

April 8, 2024

VIA EMAIL

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

Dear Ms. Dubois:

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

I write further to the Panel's directions of April 4 and 5, 2024, and in response to Mr. Wuttke's April 5, 2024 letter. The Caring Society acknowledges the Panel's further direction of today's date and will respond, as directed, by April 11, 2024. The Caring Society does not anticipate that its procedural response to that direction will involve a request to delay the June 3-4, 2024 hearing dates.

Consistent with the principles in the *Act Respecting First Nations, Metis and Inuit Children, Youth and Families*, S.C. 2019, c. 24, the Caring Society opposes the AFN's proposed amendments to the schedule set on February 6, 2024. AFN's application for delay does not adequately consider the serious issues for First Nations children, youth, families, and First Nations in the Caring Society's motion, particularly considering evidence filed in the Dr. Blackstock's March 27, 2024 reply affidavit, identifying the deaths of two young children in circumstances in which a Jordan's Principle group request was pending for many weeks in excess of the Tribunal-ordered timelines. Canada has already provided significant information in its Notice of Cross-Motion, affidavits, and answers on cross-examination. Any procedural fairness concerns can be addressed by providing AFN with additional information prior to its factum deadline, some additional time to file its factum, and more time at the oral hearing for its response. In these circumstances, a delay in the hearings is disproportionate to the interests involved for First Nation, children, youth and families and Nations, as noted above. It is also unclear why the AFN's proposed delay was only raised for the first time on April 3, 2024, nearly four months after the Caring Society filed its motions and nearly three weeks after Canada filed its cross-motion and after cross-examinations on both the motion and the cross-motion were complete.

The need for expedition in this proceeding

When it filed its motion on December 12, 2023, the Caring Society indicated that it was seeking an expeditious hearing schedule. Three elements were key to the Caring Society's view in favour of expedition. First, serious concerns regarding Canada's handling of urgent requests pursuant to Jordan's Principle. If left undetermined within the Tribunal-ordered timelines, unaddressed urgent cases can have serious impacts on First Nations children. Second, serious backlogs in processing Jordan's Principle requests that put First Nations children and families at risk. Third, long delays in reimbursement are putting unbearable pressure on families living in deep poverty. First Nations and First Nations organizations are also bridge financing Canada's long payment delays. Service providers who have already rendered services and are awaiting payment are also under pressure.

On December 21, 2023, following the December 19, 2023 case management conference call, the Panel indicated its intention in favour of an expeditious schedule and that it was prepared to hear the matter in April 2024 or the first half of May 2024.

The Caring Society worked through the holiday season to ensure that it met its January 12, 2024, filing date for its affidavits and supporting materials. The Caring Society is grateful to the many members of First Nations leadership, First Nations service providers and to the families who provided letters of support for the motion, or agreed to have their experiences with Jordan's Principle shared with the Tribunal in these affidavits.

Following numerous emails from Caring Society counsel between December 13, 2023 and February 2, 2024 and a January 25, 2024 case management conference call, the February 6, 2024 direction was required to settle the schedule. The Caring Society notes that, at the time, the AFN's only scheduling objection had to do with dealing with any preliminary motion prior to cross-examinations (as reflected in the undersigned's February 2, 2024 email to the Tribunal). The Caring Society also notes that, at the January 25, 2024 case management conference call, both the Caring Society and Canada spoke in favour of folding proceedings regarding any cross-motion into the schedule that would otherwise be set.

The AFN's adjournment request is disproportionate and should be dismissed

The Caring Society submits that AFN's request must be balanced against the rights of First Nations children, youth, and families pursuant to the *Act respecting First Nations, Inuit and Métis children, youth and families*. It must also account for the fact the progress of this matter over the last nearly four months has aimed for the earliest possible hearing date, and the procedural fairness concerns related to the timing of the hearing, in order to ensure that the relief sought is effective. It would be disproportionate to delay the hearing by at least seven weeks, and possibly three months given the intervening summer holiday period, when all participants will have reduced availability. AFN's request for further legal argument should be blended into the six weeks available between now and the filing deadline AFN proposes for its factum (May 17, 2024).

The Caring Society does not concede the procedural fairness concerns raised in Mr. Wuttke's letter given the thoroughness with which the cross-motion issues were canvassed in the Notice of Cross-Motion, Canada's affidavits, and the day-long cross-examinations of Dr. Gideon and Ms. St-Aubin. The Caring Society also notes that the long delay in AFN raising its request does not support its submission that fairness is at stake. Nor does the Caring Society agree that its serious concerns surrounding safety and well-being for First Nations children have been addressed in the AFN's submissions or its proposed delay. The safety and wellbeing of First Nations children, youth and their families must take precedence over AFN's procedural preferences. The Caring Society accordingly asks that AFN's adjournment request be dismissed.

Alternative submission to accommodate the AFN's concerns

In the alternative, the Caring Society sees a clear way of accommodating the concerns raised in Mr. Wuttke's letter and retaining the hearing dates in the best interests of First Nations children, youth, and families. More specifically, the Caring Society proposes that Canada provide a letter summarizing its cross-motion position, and the legal basis for it, on Friday, May 3, 2024. This would provide the AFN with two weeks' notice of that position, and the opportunity to respond in writing in its factum. The Caring Society also proposes that the AFN be permitted to file a supplemental factum on Wednesday, May 29, 2024 to address anything in Canada's May 24, 2024 factum that is unanticipated. The Caring Society suggests that the AFN could also be provided with additional time during oral argument on June 3 and 4, 2024 to address any unanticipated points.

The Caring Society does not agree that the motion hearing should be extended to three days. Canada's cross-motion does not raise new issues. Instead, it brings forth another perspective on issues already addressed in the Caring Society's motion (urgency and timeliness).

This suggestion would lead to the following proposed revised schedule:

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| April 12, 2024 | Answers to Requests for Information arising from April 2 and 3, 2024 cross-examinations |
| April 19, 2024 | Caring Society factum (on both the motion and cross-motion) |
| <u>May 3, 2024</u> | <u>Canada letter summarizing its position on the cross-motion</u> |
| May 10, 2024 | Commission factum Commission factum (on both the motion and cross-motion) AND COO/NAN factums (if supporting the Caring Society's motion) |
| <u>May 17, 2024</u> | <u>AFN factum (on both the motion and cross-motion) AND COO/NAN factums (if supporting Canada on the Caring Society's motion)</u> |
| May 24, 2024 | Canada factum (on both the motion and cross-motion) |

May 29, 2024 AFN supplemental factum (on the cross-motion)

June 3-4, 2024 In-Person hearing in Ottawa

The proportionate solution to the concerns AFN raises is to deal with them in the nearly two months remaining prior to the scheduled hearing dates. Delaying this important hearing into mid-summer or into the fall is not proportionate, given the important issues at stake for the implementation of Jordan's Principle and the First Nations children, youth, families and First Nations bearing the weight of Canada's non-compliance.

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

Yours truly and respectfully submitted,



David P. Taylor

DPT/jk

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