
Assembly of First Nations

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Via Email: judy.dubois@tribunal.gc.ca

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

Dear Ms. Dubois,

Re: FNCFCSC et al. v. Attorney General of Canada (Tribunal File T1340/7008)

On behalf of the Assembly of First Nations (AFN), and in response to the First Nation Child and Family Caring Society's (Caring Society's) interim motion for relief dated December 5, 2018, returnable January 9, 2019, we are pleased to provide the following response, which we will also speak to orally on January 9th.

The Caring Society's motion raises questions of "First Nations children" that are entitled to benefit from Jordan's Principle and whether that includes non-status Indians. This in turn raises the issue of First Nations citizenship. The issues of First Nations children and citizenship go to the heart of First Nations jurisdiction and self-determination. The AFN takes these issues very seriously, as demonstrated by the AFN Resolutions attached as exhibits to the Affidavit of Cindy Blackstock affirmed December 5, 2018, and attached to the Caring Society's motion.

The AFN takes the position that the questions raised in this interim motion deserve a full hearing before the Tribunal prior to any decisions are made that have the potential for far-reaching implications on First Nations and their jurisdictions.

Nevertheless, the AFN is mindful of the concerns raised by the Caring Society's motion, particularly in that irreparable harm could be caused to innocent children who might be denied the benefits of Jordan's Principle. Accordingly, the AFN does agree, in part, with the Caring Society's motion for interim relief.

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However, if relief is granted, the AFN submits that the Tribunal should do so on a restricted basis, as follows:

- i. The Tribunal should make it clear that it is not deciding the issue of Jordan's Principle entitlement based on status vs non-status. Rather, interim relief should apply to First Nations children that have ties to a local First Nation.
- ii. The Interim Order on Jordan's Principle should continue to apply where First Nation individuals may be denied or face difficulties in accessing services as a result of a jurisdictional gap and/or disputes between federal departments or the various levels of government.
- iii. That the interim relief order only applies until a full hearing on the Jordan's Principle definitional issue and a final order is issued.
- iv. The interim relief order ought to state that it be applied on a case-by-case basis, consistent with the Tribunal's decisions regarding Jordan's Principle.
- v. The interim relief order ought to emphasize the importance of the First Nation self-determination and citizenship issue, and that the order is not intended to override or prejudice First Nation rights.

In closing, the AFN notes that the Panel indicated awareness of and sensitivity to the issue of First Nation self-determination in its previous Decisions. The AFN respectfully requests that the Panel continue to exercise caution in issuing orders that have implications for First Nations, particularly with respect to their autonomy, self-determination and self-government. This should be taken into account in a ruling on the Caring Society's interim motion.

Please advise if the Panel has questions or requires clarification or further submissions.

Sincerely,



Stuart Wuttke
General Counsel





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