The National Aboriginal Organization representing the rights and interests of Non-Status Indians, Métis and Status Indians living off-reserve throughout Canada Since 1971.

L'Organisation nationale autochtone au service des droits et intérêts des Indiens non-statués, Métis et Indiens statués vivant hors des réserves à travers le Canada Depuis 1971.

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

February 22, 2019

Re: Definition of "First Nations Child"
T1340/7008

On behalf of the Congress of Aboriginal Peoples (CAP), we are responding to the February 5, 2019 letter from the Canadian Human Rights Tribunal (CHRT) as well as the responses of the other parties participating in the Tribunal proceedings on the question of the scope of eligibility of Jordan's Principle related to non-status Indian children living off-reserve.

The Tribunal's decision in 2017 CHRT 14 ruled that a definition of "First Nations child" was not to be unduly restricted or narrowed. Notwithstanding the order, Canada did in fact restrict the definition of First Nation's child to children with status under the *Indian Act,* thereby excluding a considerable number of First Nations children. The discrimination the Parties sought to remedy by bringing a complaint to the Tribunal is, therefore, only partially remedied in Canada's further discriminatory treatment of some First Nations children.

Canada's unilateral determination of a definition in this matter not only flies in the face of this Tribunal's decision, but it also disregards the current state of the law with respect to the Crown's constitutional obligations and jurisdiction as decided in the Supreme Court of Canada's decision in *CAP Daniels*, and, most importantly, the child first approach required in the application of Jordan's Principle. Further harm is caused to Indigenous children by virtue of the need for these proceedings.

CAP agrees that the parties have thoroughly canvassed the applicable law on the discreet issue before the Tribunal. It is the remedy sought in its engagement of impacted organizations to fashion a definition of "First Nations Children" that CAP takes the position is defective and practically inconsistent with the inclusivity required of the broadness of the definition itself. CAP must also be consulted.

The honour of the Crown is at stake and " …is not a mere incantation, but rather a core precept that finds its application in concrete practices."[1] There can be no more real a concrete practice than consulting with those whose children have been purposefully systemically and habitually excluded.

[1] *Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73, at para 16.

It is on the points of remedies, the honour of the Crown and substantive equality that CAP wishes to make submissions.

Respectfully,

Robert Bertrand,
National Chief

Cc: Board of Directors, Congress of Aboriginal Peoples
Cc: Jim Devoe, CEO Congress of Aboriginal Peoples