

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal of Québec)

B E T W E E N:

ATTORNEY GENERAL OF QUÉBEC

Appellant

-and-

PEKUAKAMIULNUATSH TAKUHIKAN

Respondent

-and-

ATTORNEY GENERAL OF CANADA

Intervener

**NOTICE OF MOTION OF THE PROPOSED INTERVENER,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**
(Pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that First Nations Child and Family Caring Society of Canada (“the Caring Society”) hereby brings this motion to a judge of this Honourable Court pursuant to Rule 55 of the *Rules of the Supreme Court of Canada* for an order granting them:

1. leave to intervene in this appeal;
2. such further or other relief as counsel may advise and this Honourable Court deems just.

AND FURTHER TAKE NOTICE THAT the said motion shall be made on the following grounds:

1. The Caring Society has a direct interest in this appeal:
 - (a) The Caring Society’s national mandate regarding the welfare of First Nations children and families is inextricably linked to the provision of

culturally appropriate policing services, and to the federal and provincial governments' approach to funding these services.

- (b) This Court's guidance on when the honour of the Crown is engaged and the duties that flow from it will affect Canada's negotiation and implementation of numerous funding and coordination agreements for First Nations communities in related areas, with which the Caring Society is involved.
- (c) This Court's analysis of the honour of the Crown will impact the Caring Society's ongoing litigation in *First Nations Child and Family Caring Society et al v Attorney General of Canada* and Canada's implementation of its obligations.
- (d) This Court's pronouncements will also affect Canada's approach to its ongoing negotiations and engagement with the Caring Society regarding long-term reform and funding of First Nations child and family services.

2. The Caring Society has specialized expertise that will assist the Court:

- (a) The Caring Society has unique experience through navigating both the viewpoints of First Nations agencies and communities, and the internal operations of the federal government in negotiating and implementing funding promises.
- (b) Through the CHRT litigation as well as its engagement with courts, administrative decision-makers, Parliament, and the executive branches, the Caring Society has thoroughly considered the interplay between courts and the other branches of government in the implementation of Crown promises.
- (c) The Caring Society has assisted courts as an intervener in numerous cases, including appearing before this Court on several occasions.

3. The Caring Society will provide useful and distinct submissions on the issues raised in this appeal:
 - (a) First, the Caring Society will submit that the honour of the Crown is engaged when Crown conduct amounts to a promise made to a First Nations, Inuit or Métis group that accords them a tangible benefit, with the overarching purpose of reconciling the interests of First Nations, Inuit or Métis groups, peoples, and Nations with the Crown.
 - (b) Second, the Caring Society will submit that the Court's analysis of the honour of the Crown should be anchored in two duties that flow from it: the duty of diligence and the duty to negotiate honourably.
 - (c) Third, the Caring Society will submit that the debate over whether the Crown's conduct should be evaluated based on constitutional duties or provisions of the *Civil Code of Québec* represents a false dichotomy. The duties flowing from the honour of the Crown, the *Civil Code*, and First Nations, Inuit or Métis legal orders may take their colour from each other, but none represent the exclusive lens through which the Crown's conduct can be evaluated.
4. If granted leave to intervene, Caring Society will confine itself to the issues raised by the parties and will not seek to expand the existing record. It will provide focused submissions and will endeavour to avoid duplication. The Caring Society will not take a position on the outcome of the appeal. It will not seek costs.
5. The Caring Society will comply with the *Rules of the Supreme Court of Canada* and any terms and conditions that this Honourable Court may set in granting leave to intervene.
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE THAT the following documents will be referred to in support of the said motion:

1. The affidavit of Cindy Blackstock, affirmed February 12, 2024;
2. The Memorandum of Argument of the Caring Society dated February 12, 2024; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Ottawa, Ontario this 12th day of February, 2024.

Signed:



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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.