

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPLICANT/MOVING PARTY

- and -

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA,
ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS
COMMISSION, CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL
and NISHNAWBE ASKI NATION

RESPONDENTS/RESPONDING PARTIES

AFFIDAVIT OF KIMBERLY K. SANDY

(Affirmed January 7, 2020)

1. I, KIMBERLY K. SANDY, of the Township of Springwater, in the Province of Ontario, AFFIRM:
2. I am a Licensed Paralegal and Office Manager at Nahwegahbow, Corbiere Genoodmagejig Barristers & Solicitors, a law firm located in Rama First Nation, who are counsel for the Respondent/Responding Party, Assembly of First Nations ("AFN"), in the above matter, and as such I have knowledge of the facts hereinafter deposed to except for those matter which are stated to be based upon information provided by others, all of which information I believe to be true.
3. On October 7, 2019, an Order was issued by the Court ordering that the application in this matter shall continue as a specially managed proceeding, and that the matter is hereby referred to the Chief Justice for the appointment of a case management judge. Attached as Exhibit "A" is a copy of the Order from the Honourable Mr. Justice Paul Favel.

4. On October 9, 2019, Mr. David Taylor, counsel for the Caring Society, issued a letter to the Court in response to the Order of October 7, 2019, requesting Canada's motion for stay be adjourned to a time to be determined by the case management judge. Attached as Exhibit "B" is a copy of the letter from Mr. David Taylor.
5. On October 10, 2019, Mr. Stuart Wuttke, counsel for the AFN, issued a letter to the Honourable Mr. Justice Paul Favel further to the letter of the Caring Society dated October 9, 2019, also requesting an adjournment of Canada's motion for stay be adjourned to a time to be determined by the case management judge. Attached as Exhibit "C" is a copy of the letter from Mr. Stuart Wuttke.
6. On October 11, 2019, an Oral Direction was issued by the Honourable Mr. Justice Paul Favel adjourning Canada's motion for stay to a date and time to be fixed by the case management judge once appointed, and directing Canada to consult with respondent counsel as to their availability for a case management conference in order to schedule Canada's motion. Attached as Exhibit "D" is a copy of the Oral Direction from the Honourable Mr. Justice Paul Favel.
7. On October 11, 2019, an Order was issued by the Court appointing Justice Paul Favel as Case Management Judge in this matter. Attached as Exhibit "E" is a copy of the Order from the Chief Justice Paul S. Crampton.
8. On October 17, 2019, Mr. Robert Frater, QC, counsel for Canada, issued a letter to the Court stating all counsel were available for a Case Management Conference on October 25, 2019, and containing a proposed agenda. Attached as Exhibit "F" is a copy of the letter from Mr. Robert Frater, QC.
9. On October 21, 2019, an Oral Direction was issued by the Honourable Mr. Justice Paul Favel regarding the scheduling of the Case Management Conference scheduled for October 25, 2019 at 10:30am, and directing that Canada's proposed agenda would serve as the agenda in the Conference. Attached as Exhibit "G" is a copy of the Oral Direction from the Honourable Mr. Justice Paul Favel.


10. On October 22, 2019, Mr. Mark Blackburn, APTN News Ottawa, issued a letter to Chief Justice Paul S. Crampton requesting television camera access to allow for electronic audio-visual coverage of the proceedings. Attached as Exhibit "H" is a copy of the letter from Mr. Mark Blackburn.
11. On October 24, 2019, Mr. Stuart Wuttke, counsel for AFN, issued a letter to Mr. Robert Frater, counsel for Canada, urging Canada to immediately engage in discussions with AFN and Caring Society, in consultation with the Commission and other parties, to develop options for a process to distribute the compensation to the victims/survivors. The letter also includes that AFN is prepared to overlook Canada's actions if Canada takes immediate steps to begin the engagement in good faith, and if after such discussions, the parties need more time, AFN would be prepared to return to the Tribunal to ask for more time. Attached as Exhibit "I" is a copy of the letter from Mr. Stuart Wuttke.
12. On October 24, 2019, Mr. Gregory Miller, Acting Executive Director and Registrar for the Canadian Human Rights Tribunal, issued a letter to Mr. Robert Frater, et al. stating all materials which were before the Tribunal in rendering the decision (2019 CHRT 39) are already in the possession of the Attorney General. The letter also contains an Itemized List of Record Contents for reference. Attached as Exhibit "J" is a copy of the letter from Mr. Gregory Miller.
13. On October 25, 2019, our office received the Minutes of the Case Management Conference issued by the Court. Attached as Exhibit "K" is a copy of the Minutes from the Court.
14. On October 31, 2019, Mr. Brian Smith, counsel for the Commission, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "L" is a copy of the letter from Mr. Brian Smith.
15. On November 1, 2019, Mr. David Taylor, counsel for the Caring Society, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "M" is a copy of the letter from Mr. David Taylor.


16. On November 6, 2019, Mr. Julian Falconer, counsel for the Nishnawbe Aski Nation, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "N" is a copy of the letter from Mr. Julian Falconer.
17. On November 7, 2019, Mr. Ben Kates, counsel for Amnesty International, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "O" is a copy of the letter from Mr. Ben Kates.
18. On November 7, 2019, Ms. Maggie Wente, counsel for Chiefs of Ontario, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "P" is a copy of the letter from Ms. Maggie Wente.
19. On November 8, 2019, Mr. Robert Frater, counsel for Canada, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "Q" is a copy of the letter from Mr. Robert Frater.
20. On November 8, 2019, Mr. Stuart Wuttke, counsel for AFN, issued a letter to the Court responding to the APTN's request for television camera access. Attached as Exhibit "R" is a copy of the letter from Mr. Stuart Wuttke.
21. On November 5, 2019, Mr. David Taylor, counsel for the Caring Society, issued a letter to the Court requesting an interpreter for a cross-examination on an affidavit. Attached as Exhibit "S" is a copy of the letter from Mr. David Taylor.
22. On November 14, 2019, Mr. Robert Frater, counsel for Canada, issued a letter to all respondent counsel endeavouring to identify certain issues that will inform compensation discussions and attaching a preliminary list of questions on which Canada sought the respondents' views. Attached as Exhibit "T" is a copy of the letter from Mr. Robert Frater.
23. On November 15, 2019, Mr. Robert Frater, counsel for Canada, issued a letter to Ms. Judy Dubois, Registry Officer for the Canadian Human Rights Tribunal, requesting the Tribunal to suspend its December 10 deadline for submissions. Attached as Exhibit "U" is a copy of the letter from Mr. Robert Frater.

24. On November 26, 2019, Mr. David Taylor, counsel for the Caring Society, issued a letter to Mr. Robert Frater, counsel for Canada, responding to the November 14, 2019 letter and following the joint statement of the Minister of Indigenous Services and Attorney General dated November 25, 2019. Attached as Exhibit "V" is a copy of the letter from Mr. David Taylor.

25. On November 27, 2019, Mr. David Taylor, counsel for the Caring Society, issued a letter to the Court enclosing the November 27, 2019 letter from the Ms. Judy Dubois, Registry Officer for the Canadian Human Rights Tribunal, regarding a communication from the Tribunal. Attached as Exhibit "W" is a copy of the letter from Mr. David Taylor.

26. On November 27, 2019, Ms. Judy Dubois, Registry Officer for the Canadian Human Rights Tribunal, issued a letter to all counsel in that matter containing a communication from the Tribunal. Attached as Exhibit "X" is a copy of the letter from Ms. Judy Dubois.

AFFIRMED before me)
At Rama First Nation)
In the Province of Ontario)
This 7th day of January, 2020)
)
)
_____)
A Commissioner, etc.)
James Ratis (Lso# 73017C)



KIMBERLY K. SANDY

Court File No. T-1621-19

The following is Exhibit "A" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to be "Notary", written over a horizontal line.

Notary, Commissioner Signature

Federal Court



Cour fédérale

Date: 20191007

Docket: T-1621-19

Ottawa, Ontario, October 7, 2019

PRESENT: Mr. Justice Favel

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA,
ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL AND NISHNAWBE ASKI
NATION**

Respondents

ORDER

PURSUANT to Rule 384 of the *Federal Courts Rules* and in accordance with Section A (Dispute Resolution through Dialogue) of Part III of the Practice Guidelines for Aboriginal Law Proceedings (April 2016);

THIS COURT ORDERS that

1. The application shall continue as a specially managed proceeding.
2. The matter is hereby referred to the Chief Justice for the appointment of a case management judge.

“Paul Favel”

Judge

Court File No. T-1621-19

The following is Exhibit "B" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020



Notary, Commissioner Signature

CONWAY

David P. Taylor
Direct Line: 613.691.0368
Email: dtaylor@conway.pro

Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

October 9, 2019

VIA ELECTRONIC FILING

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 1st floor
Ottawa, ON K1A 0H9

Attention: Federal Court - Registrar

Dear Sir/Madam:

RE: *ATTORNEY GENERAL OF CANADA V FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL*
COURT FILE T-1621-19

OUR MATTER ID: 5204-010

I am writing further to Justice Favel's October 7, 2019 Order that this application continue as a specially managed proceeding and referring the matter to Chief Justice Crampton for the appointment of a case management judge. We are counsel to the First Nations Child and Family Caring Society (the "**Caring Society**").

Pending the appointment of a case management judge, the next step currently scheduled for this matter is the hearing of Canada's motion for a stay of the Tribunal's September 6, 2019 Order. The motion is currently scheduled to be heard during the General Sitting on October 23, 2019. The Respondent Caring Society writes to request that Canada's motion be adjourned to a time to be determined by the case management judge, once appointed.

Conway Baxter Wilson LLP/s.r.l.
400 - 411 Roosevelt Avenue, Ottawa ON K2A 3X9
Tel: 613.288.0149 Fax: 613.688.0271
www.conway.pro

The human rights proceedings underlying the applicant's judicial review

This judicial review arises from a complaint under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (“CHRA”), and constitutes the fifth time that the Federal Court has been seized of this litigation.¹ The underlying complaint was filed in 2007 by the Caring Society and the Assembly of First Nations. Following a 72-day hearing, held over the course of 19 months, the Tribunal ruled that Canada’s on-reserve child welfare program and implementation of Jordan’s Principle discriminated against First Nations children and families contrary to section 5 of the CHRA.² The Tribunal ordered Canada to cease its discriminatory practices and reform the First Nations Child and Family Services Program (“FNCFS Program”) and the 1965 Canada-Ontario *Memorandum of Agreement Respecting Welfare Programs for Indians* to reflect the findings in its decision. Canada was also ordered to cease applying its narrow definition of Jordan’s Principle and to take measures to immediately implement the full meaning and scope of Jordan’s Principle. The Tribunal retained jurisdiction to make further determinations with respect to remedy and in order to ensure that its orders were effective. Canada did not seek judicial review of this decision.

While other matters have unfolded over the years, with the Tribunal making other orders dealing with immediate and long-term relief,³ compensation was not immediately addressed. The Tribunal indicated that it had questions for the parties, which it posed in March 2019. The parties exchanged lengthy and detailed written submissions, and the matter was heard over two days in April 2019.

The Tribunal ruled in the complainants’ favour on September 6, 2019.⁴ The order from which Canada seeks judicial review requires only one thing: that Canada consult the Caring Society and the Assembly of First Nations, so that the parties can return to the Tribunal with submissions respecting the compensation process by December 10, 2019. All other aspects of the Tribunal’s order “will find application once the compensation process [...] has been agreed to by the Parties or ordered by the Tribunal.”⁵

The Tribunal made it clear that, as part of this process, it welcomed “any comment/suggestion and request for clarification from any party in regards to moving forward with the compensation process and/or the wording and/or content of the orders.”⁶ Indeed, the Tribunal has made amendments to its orders in the past with respect to operational concerns raised by Canada.⁷

As should be clear from the summary above, the underlying litigation is incredibly complex and involves significant issues directly impacting the wellbeing, safety and best interests of First Nations children across the country. It also involves a number of existing decisions for which Canada has not sought, or has abandoned, judicial review.

¹ T-1753-08 (see 2010 FC 343); T-1008-10 (see 2011 FC 810); T-333-11 (discontinued on March 24, 2011); T-578-11/T-630-11 (see 2012 FC 445), T-918-17 (discontinued on November 30, 2017).

² 2016 CHRT 2.

³ 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017 CHRT 35 and 2018 CHRT 4. Of these, Canada only sought judicial review of 2017 CHRT 14; however, this judicial review was discontinued after the parties reached an agreement and the Tribunal amended its order on consent (see: 2017 CHRT 35).

⁴ 2019 CHRT 39.

⁵ 2019 CHRT 39 at p 83 (heading XIV).

⁶ 2019 CHRT 39 at para 270.

⁷ 2017 CHRT 35, 2018 CHRT 4 at Schedules “A” and “B”.

The need for a case management conference before Canada's stay motion is heard

This application for judicial review will be complex. Canada brings the application in the midst of the 43rd General Election, with public comments from the Prime Minister (including during the English Leaders' debate on October 7, 2019) and the Minister of Indigenous Services that contradict the relief sought in the materials Canada has filed with the Federal Court. It also seeks to have its request for a stay determined less than 48 hours after the polls close, before any Ministry will have been formed.

The Caring Society does not agree that Canada's stay hearing should be the first step in this application for judicial review. Canada has set this hearing for a General Sitting for an hour and a half; however, having consulted with the other respondents, the Caring Society does not agree that this matter can be dealt with in two hours or less. There are as many as seven parties to be heard on the matter of the stay alone. In any event, now that a case management judge is to be appointed, it is the case management judge who should determine Canada's stay motion, as well as other preliminary motions that arise.

The Caring Society intends to bring preliminary motions of its own with respect to this judicial review. First, the Caring Society will be bringing a motion to stay Canada's judicial review, or put it in abeyance, in order to allow the Tribunal to complete its orders with respect to the compensation process. Second, in the event this judicial review proceeds, the Caring Society will be bringing a motion for special costs in advance. The Caring Society is a not-for-profit organization with no litigation budget and has relied on *pro bono* counsel for many years in order to bring this matter forward.

Furthermore, if Canada is successful on its motion for a stay, the Caring Society will be seeking an expedited timeframe for the adjudication of this judicial review. First Nations children have become adults during this litigation. Indeed, First Nations children who started kindergarten the year the Caring Society filed its human rights complaint graduated from high school in June 2019. Children only get one childhood, and tens of thousands of First Nations children have spent their waiting for this litigation to bring them relief. Given the relationship between childhood development and the passage of time, we ask that the case management judge deal with all preliminary matters in order to ensure that this matter proceeds efficiently.

Please advise if there are any questions regarding the Caring Society's position or if further submissions are required.

Yours truly,



David P. Taylor

Copy to (via Email): Robert Frater, Q.C. and Max Binnie
Co-counsel for the applicant Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer and Molly Churchill
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

Court File No. T-1621-19

The following is Exhibit "C" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Katie", is written above a horizontal line.

Notary, Commissioner Signature

Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
www.afn.ca

October 10, 2019

The Honourable Paul Favel
Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 1st Floor
Ottawa, ON K1A 0H9

Via Electronic Filing

Dear Justice Favel:

Re: Application for Judicial Review – AGC v. FNCFCSC, et al. – Court Number T-1621-19

We represent the Respondent, Assembly of First Nations, and write with respect to the Order you issued on October 7, 2019 that the above-noted Application proceed as a specially managed proceeding, and that the matter be referred to the Chief Justice for the appointment of a case management judge.

It would appear that you may not have been aware of the applicant's notice of motion filed October 4, 2019, and returnable to this Honourable Court in Ottawa on October 23, 2019 at 9:30 am for a stay of execution of the Orders contained in the CHRT's ruling, 2019 CHRT 39. Given that a case management judge has not been appointed, it is our position that the motion be put over to the case management judge once one has been appointed and ask respectfully that you consider amending your Order accordingly.

The AFN agrees with the Respondent, First Nation Child and Family Caring Society's letter, filed with this Honourable Court on October 9, 2019 that the allotted time at a General Sitting to hear this motion is insufficient because the issues surrounding monetary compensation including the compensation process are complex. We believe a short adjournment is necessary in this matter to allow the parties an opportunity to propose a motions date wherein the issues surrounding the complaint, the evidence, and the Tribunal record can be fully explored and put before this Honourable Court for determination.

.../2

We are available to elaborate on the position above and welcome the opportunity to make submissions if necessary.

Sincerely,



Stuart Wuttke
General Counsel

Encl: Order issued October 7, 2019 (Hon. Justice Paul Favel)

Cc: Chief Justice, The Honourable Paul Crampton

Robert Frater, QC, Max Binnie and Tara DiBenedetto
Counsel for the Applicant, Attorney General of Canada

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

Brian Smith and Jessica Walsh
Counsel for the Respondent, Canadian Human Rights Commission

Maggie Wente and Sinead Dearman
Counsel for the Respondent, Chiefs of Ontario

Justin Safayeni
Counsel for the Respondent, Amnesty International

Julian Falconer and Molly Churchill
Counsel for the Respondent, Nishnawbe Aski Nation



Federal Court



Cour fédérale

Date: 20191007

Docket: T-1621-19

Ottawa, Ontario, October 7, 2019

PRESENT: Mr. Justice Favel

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA,
ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL AND NISHNAWBE ASKI
NATION**

Respondents

ORDER

PURSUANT to Rule 384 of the *Federal Courts Rules* and in accordance with Section A (Dispute Resolution through Dialogue) of Part III of the Practice Guidelines for Aboriginal Law Proceedings (April 2016);

THIS COURT ORDERS that

1. The application shall continue as a specially managed proceeding.
2. The matter is hereby referred to the Chief Justice for the appointment of a case management judge.

“Paul Favel”

Judge

Court File No. T-1621-19

The following is Exhibit "D" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Notary", is written above a horizontal line.

Notary, Commissioner Signature

Federal Court



Cour fédérale

Ottawa, Ontario
K1A 0H9

October 11, 2019

VIA EMAIL

Applicant

**Mr. Robert Frater, QC
Mr. Max Binnie
Ms. Tara DiBenedetto**

Respondent

**Mr. Stuart Wuttke
Mr. David C. Nahwegahbow
Mr. Thomas Milne
Mr. David Taylor
Ms. Sarah Clarke
Mr. Brian Smith**

Respondent

**Ms. Jessica Walsh
Ms. Maggie Wente
Mr. Sinead Dearman
Mr. Justin Safayeni
Mr. Julian Falconer
Ms. Molly Churchill**

Dear parties:

RE: ATTORNEY GENERAL OF CANADA V. FNCFCSC ET AL.
Court File No: T-1621-19

This will confirm the oral Direction of the Court (Mr. Justice Favel) dated October 11, 2019.

“Upon reviewing correspondence from counsel for the Assembly of First Nations dated October 10, 2019, the Court directs as follows:

- 1. The Applicant’s motion filed October 4, 2019 and made returnable at the General Sittings in Ottawa on October 23, 2019 is adjourned to a date and time to be fixed by the case management Judge once appointed; and*
- 2. Counsel for the Applicant is directed to submit, following consultation with counsel for the Respondents, dates of mutual availability of counsel for a case management conference in order to schedule the date for the hearing of the Applicant’s motion.”*

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Cormier'.

Kassandra Cormier
Registry Officer

Pursuant to section 20 of the *Official Languages Act* all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

Court File No. T-1621-19

The following is Exhibit "E" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature

Federal Court



Cour fédérale

Date: 20191011

Docket: T-1621-19

Ottawa, Ontario, October 11, 2019

PRESENT: The Chief Justice

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA,
ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL AND
NISHNAWBE ASKI NATION**

Respondents

ORDER

IT IS ORDERED pursuant to Rule 383 that Justice Paul Favel is assigned as Case Management Judge in this matter.

"Paul S. Crampton"

Chief Justice

Court File No. T-1621-19

The following is Exhibit "F" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Kato", is written above a horizontal line.

Notary, Commissioner Signature



Department of Justice
Canada

Ministère de la Justice
Canada

National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Room 500
Ottawa, Ontario
K1A 0H8

Telephone: 613-670-6289
Fax: 613-954-1920
Email: Robert.Frater@justice.gc.ca

October 17, 2019

Our File Number: 10967076

BY FAX

Registry
Federal Court Registry - Ottawa
90 Sparks Street
Ottawa, Ontario K1A 0H9

Attention: Federal Court Registry

Dear Sir/Madam:

**Re: AGC v. First Nations Child and Family Caring Society of Canada et al.
CFN: T-1621-19**

We write in response to Justice Favel's Direction of October 11, 2019. Please provide this letter to Justice Favel.

We have consulted with Counsel for the Respondents and can advise you that there is no time this week when all Counsel are available, but that all Counsel can be available for a case management conference on October 25th between 10:30 a.m. and 1:00 p.m.

With respect to the agenda for such a meeting, we would jointly suggest that it include the following matters:

- 1) Setting a date for the hearing of the stay motion (bearing in mind that Canada must report to the Tribunal on December 10, 2019 regarding a process for compensation unless the Tribunal's order is stayed);
- 2) Setting a date for filing responding materials on the stay motion;
- 3) Setting dates for cross-examination on affidavits filed on the stay motion;
- 4) Discussing the filing of any other possible motions by the respondents;
- 5) Setting dates for the filing of materials on the judicial review application.

Yours truly

Robert Frater, Q.C.
Counsel for the Attorney General of Canada

c.c. Counsel for the Respondents (via email)

Canada

Court File No. T-1621-19

The following is Exhibit "G" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Kates", is written above a horizontal line.

Notary, Commissioner Signature

Federal Court



Cour fédérale

FACSIMILE TRANSMITTAL FORM

<p>Mr. Robert Frater Q.C. , Mr. Max Binnie, Solicitors for the Applicant Fax: 613-954-1920 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Ms. Maggie Wente, Ms. Sinéad Dearman, Solicitors for the Respondents Fax: 416-981-9350 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Mr. David C. Nahwegahbow, Mr. Thomas Milne, Solicitors for the Respondent Fax: 705-325-7204 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Mr. Stuart Wuttke, Solicitors for the Respondent Fax: 613-241-5808 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Mr. Brian Smith, Ms. Jessica Walsh, Solicitors for the Respondent Fax: 613-993-3089 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Mr. David P. Taylor, Solicitors for the Respondent Fax: 613-688-0271 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Ms. Sarah Clarke, Solicitors for the Respondent Fax: 647-689-3286 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>
<p>Mr. Justin Safayeni, Solicitors for the Respondent Fax: 416-593-9345 <i>Confirmation of receipt by:</i> <i>Date and Time:</i></p>

Mr. Julian Falconer, Ms. Molly Churchill, Solicitors for the Respondent
Fax: 416-929-8179
Confirmation of receipt by:
Date and Time:

From:

Kassandra Cormier
Registry Officer
Tel.: (613) 943-2963

Date:

October 21, 2019	12:38 PM
------------------	----------

Subject:

ATTORNEY GENERAL OF CANADA v. FNCFCSC et al.
Court File No: T-1621-19

Total number of pages including this one

3

Comments: Please find attached the direction of the Court (Mr. Justice Favel) rendered on October 21, 2019.

Oct. 21. 2019 12:40PM CAS

No. 2048 P. 3041

Federal Court



Cour fédérale

Ottawa, Ontario
K1A 0H9

October 21, 2019

VIA FAX**APPLICANT**Mr. Robert Frater Q.C.
Mr. Max Binnie**RESPONDENT**Ms. Maggie Wente
Ms. Sinéad Dearman
Mr. David C. Nahwegahbow
Mr. Thomas Milne
Mr. Stuart Wuttke
Mr. Brian Smith
Ms. Jessica Walsh
Mr. David P. Taylor
Ms. Sarah Clarke
Mr. Justin Safayeni
Mr. Julian Falconer
Ms. Molly Churchill

Dear parties:

RE: ATTORNEY GENERAL OF CANADA V. FNCFCSC ET AL.
Court File No: T-1621-19

This will confirm the oral Direction of the Court (Mr. Justice Favel) dated October 21, 2019,

“Upon review of correspondence from Counsel for the Attorney General of Canada dated October 17, 2019 the Court directs that:

- 1. A case management conference is scheduled for October 25, 2019 at 10:30 am (eastern) by way of teleconference; and;*
- 2. The agenda for the case management conference is as set forth in the October 17, 2019 correspondence of the Attorney General of Canada.”*

Yours truly,

Registry Officer

Court File No. T-1621-19

The following is Exhibit "H" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature



October 22, 2019

Via Facsimile - (613) 952-3653

**World's First
National Aboriginal
Broadcaster**

APTN
339 Portage Avenue
Winnipeg, Manitoba
R3B 2C5

Chief Justice Paul S. Crampton
Federal Court
90 Sparks St.
Ottawa, ON K1A 0H9

Dear Chief Justice Crampton:

Toll-Free
1-888-278-8862

Email
info@aptn.ca

**Re: Government of Canada Judicial Review Application in respect
of CHRT Ruling; Federal Court File No. T-1621-19**

The Aboriginal Peoples Television Network ("APTN") hereby submits its Application in accordance with the Appendix A Guidelines pertaining to Electronic Media Coverage of the Federal Court Proceedings to be heard in the above-captioned matter (the "Proceedings"). APTN respectfully applies for television camera access to allow for electronic audio-visual coverage of the Proceedings.

APTN is prepared to comply with the aforesaid Guidelines and with such directions as may be given by the Court.

In support of its Application, APTN respectfully submits that the subject matter of the Proceedings involve uniqueness and importance recognized by this Court in its decision rendered on June 30, 2011 in File No. T-1008-10 (at para 3) with copy attached for convenience, and further that there is no reasonable ground upon which this Application should be denied.

APTN is also prepared to follow the protocols which were attached to this Court's June 30, 2011 decision in File No. T-1008-10.

APTN understands that there may be a hearing scheduled in November and accordingly submits this Application for that hearing and/or for any other dates when Proceedings may be heard in this matter.

APTN has submitted this Application well in advance in order that this request may be addressed prior to any hearing so as to avoid any risk of delay.

Please let us know if anything further may be required.

ABORIGINAL PEOPLES TELEVISION NETWORK

Per:

A handwritten signature in black ink, appearing to read 'MBL', with a long horizontal flourish extending to the right.

Mark Blackburn
APTN News Ottawa
mblackburn@aptn.ca
613.298.5799

Federal Court



Cour fédérale

Date: 20110630

Docket: T-1008-10

Citation: 2011 FC 810

Ottawa, Ontario, June 30, 2011

PRESENT: THE CHIEF JUSTICE

BETWEEN:

**ABORIGINAL PEOPLES TELEVISION
NETWORK**

Applicant

and

**CANADIAN HUMAN RIGHTS COMMISSION,
ATTORNEY GENERAL OF CANADA
(REPRESENTING THE MINISTER OF THE
DEPARTMENT OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT CANADA),
FIRST NATIONS CHILD AND FAMILY
CARING SOCIETY OF CANADA, ASSEMBLY
OF FIRST NATIONS, CHIEFS OF ONTARIO
AND AMNESTY INTERNATIONAL**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

2011 FC 810 (CanLII)

[1] The applicant, Aboriginal Peoples Television Network (APTN), seeks judicial review of the refusal by the Canadian Human Rights Tribunal (the tribunal) to allow APTN television camera access to its proceedings.

Background

[2] The Assembly of First Nations and the First Nations Child and Family Caring Society (the Caring Society) filed a human rights complaint alleging that the inequitable funding of child welfare services on First Nations reserves amounted to discrimination on the basis of race and national ethnic origin, contrary to section 5 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the complaint).

[3] The uniqueness and importance of this case are highlighted in the affidavit of a member of the Opaskwayak Cree Nation, who is a single mother residing some 600 kilometres north of Winnipeg. In describing the plight of aboriginal children under welfare protection, she states:

From the day I entered child protection, the inadequate funding of the services provided to me affected every aspect of my life. The injustices I experienced while under welfare protection continue to affect me in a way that is impossible for me to convey. I believe that viewing the proceedings will help validate the feelings of injustice I have experienced all of my life. It is important for me to know that these injustices are not being ignored as they have been in the past. It is also important for me to know that my story and those of other First Nations children is being heard. I am hopeful that if our stories are heard, things will change for First Nations children. I believe there can be a brighter future for them. [emphasis added]

[4] According to the tribunal's rules of procedure, the hearing of this complaint will be open to the public. Members of the media will be allowed to attend, take notes and report on the

hearing. According to the tribunal's decision, tape recorders and video cameras are not allowed in the hearing room.

[5] APTN is the only television network in Canada that focuses specifically on aboriginal issues. APTN requested permission from the tribunal to film the complaint proceedings, including opening and closing statements, testimony of witnesses, questions, objections, and arguments.

[6] The tribunal denied the APTN request for camera access.

The decision under review

[7] In its reasons, the tribunal touches on the aboriginal community's interest in being able to observe the proceedings, the significant barriers which would make it difficult or impossible for most members of this widely dispersed community to travel to Ottawa for the hearing and the impact the outcome of the proceedings will have, on aboriginal peoples in particular.

[8] The tribunal also considered the factors identified against granting camera access and broadcasting. Specifically, the tribunal noted the possibility that the media will broadcast selective excerpts which offer an incomplete portrayal of a witness' testimony. This would risk undermining the integrity of the tribunal process. Also, in the tribunal's view, broadcasting proceedings would undermine the efficacy of witness exclusion orders, and would compromise the privacy interests of participants in the hearing. Finally, again in the opinion of the tribunal, cameras might introduce an element of distraction detrimental to the fairness of the hearing.

[9] Immediately following this cursory analysis, the tribunal concludes as follows (at paragraph 37 of her decision):

It is my firm opinion, after due consideration of the submissions of the parties, that nothing less than the exclusion of cameras from the hearing room will suffice to ensure that the publicity generated by these proceedings does not undermine its integrity. (Emphasis added.)

Is the decision reasonable?

[10] I have concluded that the tribunal's decision was made without regard to the material before it. In particular, the member does not mention, let alone deal with the applicant's detailed Request and Submission of October 22, 2009, to obtain television footage of the proceedings. This Request and Submission (the APTN proposal) is attached to these reasons as Annex "A". Accordingly, the outcome reached by the tribunal is unreasonable when measured against the available record.

[11] Under the heading Guidelines for Coverage, the APTN proposal suggested some 15 operating guidelines concerning the television coverage. The guidelines covered issues from the positioning of the television equipment to suitable attire for the APTN filming crew. The APTN proposal also set out the purpose of the television coverage, and stated that APTN "commits to work with the tribunal to establish guidelines that respect the dignity and integrity of the tribunal's proceedings". The APTN proposal was necessarily subject to the approval of the tribunal.

[12] It was open to the tribunal, through its counsel, to engage in a discussion with the APTN concerning its proposal. There is no evidence before this Court that this was done.

[13] The tribunal's decision does not refer to this proposal, or provide any reasons why these guidelines were inadequate to manage any of the potential negative impacts of filming. The tribunal failed to provide reasons why a total ban on broadcasting was necessary.

[14] There was little affidavit evidence before the tribunal regarding any of the potential negative impacts of filming the proceedings. The Attorney General provided one affidavit from a Litigation Case Manager with the Department of Indian Affairs and Northern Development. Her affidavit stated that the government's witnesses had all "expressed concern" about their testimony being videoed and televised. Their primary concern was that if their testimony was taken out of context, it would portray them in a negative light and damage their working relationships with First Nations persons and agencies. None of the proposed witnesses expressed concern that their testimony would be affected by the presence of a camera, or otherwise expressed any concerns relating to the fairness of the hearing. None of the potential witnesses were named, and no evidence was provided directly from them regarding their concerns.

[15] The tribunal's three primary concerns with camera access – risk of selective editing, impact on possible exclusion orders, and impacts on witnesses – have been considered in the case law. These concerns are discussed in detail in *R v Pilarinos*, 2001 BCSC 1332, *R v Fleet* (1994), 137 NSR (2d) 156 (SC), and *Andreen v Dairy Producers Co-operative Ltd. (No. 2)* (1994), 22 CHRR D/80. *Pilarinos* concerned an application for expanded media coverage of the

trial of a former Premier of British Columbia who was charged with fraud on the government and breach of trust by a public officer. *Fleet* concerned an application to broadcast the trial of an accused charged with murder, where camera access was denied. *Andreen* is a decision of the Saskatchewan Human Rights Commission allowing camera access to an inquiry into complaints of sexual harassment, on certain conditions.

[16] The tribunal failed to consider whether the concerns over camera access raised in these cases are applicable to the facts in this case. For example, there was no evidence that exclusion orders had been issued or were contemplated, or that this issue could not be dealt with if and when it arose.

[17] Similarly, there was no evidence before the tribunal that the privacy interests at stake in the case at bar were similar to the privacy interests at stake in *Pilarinos*, *Fleet*, and *Andreen*. In *Andreen*, the privacy concern was that “there is a distinction between disclosing potentially intimate details of one’s life in a hearing room where the public attend, on the one hand, and having those disclosures broadcast throughout the province, and perhaps throughout the country, over a television network, on the other hand” (para. 14) [emphasis added].

[18] The evidence before the tribunal was that the human rights complaint would not require personal information about a complainant or respondent to be disclosed. None of the proposed witnesses were survivors of the child welfare system. No personal respondents were named in the complaint. The government witnesses would be testifying about policies and decisions made regarding the provision of child welfare services. Information about these policies and decisions

is already publicly available through several reports, including a National Policy Review (2000) prepared by the Assembly of First Nations and First Nations child and family service agency representatives in partnership with the Department of Indian Affairs and Northern Development, a 2008 Report from the Auditor General of Canada, a 2009 Report of the Standing Committee on Public Accounts, and the 2008 Canadian Incidence Study on Reported Child Abuse Neglect. The evidence before the tribunal was that the testimony and submissions would focus on widely known public policies.

[19] The interests of people living on reserve in observing the proceedings at issue are more direct than those of the general public in observing a criminal trial. The proceedings will decide whether large numbers of geographically dispersed people have experienced discrimination. The proceedings directly implicate the human rights of APTN's intended audience.

[20] By failing to consider the unique facts of this case, the tribunal's decision was made without regard to the material before it. The decision falls short of the standard of justification, transparency and intelligibility required by *Dunsmuir v New Brunswick*, 2008 SCC 9.

Mootness

[21] On March 14, 2011, after the Court had taken this proceeding under reserve, the tribunal granted the motion brought by the Attorney General of Canada that the issues raised in the complaint of the First Nations Child and Family Caring Society of Canada (and the Assembly of First Nations) were beyond the tribunal's jurisdiction (the jurisdictional motion). The tribunal's decision is reported at 2011 CRHT 4.

[22] The tribunal's dismissal of the complaint raised the issue of the mootness of this application for judicial review concerning camera access to the tribunal's proceeding. An understanding of the timelines in the proceedings both before the tribunal and this Court is useful to situate the mootness issue.

[23] On June 2 and 3, 2010, the jurisdictional motion was argued before the tribunal. Written submissions were subsequently filed.

[24] On June 25, 2010, APTN initiated this application for judicial review challenging the tribunal's refusal to allow camera access to its hearings. On November 4, 2010, after its application for judicial review had been perfected, APTN filed a requisition for hearing.

[25] Prior to scheduling the hearing, the Court used case management to obtain from the parties more information on the status of the jurisdictional motion before the tribunal. The goal was to avoid, if possible, the duplication of judicial resources. The Court was advised that the tribunal decision concerning the jurisdictional motion continued to be under reserve.

[26] On February 1, 2011, the hearing of the APTN application for judicial review was scheduled for March 7, 2011. In fact, the hearing lasted two days.

[27] As noted earlier, on March 14, 2011, the tribunal granted the relief sought in the jurisdictional motion and dismissed the complaint for lack of jurisdiction.

[28] The Attorney General of Canada contested the APTN application for camera access to the tribunal proceedings both before the tribunal and in this Court.

[29] After consideration of the parties' submissions concerning mootness and, in particular, the principles of *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, I have concluded in the exercise of my discretion that this application for judicial review should be determined now. In my view, there remains a live controversy between the parties, at least until the application for judicial review of the tribunal decision concerning the jurisdictional motion has been finally resolved.

[30] APTN, supported by the Caring Society and the Commission, argued that the tribunal erred by concluding that denying camera access to the proceedings did not constitute an unjustifiable breach of section 2(b) of the *Canadian Charter of Rights and Freedoms*. I find it unnecessary to decide the *Charter* issue at this time: *Tremblay v Daigle*, [1989] 2 SCR 530 at para. 77.

[31] Accordingly, the APTN application for judicial review of the tribunal's ruling not to allow camera access to its hearing concerning the complaint will be granted. Because the tribunal has ruled that it has no jurisdiction to consider the underlying complaint, the matter of re-determination of its decision not to grant camera access should be deferred until the judicial determination concerning the jurisdictional issue has been definitively resolved.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial review is granted;
2. The decision of the Canadian Human Rights Tribunal, dated May 28, 2010, is set aside. Re-determination of the matter by a different member is deferred until the judicial determination concerning the jurisdictional issue has been definitely resolved.

"Allan Lutfy"
Chief Justice


ANNEX "A"

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October 22, 2009

TO: Canadian Human Rights Tribunal
Suite A100, 11th Floor
160 Elgin Street
Ottawa, ON K1A 1J4
Attention: Gregory M. Smith, Registrar

This is Exhibit "A" referred to in
the Declaration Affidavit of Cynthia Dawn Szekiewicz
sworn before me this 12th
day of December, A.D. 2009


NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

REQUEST AND SUBMISSION

This Request and Submission concerns the Canadian Human Rights Tribunal File No. T-1340-708 in which the Complainants are First Nations Child and Family Caring Society of Canada and Assembly of First Nations, and the Respondent is Indian and Northern Affairs Canada.

The Aboriginal Peoples Television Network ("APTN") is requesting of the Canadian Human Rights Tribunal (the "Tribunal") permission to obtain television footage of the proceedings which are scheduled to start on the 16th day of November, 2009.

Description, Effect and Purpose of Coverage

1. APTN is the only network in Canada that focuses specifically on Aboriginal issues. The network tells the stories of First Nations peoples, Inuit and Métiis. APTN was allowed to tape the opening of the proceedings (T-1340-708) before broadcast on APTN's evening news and for archival purposes.
2. The purpose of the coverage is the following:
 - (a) The importance of these proceedings cannot be overstated. Indian and Northern Affairs Canada is allegedly discriminating against children who live in First Nations communities by not funding services to the same degree as is provided for children living off reserve. The outcome of this Tribunal proceeding will have an overwhelming effect on the lives of families living on reserve in Canada;
 - (b) The Canadian Human Rights Commission has directed the Tribunal to determine whether the practices and policies of Indian and Northern Affairs Canada in funding Child Welfare Services for First Nations and First Nations children on reserve in Canada constitute discrimination under the Canadian Human Rights Act because such services are underfunded in comparison to the funding of such services in the dominant society. The issue ranks amongst the most important in the lives and well-being of First Nations peoples in Canada. Therefore, all First Nations peoples and communities have an acute interest in, and need to understand, the true facts and legalities affecting their children and their lives. The issues are unique and seminal. Therefore, it is fundamentally important, not only to First Nations peoples but to all Canadians, that the evidence and arguments which will be brought to bear in the course of the proceeding, be available and accessible to the public. This will be an historic opportunity for transparency to prevail. It will also ensure that First Nations peoples, care providers and Canadians in general will be able through these proceedings to feel secure that these important issues are being determined by way of a comprehensive review, of an impartial tribunal and with the full participation, not

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only of counsel for the Canadian Human Rights Commission and Indian and Northern Affairs Canada, but also, with the participation and advocacy of two reputable First Nations organizations, First Nations Child and Family Caring Society of Canada and Assembly of First Nations. In short, this hearing is uniquely suited for the fullest possible public participation and viewing and, in that way, all parties can be assured that there is, and will be, appropriate accountability and transparency of practices and policies regardless of the outcome;

- (c) The federal government has announced that it is enhancing its funding to five provinces, Alberta, Saskatchewan, Nova Scotia, Quebec and Prince Edward Island. It is anticipated that details will be released at the Tribunal hearing outlining how the funding will help children and families who live on reserve. Moreover, any information about how and whether INAC is planning to enhance funding to other jurisdictions is of fundamental importance to APTN viewers;
 - (d) Because these proceedings are of unique and extraordinary public interest, APTN intends to make an extraordinary commitment of resources to provide the best possible news coverage for its viewers. Television is a medium that depends on audio and visual recordings. APTN reporters use television cameras to gather news and to report the news to the public. When a reporter cannot record an event the reporter is forced to describe the event from notes, which are never as accurate, or as full, in their information to the public as is a first hand recording. If this application is denied, APTN's ability to inform the public will be severely limited, and the understanding of First Nations peoples and all Canadians of the circumstances and issues, will be severely limited and an opportunity to build the trust of First Nations will have been lost.
3. APTN proposes to obtain the following footage in the hearing room:
- (a) Questions, objections, arguments, opening statements, closing statements posed by lawyers;
 - (b) Answers from witnesses;
 - (c) Questions, objections, arguments, rulings, opening statement, closing statement, final ruling from the Commissioner.

Consent of the Tribunal

4. APTN acknowledges this application is subject to the reasonable consent of the Tribunal. It further commits to work with the Tribunal to establish guidelines that respect the dignity and integrity of the Tribunal's proceedings. If requested by the Tribunal, APTN would be pleased to assist the Tribunal in obtaining the consent of the parties to this Application. However, APTN respectfully suggests that this matter is of such national importance and concern to First Nations and others, that transparency, accountability and the fullest participation by the public require the Tribunal's consent to this application whether or not the consent of the parties is sought or given.

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Guidelines for Coverage

5. The applicant undertakes to abide by the following guidelines and any order of the Tribunal which may supplement these guidelines in this case:
- (a) No more than one television camera will be used at any one time;
 - (b) Camera and operating personnel will be in place at least 10 minutes prior to the scheduled commencement or re-commencement of the proceeding;
 - (c) Equipment and operating personnel will be placed in an area, as agreed between the Tribunal and APTN, and shall not be moved or removed while the Tribunal is in session. The area designated shall provide reasonable access to coverage;
 - (d) Cameras and sound recording equipment will be unobtrusive and not distracting. There will be minimum sound, no visible lights, and equipment will be operated in a manner that prevents participants from knowing whether the equipment is recording. With the concurrence of the Tribunal or its designates modifications and additions may be made to light sources existing in the facility, providing such modifications or additions are installed and maintained without significant public expense;
 - (e) All non-camera equipment will be outside the hearing room and will not impede public access or traffic;
 - (f) Operating personnel in the hearing room will be suitably attired and conduct themselves in keeping with Tribunal proceedings;
 - (g) There will be no visual coverage of the members of the public in attendance. The camera will be positioned to the right of the Commissioner's bench and the public gallery will not appear in any of the shots during the hearings. The camera will be turned off at lunch and breaks;
 - (h) There will be no recording of people or events within the Tribunal building during any recess or adjournment;
 - (i) Cameras will not be focused on any materials on counsel tables, or in counsel's possession, or on any materials used in the examination of a witness that are not admitted into evidence. There will be no broadcast of conferences which occur in a Tribunal facility between counsel and their clients, between co-counsel of a client, or between counsel and the Tribunal privately or in camera;
 - (j) There will be no shots closer than those that would include at least the head and shoulders of any participant being filmed;
 - (k) There will be no live broadcasting without Tribunal consent;

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- (l) Any authorized recording will be used only for the purpose(s) authorized and only during the time period, if any, specified in the authorization. Use for any other purpose or time period requires the applicant to obtain the consent of the Tribunal, and must be the subject of a separate Tribunal application and order pursuant to these provisions;
- (m) All recordings of authorized coverage of Tribunal proceedings shall be retained and securely stored by APTN for a period of at least three years. During that period APTN will provide them to the Tribunal upon the direction of the Tribunal;
- (n) APTN has the equipment necessary to provide a live feed of the proceedings for up to six media outlets should they choose to cover this hearing. The feed will be provided to them at no cost. This will be a live feed; no archival tape will be provided;
- (o) None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a Tribunal proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

Co-ordinates

- 6. The in charge person at APTN is: Mark Blackburn, Executive Producer, APTN Ottawa, 600 – 165 Sparks Street, Ottawa, ON K1P 5B9, (Office) 613-567-1550 ext. 249, (Cell) 613-298-5799, Email: MBlackburn@aptn.ca.
- 7. Jack R. London, C.M., Q.C. also is available at the convenience and call of the Tribunal at Pitblado LLP, Barristers and Solicitors, 2500 – 360 Main Street, Winnipeg, MB R3C 4H6, (Office) 204-956-3500, (Fax) 204-957-0227, Email: london@pitblado.com.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1008-10

STYLE OF CAUSE: ABORIGINAL PEOPLES TELEVISION NETWORK v
CHRC ET AL

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 9, 2011

REASONS FOR JUDGMENT: LUTFY C.J.

DATED: June 30, 2011

APPEARANCES:

Mr. Bob Sokalski FOR THE APPLICANT

Mr. Jonathan Tarlton & Ms. Rosemarie Schipizky FOR THE RESPONDENT, THE ATTORNEY
GENERAL OF CANADA

Mr. Daniel Poulin & Ms. Samar Musallam FOR THE RESPONDENT, CANADIAN HUMAN
RIGHTS COMMISSION

Ms. Anne Lévesque FOR THE RESPONDENT, FIRST NATIONS
CHILD AND FAMILY CARING SOCIETY OF
CANADA

SOLICITORS OF RECORD:

Hill Sokalski Vioncent Walsh FOR THE APPLICANT
Trippier LLP

Winnipeg Manitoba

Myles J, Kirvan FOR THE RESPONDENT, THE ATTORNEY
GENERAL OF CANADA

Deputy Attorney General of Canada

Halifax, Nova Scotia

Canadian Human Rights Commission FOR THE RESPONDENT, CANADIAN HUMAN
RIGHTS COMMISSION

Ottawa, Ontario

Champ & Associates FOR THE RESPONDENT, FIRST NATIONS
CHILD AND FAMILY CARING SOCIETY OF
CANADA

Ottawa, Ontario

Court File No. T-1621-19

The following is Exhibit "I" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "R. Bates", is written above a horizontal line.

Notary, Commissioner Signature

Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Telephone: 613-241-6789 Telecopieur: 613-241-5808
www.afn.ca

October 24, 2019

Via Email: Robert.Frater@justice.gc.ca

Mr. Robert Frater, Q.C.
Department of Justice Canada
National Litigation Sector
500-50 O'Connor Street
Ottawa, ON K1A 0H8

Dear Mr. Frater:

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

Further to the above-noted matter and with respect to the upcoming case management conference, please be advised that the AFN will be opposing Canada's motion for a stay of the Panel's Decision, 2019 CHRT 35, issued on September 6, 2019 ("the Decision"). But rather than litigating this matter, we strongly urge Canada to immediately engage in discussions with AFN and the Caring Society, in consultation with the Commission and other parties, to develop options for a process to distribute the compensation to the victims/survivors.

It is our understanding that Canada does not take issue with the need to pay compensation. Indeed, the Prime Minister has said throughout the campaign and repeated in his news conference yesterday that Canada agrees with the need to pay compensation to First Nation child welfare victims. From your motion materials, it would appear that your most pressing concern is the impending December 10, 2019, date given by the Panel, for Canada, AFN and the Caring Society to report back to the Tribunal on "propositions", once we have had the opportunity to engage in discussions on options for a process for the distribution of compensation to victims/survivors.

To be clear, the Panel made no final determination on the process for compensation in the decision. It simply ordered Canada to engage in discussions with AFN and the Caring Society and directed all of us to report back. The concern with the December 10th deadline is one which is self-inflicted by Canada as a result of its failure to engage in

meaningful discussions with us. Canada should not be able to obtain a stay in such circumstances. The AFN takes the position that Canada ought to have engaged in such discussions from the outset of the order and that the election is no excuse for defying a Tribunal order. Nevertheless, AFN is prepared overlook this if Canada takes immediate steps to begin the engagement in good faith, and if after such discussions, we need more time, AFN would be prepared to return to the Tribunal to ask for more time.

In the decision, at paragraph 269, the Panel recognized the need for a culturally safe process to locate the victims and survivors referred to in the decision, to ensure one is created that protects their rights and privacy. The Panel also recognized in the decision that certain means currently exist to assist locating victims and survivors, and that the AFN and Caring Society are ready, willing and able to assist in this regard. It is in the interests of all parties, especially the victims/survivors, that we take a cooperative approach in the distribution of compensation.

We would appreciate your earliest response and want you to know that we will be providing a copy of this correspondence to Justice Favel and all parties at the case management conference.

Sincerely,



Stuart Wuttke
General Counsel

Cc: Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie and Tara DiBenedetto
Counsel for the Respondent, Attorney General of Canada

David Taylor and Sarah Clarke
Counsel for the Co-Complainant, First Nations Child and Family Caring Society of Canada

Brian Smith and Jessica Walsh
Counsel for the Canadian Human Rights Commission

Julian Falconer and Molly Churchill
Counsel for the Interested Party, Nishnawbe Aski Nation

Maggie Wentle and Sinead Dearman
Counsel for the Interested Party, Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the Interested Party, Amnesty International

Court File No. T-1621-19

The following is Exhibit "J" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Rater", is written above a horizontal line.

Notary, Commissioner Signature



October 24, 2019

By E-mail/Letter

Mr. Robert Frater
Mr. Max Binnie
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Counsel:

Re: Application for Judicial Review - FC File no. T-1621-19
Attorney General of Canada v. First Nations Child and Family Caring Society of
Canada et al. (CHRT File no. T1340/7008)

We write further to the Notice of Application in the above-noted proceeding, served on us on October 4, 2019, in respect of the Canadian Human Rights Tribunal ("Tribunal") decision in file no. T1340/7008 dated September 6, 2019, and cited as 2019 CHRT 39.

The Notice includes a request that "...the Canadian Human Rights Tribunal send a certified copy of the record upon which its decision was based to the Applicant and to the Registry within 20 days."

Rule 317(1) of the *Federal Courts Rules*, SOR/98-106 provides as follows:

317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

317 (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

[emphasis added]

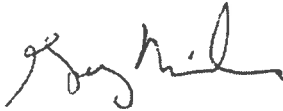
The Tribunal believes that the Attorney General is in possession of all materials which were before the Tribunal in rendering the decision subject to this Application.

However, in order to provide assurances in this regard, we are transmitting an itemized List of Record Contents for your reference. (Please see attachment: *FNCFCS documents before the Tribunal for compensation ruling*)

In the event you discover that any of the documents referred to in the List is not in your possession, please contact the undersigned and we will provide it to you and to the Registry forthwith.

Finally, upon request, we would be pleased to provide clean duplicate copies of any documents that have become marked up during the Tribunal proceeding, as well as enhanced descriptions of any items on the List.

Yours sincerely,



Gregory Miller
Acting Executive Director and Registrar

c.c. The Registry of the Federal Court of Canada
David Taylor and Sarah Clarke, Counsel for FNCFCS
David C. Nahwegahbow, Thomas Milne and Stuart Wuttke, Counsel for AFN
Brian Smith and Jessica Walsh, Counsel for CHRC
Maggie Wenté and Sinéad Dearman, Counsel for Chiefs of Ontario
Justin Safayeni, Counsel for Amnesty International
Julian Falconer and Molly Churchill, Counsel for Nishnawbe Aski Nation

Encl.

FNCFCSC et al. v. AGC - record

10.30.17 Notice of Motion for Order to Vary - October 30 2017.pdf

2012-04-18 - Federal Court Decision - T-578-11.pdf

2013-01-11 - Letter to parties enclosing agenda for Jan 22 CMCC & requesting confirmation RE intention to file additional SoP.pdf

2013-01-17 - Respondent's letter advising that AGC will file an amended SoP & attend CMCC in person.pdf

2013-01-29 - CHRC's Amended SoP.pdf

2013-01-29 - Complainant's Amended SoP.pdf

2013-01-31 - CHRC letter to Tribunal advising of corrections to its Amended SoP.pdf

2013-02-15 - AGC's updated SOP.pdf

2013-03-11 - Addendum to expert report (CHRC).pdf

2013-04-24 - Encl ruling 2013 CHRT 11.pdf

2013-08-05 - AGC's Final Written Submissions (Retaliation).pdf

2013-08-06 - FNCFCS' revision to remedies set out on page 25 of its Final Written Submissions.pdf

2013-08-07 - AFN's letter - closing arguments on retaliation complaint.pdf

2014-01-06 - Point Form decision.pdf

2014-03-05 - CHRC's letter enclosing Chart that outlines which portions of filed documents CHRC & Complainants may rely upon.pdf

2014-03-28 - AGC's letter providing documents as per ruling 2014 CHRT 12.pdf

2014-07-09 - CHRC's letter enclosing amended chart of documents filed by Complainants and CHRC.pdf

2014-08-06 - Transcripts files with CHRT by Caring Society

2014-2016 Closing Submissions:

Closing Submissions AFN.pdf

Closing Submissions - Amnesty International.pdf

Closing Submissions - Caring Society.pdf

Closing Submissions - Chiefs of Ontario.pdf

Closing Submissions - CHRC.pdf

Closing Submissions - Respondent.pdf

Closing Submissions corrections - AFN.pdf

2013-2014 hearing recordings including oral submissions recordings
Complaint.pdf

2014-10-03 - AGC's closing submissions.pdf

2014-10-09 - FNCFCS' letter seeking that the Respondent clarify parts of its written closing submissions.pdf

2014-10-09 - AGC's response to the Caring Society's letter Re clarifications.pdf

2014-10-10 - FNCFCS' letter in response to AGC letter of October 9, 2014.pdf

2014-10-14 - AFN's Final Reply submissions.pdf

2014-10-14 - CHRC's Final Reply submissions.pdf

2014-10-14 - FNCFCS' Final Reply submissions.pdf

2014-10-15 - COO's Final Reply submissions.pdf

2014-11-03 - Letter to parties Re evidentiary record.pdf

2014-12-01 - AFN's letter RE evidentiary record in response to Tribunal letter of Nov 3, 2014.pdf

2014-12-01 - AGC's letter RE evidentiary record in response to Tribunal letter of Nov 3, 2014.pdf

2014-12-01 - Caring Society's correspondence RE evidentiary record in response to Tribunal letter of Nov 3, 2014.pdf

2014-12-01 - Caring Society's second letter RE evidentiary record in response to Tribunal letter of Nov 3, 2014.pdf

2014-12-01 - CHRC's letter RE evidentiary record in response to Tribunal letter of Nov 3, 2014.pdf

2014-12-02 - AGC's letter requesting that panel issue ruling on admissible exhibits.pdf

2014-12-03 - AGC's letter addressing AFN's remarks RE documents to be included in evidentiary record.pdf

2014-12-05 - Letter to parties Re recent correspondence.pdf

2014-12-15 - Caring Society's letter Re recent case law on the issue of class action.pdf

2014-12-18 - AGC's letter Re Caring Society's letter of Dec 15, 2014.pdf

2015-01-05 - CHRC's letter Re filing of transcripts of final oral argument.pdf

2015-01-13 - AGC's letter Re hard drives.pdf

2015-01-14 - Letter to parties enclosing ruling 2015 CHRT 1.pdf

2015-01-19 - AGC's letter advising it will provide Chart with comments following Tribunal ruling 2015 CHRT 1.pdf

2015-02-04 - Respondent's letter in response to Panel's ruling 2015 CHRT 1.pdf

2015-02-13 - AGC's letter advising of clarification RE tabs referred to in the Respondent's Chart.pdf

2015-04-16 - FNCFCS' letter Re FCA decision in Brown v. AGC.pdf

2015-06-05 - Letter to parties enclosing Decision 2015 CHRT 14.pdf

2016-01-22 - Letter to parties enclosing Decision 2016 CHRT 2.pdf

2016-02-10 - Panel Chair clarification request on relief items.pdf

2016-02-18 - AGC's letter to Panel Re AFN and CHRC letters.pdf

2016-02-18 - Caring Society's letter to Panel Re AFN and CHRC letters.pdf

2016-02-18 - Caring Society's submissions in response to Panel's Feb 10, 2016 requests for clarification.pdf

2016-02-18 - COO's submissions in response to Panel's Feb 10, 2016 requests for clarification.pdf

2016-03-03 - AFN's letter providing clarification on certain aspects of the requests for immediate relief, further to CHRT letter of Feb 10, 2016.pdf

2016-03-03 - CHRC's letter providing clarification on certain aspects of the requests for immediate relief, further to CHRT letter of Feb 10, 2016.pdf

2016-03-10 - AGC's letter providing clarification on remedy, further to CHRT letter of Feb 10, 2016.pdf

2016-03-16 - Letter to parties Re AFN's extension of time request for filing of Replies further to Federal Budget announcement.pdf

2016-03-18 - MOTION RECORD of the proposed Interested Party, Nishbawbe Aski Nation.pdf

2016-03-24 - Letter to parties re NAN status and Respondent replies.pdf

2016-03-31 - AFN's Reply submissions to the Panel's request for clarification on immediate relief dated Feb 10, 2016 and response to AGC's extension request.pdf

2016-03-31 - AGC's letter advising Respondent is in process of preparing submissions on further details Re immediate relief by April 6, 2016.pdf

2016-03-31 - Caring Society's Reply submissions regarding the Panel's request for clarification on immediate relief and response to AGC's extension request.pdf

2016-03-31 - CHRC's letter further to AGC's submissions on clarifications Re remedy.pdf

2016-03-31 - COO's Reply submissions to the AGC's submissions on remedy and response to the AGC's request for an extension of time.pdf

2016-04-06 - AGC's letter Re further submissions on Remedy.pdf

2016-04-11 - AFN's response to the Respondent's further submissions on Remedy of April 6, 2016.pdf

2016-04-11 - Caring Society's submissions in reply to AGC's further submissions Re immediate relief items.pdf

2016-04-11 - CHRC's letter Re AGC's further submissions on Remedy.pdf

2016-04-18 - AGC's response to the Complainants' and Interested Parties' April 11, 2016 submissions.pdf

2016-04-19 - Caring Society's letter in response to AGC's letter of April 18, 2016.pdf

2016-04-21 - AFN's letter in response to AGC's letter of April 18, 2016 and Caring Society's letter of April 19, 2016.pdf

2016-04-26 - Letter to parties enclosing ruling 2016 CHRT 10.pdf

2016-05-05 - Letter to parties enclosing ruling 2016 CHRT 11.pdf

2016-05-10 - AGC's submissions on Jordan's Principle further to Tribunal ruling 2016 CHRT 10.pdf

2016-05-19 - NAN's written submissions on Immediate Relief.pdf

2016-05-24 - AGC's submissions further to Tribunal Ruling 2016 CHRT 10.pdf

2016-06-02 - NAN's letter to CHRT addressing other parties' requests for clarification on NAN's immediate relief submissions.pdf

2016-06-03 - AFN's letter in response to NAN's Immediate Relief Submissions.pdf

2016-06-03 - AGC's letter in response to NAN's Immediate Relief Submissions.pdf

2016-06-03 - Caring Society's letter in response to NAN's Immediate Relief Submissions.pdf

2016-06-03 - CHRC's letter in response to NAN's Immediate Relief Submissions.pdf

2016-06-03 - COO's letter in response to NAN's Immediate Relief Submissions.pdf

2016-06-08 - Caring Society's submissions in response to AGC's May 10 and May 24, 2016 compliance reports.pdf

2016-06-08 - COO's letter in response to the Attorney General's submissions of May 24, 2016.pdf

2016-06-10 - Caring Society letter clarifying position on status of certain documents which NAN relied in May 19, 2016 submissions.pdf

2016-06-13 - AGC's letter in response to CHRT's June 7, 2016 letter.pdf

2016-06-13 - Caring Society's letter in response to CHRT's June 7, 2016 letter.pdf

2016-06-14 - AFN's letter in response to CHRT's June 7, 2016 letter.pdf

2016-06-14 - NAN's letter in reply to parties' response to NAN's May 19, 2016 submissions on immediate relief.pdf

2016-06-24 - AFN's letter enclosing its reply submissions.pdf

2016-06-24 - CHRC's letter enclosing its reply submissions.pdf

2016-06-29 - Caring Society's letter in response to CHR letter of June 14, 2016.pdf

2016-07-06 - AGC's further reply submissions on immediate relief.pdf

2016-07-11 - Concerns re Respondent's submission (Caring Society).pdf

2016-09-14 - Letter to parties enclosing Ruling 2016 CHRT 16.pdf

2016-09-30 - AGC's letter and INAC's submissions in response to the Tribunal's order of September 14, 2016.pdf

2016-10-12 - AGC's letter in response to CHRT letter of Oct 7, 2016 re available dates for Case Management Meeting.pdf

2016-10-13 - Letter to parties Re scheduling of Case Management Meeting.pdf

2016-10-19 - Letter to parties Re planning of Case Management Meeting.pdf

2016-10-20 - Caring Society's letter in response to CHRT letter of Oct 19, 2016 re Jordan's Principle and Disclosure.pdf

2016-10-21 - AGC's letter in response to Caring Society's letter of Oct 20, 2016.pdf

2016-10-27 - Letter to parties Re Panel's decision on Caring Society's requests.pdf

2016-11-14 - Letter to parties Re next steps.pdf

2016-11-22 - AFN's Notice of Motion re Immediate Relief.pdf

2016-11-22 - Caring Society's Notice of Motion re Immediate Relief.pdf

2016-11-22 - COO's Notice of Motion re Immediate Relief.pdf

2016-11-22 - NAN's Notice of Motion re Immediate Relief.pdf

2016-12-15 - Caring Society letter and Motion re non-compliance with the Tribunal orders regarding Jordan's Principle.pdf

2016-12-16 - Caring Society's letter regarding Jordan's Principle.pdf

2016-12-20 - AFN - Affidavit of Jonathan Thompson.pdf

2016-12-20 - AFN - Affidavit of Raymond Shingoose.pdf

2016-12-20 - Caring Society - Affidavits of Dr. Wilson (with exhibits) and Dr. Blackstock (1st affidavit without exhibits, 2nd with exhibits).pdf

2016-12-20 - Caring Society - Dr. Blackstock's 1st affidavit (with exhibits).pdf

2016-12-20 - COO - Affidavit of Deputy Grand Chief Denise Stonefish.pdf

2016-12-20 - NAN's Motion Record on Immediate Relief.pdf

2017 CHRT 14 - Proposed Amended Order.docx

2017-01-05 - Caring Society's letter enclosing Dr. Loxley's affidavit.pdf

2017-01-06 - CHRT letter to parties conveying Panel's direction re next steps.pdf

2017-01-06 - COO's letter confirming it supports the Caring Society's Motion for immediate relief Re Jordan's Principle.pdf

2017-01-11 - AGC's letter in response to CHRT letter of Jan 6, 2017 and CHRC email of Jan 10, 2017.pdf

2017-01-12 - AFN's letter in response to CHRT letter of Jan 6, 2017, CHRC email of Jan 10, 2017 and AGC's letter of Jan 11, 2017.pdf

2017-01-19 - NAN's letter supporting the Caring Society's Dec 16, 2016 submissions re Jordan's Principle.pdf

2017-01-25 - AGC's email enclosing affidavit of Cassandra Lang sworn Jan 25, 2017.pdf

2017-01-25 - AGC's email enclosing affidavit of Robin Buckland sworn Jan 25, 2017.pdf

2017-01-30 - AFN's email enclosing affidavit of Jonathan Thompson sworn Jan 30, 2017.pdf

2017-01-30 - AFN's email enclosing affidavit of Raymond Shingoose sworn Jan 30, 2017.pdf

2017-01-30 - COO's email enclosing affidavit of Denise Stonefish sworn Jan 29, 2017.pdf

2017-01-30 - NAN email-Amended Notice of Motion for Immediate Relief-affidavits of Wilson Barnes Kirew .pdf

2017-01-31 - Letter to parties conveying Panel's direction re next steps.pdf

2017-01-31 - NAN's email enclosing affidavits of Michael Kirew, Thomas A. Wilson and David Barnes, sworn Jan 27, 2017.pdf

2017-01-31 - NAN's email in response to AGC's letter of Jan 30, 2017.pdf

2017-02-01 - AGC's email in response to CHRT letter of Jan 31, 2017.pdf

2017-02-02 - CHRC's response to CHRT's Feb 2, 2017 letter.pdf

2017-02-02 - Letter to parties conveying Panel's direction re next steps.pdf

2017-02-02 - NAN's response to CHRT's Feb 2, 2017 letter.pdf

2017-02-03 - Caring Society's response to CHRT's Feb 2, 2017 letter.pdf

2017-02-10 - AGC's email enclosing affidavit of Lee Cranton.pdf

2017-02-10 - AGC's letter in response to CHRT's Feb 10, 2017 email.pdf

2017-02-10 - CHRT email conveying Panel's direction for AGC and NAN.pdf

2017-02-13 - NAN's email enclosing letter to CHRT's Feb 10, 2017 email, and NAN's Reply affidavit of Sol Mamakwa.pdf

2017-02-22 - Caring Society's letter enclosing web link to transcripts of cross-examinations of Cassandra Lang and Robin Buckland.pdf

2017-02-22 - Cross-examination of Cassandra Lang (exhibits only).pdf

2017-02-22 - Cross-examination of Robin Buckland (exhibits only).pdf

2017-02-22 - Transcript of cross-examination of Cassandra Lang (vol I and II), Robin Buckland (vol I and II) and Lee Cranton.pdf

2017-02-22 - Transcript of cross-examination of Cassandra Lang (volume I).pdf

2017-02-22 - Transcript of cross-examination of Cassandra Lang (volume II).pdf

2017-02-22 - Transcript of cross-examination of Robin Buckland (volume I).pdf

2017-02-22 - Transcript of cross-examination of Robin Buckland (volume I)_Redacted.pdf

2017-02-22 - Transcript of cross-examination of Robin Buckland (volume II).pdf

2017-02-28 - AFN's Book of Authorities in support of Factum.pdf

2017-02-28 - AFN's Factum (electronic copy without Book of Authorities).pdf

2017-02-28 - Caring Society's Book of Authorities (vol 1).pdf

2017-02-28 - Caring Society's Book of Authorities (vol 2).pdf

2017-02-28 - Caring Society's Factum (electronic copy without Books of Authorities).pdf

2017-02-28 - COO's Factum and Book of Authorities (electronic copies).pdf

2017-02-28 - NAN's Book of Authorities in support of Factum.pdf

2017-02-28 - NAN's Factum (electronic copy without Books of Authorities).pdf

2017-03-02 - AGC's letter in response to CHRT Jan 6, 2017 direction.pdf

2017-03-02 - NAN's letter enclosing transcript of cross-examination of Lee Cranton.pdf

2017-03-02 - Transcript of Cross-Examination of Lee Crantonpdf.pdf

2017-03-06 - AGC's letter in response to NAN's March 2, 2017 correspondence.pdf

2017-03-06 - Letter to parties conveying Panel's direction re next steps.pdf

2017-03-07 - CHRC's Book of Authorities in support of its submissions on Motions.pdf

2017-03-07 - CHRC's submissions on the Motions.pdf

2017-03-09 - AFN's letter in response to CHRT letter of March 6, 2017.pdf

2017-03-09 - Caring Society's letter in response to CHRT letter of March 6, 2017.pdf

2017-03-09 - CHRC's letter in response to CHRT letter of March 6, 2017.pdf

2017-03-13 - AGC's letter in response to CHRT letter of March 6, 2017.pdf

2017-03-13 - NAN's letter in response to CHRT letter of March 6, 2017.pdf

2017-03-14 - Respondent's Factum and Book of Authorities.pdf

2017-03-15 - Caring Society's letter in reply to Mr. Tarlton's letter of March 13, 2017.pdf

2017-03-15 - Letter to parties - Process to provide public access to documents filed.pdf

2017-03-15 - Letter to parties conveying Panel's direction re request by NAN.pdf

2017-03-16 - AFN's position on CHRT correspondence of March 15, 2017.pdf

2017-03-16 - CHRC's email in response to the Tribunal letters of March 15, 2017.pdf

2017-03-16 - COO's position on CHRT letters of March 15, 2017.pdf

2017-03-16 - NAN's Factum on Refusals.pdf

2017-03-17 - AFN's Book of Authorities.pdf

2017-03-17 - AFN's Reply Submissions.pdf

2017-03-17 - AGC's Answers to Requests (Cassandra Lang, Robin Buckland and Lee Cranton)

2017-03-17 - AGC's Book of Authorities in support of its submissions responding to NAN's requests for undertakings.pdf

2017-03-17 - AGC's letter re public accessibility of record.pdf

2017-03-17 - AGC's submissions in response to NAN's requests for undertakings.pdf

2017-03-17 - Caring Society's Book of Authorities in support of Reply Submissions re Immediate Relief.pdf

2017-03-17 - Caring Society's letter in response to CHRT letter of March 15, 2017 re access to the record by the public.pdf

2017-03-17 - Caring Society's Reply Submissions re Immediate Relief.pdf

2017-03-17 - COO's Reply Submissions and Book of Authorities.pdf

2017-03-17 - NAN's Reply Submissions.pdf

2017-03-20 - Letter to parties conveying Panel's ruling on NAN's motion for undertakings.pdf

2017-03-21 - AGC's email to CHRT advising that an agreement on a portion of the remedies has been reached between Canada and NAN.pdf

2017-03-21 - Letter enclosing Panel's Agenda for March 22-24, 2017 motions hearing.pdf

2017-03-21 - NAN's Compendium Index.pdf

2017-03-22 - AGC's letter re correction to record in Respondent's March 14, 2017 Factum re Cassandra Lang.pdf

2017-03-22 - ANNEX A - Choose Life letters (two documents) filed by NAN during March 22-24, 2017 motions hearing.pdf

2017-03-24 - Caring Society email-document dated February 23, 2017 regarding Jordan's Principle-filed at Motions hearing-March 24 2017.pdf

2017-03-29 - Letter to parties enclosing ruling 2017 CHRT 7.pdf

2017-05-12 - CHRC clarifying replacement of book of documents.pdf

2017-05-24 - Letter to parties enclosing ruling 2017 CHRT 14.pdf

2017-06-01 - Letter to parties advising of corrections re para. 20 of ruling 2017 CHRT 7.pdf

2017-06-08 - NAN's email enclosing the June 8, 2017 Choose Life Working Group report.pdf

2017-06-23 - AGC's email enclosing letter with two enclosures respecting Joint Ministerial Statement issued June 23, 2017.pdf

2017-06-23 - AGC's email letter and Notice of Application for Judicial Review of Tribunal Ruling 2017 CHRT 14pdf.pdf

2017-07-11 - AGC's letter enclosing the NAC on FNCFS Program Reform's Minutes of January and March 2017 Meetings.pdf

2017-08-04 - AGC's letter re letter from Hon. Min. of INAC to Union of BC Chiefs, copied to CHRT.pdf

2017-08-23 - Letter to parties re AGC's letter of August 4, 2017.pdf

2017-09-19 - Ltr attach Minutes of May NAC meetings.pdf

2017-09-19 NAC Minutes May 2017.pdf

2017-10-13 Request to adjourn COO motion.pdf

2017-10-18 - CS position on T letter of Oct 16.pdf

2017-10-23 - NAN response to Oct. 13 letter.pdf

2017-10-23 AFN no subs to make re Oct 13 letter.pdf

2017-10-31 - AFN Consent.pdf

2017-10-31 AI consent order.pdf

2017-10-31 C - Notice of Motion to vary an order (on consent).pdf

2017-10-31 CHRC Consent.pdf

2017-11-01 T to amend ruling 2017 CHRT 14.pdf

2017-11-27 - Tribunal requesting update.pdf

2017-11-29 Affidavits McDougall and Jones.pdf (confidentiality order for Jones affidavit)

2017-11-29 C subs re R compliance report.pdf

2017-11-29 NAN subs re R compliance report.pdf

2017-12-01 - R notice of discontinuance.pdf

2017-12-01 - R requesting more time to provide info.pdf

2017-12-01 Extension granted.pdf

2017-12-08 September NAC Executive summary minutes.pdf

2017-12-15 Affidavit of Sony Perron.pdf
2017-12-15 reply affidavit of SPerron.pdf
2017-12-18 AGC- S Perron promotion - Affidavit unaffected.pdf
2018-01-11 Complainant letter to Tribunal.pdf
2018-01-11 Respondent reply to FNCFCS.pdf
2018-01-29 AFN-response to FNCFCS and ruling.pdf
2018-01-29 Amnesty-response to FNCFCS and ruling.pdf
2018-01-29 Chiefs of Ontario-response to FNCFSCS.pdf
2018-01-29 CHRC-response to FNCFCS and ruling.pdf
2018-01-29 FNCFSCS-response and replies.pdf
2018-01-29 FNCFSCS-response to Tribunal ruling request.pdf
2018-01-29 NAN-response to FNCFSCS.pdf
2018-01-29 Respondent-response to FNCFCS and ruling.pdf
2018-02-06 NAN-modifications.pdf
2018-02-08 - Parties-steps on consultation protocol.pdf
2018-02-12 CHRC-response to amendments.pdf
2018-02-12 COO-response to amendments.pdf
2018-02-12 FNCFSCS-response to amendments.pdf
2018-02-12 Respondent-response to amendments.pdf
2018-02-15 AFN-extension request-on consent.pdf
2018-02-16 CHRT-Consultation protocol extension.pdf
2018-03-02 AFN-Consultation protocol.pdf
2018-03-05 Respondent-Research and ethics.pdf
2018-03-06 FNCFCSC-research and ethical guidelines.pdf
2018-03-08 CHRT-letter to parties on Ruling 2018 CHRT 4 para 421 order.pdf
2018-03-14 CHRC-response to CHRT letter of March 8.pdf
2018-03-15 AFN-response to CHRT letter of March 8.pdf
2018-03-15 COO-response to CHRT letter of March 8.pdf
2018-03-15 NAN-response to CHRT letter of March 8.pdf
2018-03-22 Respondent-extension request.pdf

2018-04-05 Respondent-Environmental scan report.pdf

2018-04-09 AGC-Cost analysis-Budget Explanatory Note-March 2018-Final.pdf

2018-04-09 AGC-Cost analysis-IFSD Project Proposal Budget-March 2018.pdf

2018-04-09 AGC-Cost analysis-Project Proposal Needs Assessments-March 2018.pdf

2018-04-09 AGC-Cost analysis.pdf

2018-04-09 Respondent-needs assessment and budget.pdf

2018-04-10 CHRT-letter to parties.pdf

2018-04-19 CHRT-letter to parties.pdf

2018-04-27 DOJ-response to Panel questions.pdf

2018-05-02 CHRT-letter to parties.pdf

2018-05-07 NAN response to AGC 04-27.pdf

2018-05-09 Recordings and documents of the Cross-examination of Mr. Sonny Perron held May 9, 2018.

Transcripts of the cross-examination of Sonny Perron held on May 9, 2018.

2018-05-24 Affidavits of Valerie Gideon #1 and #2

2018-06-05 NAN-Affidavit.pdf

2018-06-07 CHRC-response.pdf

2018-06-07 COO-Affidavits-Jones McDougall.pdf (confidentiality order for Jones affidavit)

2018-06-07 FNCFCSC-Affidavit-Navarro.pdf

2018-06-08 AFN.pdf

2018-06-08 COO-Affidavit-Olivia Schilthuis.pdf

2018-06-08 DOJ.pdf

2018-06-11 DOJ-interim report.pdf

2018-06-21 DOJ-Affidavit of Paula Isaak.pdf

2018-06-21 DOJ-Affidavit of Valerie Gideon.pdf

2018-06-26 CHRT-CMCC request August 1 2018.pdf

2018-08-20 CHRT-CMCC summary-August 1-FNCFCSC v AGC.pdf

2018-10-09 CHRT-Notice of cross-examination-FNCFCSC v AGC.pdf

2018-10-30 Exhibits and recordings to the Cross-examination of Valerie Gideon held October 30-31, 2018

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2018-12-10 AGC-Response to FNCFSC letter.pdf

2018-12-12 CHRT-email to parties re December 17 2018 CMCC.pdf

2018-12-20 CHRT-email to parties.pdf

2018-12-21 AGC-Affidavit of Valerie Gideon.pdf

2018-12-21 Complainant-email re reply to CHRT email.pdf

2018-12-21 Complainant-further outstanding issues.pdf

2018-12-21 Complainant-outstanding issues.pdf

2019-01-07 CHRT-Letter to parties enclosing ruling 2019 CHRT 1.pdf

2019-01-09 Hearing Submissions documents and recordings for FN child (interim relief)

2019-02-20 AGC-Letter to Tribunal re motion.pdf

2019-02-21 CHRT-Letter to parties enclosing ruling 2019 CHRT 7.pdf

2019-02-27 CHRT-Letter to parties.pdf

2019-02-28 COO-letter to Tribunal re Submissions.pdf

2019-01-29 AGC-Supplementary record of documents (CCCW Meeting minutes)

2019-03-01 AFN-letter to Tribunal re Submissions.pdf

2019-03-04 CHRT-Letter to parties enclosing ruling 2019 CHRT 11.pdf

2019-03-07 AFN-amendments to 2019 CHRT 7 Order.pdf

2019-03-07 AGC-amendments to 2019 CHRT 7 Order.pdf

2019-03-11 CHRT-Letter to parties-submissions.pdf

2019-03-15 CHRT-Letter to parties-amendments.pdf

2019-03-15 Questions on compensation from the Panel Chair.pdf

2019-03-15 Questions on 2019 CHRT 7 possible amendments from the Panel

2019-03-18 FNCFSC-amendments to 2019 CHRT 7.pdf

2019-03-22 AFN-Additional time needed-Amendments to 2019 CHRT 7.pdf
2019-03-22 AGC-Amendments to 2019 CHRT 7.pdf
2019-03-22 CHRC letter re interim Ruling options.pdf
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2019-03-28 FNCFCSC-Letter and FC T-402-19.pdf
2019-04-03 FNCFCSC-Notice of Motion-Compensation.pdf
2019-04-03 FNCFCSC-Compensation.pdf
2019-04-03 CHRC-Submissions on compensation -FNCFCSC v AGC.pdf
2019-04-03 CHRT-CMCC summary-March 19 2019-FNCFCSC v AGC.pdf
2019-04-03 COO-compensation-FNCFCSC v AGC.pdf
2019-04-03 FNCFCSC-Annex A.pdf
2019-04-03 FNCFCSC-Compensation-Affidavit of Spenser Chalmers.pdf
2019-04-03 NAN-compensation.pdf
2019-04-04 AFN-compensation-affidavit of Kolodziej.pdf
2019-04-04 AFN-compensation-affidavit of Turpel-Lafond.pdf
2019-04-04 AFN-compensation-Book of Authorities.pdf
2019-04-04 AFN-compensation.pdf
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2019-04-16 AGC-Compensation-Authorities.pdf
2019-04-16 AGC-Compensation-Submissions.pdf
2019-04-16 AGC-Compensation-Submissions-note on footnotes.pdf
2019-04-18 AFN-Compensation-reply.pdf
2019-04-18 CHRC-Compensation-reply.pdf
2019-04-18 FNCFCSC-Compensation-reply.pdf
2019-04-18 Amnesty-position on compensation.pdf
2019-04-25-26 Compensation hearing recordings and documents
2019-04-25 Respondent's condensed book
2019-04-25 AFN's Compendium of documents
Affidavit of D. Navarro and Exhibit - Oct 30, 2017 (optimized).pdf
Caring Society to Tribunal - 08 09 2014.pdf

Consent - AGC (Signed).pdf

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NAN Consent (Motion to Vary) Oct 30, 2017 - Signed.pdf

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Royal reporting transcripts requested by CHRT for selected hearing days (period of February 2013-October 2014).

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2. Corporate Manuals System (INAC), Program Directives 20-1: Chapter 5 - Social Development, (April 1, 1995)
3. Dr. Rose-Alma J. MacDonald & Dr. Peter Ladd et al., First Nations Child and Family Services Joint National Policy Review Final Report (Ottawa: Assembly of First Nations and Department of Indian Affairs and Northern Development, June 2000)
4. John Loxley, Fred Wien and Cindy Blackstock, Bridging Econometrics and First Nations Child and Family Service Agency Funding: Phase One Report, a summary of research needed to explore three funding models for First Nations child welfare agencies (Vancouver: First Nations Child and Family Caring Society of Canada, December 2004)
5. Dr. Cindy Blackstock et al., Wen:De We Are Coming to the Light of Day (Ottawa: First Nations Child and Family Caring Society, 2005)
6. John Loxley et al., Wen:De The Journey Continues (Ottawa: First Nations Child and Family Caring Society, 2005)

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7. Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples (October 1, 1996)

EXHIBIT HR-3, tab:

8. Minister of Indian Affairs and Northern Development, Gathering Strength: Canada's Aboriginal Action Plan, (1997)
9. Minister of Indian Affairs and Northern Development, Gathering Strength: Canada's Aboriginal Action Plan - A Progress Report - Year One, (December 31, 1998)
10. Government of Canada, Statement of Apology - to former students of Indian Residential Schools (June 11, 2008)
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458. William McArthur - Manager, Child and Family Services, British Columbia Region (AANDC), Okanagan Nation Alliance Delegation Budget, (Jennifer Houde - Okanagan Nation Alliance, May 12, 2014)
459. Health Canada, Non-Insured Health Benefits – Provider Guide for Medical Supplies and Equipment (MS&E) Benefits, (April 2009)
460. Chiefs of Ontario, A Guide for First Nations in Ontario: Navigating the Non-Insured Health Benefits & Ontario Health Programs Benefits, (2013)
461. Health Canada, Medical Supplies and Equipment – General Benefits and Criteria Chart
462. Health Canada, First Nations & Inuit Health - Non-Insured Health Benefits: Procedures for Appeals
463. Health Canada, Non-Insured Health Benefits: Drug Benefit List (2013)

464. Health Canada, Non-Insured Health Benefits: Dental Predetermination Centralization, (May 21, 2004)
465. Eligibility and Approval Process for NIHB Program; Non-Insured Health benefits - Report of Survey of Audiologists, (December 8, 2013)
466. Jerry Lyons - SEPP (AANDC), Meeting of the Forum of Ministers Responsible for Social Services (Moncton, November 21-22, 2002), Minister of Indian Affairs and Northern Development, November 13, 2002)
467. Jerry Lyons - SEPP (AANDC), First Nation Child and Family Services (FNCFS) - Media Coverage, (Minister of Indian Affairs and Northern Development, October 31, 2002)
468. Jerry Lyons - SEPP (AANDC) Sue Brown - Funding Services (Atlantic Region, AANDC), New Brunswick First Nation Child and Family Services (NBCFS), Deputy Minister - Indian Affairs and Northern Development, October 4, 2002)
469. Havelin Anand - Acting Director General, Social Programs and Policy (AANDC), Overview of Progress Report, (November 2004)
470. Vince Donoghue - Social Services and Justice, Social Policy and Programs (AANDC), Child and Family Services – Record Identifier 20 - Region Atlantic, (May 26, 2005)
471. Vince Donoghue - Social Services and Justice, Social Policy and Programs (AANDC), Child and Family Services – Record Identifier 25 - Region Atlantic
472. First Nations Basic Services: Cost Drivers Project, Expenditure Review Steering Committee, (September 2005)
473. Dwayne Johns - A/Director, Funding Services, Saskatchewan Region (AANDC), Re: 2014-2015 Maintenance Rates and Invoicing Changes, Saskatchewan FNCFS Agency Directors, April 16, 2014)
474. Arlene Thunder - A/Manager, Social Development, AANDC (Alberta Region), Meeting with the Honourable Iris Evans, Alberta Minister of Children's Services, on May 3, 2004, (Paul Bresee - Minister's Chief of Staff (AANDC)
475. Social Development Progress Report, (Assistant Deputy Minister (AANDC), 2004)
476. Approaches to "Comparability" in Self-Government Agreements, (2003)
477. John Dance (AANDC), "Wow" Facts - Cost-Driver Project (Revised), (Steven Singer - Senior Policy Manger, Operations and Quality Management Directorate (AANDC), et al., February 1, 2006)
478. AANDC, AANDC, Comprehensive Program Assessment Template, First Nations Child and Family Services Program
479. Health Canada, Summary Note - LOP-NIHB Appeals, (June 2014)
480. Health Canada, LOP Request, (June 2014)

481. Indian and Northern Affairs Canada, Results-based Management and Accountability Framework (RMAF) for The First Nations Child and Family Services Program, (Treasury Board Secretariat)

482. Peter Jones, Director, Education and Social Programs, Aboriginal Affairs and Northern Development Canada, National Child Benefit Reinvestment (NCBR) 2014-2015, (April 22, 2014)

483. Band Council, Whitefish River First Nation, Band Council Resolution re: National Child Benefit Reinvestment (NCBR) 2014-2014, (Whitefish River First Nation, May 16, 2014)

Court File No. T-1621-19

The following is Exhibit "K" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Katie", is written above a horizontal line.

Notary, Commissioner Signature



MINUTES OF THE CASE MANAGEMENT CONFERENCE

Held in Ottawa on October 25, 2019 at 1030 concerning the following Application:

1. AGC v First Nations Child and Family Caring Society of Canada et al., T-1621-19

I. Attendees:

[1] A two-hour case management conference was held by teleconference at the Federal Court in Ottawa with counsel for the parties in the above-noted file on October 25, 2019 at 10:30AM.

A. *The Court:*

1. The Honourable Mr. Justice Paul Favel

B. *Registrar:*

2. Ms. Shaylee Martin.

C. *Counsel for the Applicant – Attorney General of Canada (AGC):*

3. Mr. Robert Frater, Q.C. (by telephone)
4. Mr. Max Binnie (by telephone)
5. Ms. Meg Jones (by telephone)

D. *Counsel for the Respondent – First Nations Child and Family Caring Society of Canada (Caring Society)*

6. Mr. David P. Taylor (by telephone)
7. Ms. Barb McIsaac (by telephone)
8. Ms. Sarah Clarke (by telephone)

E. *Counsel for the Respondent – Assembly of First Nations (AFN)*

9. Mr. David C. Nahwegahbow (by telephone)

10. Mr. Thomas Milne (by telephone)
11. Mr. Scott Robertson (by telephone)
- F. *Counsel for the Respondent – Canadian Human Rights Commission (CHRC)*
 12. Mr. Brian Smith (by telephone)
 13. Ms. Jessica Walsh (by telephone)
- G. *Counsel for the Respondent – Chiefs of Ontario:*
 14. Ms. Maggie Wente (by telephone)
 15. Ms. Sinéad Dearman (by telephone)
- H. *Counsel for the Respondent, Amnesty International (Amnesty)*
 16. Mr. Ben Kates (by telephone)
- I. *Counsel for the Respondent – Nishnawbe Aski Nation (NAN)*
 17. Ms. Molly Churchill (by telephone)

II. General Information

[2] Justice Favel notes that the motions are: (1) a motion for a stay of execution of the Canadian Human Rights Tribunal decision that is the subject of the underlying judicial review, brought by the Applicant AGC [Motion 1]; and (2) a motion that this judicial review ought to be held in abeyance until the CHRT issues further directions as to their decision, brought by the Respondent Caring Society [Motion 2]. Parties agreed that these motions can both be addressed at the same time through a two-day hearing discussed below.

[3] AFN notes that they may bring a further motion sometime in the future regarding striking AGC's application for judicial review.

[4] A discussion about the hearing schedule followed.

III. Setting a deadline for filing affidavits for both motions

[5] All parties confirmed that they will be able to file their affidavits for both motions by **Friday November 8, 2019**.

IV. Setting a date for cross-examinations of the affidavits for both motions

[6] All parties confirmed that they can hold cross-examinations on **Thursday, November 14, 2019** with respect to the filed affidavits.

[7] Parties discussed the tight timeline involved and all strongly desired that cross-examination transcripts should be made available the next day, **Friday, November 15, 2019**. Parties noted that this service is available in Toronto and should be available in Ottawa as well.

V. Setting dates for the filing of arguments and other materials

[8] Parties agreed that **Tuesday, November 19, 2019** is acceptable to file legal arguments for both motions. For Motion 1, Respondents will file responding arguments. For Motion 2, Caring Society will file legal arguments.

[9] Parties agreed that **Friday, November 22, 2019** is acceptable for AGC to file responding arguments to both Motion 1 and Motion 2. For Motion 1, AGC will file reply arguments. For Motion 2, AGC will file response arguments. Caring Society noted that it will not have an opportunity to reply to AGC's response arguments for Motion 2, but is content to integrate their reply arguments into their oral arguments at the hearing.

VI. Setting a date for the hearing of the stay motions

[10] After consultations with the parties, the hearing is expected to be two days in length. Parties are in general agreement that **November 25-26, 2019** is a good tentative date for the hearing. AFN will report back as soon as possible re: their availability.

VII. Discussing Media Access to Proceedings with Parties

[11] Justice Favel noted that Aboriginal Peoples' TV Network has requested media access to these proceedings. Per Court policy, he polled all counsels on their opinions. Counsel agreed to make submissions to Court re: their positions accepting/opposing media access to proceedings by **November 8, 2019**.

VIII. Setting dates re: judicial review application

[12] Justice Favel undertook to inquire about Court schedule for a possible two-day judicial review hearing and the address the parties about future scheduling. This can be further discussed at another case management conference.

IX. Other Discussions / Housekeeping / Conclusion

[13] Justice Favel directs parties to discuss the hearing schedule for November 25 and 26, 2019 and advise the Court regarding their proposed times and order of argument accordingly.

[14] Should AFN bring forward an additional motion, counsel for AFN is directed to submit, following consultation with all other counsel, dates of mutual availability of counsel for a case management conference to schedule the date for hearing of the motion.

[15] Justice Favel advises parties that should there be a need for another case management conference, counsel are directed to consult amongst each other and request a mutually agreeable date to the Court.

“Paul Favel”

Judge

Court File No. T-1621-19

The following is Exhibit "L" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Hates", is written above a horizontal line.

Notary, Commissioner Signature



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

Legal Services
Division

Division des services
juridiques

Direct Line / ligne directe: (613) 943-9205
Facsimile / télécopieur: (613) 993-3089
Email / courriel: brian.smith@chrc-ccdp.gc.ca

By Fax

October 31, 2019

Administrator
Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

Dear Administrator:

**Re: *AGC v. First Nations Child and Family Caring Society et al.*
Request from Aboriginal Peoples Television Network
Federal Court File No. T-1621-19**

By e-mail dated October 23, 2019, the Registry provided the parties to the above-noted application with a copy of a letter dated October 22, 2019, from the Aboriginal Peoples Television Network ("APTN").

In that letter, the APTN asks for permission to obtain television footage of the court proceedings, in accordance with the Guidelines that were attached as Annex A to this Court's decision dated June 30, 2011 (2011 FC 810).

During the case management teleconference convened by Justice Favel on October 25, 2019, counsel for all parties agreed to provide their positions in response to APTN's request by November 8, 2019.

Please accept this letter as the submission of the Canadian Human Rights Commission (the "Commission") in response to APTN's request. We ask that you please place this letter before Justice Favel, for his consideration.

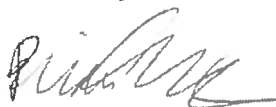
The Commission notes that in its 2011 decision, the Court said the human rights case that underlies this application is unique and important (at para. 3), and would "directly implicate the human rights of APTN's intended audience" (at para. 19).

The Commission is also mindful that decision-makers allowed camera access in earlier proceedings relating to this same case. For example, after this Court's 2011 decision, the Canadian Human Rights Tribunal decided to allow its proceedings to be filmed. Similarly, this Court allowed cameras to record a prior application for judicial review brought by the Attorney General of Canada¹, and the Federal Court of Appeal allowed cameras to record an appeal therefrom.²

Bearing these considerations in mind, the Commission consents to APTN's request. The Commission would be content to have APTN film any appearances in this matter, in accordance with the Guidelines attached to the Court's 2011 decision.

If the Court has any questions, or requires anything further at this time, please do not hesitate to let us know.

Yours truly,



Brian Smith
Senior Counsel

- cc. Robert Frater, Q.C./Max Binnie (counsel to AGC, by e-mail)
David Taylor/Sarah Clarke/Barbara McIsaac, Q.C. (counsel to Caring Society, by e-mail)
David Nahwegahbow/Thomas Milne / Stuart Wuttke (counsel to AFN, by e-mail)
Maggie Wente/Sinéad Dearman (counsel to COO, by e-mail)
Julian Falconer/Molly Churchill / Aliah El-Houni (counsel to NAN, by e-mail)
Justin Safayeni/Ben Kates (counsel to Amnesty International, by e-mail)
Mark Blackburn (APTN News Ottawa, by e-mail)

¹ *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445.

² *Canada (Attorney General) v. Canadian Human Rights Commission et al.*, 2013 FCA 75.

Court File No. T-1621-19

The following is Exhibit "M" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature

CONWAY

Lawson/Jones

David P. Taylor
Direct Line: 613.691.0368
Email: dtaylor@conway.pro

Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

November 1, 2019

VIA FAX

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 1st floor
Ottawa, ON K1A 0H9

Attention: Federal Court - Registrar

Dear Sir/Madam:

RE: ATTORNEY GENERAL OF CANADA V FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL
COURT FILE T-1621-19
OUR MATTER: 5204-010

Further to the Registry's email dated October 23, 2019 regarding the Aboriginal Peoples Television Network's ("APTN") request for permission to obtain television footage of the court proceedings, and as directed by Justice Favel during the October 25, 2019 case conference, please accept this letter as the submission of the First Nations Child and Family Caring Society of Canada ("Caring Society").

The Caring Society supports APTN's request. As noted in Mr. Smith's October 31, 2019 letter on behalf of the Commission, APTN has in the past been granted camera access to film hearings at the Tribunal, Federal Court and Federal Court of Appeal in proceedings related to this complaint. Consistent with access to justice, granting APTN similar camera access to proceedings on this judicial review ensures victims of Canada's discrimination can follow matters that affect them.

We would also note that the *United Nations Convention on the Rights of the Child*, Article 12, references the rights of children to participate in all matters affecting them, including judicial

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proceedings. Granting APTN camera access is a practical way of involving First Nations children located across Canada in these proceedings.

Bearing similar considerations in mind, the Caring Society respectfully requests that, in assigning a court room for the November 25-26, 2019 hearing, the Court consider the possibility that a significant number of members of the public may wish to attend the hearing. Indeed, in 2011 the Federal Court hearing room in the Supreme Court of Canada building was full. Proceedings before the Tribunal have also attracted significant numbers of public attendees.

On a final note, we would advise the Court that the National Film Board has also filmed proceedings before the Tribunal, Federal Court and Federal Court of Appeal. We would consent to a National Film Board request to film on the same terms as APTN should such a request be made.

Yours truly,



David P. Taylor

Copy to (via Email): Robert Frater, Q.C. and Max Binnie
Co-counsel for the applicant Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer, Molly Churchill and Aliah El-Houni
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

Court File No. T-1621-19

The following is Exhibit "N" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Katis", is written above a horizontal line.

Notary, Commissioner Signature

JULIAN N. FALCONER, B.A., LL.B., LL.D. (Hon.)
ASHA JAMES, B.A., LL.B., J.D.
MEAGHAN T. DANIEL, B.A., LL.B.
AKOSUA MATTHEWS, B.A., MPHIL (OXON), J.D.



MOLLY CHURCHILL, B.A., M.S.W., B.C.L., LL.B.
DOMINIC BELL B.A., B.C.L., LL.B.
ALIAH EL-HOUNI B.A., B.C.L., LL.B.
NATALIE POSALA B.A., J.D.

SENT BY EMAIL

November 6, 2019

Administrator
Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor Ottawa
Ontario K1A 0H9

**Re: AGC v. First Nations Child and Family Caring Society et al.
Federal Court File No. T-1621-19
Request from Aboriginal Peoples Television Network**

The Aboriginal Peoples Television Network ("APTN") has asked for permission to obtain television footage of the court proceedings in the above-noted matter, in accordance with the Guidelines that were attached as Annex A to this Court's decision dated June 30, 2011 (2011 FC 810). Please accept this letter as the submission of the Nishnawbe Aski Nation ("NAN") on this request and provide them to Justice Favel for his consideration.

NAN supports APTN's request. NAN is a Political Territorial Organization that represents the socioeconomic and political interests of 49 First Nation communities in northern Ontario. NAN encompasses James Bay Treaty No. 9 and Ontario's portion of Treaty No. 5, and has a total land-mass covering two-thirds of the province of Ontario. As a result of the geography of NAN's territory, NAN First Nations communities are typically remote and isolated, and many do not have year-round road access.

The judicial review proceedings, including related motions, are of significant public interest, including specifically to members of NAN First Nations. APTN has in the past been granted permission to film hearings at the Tribunal, Federal Court and Federal Court of Appeal in proceedings related to the present judicial review. Granting APTN similar camera access to proceedings on this judicial review is consistent with access to justice, as it will make it easier for victims of Canada's discrimination in NAN territory to be able to follow the matter.

As such, NAN supports and consents to the APTN's request.



Yours very truly,



Julian N. Falconer (LSO #29465R)
Molly Churchill (LSO # 72510P)

Falconers LLP
Barristers-at-Law
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Tel: 416-964-0495
Fax: 416-929-8179

Counsel for Nishnawbe Aski Nation



Court File No. T-1621-19

The following is Exhibit "O" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Katie", is written above a horizontal line.

Notary, Commissioner Signature

November 7, 2019

SENT VIA FAX

Federal Court - Registrar
Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

Dear Registrar:

Re: AGC v First Nations Child and Family Caring Society et al.
Federal Court File No. T-1621-19
Request from Aboriginal Peoples Television Network

Further to the letter of the Aboriginal People's Television Network ("APTN") dated October 23, 2019 and the Case Management Conference held in this matter on October 25, 2019, the Respondent Amnesty International wishes to express its support for and consent to APTN's request for television camera access for the purpose of broadcasting these proceedings. Granting APTN's request will facilitate the participatory rights of those directly impacted by these proceedings, which rights are enshrined in, among other places, the *Convention on the Rights of the Child*, the *United Nations Declaration of the Rights of Indigenous Persons*.

Respectfully yours,



Benjamin Kates

c. **SENT VIA EMAIL**

Robert Frater, Q. C. and Max Binnie,
Co-counsel for the Applicant, Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the Complainant, Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wentz and Sinéad Dearman
Co-counsel for the Interested Party, Chiefs of Ontario

Julian Falconer, Molly Churchill and Aliah El-Houni
Co-counsel for the Interested Party, Nishnawbe Aski Nation

David Taylor, Sarah Clarke, Anne Levesque and Barbara McIssac, Q.C.
Co-counsel for the Complainant, First Nations Child and Family Caring Society

Court File No. T-1621-19

The following is Exhibit "P" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Ratter", is written above a horizontal line.

Notary, Commissioner Signature

Maggie Wente
mwente@oktlaw.com
(416) 981-9340
74489

November 7, 2019

DELIVERED VIA EMAIL CMT_OTTAWA@CAS-SATJ.GC.CA

Federal Court of Canada
Ottawa, ON


Attention: Registrar

Dear Sirs/Mesdames:

Re: Attorney General of Canada v. First Nations Child and Family Caring Society of Canada et al., T-1621-19

Chiefs of Ontario (COO) consents to and supports the Aboriginal Peoples' Television Network's request to film and televise the court proceedings in the above matter.

Yours truly,



Maggie Wente

MEW/pr

cc: All Parties

N:\Matters\74489\mew fed crt ltr.docx

Court File No. T-1621-19

The following is Exhibit "Q" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature



Department of Justice
Canada

Ministère de la Justice
Canada

National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Room 500
Ottawa, Ontario
K1A 0H8

Telephone: 613-670-6289
Fax: 613-954-1920
Email: Robert.Frater@justice.gc.ca

November 8, 2019

Our File Number: 10967076

BY FAX

Registry
Federal Court Registry - Ottawa
90 Sparks Street
Ottawa, Ontario K1A 0H9

Dear Registrar:

Re: AGC v. First Nations Child and Family Caring Society of Canada et al.
CFN: T-1621-19

Please bring this letter to the attention of Mr. Justice Favel.

With respect to the request by the APTN for television footage of the proceedings, the Attorney General of Canada consents to the request.

The Court's policy on cameras in the courts creates a presumption in favour of requests. In the proceedings before the CHRT, we have had several years of experience with cameras operated by the National Film Board, which have not created difficulties. The case is one that it is important to Indigenous communities, and the request will help facilitate access to those with an interest in the proceedings.

Yours truly,

Robert Frater, Q.C.
Counsel for the Attorney General of Canada

c.c. Counsel for the Respondents (via email)
APTN News Ottawa

Canada

Court File No. T-1621-19

The following is Exhibit "R" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "Rutis", is written above a horizontal line.

Notary, Commissioner Signature

Assembly of First Nations

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Telephone: 613-241-6789 Fax: 613-241-5808
www.afn.ca



Assemblée des Premières Nations

55, rue Metcalfe, Suite 1600
Ottawa (Ontario) K1P 6L5
Téléphone: 613-241-6789 Télécopieur: 613-241-5808
www.afn.ca

November 8, 2019

Via Electronic Filing & Fax: (613) 952-3653

Federal Court of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, 1st Floor
Ottawa, ON K1A 0H9

Dear Administrator:

Re: Application from Aboriginal Peoples Television Network requesting Media Access
ATTORNEY GENERAL OF CANADA v. FNCFCSC et al.
Court Number T-1621-19

On behalf of the Assembly of First Nations, and further to the case management conference on October 25, 2019 before the Honourable Justice Paul Favel, please accept the below as the AFN's submissions setting out its position in support of the APTN's application for television camera access to allow for electronic audio-visual coverage of the above proceeding.

This case is of national importance and the outcome of Canada's motion scheduled to be heard on November 25-26, 2019, as well as potentially the judicial review proceedings to be scheduled afterward, stand to impact the lives of many First Nations children and families living on reserve in Canada.

It is the AFN's position that APTN's request for media access is in the public interest and granting APTN media access allows this unique and important proceeding to become available and accessible to many households, organizations, communities, etc. across the country that continue to monitor this case. It allows the people living on reserve – i.e. the individuals who stand to be most impacted in the outcome of this case – to observe the proceedings at issue which would otherwise be inaccessible by virtue of the location of the court houses in relation to where they live. The AFN submits it is in the interests of these individuals and for justice that APTN's application be granted.

Chief Justice Allan Lutfy wrote the following in the Federal Court decision submitted by APTN in Mr. Blackburn's letter dated October 22, 2019:

“The interests of people living on reserve in observing the proceedings at issue are more direct than those of the general public ... The proceedings will decide whether large number of geographically dispersed people have experienced discrimination. The proceedings directly implicate the human rights of APTN’s intended audience.”¹

The justice system is often criticized as being inaccessible to Indigenous peoples. The AFN submits granting the APTN application allows and is an effective means by which First Nations children and families dispersed across Canada and living on reserve to gain access and experience the proceeding. It allows these individuals to participate and enhances their access to justice. Such access advances *reconciliation* as it increases the transparency of the proceeding from the Indigenous perspective.²

It is important to acknowledge the APTN was granted media access at the Tribunal level subject to operating guidelines.³ These guidelines are also enclosed in Mr. Blackburn’s letter dated October 22, 2019, and considered by this Court in its decision, 2011 FC 810, quoted above. Canada contributed to these guidelines⁴ and compliance with the guidelines has never been at issue.

In closing, the AFN supports and consents to the APTN’s application requesting media access in accordance with the guidelines enclosed to Mr. Blackburn’s letter. Thank you for this opportunity to provide submissions on this matter. Please advise if you require further information.

Sincerely,



Stuart Wuttke
General Counsel

¹ APTN v. Canada (Human Rights Commission), 2011 FC 810, para 19.

² Restoule v. Canada (AG), 2018 ONSC 114, paras 49, 59, 62 and 72.

³ FNCFCSC et al. v. AGC (for the Minister of INAC), 2012 CHRT 18.

⁴ FNCFCSC et al. v. AGC (for the Minister of INAC), 2012 CHRT 23.



Cc: Robert Frater, Q.C. and Max Binnie
Counsel for the Applicant, Attorney General of Canada

David Taylor, Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Counsel for the Respondent, First Nations Child and Family Caring Society of Canada

Brian Smith and Jessica Walsh
Counsel for the Respondent, Canadian Human Rights Commission

Maggie Wentz and Sinead Dearman
Counsel for the Respondent, Chiefs of Ontario

Julian Falconer, Molly Churchill and Aliah El-Houni
Counsel for the Respondent, Nishnawbe Aski Nation

Justin Safayeni and Ben Kates
Counsel for the Respondent, Amnesty International

Court File No. T-1621-19

The following is Exhibit "S" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature

CONWAY

Lawyers and Accountants

David P. Taylor
Direct Line: 613.691.0368
Email: dtaylor@conway.pro

Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

November 5, 2019

VIA FAX

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 1st floor
Ottawa, ON K1A 0H9

Attention: Federal Court - Registrar

Dear Sir/Madam:

RE: *ATTORNEY GENERAL OF CANADA V FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL*
COURT FILE T-1621-19

OUR MATTER ID: 5204-010

We are counsel to the Respondent, First Nations Child and Family Caring Society (the "**Caring Society**") in the above-noted matter. We write to the Court requesting an interpreter for a cross-examination on an affidavit, pursuant to Rule 93 (2) of the *Federal Court Rules*.

We can provide the following information:

Date: Thursday, November 14, 2019

Approximate Length of Cross-Examination: Full day commencing at 10:00 AM

Location: ASAP Reporting, World Exchange Plaza, 100 Queen Street, Suite 940, Ottawa

Number of Deponents: 1

Number of counsel in attendance: 11

Conway Baxter Wilson LLP/s.r.l.
400 - 411 Roosevelt Avenue, Ottawa ON K2A 3X9
Tel: 613.288.0149 Fax: 613.688.0271
www.conway.pro

Please advise if you require further information.

Yours truly,



David P. Taylor

Copy to (via Email): Robert Frater, Q.C. and Max Binnie
Co-counsel for the applicant Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer, Molly Churchill and Aliah El-Houni
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada

Court File No. T-1621-19

The following is Exhibit "T" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "R. Kato", is written above a horizontal line.

Notary, Commissioner Signature



Department of Justice
Canada

Ministère de la Justice
Canada

National Litigation Sector
Department of Justice Canada
50 O'Connor Street, Room 556
Ottawa, Ontario
K1A 0H8

Telephone: 613-670-6289
Fax: 613-954-1920
Email:

November 14, 2019

Our File Number: 10967076

BY EMAIL

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**Brian Smith and Jessica
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Canadian Human Rights
Commission
344 Slater Street
Ottawa, ON K1A 1E1

**Maggie Wentz and
Sinéad Dearman**
Olthuis Kleer Townshend
250 University Avenue,
8th Floor
Toronto, ON M5H 3E5

Dear Counsel:

**Re: AGC v. First Nations Child and Family Caring Society of Canada et al. [JR]-
T-1621-19**

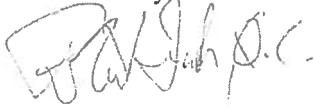
In your affidavits filed on the stay motion/motion to hold the judicial review in abeyance, you have referred to the desirability of the government's engaging in discussions regarding the process for compensation.

While we remain of the view that such discussions are premature pending the outcome of the judicial review that will examine the reasonableness of the Tribunal's order, we have endeavoured to identify certain issues that will inform compensation discussions, whether in the context of Tribunal proceedings or in the class action. We have attached a preliminary list of questions on which we seek your views, in order to move compensation discussions forward. Following the naming of a new Minister/Cabinet, we hope to provide further questions.

Canada

We also would advise you that tomorrow, we will write to the Tribunal requesting that it extend the December 10 deadline for process-related issues. In our view, the Tribunal should await the outcome of the stay/abeyance motions to give the Federal Court sufficient time to render its decision. If we are unsuccessful on the stay, it would be appropriate to set a new date at a Case Management meeting.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert Frater, QC". The signature is written in a cursive, somewhat stylized font.

Robert Frater, QC
Chief General Counsel

Enclosure

1. In addition to discussing among the Parties, what other groups should be consulted?
2. What do you see as the key conditions for successful administration of compensation?
3. What is the time period that you feel should be covered in the compensation of victims?
4. How do you see the relationship between compensation before the Tribunal and the *Moushoom* class action?
5. What other critical issues have the Parties identified with regard to the payment of compensation?

Court File No. T-1621-19

The following is Exhibit "U" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature



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National Litigation Sector
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November 15, 2019

Our File Number: 10967076

BY EMAIL

Judy Dubois
Registry Officer
Canadian Human Rights Tribunal
160 Elgin Street, 11th Floor
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

**Re: AGC v. First Nations Child and Family Caring Society of Canada et al. [JR]-
T-1621-19 / T1340-7008**

Please bring this letter to the attention of the panel.

The Panel delivered its compensation ruling on September 6 of this year. In paragraph 269 of the ruling, the Panel directed

The Panel is not making a final determination on the process here rather, it will allow parties to discuss possible options and return to the Tribunal with propositions if any, no later than December 10, 2019. The Panel will then consider those propositions and make a determination on the appropriate process to locate victims/survivors and to distribute compensation.

The Attorney General of Canada has sought judicial review of this ruling, and has asked the Federal Court to stay your order pending the hearing of the judicial review. Although the Attorney General asked that the matter be heard on October 23, the stay motion has been set down for November 25-26.

In the circumstances, and to give the Federal Court time to render its decision, we would ask the Tribunal to suspend its December 10 deadline for submissions. If the Attorney general is successful on its stay motion, and if a concurrent motion brought by the Caring Society to hold the judicial review in abeyance is unsuccessful, the deadline will no longer be operative.

Canada

If the Attorney General's motion for a stay is unsuccessful, and/or the Caring Society's motion is successful, the appropriate course would be to convene a Case Management hearing to fix a new date for the submissions on process contemplated by para. 269.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert Frater, QC". The signature is written in a cursive, somewhat stylized font.

Robert Frater, QC
Chief General Counsel

c.c. Counsel for the Respondents

Court File No. T-1621-19

The following is Exhibit "V" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "K. Sandy", is written above a horizontal line.

Notary, Commissioner Signature

CONWAY

David P. Taylor
Partner
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Assistant: Doreen Navarro
Direct Line: 613.691.0375
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November 26, 2019

VIA EMAIL

Robert Frater, Q.C.
Chief General Counsel
Justice Canada
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Dear Sir:

**RE: CONSULTATION COMMITTEE ON CHILD WELFARE
 PROCESS FOR COMPENSATION PURSUANT TO 2019 CHRT 39**

OUR MATTER ID: 5204-006

I write in response to your November 14, 2019 letter, further to my September 8, 2019 letter following the Tribunal's September 6, 2019 ruling regarding compensation in 2019 CHRT 39, and following the Minister of Indigenous Services and the Attorney General's November 25, 2019 joint statement on compensation for First Nations children.

The Caring Society notes the November 20, 2019 appointment of the Honourable Marc Miller as the new Minister of Indigenous Services and congratulates him on his appointment. Over the past few months, your client has repeatedly identified the appointment of a new Minister as a pre-condition to appointing an ISC representative authorized to conduct discussions with the AFN and the Caring Society regarding the process of paying compensation to victims per 2019 CHRT 39.

We note that Minister Miller is already making public statements regarding the Tribunal's compensation order. As such, we presume that he is now fully briefed and ready to instruct his staff and senior officials. In addition to yesterday's joint statement, my client noted with interest the Minister's statement on Power and Politics yesterday evening that:

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we need to [...] compensate children and families for the past harm and that is what we are moving towards today. This is, these are discussions that are and will be at an initial stage, but we need to address it in a comprehensive fashion with, again, national organizations, those advocates that have been so incredible in moving the discussion forward, and the legal principles forward when you talk about Jordan's Principle, but also talk to representatives of families and get that group of people and not simply a ten-year period.

Given the Minister's statements, when can my client expect to be advised of ISC's representative for discussions with the Caring Society and the AFN?

Secondly, in your November 14, 2019 letter you attached a preliminary list of questions on which you sought the parties' views. The Caring Society's position is that these five questions, along with the six questions listed in my September 8, 2019 letter, should form the agenda for a first meeting to discuss the Compensation Process. These discussions can also be guided by the scoping questions that the Caring Society provided to your client during the summer of 2018, which should be answered in advance of the first meeting.

To facilitate developing an agenda for this first meeting, I have merged the three lists of topics and added some new topics.

1. Consistent with Mr. Perron's responses during cross examination regarding work underway to brief the new Minister, what steps has Canada undertaken to look at options for developing a process of compensation? Where there are documents, please provide copies in advance of our first meeting;
2. What is the time period that you feel should be covered in the compensation of victims? (**AGC Question #3**);
 - a. Does Canada agree that compensation should be awarded to victims from the time period of 2006 (one year before the complaint was filed under the *CHRA*) to the time when Canada is found compliant with the *CHRT's* orders? (**CS 2018 Scoping Question #4**);
3. In addition to discussing among the Parties, what other groups should be consulted? (**AGC Question #1**);
 - a. Has Canada undertaken any conversations with victims of the discrimination per Minister Bennett's statements on October 11, 2019? (**CS Oct 15 letter**);
 - b. Supporting First Nations youth in care and First Nations young leaders to provide expert advice on the distribution of funds (see, for example, section 4(d) of the *CCCW Terms of Reference*) (**CS Sept 8 letter**);
4. What do you see as the key conditions for successful administration of compensation? (**AGC Question #2**);

- a. Mechanisms to ensure the best interests of vulnerable victims (children, young adults in post-majority care, adults with addictions, adults with high special needs, and potentially others) (**CS Sept 8 letter**);
 - b. What department or arm of government will be responsible for issuing payments to victims (i.e.: ISC, Service Canada);
 - c. Should Canada pay for fees for a professional financial mechanism to oversee the distribution and/or management of funds held in trust for victims? (**CS 2018 Scoping Question #5**);
5. How do you see the relationship between compensation before the Tribunal and the *Moushoom* class action? (**AGC Question #4**);
- a. Does Canada agree that any *CHRA* compensation settlement must not, in any way, affect civil claims for compensation that may be brought by children/youth or their families against Canada regarding discrimination in the FNCFS Program and Jordan's Principle (**CS 2018 Scoping Question #3**);
6. Does Canada agree that compensation should be paid to both victims affected by the FNCFS Program and Jordan's Principle? (**CS 2018 Scoping Question #1**);
7. Does Canada agree that its discriminatory conduct was "wilful and reckless"? (**CS 2018 Scoping Question #2**);
8. What other critical issues have the Parties identified with regard to the payment of compensation? (**AGC Question #5**):
- a. Information in Canada's Possession that would assist in identifying victims of discrimination (*Indian Act* status records, maintenance reports, adoption lists, records from Jordan's Principle reconsiderations, Service Access Resolution Funding applications that provide details of past service delays or denials) (**CS Sept 8 letter**);
 - b. Processes Canada may have in place for the calculation of interest (**CS Sept 8 letter**);
 - c. Can Canada confirm that compensation paid to victims will not be subject to claw backs from other federal social service programs, such as social assistance or the Canada Child Benefit?
 - d. Can Canada confirm whether the compensation paid to victims will be subject to federal taxation?
 - e. Mechanisms to ensure that costs to administer payments to victims do not reduce funds available to victims (either with respect to awards payable or re-allocation from programs (see re-allocation policy and the orders in 2018 CHRT 4)) (**CS Sept 8 letter**);

- f. Compensation for Jordan River Anderson's estate and family (as they are excluded from the Panel's orders regarding Jordan's Principle, which take effect in December 2007) (*CS Sept 8 letter*); and
9. What non-financial measures of reconciliation can and should Canada take? For example, what measures would be taken in cases where families have faced tragic outcomes as a result of Canada's discriminatory actions (*CS 2018 Scoping Question #6*).

At this time the Caring Society will not be providing any further substantive response to the questions posed in your November 14, 2019 letter. Consistent with the Tribunal's order and the Minister's public statements, the Caring Society is seeking a discussion with Canada, involving a two-way exchange of information and ideas. The Caring Society is not interested in participating in a unilateral process in which it provides Canada with information without knowing Canada's position on the various items at play.

We look forward to hearing from you as soon as possible so that the parties may begin the important work of reaching an agreement on the process by which compensation may be paid to the victims of Canada's discrimination.

Yours truly,



David P. Taylor

Copy: **Jonathan Tarlton, Patricia MacPhee, Kelly Peck, Max Binnie and Meg Jones**
Co-counsel for the Attorney General of Canada

David Nahwegahbow, Stuart Wuttke and Thomas Milne
Co-counsel for the Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Sinéad Dearman
Co-counsel for the Chiefs of Ontario

Justin Safayeni and Ben Kates
Co-counsel for Amnesty International

Julian Falconer and Molly Churchill
Co-counsel for Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara A. McIsaac, Q.C.
Co-counsel for the First Nations Child and Family Caring Society of Canada

Court File No. T-1621-19

The following is Exhibit "W" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to be "R. Kelly", is written above a horizontal line.

Notary, Commissioner Signature

CONWAY

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Assistant: Doreen Navarro
Direct Line: 613.691.0375
Email: dnavarro@conway.pro

November 27, 2019

VIA FACSIMILE

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 1st floor
Ottawa, ON K1A 0H9

Attention: Federal Court - Registrar

Dear Sir/Madam:

**RE: ATTORNEY GENERAL OF CANADA V FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL
COURT FILE T-1621-19**

OUR MATTER ID: 5204-010

We are counsel to the Respondent, First Nations Child and Family Caring Society (the "Caring Society") in the above-noted matter. Please find attached correspondence from the Tribunal postponing the deadline for submissions regarding the compensation process to January 29, 2020. Given the Attorney General's representations regarding the urgency of this matter, we would ask that you bring this letter and the attached correspondence to Justice Favel's attention.

The Caring Society may also refer to this correspondence when making submissions regarding costs.

Please advise if you require further information.

Yours truly,



David P. Taylor

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www.conway.pro

Copy to (via Email): Robert Frater, Q.C., Max Binnie and Meg Jones
Co-counsel for the applicant Attorney General of Canada

David Nahwegahbow, Stuart Wuttke, and Thomas Milne
Co-counsel for the complainant Assembly of First Nations

Brian Smith and Jessica Walsh
Co-counsel for the Canadian Human Rights Commission

Maggie Wente and Sinéad Dearman
Co-counsel for the interested party Chiefs of Ontario

Justin Safayeni and Ben Kates
Counsel for the interested party Amnesty International

Julian Falconer, Molly Churchill and Aliah El-Houni
Co-counsel for the interested party Nishnawbe Aski Nation

Sarah Clarke, Anne Levesque and Barbara McIsaac, Q.C.
Co-counsel for the complainant First Nations Child and Family Caring Society of Canada



November 27, 2019

By e-mail

(See Distribution List)

Dear Counsel,

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

The Panel wishes to communicate the following to the parties:

On September 6, 2019, the Tribunal rendered its ruling on compensation without deciding the process to identify victims/survivors and how to distribute that compensation. Given the complexity of the matter, the Panel ordered the Caring Society, the AFN and Canada to discuss possible options and return to the Tribunal by December 10, 2019. The AGC sought a judicial review of this ruling and a stay of the December 10, 2019 date at the Federal Court in October 2019.

On November 15, 2019 the Attorney General of Canada addressed the Panel in a letter requesting that the Panel postpone the December 10, 2019 date to an unspecified later date. The Panel sought the views of all parties and interested parties on this request. The other parties oppose the extension.

In its letter dated November 25, 2019, the AGC submits that the reason that they have asked the Panel to postpone the date is because the parties indicated that Canada should have come to the Tribunal instead of the Court to seek and extension. The AGC adds that the stay should be decided by the Federal Court. The AGC indicates that their first choice for a Federal Court hearing date was October 23, 2019 and that this date was refused by some parties who elected November 25-26, 2019 instead.

The AGC is concerned that the Federal Court will not have sufficient time to rule on the stay motion before December 10, 2019 and is requesting that the Tribunal assist the Court in allowing it to have sufficient time to rule on the matter.

In response to the AGC's November 25, 2019 reply, the NAN indicated that no such issue was raised by the Federal Court on November 25, 2019.

The Panel is perplexed by such a request made by a party appearing in front of the Federal Court. The Tribunal has no say in the Federal Court's case management and decision-making. It certainly has respect for the Court and understands the importance of having sufficient time to make the best-informed decision in such an important case.

The Panel is disappointed that the AGC did not come back to the Panel asking for an extension of the December 10, 2019 date in September or October even if it was seeking judicial review of the merits of the ruling. The AGC knows that the Panel is flexible and has already accepted to modify deadlines in the past. The Panel set the December 10, 2019 at the request of the Caring Society who requested 3 months for the discussions on process to occur. The Panel, if asked early on with compelling reasons to extend the deadline, would have accepted to postpone that date. Again, this has happened in the past and Canada is aware of this.

The Panel has repeated at numerous times that this case is complex and that the expertise and input of parties is valued and that flexibility is important.

With the December 10, 2019 date approaching and the indication from parties that Canada has not entered into discussions with them and instead chose a stay of the December 10, 2019 date, Canada has potentially opted for non-compliance of the Tribunal's order until the Federal Court has ruled on the motion. While the Panel understands that if the AGC is successful on the stay issue, the December 10, 2019 becomes moot, the Panel also points out that the December 10, 2019 was not a compensation payment deadline but rather a presentation of the parties' discussion on the process. The Panel viewed the process as collaborative between the parties and understands that this is not the case at the moment.

With the December 10, 2019 date rapidly approaching and the current state of things, the Panel believes that not much collaboration has been accomplished. The Panel feels "cornered" and does not appreciate it.

The Panel understands that the other parties have made significant efforts to comply with the Tribunal's deadline and appreciates it greatly. However, the Panel wishes that Canada provide input on that work as per the order.

In light of the circumstances, the Panel extends the December 10, 2019 date to **January 29, 2020**. The Panel reiterates that all parties may address the Tribunal if the deadlines set by the Panel are difficult to meet. This being said, no party can unilaterally elect to simply not-comply with Tribunal orders.

If you have any questions or concerns further to the above, please do not hesitate to contact the Registry by email at registry.office@chrt-tcdp.gc.ca and judy.dubois@tribunal.gc.ca.

Yours truly,



Judy Dubois
Registry Officer

DISTRIBUTION LIST

TO:

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Court File No. T-1621-19

The following is Exhibit "X" referred to in the
Affidavit of Kimberly K. Sandy
Affirmed before me this 7th day of January 2020

A handwritten signature in blue ink, appearing to read "R. Kelly", is written above a horizontal line.

Notary, Commissioner Signature



November 27, 2019

By e-mail

(See Distribution List)

Dear Counsel,

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

The Panel wishes to communicate the following to the parties:

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If you have any questions or concerns further to the above, please do not hesitate to contact the Registry by email at registry.office@chrt-tcdp.gc.ca and judy.dubois@tribunal.gc.ca.

Yours truly,



Judy Dubois
Registry Officer

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Attorney General of Canada and
Applicant/Moving Party

**First Nations Child & Family
Caring Society, et al.**

Respondents/Responding Parties

Court File No: T-1621-19

FEDERAL COURT

Affidavit of Kimberly K. Sandy

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