
Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: (613) 241-6789 Fax: (613) 241-5808
<http://www.afn.ca>



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa, Ontario K1P 6L5
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
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October 10, 2023

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

Dear Panel:

**RE: First Nations Child and Family Caring Society et al v. Attorney General of Canada
Tribunal File: T1340/7008**

We write to you today on behalf of the Assembly of First Nations (“AFN”) in response to the Panel’s August 21, 2023 correspondence requesting a reply to Canada’s supplementary report filed on September 21, 2023, and the Panel’s follow-up to said response dated October 4, 2023 requesting additional clarifications from the Parties in relation to the status of the long-term reform negotiations aimed at implementing the previous orders of the Panel for Canada to cease the discrimination and prevent its reoccurrence.

Current status of long-term reform

The current status of the negotiations of a Final Settlement Agreement (“FSA”) on the long-term reform of the First Nations Child and Family Services Program and Jordan’s Principle has been subject to a pause pending Canada receiving a revised mandate from Cabinet. A revised mandate was required by Canada as a result of a request to bifurcate long-term reform and Jordan’s Principle into two separate agreements and extend the timeframes in which to conclude these agreements, as outlined in the “Joint Path Forward” proposal as tendered by the AFN and the First Nations Child and Family Caring Society of Canada (“Caring Society”) to the parties on March 15, 2023. The Joint Path Forward was designed to reflect certain sentiments of the First Nations-in-Assembly, as expressed in Resolution 40/2022, which was adopted at the December 2022 Special Chiefs Assembly, which spoke to the need for evidence and policy-based options and the extension of times for the execution of a FSA on long-term reform.

The Joint Path Forward reflects a revised timeline with respect to the negotiations, and the position of the AFN and Caring Society that the timeline of March 31, 2023, further to Canada's then existing mandate, for the finalizing of the FSA would not be possible. It speaks to the fact that a long-term funding approach should be evidence-based and informed by the results of IFSD research on Phase 3 and non-agency First Nations, instead of relying entirely on the Reformed Funding Approach as premised on IFSD's Phase 2 research which was the basis for the negotiations within the context of the Agreement-in-Principle ("AIP"). A pathway was proposed with respect to completing a FSA on long-term reform for Child and Family Services by January 2024.

As part of the Joint Path Forward, the AFN and Caring Society have also proposed the bifurcation of Jordan's Principle, again allowing for the completion of relevant work by IFSD on the Jordan's Principle Needs Assessment which has an expected completion date of March 2024. This would allow for the conclusion of reforms to the FNCFS Program to occur in the near future and allow the parties to secure the necessary research and data to ensure an evidence-based settlement agreement on Jordan's Principle at a future date in 2024. Again, a pathway was established for the completion of this work, with an estimated completion date of December 2024, including the endorsement of such an agreement by the First Nations-in-Assembly.

Canada was clear with the Parties that any deviation from its then existing mandate to complete an FSA by March 31, 2023 could result in significant delays, and that the procurement of a revised mandate was not necessarily guaranteed. As such, following delivery of the Joint Path Forward, Canada advised that it could no longer proceed with the negotiation of the FSA until such a revised mandate was secured on the Joint Path Forward. Such a pause was necessary as the existing mandate for the negotiation of the FSA terminated as of March 31, 2023, already being an extension of the deadline of December 31, 2022, as provided for in the AIP. Canada has yet to secure such a revised mandate from Cabinet, and accordingly, the FSA negotiation table has paused and the Parties have, in the interim, been primarily fixed on items outside the scope of the negotiation of the FSA, including the implementation of existing CHRT orders such as the immediate measures consent order (2022 CHRT 8), the major capital order (2021 CHRT 41) and Canada's existing commitments. Some elements contemplated by the AIP continue to be discussed, but again, remain subject Canada obtaining a revised mandate for the continued negotiation of the FSA.

We are pleased to advise that the AFN remains committed to the negotiations and achieving a FSA in relation to the FNCFS Program and Jordan's Principle. However, the AFN does have concerns with the pace at which Canada is currently proceeding with respect to the procurement of its revised mandate. While the AFN understood that significant delays could be expected or that the mandate itself could be jeopardized, it has now been a half a year since the Joint Path Forward was proposed. While the Parties continue to meet regularly, real progress towards the implementation of the Tribunal's orders and the long-term reform of the FNCFS Program and Jordan's Principle will not be attainable until such time clarity is received on Canada's procurement of a revised mandate.



Jordan's Principle

With respect to Jordan's Principle, the AFN is aware that delays in processing Jordan's Principle requests are occurring across Canada. Canada has disclosed that, as of September 8, 2023, there are backlogs in the processing of requests in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Northern Region with each reporting between approximately 1000 and 2600 requests requiring intake or assignment. In addition, each region is receiving between approximately 40 and 75 new Jordan's Principle requests daily.

The AFN acknowledges that there have been some ongoing issues resulting from the increased number of requests derived from Canada's implementation of the Jordan's Principle "Back-to-Basics" approach agreed to by Canada and the Parties and the expanded interpretation of the definition of Jordan's Principle. The AFN is committed to working with Canada and the Parties on solutions to address the problems which have been identified, such adherence to the Tribunal's timelines and response times in the context of urgent requests.

In this context, the AFN is also mindful of the exponential increase in terms of both requests and approvals, as well as the fact that the plans in relation to working towards the reform of Jordan's Principle as contemplated within the AIP have been delayed as a result of the introduction of the Joint Path Forward and Canada's need for a revised mandate.

Regards,



Stuart Wuttke,
General Counsel

cc. Maggie Wenthe, Sinéad Dearman and Jessie Stirling
Counsel Chiefs of Ontario

Julian Falconer, Christopher Rapson and Natalie Posala
Counsel for Nishnawbe Aski Nation

Paul Vickery, Christopher Rugar and Sarah-Dawn Norris
Counsel for the Attorney General of Canada

Sarah Clarke, David Taylor and Kevin Droz
Counsel for the First Nations Child and Family Caring Society

Brian Smith
Counsel for the Canadian Human Rights Commission

Justin Safayeni and Stephen Aylward
Counsel for the interested party Amnesty International

