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Via Email

Our File Number: LEX-500219273

August 29, 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**

Introduction

We write with regard to the Panel's August 20, 2025 ruling in 2025 CHRT 80. We appreciate the Panel's confirmation that it will continue to advance proceedings on the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*. We also appreciate the Panel's indication that it will schedule a Case Management Conference Call (CMCC) to answer questions on its latest ruling, provide clarification and discuss scheduling. To assist with an orderly discussion at the CMCC, we are sharing our initial questions and requests for clarification below.

We also wish to provide additional information to the Panel and clarifications of our own in response to 2025 CHRT 80, particularly in light of the Tribunal's outstanding decision on the Caring Society's January 14, 2025 motion seeking an order for further consultations on long-term reform.

Consultation Motion

The First Nations Child and Family Caring Society of Canada (Caring Society) filed a motion in January 2024 for an order compelling Canada to engage in additional consultations with the AFN and the Caring Society on both the FNCFS Program and Jordan's Principle. The Panel determined that the motion would be heard in writing only, with filings complete as of May 22, 2025. The motion has been under reserve with the Panel since that time.

Canada's position in response to the Caring Society's motion was:

- while Canada has made intensive and meaningful efforts towards achieving final resolution of the complaint with the consent of all parties, the dialogic approach with the AFN and the Caring Society is no longer working;
- Canada's good faith efforts to consult and negotiate have been hindered by the Caring Society's conduct, which includes:
 - abandoning consultations and negotiations;
 - advocating against the Final Agreement, which was based on the terms of the Agreement in Principle between the Caring Society, the AFN, COO, NAN and Canada;
 - making extensive new and further demands that are well outside the terms to which they previously agreed, and beyond what is required to meet the Tribunal's reform orders;
- the Panel should not order any additional consultations with the AFN and the Caring Society; and
- instead, the Panel should move forward by considering the pending motion for approval of the *2025 Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario*.¹

In paragraph 9 of 2025 CHRT 80, the Panel stated that "This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform." **We seek clarification, however, as to whether 2025 CHRT 80 is intended to fully or partially resolve the consultation motion as regards the FNCFS Program.**

Negotiations with the National Children's Chiefs Commission

In paragraph 119 of the Ruling, the Panel ordered that "Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose."

Following the Panel's July 25, 2025 CMCC, and prior to the Panel's August 20 Ruling, federal political representatives and high-level officials from Indigenous Services Canada (ISC) voluntarily met with the National Children's Chiefs Commission (NCCC) on two occasions. First, on August 11, 2025, ISC Associate Deputy Minister Michelle Kovacevic met with Chief Pauline Frost, Chair of the NCCC. Second, on August 18, 2025, the Honourable Mandy Gull-Masty, Minister of Indigenous Services, together with ISC's Deputy Minister Gina Wilson, met with Chief Frost.

¹ Factum of the Attorney General of Canada in response to the Caring Society's consultation motion, dated May 15, 2025, paras 1-4.

During these meetings, Chief Frost stated that the NCCC's position remains that a national agreement must cover First Nations children both on- and off-reserve. She also noted the NCCC's position that the \$47.8 billion proposed in the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (Final Agreement) is only a baseline from which to begin negotiations.

Chief Frost stated that negotiations towards long-term reforms should be tripartite between the First Nations Child and Family Caring Society of Canada (Caring Society), the NCCC and Canada. She further stated that the NCCC has entered into a bilateral agreement with the Caring Society, although Canada has no knowledge of the contents of that bilateral agreement.

Canada's position is that the NCCC's position, particularly with respect to off-reserve Program funding, are beyond the scope of the 2021 *Agreement-in-Principle on Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* (Agreement in Principle) made with the Complainants (the Caring Society and the AFN), and indeed beyond the scope of the complaint itself.² **We are therefore seeking clarification from the Panel as to whether the Panel is asking that Canada engage with the NCCC beyond these two meetings and, if so, to confirm that any such additional meeting is to cover only issues within the scope of the Agreement in Principle and the complaint.**

In addition, we are seeking the Panel's clarification as to whether it is suggesting that Canada not only *consult*, but *negotiate* with the NCCC and/or the Caring Society and/or the AFN, in line with the parameters set out in paragraph 113, towards a new national long-term FNCFS Program reform agreement, and despite Canada's position articulated with respect to the January 2025 consultation motion that: (a) Canada has fully discharged its obligations pursuant to the Tribunal's orders to consult with the AFN and the Caring Society; and (b) the Panel should not order additional consultations with the AFN and the Caring Society.³ Further, on what basis has the Panel arrived at the parameters in paragraph 113 and does the Panel intend that Canada must comply with each of them in any national plan for long-term reform of the FNCFS Program? As noted by the Panel, some of these parameters have been set out in previous rulings. However, others are new and expand upon previous rulings.

Should the Panel clarify that it expects Canada to negotiate with the NCCC, the Caring Society and/or the AFN in line with its new parameters and new consultation process, Canada will require time beyond August 29, 2025 to seek and obtain instructions.

Consultation with Non-Parties

In paragraph 120 of 2025 CHRT 80, the Panel orders that the AFN and the Caring Society shall consult with a series of non-parties, including the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions. **We are seeking clarification as to the basis on which the Panel has jurisdiction to order that complainants (in this case, the AFN and the Caring Society) consult with non-parties to a complaint, with or without the respondent.**

² *Ibid.* See for example paragraph 84.

³ *Ibid.* See for example paragraph 88.

Timing of Consultations

The Panel stated at paragraph 108 of 2025 CHRT 80 that it cannot invite all First Nations into the proceeding without creating a paralysis, while at the same time ordering that within 4 months, the AFN, the Caring Society and Canada develop long-term FNCFS Program reform plans that incorporate all regional and local First Nations perspectives, including through consultations with the NCCC, First Nations chiefs, other experts including First Nations and First Nation organizations outside Ontario and all those who filed interested party motions (paras 113, 120 and 126). **Does the Panel contemplate that the Complainants (the AFN and the Caring Society) and potentially the Respondent (Canada) will consult or negotiate directly with every First Nation community, regional entity, and First Nations child and family services agency in Canada (save for in Ontario and the Northwest Territories) on national FNCFS Program reforms in advance of providing their plan or plans on December 20, 2025?**

Like the Tribunal, Canada believes it is critical that reforms to the FNCFS Program be co-developed with First Nations, experts and regional groups. That is why Canada consulted so extensively over a number of years with the AFN, Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN). The AFN has been viewed in these proceedings as the representative of First Nations across Canada, COO as the representative of Ontario First Nations, and NAN as the representative of 49 First Nations in northern Ontario.

It has become clear to Canada that a consultation or negotiation process to develop new plans for long-term reform, which reflects the expressed needs of First Nations leadership and communities, will take time. For example, Canada has heard a potential lack of consensus around whether one national long-term reform strategy is the right approach. Canada is deeply concerned that the Panel's four-month timeframe to develop new plans for long-term reform is not achievable.

Next Steps

At paragraph 120 of 2025 CHRT 80, the Panel ordered the Caring Society and the AFN to submit a comprehensive national plan as well as requested remedies for long-term reform of the FNCFS Program. The Panel ordered Canada to take part in development of that plan or to submit its own comprehensive national plan (paragraphs 125 and 126).

We are seeking clarification regarding whether the Panel intends to implement a process leading to its consideration of the merits of the potentially competing plans, including the filing of evidence and argument, or whether the Panel intends to make orders on long-term reform of the FNCFS Program based solely on the plans submitted on December 20, 2025.

Consultations ordered by the Panel in 2025 CHRT 6

In paragraph 86 of 2025 CHRT 80, the Panel wrote: "On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items... the Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders."

For clarity, in 2025 CHRT 6, the Panel ordered consultations on eleven items. Canada's letter to the Panel, dated August 14, 2025, advised that as of the end of the Tribunal-mediated process on August 13, 2025, "two topics that the Tribunal ordered consultation on in 2025 CHRT 6 have yet to be discussed." Our indication that two items remain to be *discussed* should not be taken to imply that the parties have *resolved* any of the other topics for consultation. Rather, the parties have to date *consulted* on nine of the eleven items. It is Canada's hope that the other parties will meet with Canada to discuss at a minimum the remaining two items, outside of Tribunal-assisted mediation. Canada is making best efforts to coordinate such discussions.

Thank you in advance for considering these questions and clarifications.

Sincerely,



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