
Assembly of First Nations

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April 5, 2024

By Email

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

Dear Madame Registrar:

Re: First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada (File No. T#1340/7008)

The Assembly of First Nations (AFN) writes in response to the Panel's direction dated April 4, 2024, and correspondence dated February 6, 2024. During the Case Management Conference on January 25, 2024, a schedule for the exchange and filing of materials was set. The schedule was based on the non-compliance motion filed by the First Nations Child and Family Caring Society of Canada (Caring Society). There were no preliminary motions filed at that time. It was the AFN's understanding that the schedule was potentially subject to revision should any preliminary motions or cross-motions be filed.

On March 15, 2024, the Attorney General of Canada filed a cross motion. The current schedule does not provide for the exchange and filing of materials relating to Canada's cross-motion.

The current schedule set by the Panel is:

February 23, 2024	NAN Affidavits
March 15, 2024	AFN and Canada Affidavits (and any cross-motions)
March 21, 2024	Supplemental Canada and AFN Affidavits
March 27, 2024	Any Caring Society Reply Affidavit
April 2-3 & 5, 2024	In Person Cross-examinations in Ottawa
April 12, 2024	Answers to requests for information.
April 19, 2024	Caring Society factum
May 10, 2024	Commission factum (and any of AFN/COO/NAN supporting)
May 24, 2024	Canada factum (and any of AFN/COO/NAN opposing)
June 3-4, 2024	In Person hearing in Ottawa

As noted, the above schedule does not reflect the filing of Canada's cross-motion and provides no dates for the filing of a Response or a Reply on Canada's cross-motion. The cross-motion raises a number of issues that may impact the administration of Jordan's Principle in First Nations communities. As a co-complainant, the AFN has the right to respond to Canada's written submissions and requested relief, pursuant to Rule 3(2)(a) of the *Rules of Procedure under the CHRA*.

The AFN's right to file a response to Canada's factum is rooted in procedural fairness, which includes the AFN being provided with adequate notice of the case being advanced by Canada, as well as an opportunity to properly prepare and respond to the arguments raised by Canada. This right was reflected in *Baker v. Canada (Minister of Citizenship and Immigration)*¹, where the court held:

I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, **with an opportunity for those affected by the decision to put forward their views and evidence fully** and have them considered by the decision-maker. [emphasis added]

The denial of the AFN's right to respond to Canada's written submissions in the cross-motion would constitute a denial of natural justice. As such, the AFN proposes that the Panel consider adopting the following revisions to the schedule to ensure all Parties can adequately respond to the motion and cross-motion:

April 12, 2024	Answers to requests for information
April 19, 2024	Caring Society factum
May 10, 2024	Commission factum (and any of COO/NAN supporting)
May 17, 2024	AFN factum (supporting and opposing elements)
May 24, 2024	Canada factum (and any of COO/NAN opposing)
June 7, 2024	Caring Society reply and Canada's cross-motion factum
June 28, 2024	Caring Society/AFN/ Commission/COO/NAN response to Canada's cross-motion factum
July 19, 2024	Canada reply factum
TBA	In Person hearing in Ottawa (3 day hearing)

The proposed schedule above is consistent with procedural fairness as it provides the AFN and the other parties, if they so choose, with the opportunity to fully present their views and evidence for consideration by the Panel. In the interest of preserving the parties' full participatory rights, the AFN appreciates the Panel's due consideration of the newly proposed schedule.

¹ [1999 CanLii 699](#) (SCC) at para [22](#).

Finally, I wish to advise that the AFN is heavily involved in negotiations on the conclusion of a settlement agreement on long-term reforms to the First Nations Child and Family Services (FNCFS) Program. The negotiations take place four days a week, every week. Our attendance at the cross-examination this week resulted in the AFN redirecting significant resources and focus from the crucial and very productive negotiations on reforms to the FNCFS Program. The above schedule will allow the AFN, and presumably the other parties participating in negotiations, to remain meaningfully engaged in both processes.

Respectfully,



Stuart Wuttke, LSM
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