
Assembly of First Nations

50 O'Connor Street, Suite 200
Ottawa, Ontario K1P 6L2
Telephone: (613) 241-6789 Fax: (613) 241-5808
www.afn.ca



Assemblée des Premières Nations

50 rue O'Connor, Bureau 200
Ottawa (Ontario) K1p 6L2
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
www.afn.ca

March 24, 2025

By Email

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 February 10, 2025, and February 27, 2025, directions, specifically as they pertain to the Panel’s deadline of March 24, 2025, for the AFN, the First Nations Child and Family Caring Society (“Caring Society”), the Chiefs of Ontario (“COO”) and Nishnawbe Aski Nation (“NAN”), to share their respective views on the Panel’s comments regarding the potential for moving forward in the short term with respect to the long-term remedial phase of these proceedings.

The AFN would first note its appreciation for the Panel’s willingness to allow the parties to discuss and negotiate viable solutions to end Canada’s discrimination over the past several years. From the completion of the Agreement-in-Principle in December of 2021, until the presentation of the Draft Final Agreement in October 2024, the AFN extensively engaged in all facets of this matter in an effort to advance long-term reforms of the First Nations Child and Family Services Program in alignment with the Tribunal’s findings in its merits decision and subsequent directions on the dialogic approach. These efforts included significant engagement with the Caring Society, Canada, COO and NAN until approximately December of 2023, following which Canada, the AFN, COO and NAN engaged in an intensive schedule to advance a national level Draft Final Agreement. The AFN would be remiss not to reflect on the extensive time and resources applied in advancing this work, the AFN’s commitment reflected in the months of frequent and full day negotiations. This was coupled with intensive months long national engagements with First Nations on the Draft Final Agreement, and more efforts at amending same with the parties thereto to reflect the concerns raised by First Nations during the course of the engagements. For a more fulsome reflection on these efforts, we would turn your attention to the recently filed Affidavit of Amber Potts, affirmed March 3, 2025.

The AFN was of the view that the Draft Final Agreement would have satisfied the Panel's orders and even provided additional relief that is beyond this panel's jurisdiction. However, the First Nations-in-Assembly ultimately rejected the Draft Final Agreement, the Chiefs noting several concerns, including the settlement privileged nature of the negotiations, as well as their desire for the negotiation mandate to be expanded beyond the scope of what was envisioned within the Agreement-in-Principle and the Draft Final Agreement. The First Nations-in-Assembly provided the AFN with a revised mandate which included issues such as ensuring funding was made available for children residing off-reserve, the indefinite continuation of the actuals process for a variety of the funding streams, and the retention of oversight of the CHRT with respect to the implementation of any Final Agreement.

As we have previously advised, the First Nations-in-Assembly formed the National Children's Chief Committee ("NCCC") to advance its new negotiation mandates further to a series of Resolutions adopted during the AFN's October 2024 Special Chiefs Assembly (Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*), the formation of which was subject to additional clarity by way of Resolutions adopted at the AFN's December 2024 Special Chiefs Assembly (Resolution 87/2024, *Ensuring Fair and Equitable Inclusion of the Northwest Territories in the Child Welfare Compensation and Long-Term Reform Final Settlement Agreement*, Resolution 88/2024, *Implementing the Chiefs' Direction to End Canada's Discrimination in First Nations Child and Family Services*; Resolution 89/2024, *Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle*; and Resolution 90/2024, *Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations*).

The NCCC has been tasked with the oversight of negotiations on all long-term reform agreements, extending both to long-term reform of the FNCFS Program and Jordan's Principle. The AFN Executive Committee has expressed its support of the NCCC's efforts in this regard, and the AFN's National Chief has called upon Canada on multiple occasions to seek out a revised negotiation mandate in line with the direction of the Chiefs and return to the negotiation table. Canada unfortunately advised the AFN on January 6, 2025, that its mandate did not include further negotiations on reform of the First Nations Child and Family Services Program on a national basis, but that it would instead be focusing on negotiating an agreement specific to Ontario, based on the Final Agreement's terms. Despite repeated calls to return with a revised mandate by the National Chief, this remains the status quo to date with respect to negotiations on a national level agreement.

For clarity, the AFN's new mandates have rejected various elements of the Agreement-in-Principle and now include a call on Canada to broaden the scope of reforms contemplated within the Draft Final Agreement. As this Panel is aware, our near two decades spent at the Tribunal has shed light on the scope of the discrimination that Canada has inflicted upon First Nations children and families. The magnitude of the discrimination found by this Panel requires reforms of equal significance. The mandates from the First Nations-in-Assembly reflect the desire of First Nations leadership for broad-scoped reforms that Canada has indicated that they feel, in some respects,

fall outside of the scope of the initial complaint before the CHRT and the Agreement-in-Principle, as per the evidence advanced by the Caring Society.

While Canada's position on the national level negotiations remains unchanged, the AFN would highlight the recent endorsement of the Ontario Specific Final Agreement by the First Nations members of NAN and COO. This endorsement of the Ontario specific agreement, which was based on the draft national agreement, is an important and positive exercise of self-determination. Without the AFN taking a position on the Ontario Final Agreement, noting that a motion will be forthcoming on its merits in the near future, the AFN highlights the importance placed during the course of its engagements, and within the recent resolutions, on accounting for the distinct regional circumstances of First Nations, and adhering to the internationally recognized right to free, prior and informed consent. The AFN Charter also clearly emphasizes the recognition and affirmation of First Nations mutual freedom and self-determination, as well as mutual respect for the sovereignty of each First Nation across Turtle Island.

The NCCC also recently commended COO and NAN on their ongoing efforts to reform child and family services, reflecting on the Ontario Specific Agreement being "an important step towards addressing the longstanding challenges faced by First Nations communities", while flagging concern with Canada's failure to engage in discussions outside of Ontario.¹

With respect to Canada's recent comments to the Panel on the long-term reform remedial phase, the AFN recognizes the importance of facilitating the consideration of the Ontario Final Agreement. This Panel's determination on the Ontario Final Agreement could set a benchmark to guide further discussions on a national process and may very well inform proposed relief to end Canada's discrimination.

However, while the Ontario Final Agreement is certainly important, and may lend itself to the Panel providing further guidance on the long-term reform remedial stage and national reform, the Chiefs have been clear that the AFN's mandate is focused on national-level reforms. Accordingly, the AFN once again calls upon Canada to seek out a new negotiation mandate consistent with the AFN's resolutions, regardless of Canada's position with respect to such mandates exceeding the Agreement-in-Principle or the scope of the complaint. The AFN reiterates its commitments to advancing the mandates of the First Nations-in-Assembly and supporting the NCCC in the negotiation of long-term reform agreements both with respect to the FNCFS Program and Jordan's Principle.

Absent reciprocal commitments from Canada, the AFN is ultimately in the hands of the Panel with respect to how it wishes to advance the long-term remedial stage in these proceedings. While negotiation was and remains the AFN's preference, the AFN is mindful of the extensive negotiations which have occurred to date and the nine-year span since this Panel released its merit decision. The AFN remains a party to these proceedings and will continue to engage and advocate for First Nations children and families in all facets, further to the directions of the Panel and the First Nations-in-Assembly.

¹ <https://ourchildrenourway.ca/national-childrens-chiefs-commission-responds-to-ontarios-draft-agreement-on-first-nations-child-and-family-services-reform/>

Sincerely,



Adam Williamson
Senior In-House Counsel

cc. Maggie Wentz, Jessie Stirling
Counsel for Chiefs of Ontario

Julian Falconer, Meaghan Daniel
Counsel for Nishnawbe Aski Nation

Paul Vickery, Sarah-Dawn Norris, Dayna Anderson, Kevin Staska, Samantha Gergely
Counsel for the Attorney General of Canada

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

Anshumala Juyal, Khizer Pervez
Counsel for the Canadian Human Rights Commission

Justin Safayeni and Stephen Aylward
Counsel for Amnesty International