

**CANADIAN HUMAN RIGHTS TRIBUNAL**

B E T W E E N:

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

Complainants

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

Commission

- and -

**ATTORNEY GENERAL OF CANADA  
(representing the Minister of Indian and Northern Affairs)**

Respondent

- and -

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

Interested Parties

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**RESPONSE of the ASSEMBLY OF FIRST NATIONS to the  
PANEL'S JUNE 14, 2016 RULING**

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## **Introduction**

1. The Assembly of First Nations (AFN) makes these submissions pursuant to the Tribunal's letters dated June 14<sup>th</sup> and 17<sup>th</sup>, 2016. In those letters, the Panel expressed the view that it would be beneficial to receive responses from all the parties and in particular whether the AFN agrees or disagrees with the positions taken by the First Nations Child and Family Caring Society of Canada (Caring Society) and the Chiefs of Ontario (COO) with respect to their responses to the Respondent's (INAC) May 10<sup>th</sup> and May 24<sup>th</sup> submissions.

## **Position with respect to the Caring Society's and COO's Submissions**

2. At the outset, the AFN states that it agrees completely with the Caring Society's submissions of June 8<sup>th</sup>, particularly paragraphs 14 through 55, which contain an assessment of the extent to which INAC has complied with the Panel's Order to "immediately take measures to address the items underlined...from the findings in the *Decision*". The AFN is also supportive of the COO's June 8<sup>th</sup> submissions, as well as Nishnawbe Aski Nation (NAN), with regard to INAC's compliance with immediate relief measures in Ontario and the 1965 Agreement.

## **Spirit of Reconciliation**

3. The AFN also takes to heart the concluding remarks by the Panel Chairperson in the Tribunal's ruling of April 26, 2016, that "the hearings in this matter were held in the spirit of reconciliation..[t]he time is now" and that communication and collaboration is essential in order to achieve reconciliation. The AFN is acutely aware of the need to translate intentions into action and that is where the difficulty lies. We are dealing in this case with a situation of historical disadvantage and systemic discrimination, perpetrated by a "system" within the oldest Ministry of government, which is not used to being accountable for its discriminatory conduct and is resistant to change.

## Next Steps

4. The AFN welcomes the Directions and Rulings the Panel has made thus far regarding remedies, including the April 26<sup>th</sup> Ruling and, in particular, believes the Panel's decision to retain jurisdiction is necessary.
5. The AFN also agrees with the Panel's decision to order INAC compliance and reporting on immediate relief measures, as contained in the April 26<sup>th</sup> Decision. However, it is the AFN's submission that a further round of submissions and compliance reporting might be counter-productive and add unnecessary further delays. Moreover, it is creating resourcing challenges for the AFN. Rightfully, INAC should be contributing to these costs. For these reasons, we urge the Panel to move to a more definitive order, pursuant to section 53(2) that INAC be ordered to engage in consultations with the Commission, on immediate measures to redress the discrimination which it has been found to be guilty of perpetrating against First Nations' children and families. Of course, as we set out in our previous submissions, based on s. 35 of the *Constitution Act, 1982*, this process ought to be carried out with the full consultation of the AFN, the Caring Society, and with the COO and NAN.
6. The AFN reaffirms its prior submissions on remedies and continues to support the Caring Society's and COO's position with respect to immediate relief and long-term reform of the FNCFS Program.
7. The AFN submits that the opportunity to realize effective and meaningful change in the immediate term diminishes as time passes on and we drift further away from the date the Tribunal's decision in the main complaint was rendered. The AFN submits that all parties, including the Respondent, have expressed that same concern in some way or another. However, the AFN submits that the differences lie in the priorities each party has identified in their submissions but such differences must not delay the implementation of immediate remedies any further.
8. The AFN has made good faith overtures to discuss and negotiate immediate relief. No immediate movement has materialized. Therefore, the AFN submits the Panel direct the

Commission to further assist in creating the momentum required to advance the immediate remedies stage.

9. The Panel identified immediate, mid-term, and long-term relief should be considered by the parties. Subsequently, the scope of submissions in relation to immediate relief provided to the Panel are, at times, inclusive of both mid-term and long-term relief. The AFN submits the parties, including the Respondent, must come together in determining what immediate change can be made now that will immediately begin to redress the discriminatory elements of the FNCFS Program.

### **The AFN's Position Regarding Immediate Relief: A Definitive Order**

10. The time from the Panel's ruling on the merits of this complaint to the establishment and implementation of immediate relief is in danger of becoming mid-term relief. The Panel has already found discrimination as against First Nation children in on-reserve child welfare programs. Without action on immediate relief, the discrimination continues unabated.
11. There is a demonstrated need for momentum in relation to implementing immediate relief to redress the FNCFS Program and prevent the discrimination against First Nation children from occurring now and into the future.
12. Recognizing the complexities and importance of implementing real change in relation to its findings of historical disadvantage and discrimination, in its decision 2016 CHRT 10, the Panel stated:

[36] Remedial orders designed to address systemic discrimination can be difficult to implement and, therefore, may require ongoing supervision. Retaining jurisdiction in these circumstances ensures the Panel's remedial orders are effectively implemented (see *Grover* at paras. 32-33).

[37] Given the ongoing nature of the orders above, and given the Panel still needs to rule upon other outstanding remedial requests, the Panel will continue to maintain jurisdiction over this matter. Any further retention will be re-evaluated following the further reporting by INAC and the Panel's ruling on the other outstanding remedies.

13. Therefore, consistent with the Panel's ruling in relation to ongoing supervision, the AFN submits a definitive order regarding immediate relief should:

- Appoint the Commission to engage all party discussions on immediate relief;
- Direct the Commission to create a subsequent draft order, including specific dates for the Respondent to implement all of the elements of immediate relief; and
- Require the Commission to submit a draft order agreed upon by all parties within 60 days of the Panel's section 53(2) order.

14. The AFN submits such an order ought to include a process for the Respondent to follow that, in addition to regular reporting, the Respondent work with the Commission to ensure compliance with the orders already in place. The AFN proposes the details of this order be based on the parties' submissions and based on consultation with the parties in an in-person meeting.

15. An order produced through consultation would be consistent with INAC's fiduciary obligations and the constitutional status of the victims of the discrimination and their families under s. 35 of the *Constitution Act, 1982*.

16. The AFN submits the Panel must maintain its supervision over the Respondent during the entirety of the remedies stage, until a new FNCFS Program is rolled out, and that timelines in relation to remedial orders are adhered to.

17. The AFN also submits that the Panel should order the Respondent, or direct the Commission, to address the issue of resourcing the parties to ensure their meaningful participation in the process that must occur among the parties to effect the necessary change to end the ongoing discrimination.

18. The AFN submits an order respecting immediate relief should complement orders already made by the Panel.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

June 24, 2016

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a final vertical stroke.

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Co-Counsel for the Complainant  
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