis. The order sought at paragraph 12 would add administrative burden without any demonstrated utility, and it invites further operational confusion.

45. Canada has and will continue to discuss the appeals process with the Parties at JPOC and the JPOC Appeals Working Group as part of the existing consultation orders, with the view of finding operational improvements where they may exist, and in particular, to address an External Expert Review Committee.

Urgent triage process (Orders sought at paras 13-16)

46. The Parties' orders sought at paragraphs 13-16 of the Joint Motion are unnecessary and would compromise the overall administration of Jordan's Principle. Blanket orders for ISC to deem matters as urgent, particularly in the absence of a minimum level of evidence required to make the assessment, may result in the improper triaging of non-urgent requests as urgent, and reintroduce elements of the Back-to-Basics approach that the Tribunal has confirmed are not in line with its orders.⁸

47. Regarding the order sought at paragraph 13, Canada has already adopted and implemented the Tribunal's definition of urgent from 2025 CHRT 6. Canada does not view the Tribunal's

⁸ [2025 CHRT 6](#) at paras 560, 565.

definition of urgent⁹ as an exhaustive list and expects that there are other circumstances that will be classified and processed as urgent to address the child's need(s). Further clarification on urgent circumstances is not needed and could inadvertently misdirect those in emergency need to Jordan's Principle before calling 911, where operators are specialized and equipped to respond to life threatening emergencies, and trained to provide access to local community resources. The order sought is duplicative and therefore unnecessary.

48. Regarding the orders sought at paragraphs 14 and 15 of the Joint Motion, urgent matters are to be determined within 12 hours of receipt pursuant to prior Tribunal Orders and require supporting documentation. The Tribunal has already held that miscategorized urgent requests pose a significant challenge to the overall administration of Jordan's Principle, as they may be prioritized over other urgently needed requests.¹⁰ Further, Jordan's Principle cannot provide medical or emergency services; such urgent care is provided by medical/health clinics, hospitals, or emergency response services. The quality and direct delivery of assistance that can be offered is not comparable. The Tribunal's clarification in 2025 CHRT 6 that "[T]his urgent Jordan's Principle timeline is not meant to replace 911 or paramedics or other emergency services."²⁹ aligns with Jordan's Principle not being a service provider that delivers direct or front-line services, subject to a few exceptions that can be funded directly such as some emergency accommodations.

49. As such, no further order is assistive or required as Canada will continue to determine urgent requests according to the Tribunal's definition of urgent, applicable Tribunal timelines, and established documentation requirements.

⁹ [2025 CHRT 6](#) at para [554](#).

¹⁰ [2025 CHRT 6](#) at para [113](#).

50. Regarding the order sought at paragraph 16, Canada discusses the issue of qualified professionals below at paragraphs 62-63 of this Response.

Definition of basic necessities (Orders sought at paras 17-18)

51. The Parties' order sought at paragraphs 17-18 of the Joint Motion are overly broad, subjective, and embedded with terminology that requires subjective application, and should be denied. "Basic necessities" are essential needs, and this is what the definition should reflect.

52. Regarding the order sought at paragraph 17, the proposed definition obscures rather than clarifies the meaning of "basic necessities". Within the Tribunal's decision, they refer to "food or other basic necessities"³² as constituting urgent cases. A reasonable inference of the decision is that food is an example of a basic necessity and that necessities constitute the same type of needs for basic living. In some circumstances, it is conceivable that lack of access to certain basic necessities may also contribute to a child being at risk of entering the child welfare system. While ISC does not currently have a comprehensive or exhaustive list of what constitutes a basic necessity, and would advise against same because a case-by-case review is preferable, the proposed definition does not assist in the timely determination of Jordan's Principle requests.

53. Regarding the order sought at paragraph 18, it appears to provide a second definition of "basic necessities" to include requests where there is "no access to adequate food, water, shelter (including heat and electricity), healthcare, medication and medical products, newborn and infant products, hygiene products and/or any other service, product or support consistent with the Urgent Request Triage." The Parties go on to propose that any ambiguity resulting from consideration and application of this definition should be resolved in favour of providing access to supports to the child. But like the order proposed at paragraph 17, this definition is overbroad, obscures any

objective meaning and fails to provide clarity, predictability, and measurability to those submitting and considering Jordan's Principle requests.

54. The level of detail required to guide decision-making on basic necessities is more appropriately situated in operational, policy, and guidance documents rather than binding orders.

Risk of entering child welfare system (Order sought at para 19)

55. The order sought at paragraph 19 of the Joint Motion, which proposes, in effect, a definition of the concept of "risk of entering child welfare system", is not contemplated by 2025 CHRT 6 and does not properly fall within the scope of this process. ISC already considers risk of entering child welfare system as an urgent circumstance pursuant to Tribunal orders. ISC may receive information in an urgent funding request to Jordan's Principle for services and supports indicating that a First Nations child is at risk of entering the child welfare system and may consider that information as presented; however, does not independently assessed to determine whether such a risk exists.

56. Canada provides funding to deliver child and family services to First Nations children living on-reserve or in the Yukon. It does not deliver services itself or manage service delivery. Assessing risk of removal is the role of authorized child and family services agencies or provincial entities, who bring specialized training and experience to that task. Information on a child's risk of entering the child welfare system must come from those authorities. The order sought at paragraph 19 will not assist in the timely determination of requests to Jordan's Principle and risks diverting children away from child and services program involvement and supports.

Definition of domestic violence and fleeing domestic violence (Orders sought at paras 20-21)

57. The orders sought at paragraphs 20-21 of the Joint Motion should be denied because they are overbroad and do not lend clarity or objectivity to either Jordan's Principle requestors or decision-makers. ISC does not currently have defined operational parameters for either definition. Imposing definitions would simply limit the flexibility available to a decision maker. In keeping with the definition of "urgent", Canada will continue to provide a broad range of services and supports to assist families leaving situations of violence, including intimate partner violence.

58. Operationally, Jordan's Principle cannot assess or mitigate domestic violence risks for families remaining in their home. Domestic violence situations often require integrated safety planning, risk assessment, and supports that extend beyond financial assistance, and which may involve law enforcement. Any child safety related issues or assessment, including regarding risk of removal of the child must be done by Child and Family Services authorities, not the Jordan's Principle call centre or focal points. Those authorities have the expertise and knowledge to conduct such assessments, based on the history of their files, their experience, and authority.

Emergency circumstances and required coordination of services (Orders sought at paras 22-24)

59. The orders sought at paragraphs 22-24 of the Joint Motion should be denied because they are not reasonable or feasible on an interim basis, and they invite the Tribunal to improperly prescribe complex public policy.

60. ISC has already included First Nations children affected by emergencies within the Tribunal's definition of urgent circumstances for Jordan's Principle and receives/funds requests during emergency situations that are assessed on a case-by-case basis. Detailed orders directing

coordination of Jordan's Principle within emergency management structures across First Nations, federal, provincial and local/community governments would extend Jordan's Principle beyond its scope. It may duplicate or disrupt existing systems that are specifically mandated to manage emergency responses. Further, utilizing Jordan's Principle for emergency circumstances may cause harm by diverting families from existing programs implemented for emergency response purposes.

61. Jordan's Principle is administered through funding requests and ISC cannot mobilize resources, provide support to impacted communities, or enhance preparedness, response, and recovery efforts. The coordination of services during emergencies is led by incident command and emergency management authorities. Guidance and internal processes, rather than Tribunal orders, are the appropriate tools to manage how Jordan's Principle can provide support in emergency contexts, especially on an interim basis.

Definition of qualified professionals to identify urgent requests (Order sought at para 25)

62. The order sought at paragraph 25 of the Joint Motion, including the definition of qualified professionals proposed for the purposes of determining "risk of entering the child welfare system", should be denied because it is overbroad.

63. Generally, a high-level definition of a "qualified professional" who may identify a request as urgent could include licensed health or medical professionals, emergency services workers and social workers/social service professionals in good standing, as well as, in rural or remote areas, Community Health Representatives. However, urgent Jordan's Principle requests cannot be identified by professionals either outside of their scope of knowledge/knowledge base/area of expertise, or without knowledge of the child or being in the circle of care for the child. These

requirements are to ensure that the urgent requests align with the best interests of the child and their distinct needs. This definition is specific to identifying urgent requests is distinct to the broader scope of qualified professionals who may write a letter of recommendation. ISC is already using a flexible approach to adapt to the needs of remote and rural areas where credentialled practitioners are not always available. Additionally, ISC does not require that a qualified professional identify a child's request as urgent in order for it to be processed as urgent.

Determination Clock (Order sought at para 26)

64. The order sought at paragraph 26 of the Joint Motion should be denied because it is inconsistent with the material and relevant facts, including the need to have a structured request process that ensures children and families receive appropriate products, supports, and services and so that Canada can render a decision in a timely fashion.

65. The order sought by the Parties respecting the determination clock¹¹ is premised on documentation requirements that do not align with minimum Jordan's Principle documentation requirements, as published online. The determination clock should not begin until the minimum required documentation to determine a request is received by Canada. Canada requires adequate documentation and information to determine a request, for all types of requests – urgent and non-urgent, individual and group – to ensure clarity, consistency, and consideration of substantive equality. ISC also notes that in urgent circumstances, and on a case-by-case basis, ISC may accept verbal recommendations and consents while working with requestors to obtain written information.

¹¹ Notice of Motion, para 26 at p 13.

Reimbursement and financial hardship (Orders sought at paras 27-30)

66. The orders sought at paragraphs 27-30 of the Joint Motion should be denied because they are not realistically achievable within government constraints to issue payments within a fiscally responsible, accountable, documented and transparent manner that may be audited, including the expansive use of acquisition cards.

67. Canada recognizes the importance of timely payments. To that end, ISC has established reasonable reimbursement and payment timelines for Jordan's Principle, which have not been specifically ordered by the Tribunal.⁴³ Canada has prioritized efforts to expand funding agreements with service providers, where appropriate, to avoid families having to incur costs up-front and seek reimbursement. In circumstances where reimbursement becomes necessary, the service standard for repayment is 15 business days, which reflects what ISC can realistically execute for most cases, sharing payment responsibilities with Shared Services Canada.

Backlog (Orders sought at paras 31-33)

68. The orders sought at paragraphs 31-33 of the Joint Motion should be denied because they rely on a pre-determination of definitions of urgency, substantive equality and the decision-making framework, are broadly worded, and offer little in terms of practical solutions respecting the backlog. Canada has been proactive and transparent with regular reporting of same.

69. Regarding the order proposed at paragraph 31, since the Interim Decision, Canada has meaningfully addressed the urgent backlog. As such an order that any Jordan's Principle request meeting urgent criteria in the backlog, be determined within 12 hours is redundant;¹² the Tribunal

¹² Notice of Motion, para 31 at p 14.

has already ordered that urgent requests be determined within 12 hours.¹³ In addition, should a non-urgent matter in the backlog become urgent, it will be triaged accordingly.

70. Regarding the order proposed at paragraph 32 of the Joint Motion, Canada continues its efforts in reducing the backlog and agrees it must be addressed; however, the requested order relies wholly on vague and broad references to “Tribunal-approved” definitions of substantive equality and decision-making framework as well as unspecified reference to Jordan’s Principle Orders, which Canada objects to, as discussed herein.

71. Regarding the order proposed at paragraph 33 of the Joint Motion, in terms of Canada’s efforts to reduce the backlog, and the manners in which the Parties dictate that Canada shall not undertake such efforts,¹⁴ Canada does not intend to unilaterally undertake reduction efforts without providing notice to requestors in the event such efforts affect a request in the backlog. Canada will ensure procedural fairness and this Tribunal need not, and should not, dictate the scope of such operational and procedural matters. Canada notes that it is already implementing service improvements through the National Improvement Plan to address the backlog and operational related issues.

72. In addition, this requested order also relies wholly on vague and broad references to “Tribunal-approved” definitions of substantive equality and decision-making framework as well as unspecified reference to Jordan’s Principle Orders, which Canada objects to as discussed herein.

¹³ [2025 CHRT 6](#) at para [126](#), citing [2017 CHRT 35](#).

¹⁴ Notice of Motion, para 33 at p 15.

***First Nations and First Nations authorized organizations delivering Jordan's Principle services
(Orders sought at paras 34-36)***

73. The orders sought at paragraphs 34-36 of the Joint Motion should be denied because they expand and distort the Tribunal's prior orders, and they are duplicative and unnecessary.

74. Canada does not agree to funding First Nations and First Nations authorized organizations delivering Jordan's Principle at costs incurred in delivering those services beyond those agreed to and approved in advance.¹⁵ The current Jordan's Principle interim model is federally administered and request-based. The group request model is premised on the existence of contribution agreements entered into between Canada and First Nations, which sets out the requested funding to be provided based on the needs of First Nations children identified, whereas the order sought utilizes ambiguous and broad language to expand funding to "First Nations and First Nations-authorized organization delivering Jordan's Principle services".¹⁶

75. This proposed order misrepresents the Tribunal's orders in the Interim Decision,¹⁷ which are premised on the existence of contribution agreements entered into between Canada and First Nations. Further, this order seeks to direct how limited public funds should be allocated, which falls within the executive functions of government and is not within the Tribunal's jurisdiction.

76. This Tribunal has already ordered that where Canada enters into a contribution agreement, the First Nation or First Nation community organization is not bound by the Tribunal-ordered timelines or procedural terms of any of the Tribunal's Jordan's Principle orders that are directed at Canada.¹⁸

¹⁵ Notice of Motion, paras 34–35 at p 15.

¹⁶ Notice of Motion, para 34 at p 15.

¹⁷ [2025 CHRT 6](#) at paras [454](#), [570–75](#).

¹⁸ [2025 CHRT 6](#) at para [456](#).

77. Regarding the order sought at paragraph 36 of the Joint Motion, Canada will continue to work with First Nations Rights Holders to determine how to refer children to existing Jordan's Principle group requests in their regions, where appropriate.

February 2025 Operational Bulletin (Orders sought at paras 37-38)

78. The Tribunal should not grant the orders sought at paragraphs 37-38 of the Joint Motion as they are outside of the Tribunal's jurisdiction.

79. In February 2025, ISC issued a Jordan's Principle Operational Bulletin to improve clarity, consistency, and efficiency in the determination of requests. The Operational Bulletin sets documentation requirements to assist with the determination of requests and further notes that certain requests—such as new homes, elite sports, international travel without exceptional medical need, and non-medical supports like childcare, furniture, or vehicles—will “generally” not be approved unless required for substantive equality and in respect of the Tribunal's Jordan's Principle Orders. This does not preclude the approval of some of these types of requests and exceptions exist. ISC continues to assess such requests on a case-by-case basis, and in line with the Supreme Court of Canada's definitions of substantive equality, best interests of the child, access to culturally appropriate services, and the Tribunal's past orders.

80. Subject to further particulars and clarification from the Parties about the scope of their motion, Canada reserves the right to make further submissions.

A. Remedy

81. For all of the above reasons, Canada requests that:

- a. all orders sought by the Parties be dismissed;
- b. Any determinations or further orders on consultative obligations on the part of Canada be reserved for the Decision on the pending Consultation Motion, for which there was full evidence and submissions made therein, and not for this motion herein; and
- c. Such further and other relief as Canada may request of the Tribunal.

B. Legislation

82. Canada pleads and relies on *The Canadian Human Rights Act*, *Privacy Act*, and such further and legislation as this Tribunal may permit.



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