Court File No. T-1621-19

FEDERAL COURT

B E T W E E N:

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

SUBMISSIONS FOR COSTS of the ASSEMBLY OF FIRST NATIONS FURTHER TO THE JUDGMENT RENDERED BY THE HONOURABLE MR. JUSTICE FAVEL ON NOVEMBER 29, 2019

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. Overview

1. The Assembly of First Nations ("AFN") provides these submissions on costs further to the judgment rendered by The Honourable Mr. Justice Favel on November 29, 2019, and further to its written submissions dated November 19th requesting its costs on a solicitor-client basis, and submits the Attorney General of Canada's ("Canada") motion could have been easily avoided, should not have been brought, and that the AFN's costs of the motion be awarded.

2. Statement of Facts

A. Summary

2. The AFN relies on its Statement of Facts as set out in its written submissions dated November 19, 2019 in response to Canada's motion. The AFN also relies on the background provided in the judgment rendered by the Honourable Mr. Justice Favel on November 29th in *Canada (AG) v. First Nation Child and Family Caring Society of Canada* ("the *Decision*")[1] at paragraphs 4-11. Furthermore, the AFN adds this statement of facts.

[1] *Canada (AG) v. First Nation Child and Family Caring Society of Canada*, 2019 FC 1529 (Docket T-1621-19)(November 29, 2019).

3. The *Decision* is with respect to two (2) motions, one from Canada and the other from the First Nations Child and Family Caring Society ("Caring Society"), both of which were dismissed. The AFN was a respondent to both, however it supported the Caring Society's motion and opposed Canada's motion. In its factum dated November 19th, the AFN requested costs against Canada on a solicitor-client basis, but did not request costs against the Caring Society.[2]

4. On October 4th, Canada filed its notice of application for judicial review.[3] On the same date, Canada filed its notice of motion for stay of order of the Canadian Human Rights Tribunal's ("CHRT") rulings and orders in its decision, 2019 CHRT 39,[4] for the duration of the judicial review proceedings. This matter (Docket T-1621-19) includes both Canada's application for judicial review and motion for stay. The application is a specially managed proceeding by Order of the Honourable Mr. Justice Favel dated October 7th,[5] who was later appointed as Case Management Judge by Order of Chief Justice Paul S. Crampton dated October 11th.[6]

5. Canada's application for judicial review is a separate proceeding from the motion for stay. The application for judicial review concerns alleged errors made without jurisdiction or beyond the Tribunal's jurisdiction, denied procedural fairness to Canada, erroneously relied on factual material, erroneously interpreted provisions of the CHRA, or were otherwise unreasonable. Whereas, Canada's motion for stay attacks the CHRT's orders contained in its decision, 2019 CHRT 39, requesting they be stayed for the duration of the judicial review proceedings. The two proceedings are discreet from one another.

6. As a result of the dismissal of Canada's motion, Canada's application for judicial review is not affected and is in fact proceeding in this Court consecutively with the proceedings regarding compensation before the CHRT.

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[2] Motion Record of the Respondent, AFN, November 19, 2019, Tab 7, Memorandum of Fact and Law, para. 97.
[3] *AGC v. FNCFCSC et al.* (Docket T-1621-19)(Filed October 4, 2019)
[4] *First Nations Child & Family Caring Society of Canada et al. v. AGC (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 (File No. T1340/7008)(September 6, 2019).
[5] Order issued by The Hon. Mr. Justice Paul Favel dated October 7, 2019.
[6] Order issued by Chief Justice Paul S. Crampton dated October 11, 2019.

7. The judicial review proceeding remains in its initial stages however Canada's motion for stay proceeded on an expedited basis and is the subject of these submissions on costs.

B. Adjournment of Canada's Motion

8. Canada initially sought the motion to be heard at a General Sitting on October 23rd however concerns were raised by the respondent parties that, given the complexity of the matter, the time allotted at a General Sitting was not sufficient to hear the issues as between the parties, which included Canada's previous non-compliance with the CHRT's rulings and orders. On October 9th and 10th, the Caring Society and the AFN, respectively, requested the motion be adjourned to a time to be determined by the Case Management Judge once appointed.[7]

9. On October 11th, Justice Favel issued an oral direction based on the letter correspondence received from the AFN (and presumably also from the Caring Society) that Canada's motion is adjourned to a date and time to be fixed by the Case Management Judge once appointed. The term "once appointed" is used in the oral direction however Justice Favel was in fact appointed earlier that same day, shortly before the oral direction was issued. Justice Favel's oral direction also directed Canada to canvass dates with the respondent parties for a Case Management Conference in order to schedule the date for the hearing of Canada's motion.[8]

10. On October 17th, Canada advised the Court that the parties were available on October 25th for a Case Management Conference and included a proposed agenda.[9] On October 21st, upon the oral direction of Justice Favel, a Case Management Conference was scheduled for October 25th at 10:30am by way of teleconference. Canada's proposed agenda served as the agenda for the conference. [10]

11. The Case Management Conference took place on October 25th by way of teleconference and was approximately two (2) hours in duration. Part of the discussion included the tight

[7] Letter, Stuart Wuttke to The Hon. Mr. Justice Paul Favel dated October 10, 2019; also, Letter, David Taylor to Federal Court (Registrar) dated October 9, 2019.
[8] Oral Direction issued by The Hon. Mr. Justice Paul Favel dated October 11, 2019.
[9] Letter, Robert Frater, Q.C. to Federal Court (Registrar) dated October 17, 2019.
[10] Oral Direction issued by The Hon. Mr. Justice Paul Favel dated October 21, 2019.

timeline[11] created by Canada in its position that its motion be heard before the December 10, 2019 deadline imposed by the CHRT in its decision (2019 CHRT 39) concerning the *Process for Compensation* (discussed throughout below).[12] This decision from the CHRT is the subject of Canada's motion for stay.

12. Canada's motion for stay was adjourned according to an expedited motions timeframe to a two (2) day hearing scheduled for November 25-26, 2019.

C. AFN Providing Canada an opportunity to avoid its Motion for Stay

13. Before the Case Management Conference, on October 24th, the AFN wrote to Canada informing it the AFN will be opposing Canada's motion for stay and offering the opportunity to Canada to bring its concerns regarding the December 10th deadline to the CHRT by requesting an extension.

14. The AFN's letter strongly urges Canada to immediately engage in discussions with AFN and Caring Society, in consultation with the Canadian Human Rights Commission ("Commission") and other parties, to develop options for a process to distribute the compensation to the victims/survivors as ordered by CHRT in its decision, 2019 CHRT 39.

15. In the letter, the AFN set out its position that Canada ought to have engaged in such discussions from the outset of the CHRT's orders. Below is an excerpt from this letter:

> "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.

[11] Minutes of the Case Management Conference issued by the Federal Court dated October 25, 2019, para 7.
[12] *Supra* note 4, para 269 (but also paras 258-270). See also, *supra* note 1, paras 21 and 31.

> 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." [13] (original emphasis)

16. The above excerpt shows the good faith efforts of the AFN toward Canada in addressing its concerns as set out in its motion for stay. Unfortunately, Canada did not respond to this letter.

D. CHRT Tribunal Record

17. On October 24th, the CHRT delivered a letter to all counsel containing a copy of an Itemized List of Record Contents for the parties' reference. Canada requested the record for its notice of application for judicial review, and the CHRT was obligated to provided this list pursuant to Rule 317(1) of the *Federal Courts Rules*. The itemized list is 44-pages in length.[14]

E. APTN's Request for Television Camera Access

18. On October 22nd, the Aboriginal Peoples Television Network ("APTN") issued a letter to Chief Justice Paul S. Crampton requesting television camera access to allow for electronic audio-

[13] Letter, Stuart Wuttke to Robert Frater, QC dated October 24, 2019.
[14] Letter, Gregory Miller to Robert Frater, QC dated October 24, 2019.

visual coverage of the proceedings.[15] The APTN wished to gain television camera access to both Canada's judicial review and motion for stay proceedings.

19. The AFN includes the APTN's request for television camera access to show the matter is a unique and important proceeding to many First Nations children and families across Canada who have been and continue to monitor the case.

20. Included in the letter in support of APTN's request was a previous Reasons for Judgment and Judgment issued by former Chief Justice, Allan Lutfy, on June 30, 2011 (2011 FC 810)[16] granting APTN's application for judicial review of the CHRT's decision dated May 28, 2010 that refused APTN television camera access to the CHRT proceedings.

21. Briefly, the CHRT's decision was found to be unreasonable by Chief Justice Lutfy and was sent back for re-determination. It should be noted that at that time Canada contested the APTN application for camera access to the CHRT proceedings both before the Tribunal and this Court.[17]

22. At the Case Management Conference, Justice Favel provided the parties the opportunity to respond to APTN's request by November 8th.[18] The AFN supported APTN's request. Below is an excerpt from the AFN's letter expressing its support:

> "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.

[15] Letter, Mark Blackburn to Chief Justice Paul S. Crampton dated October 22, 2019.
[16] *Aboriginal Peoples Television Network v. Canada (Human Rights Commission)*, 2011 FC 810.
[17] *Ibid*, para 28.
[18] *Supra* note 11, para 5.

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." (citing *APTN v. Canada (Human Rights Commission)*, 2011 FC 810, para 19.)

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." (citing *Restoule v. Canada (AG)*, 2018 ONSC 114, paras 49, 59, 62 and 72.)"[19]

23. APTN's request was supported by all parties[20] and television camera access was granted in this matter as evidenced by APTN televising the November 25-26 hearing.[21]

F. Cross-Examination of Canada's Affiant, Sony Perron

24. On November 14th, the cross-examination of Canada's affiant, Sony Perron, took place in Ottawa, ON at ASAP Reporting. Mr. Perron is bilingual (French/English) and required an interpreter.[22] A full-day was scheduled for this examination beginning at 10:00am with approximately eleven (11) counsel in attendance. One of AFN's counsel was required to travel to this examination.

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[19] Letter, Stuart Wuttke for the AFN to Federal Court (Registrar) dated November 8, 2019.
[20] Letter, Brian Smith for the Commission to Federal Court (Registrar) dated October 31, 2019; Letter, David Taylor for the Caring Society to Federal Court (Registrar) dated November 1, 2019; Letter, Julian Falconer for the Nishnawbe Aski Nation to Federal Court (Registrar) dated November 6, 2019; Letter, Ben Kates for Amnesty International to Federal Court (Registrar) dated November 7, 2019; Letter, Maggie Wente for Chiefs of Ontario to Federal Court (Registrar) dated November 7, 2019; and, Letter, Robert Frater, QC for Canada to Federal Court (Registrar) dated November 8, 2019.
[21] Note: there is no document on file granting the APTN television camera access however such permission was granted as evidenced by APTN in fact televising the November 25-26, 2019 proceeding.
[22] Letter, David Taylor to Federal Court (Registry) dated November 5, 2019.

G. AFN's Affidavits in response to Canada's Motion

25. The AFN filed five (5) affidavits in response to Canada's motion: (i) Affidavit of Mary-Ellen Turpel-Lafond (affirmed November 7, 2019) which was two (2) volumes spanning 798-pages in length and including thirteen (13) exhibits, (ii) Affidavit of Jon Thompson (affirmed November 8, 2019) spanning 158-pages in length and including seventeen (17) exhibits, (iii) Affidavit of Peter Grant (affirmed November 8, 2019) spanning 386-pages in length and including nine (9) exhibits, (iv) Affidavit of Rachelle Metatawabin (affirmed October 30, 2019), and (v) Affidavit of Erickson Owen (affirmed October 25, 2019).

H. Canada's Last-Ditch Attempt to Comply with Tribunal Order

26. On November 14th, Canada issued a letter to all respondent counsel in response to the evidence filed in the respondents' affidavits regarding the desirability of the government's engaging in discussions regarding the process for compensation.

27. A possible intent behind Canada's letter appears to be a last-ditch attempt to achieve some small level of compliance with the CHRT orders. The letter states "we have endeavoured to identify certain issues that will inform compensation discussions…", and that "we have attached a preliminary list of questions on which we seek your views, in order to move compensation discussions forward."[23]

28. This letter was issued over two (2) months after the CHRT's decision was issued on September 6th containing the order that Canada engage in discussions. In addition, the letter was issued nine (9) days before the hearing on Canada's motion scheduled for November 25-26th. The letter does not explain why Canada decided to attempt to engage in discussions so late.

29. The main thrust of Canada's letter is it providing notice to respondent counsel that Canada will be filing a letter to the CHRT requesting an extension of the December 10th deadline. The letter is not a response to the AFN's October 24th letter. The letter does not contain an

[23] Letter, Robert Frater, QC to Respondent Counsel dated November 14, 2019.

invitation to discuss the process for compensation as ordered by the CHRT. It also does not contain any offer to settle the matter in an attempt to avoid the motion.[24]

I. Canada's Joint Statement regarding Compensation for First Nations children

30. On November 25th, a joint statement was published by the Minister of Indigenous Services (the Honourable Marc Miller) and the Minister of Justice and Attorney General of Canada (the Honourable David Lametti) on compensation for First Nations.

31. The joint statement refers to the Federal Court class action, *Xavier Moushoom vs. AGC* (Docket T-402-19) which was filed on March 4, 2019, as well as the CHRT decision, 2019 CHRT 39, issued September 6, 2019, as mentioned above.

32. The intent of the joint statement appears to be a declaration from Canada that it prefers the class action over the CHRT decision. It states "The Government of Canada is committed to seeking a comprehensive settlement on compensation that will ensure long-term benefits for individuals and families and enable community healing." However, the joint statement also states "Canada intends to pursue a judicial review of this CHRT ruling", obviously referring to the CHRT's decision, 2019 CHRT 39.

33. The joint statement does not include any information or statement as to how Canada intends to comply and/or address the CHRT orders in 2019 CHRT 39, which is the subject of Canada's motion for stay. There is no mention of any efforts toward settling the matter with the respondent parties. There is no mention of discussion the process for compensation as ordered by the CHRT.

34. It should be acknowledged the CHRT reminded Canada that ending the remedial process can be done at any time through Canada offering settlement on compensation, stated by the CHRT as follows:

> [385] There is no unfairness to Canada here. The Panel reminds Canada that it can end the process at any time with a settlement on compensation, immediate relief

[24] See, letter, David Taylor to Robert Frater, QC dated November 26, 2019.

> and long term relief that will address the discrimination identified and explained at length in the *Decision*. Otherwise, the Panel considers this ruling to close the immediate relief phase unless its orders are not implemented. The Panel can now move on to the issue of compensation and long term relief.[25]

35. To date, Canada has not made any offer to settle the matter regarding compensation. In addition, the joint statement does not contain any offer to settle this particular matter in an attempt to avoid the motion but rather includes a declared determination to pursue litigation to its possible end as against the respondent parties, which includes Canada's motion for stay.

J. CHRT's Letter to All Counsel Postponing December 10, 2019 Deadline

36. On November 27th, the Caring Society filed with the Court the CHRT's letter of the same date addressed to all counsel postponing the December 10th deadline regarding the process for compensation.[26]

37. The CHRT's letter was issued in response to a letter from the AGC dated November 15, 2019 filed in the CHRT proceeding (not this proceeding) – ten (10) days before the hearing of Canada's motion – wherein Canada expresses to the CHRT, likely for the first time, that Canada sought a judicial review of CHRT's ruling and asked the Federal Court to stay the CHRT's orders pending the hearing of the judicial review.[27] The letter also sets out two possibilities regarding the December 10th deadline in the event Canada's motion is successful, and in the event it is unsuccessful.

38. In the event Canada's motion is unsuccessful, the letter states a Case Management Hearing before the CHRT may be necessary to fix a new date on the process for compensation as ordered by the CHRT in paragraph 269 of its decision, 2019 CHRT 39. The letter does not contain a report of Canada's progress toward achieving compliance of the CHRT's orders. In

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[25] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4, para 385.
[26] Letter, David Taylor to Federal Court (Registrar) dated November 27, 2019.
[27] Letter, Robert Frater, QC to Judy Dubois (Registry Officer) dated November 15, 2019.

particular, Canada's letter contains no report or update on the process for compensation even though the deadline of December 10th was looming at that time.

39. Canada's November 15th letter was not received well by the CHRT. Below are excerpts from the Tribunal's letter wherein the Panel communicates its disappointment that Canada did not request an extension of the December 10th deadline with the Tribunal at a earlier and more reasonable time, but instead chose to unilaterally elect to not comply with the Tribunal's orders.

> "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." [28]

40. Justice Favel refers to the CHRT's letter quoted above in the *Decision* at paragraphs 21 and 31.

41. It is obvious according to the letter that Canada had the opportunity to extend the December 10th deadline, and that the CHRT would have been amendable to doing so. The letter confirms that Canada deliberately choose not to explore this option with the CHRT and thereby avoid its motion for stay altogether.

42. The CHRT's letter also aligns with Justice Favel's reasons in the *Decision*, specifically that the Compensation Ruling did not include an order for payment of compensation, but rather only an order that Canada engage in discussions. It is also clear that the Panel viewed Canada's decision not to make any effort to meet the initial December 10th deadline as non-compliance with its Compensation Ruling.

K. Canada's Position on Costs of its Motion

43. It is noteworthy that Canada requests costs in its memorandum of fact and law[29] but conversely did not requests costs in its draft order.[30] There is no explanation for this divergence. It is reasonable to presume Canada would have sought costs against the AFN (and possibly the other respondent parties) had Canada been successful in its motion.

[28] Letter, Judy Dubois (Registry Officer) to All Counsel dated November 27, 2019.
[29] Motion Record of the Applicant, Canada, October 4, 2019, Tab 5, Memorandum of Fact and Law, para. 76.
[30] Motion Record of the Applicant, Canada, October 4, 2019, Tab 4, Draft Order.

L. AFN has incurred considerable resources to oppose Canada's Motion

44. Canada's motion for stay was an important and complex matter that could have significantly disrupted the work being done at the CHRT among the parties regarding compensation getting into the hands of vulnerable First Nations children and families across Canada.

45. The AFN's response to Canada's motion required significant planning and the assistance of several counsel. This is due to the magnitude and complexity of this matter. The matter is also historical as it dates back to February 2007 when the initial human rights complaint was filed with the Canadian Human Rights Commission. As a result, the AFN has incurred legal fees to oppose the Canada's motion, including travel costs for its counsel and other disbursements involving the preparation of voluminous responding affidavits.

46. The AFN's legal department is assisted by an external law firm that specializes in Indigenous law. This law firm has assisted the AFN in this case since approximately 2010. It also assisted in responding to Canada's motion for stay. The cost of the AFN's external counsel are among the AFN's fees and disbursements.

47. Although this matter is not under Assessment, a draft Bill of Costs is included in these submissions showing the AFN's costs in responding to and opposing Canada's motion for stay.

PART II – POINTS IN ISSUE

48. The AFN submits the issues to be determined are:

    i. Should this Court order solicitor-and-client costs?;

    ii. Could Canada's motion have been avoided or should not been brought?; and

    iii. Should this Court exercise its discretion and award costs of Canada's motion for stay to the AFN in an amount to be fixed by the Court?

PART III – STATEMENT OF SUBMISSIONS

A. Solicitor-and-Client Costs

49. The AFN submits the Court may award all or part of costs on a solicitor-and-client basis according to Rule 400(6)(c).

50. The AFN submits the Court has full discretion whether to award solicitor-and-client costs which is not limited only to situations where there is reprehensible, scandalous and outrageous conduct during litigation. It can include conduct where a party has failed to follow a court order. The Honourable Mr. Justice Mosley wrote the following for the Federal Court of Appeal in *Shotclose* for this principle under Rule 400(6):

> [7] The Court may award all or part of costs on a solicitor and client basis: Rule 400 (6), Federal Courts Rules, SOR/98/103. While this is generally done where there has been reprehensible, scandalous and outrageous conduct during litigation, the Court's discretion is not so limited: *King v. Canada (Attorney General)* 2000 CanLII 16124 (FCA), 187 FTR 160 at paragraph 2.[31]

51. In *King*,[32] the FCA addressed an appeal from an order of Justice Pelletier sitting in Chamber awarding costs on a solicitor-and-client basis under Rule 400(6). Solicitor-and-client costs were awarded based on the conduct of the Veterans Appeal Board, who failed to follow an earlier court order. The reasoning behind Justice Pelletier's decision to order solicitor-and-client costs was upheld by the FCA, that the "Board's handling of this case was cumbersome and unfair to the respondent."[33] Under the circumstances in *King*, had the Board complied with the terms of the order, then the respondent might have spared the expense of filing its application.[34]

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[31] *Shotclose v. Stoney First Nation*, 2011 FC 1051, para 7.
[32] King v. Canada (AG), 2000 CanLII 16124 (FCA).
[33] King v. Canada (AG), 2000 CanLII 16124 (FCA), para 5.
[34] King v. Canada (AG), 2000 CanLII 16124 (FCA), para 4.

52. The AFN submits *King* is of application in these submissions on costs as Canada in this case also failed to follow an order from the CHRT resulting in the AFN incurring fees and expenses to respond to the motion.

53. The AFN adds that reasons of public interest may also justify the making of an order for solicitor-and-client costs as stated by the SCC in *Mackin*:

> 86. At trial, the respondents were awarded party-and-party costs. In the Court of Appeal, this decision was reversed and it was decided that the government's conduct justified the award of solicitor-client costs. It is established that the question of costs is left to the discretion of the trial judge. The general rule in this regard is that solicitor-client costs are awarded only on very rare occasions, for example when a party has displayed reprehensible, scandalous or outrageous conduct (Young v. Young, [1993] 4 S.C.R. 3, at p. 134). Reasons of public interest may also justify the making of such an order (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at p. 80).[35]

54. The AFN submits it is within the discretion of this court whether to award the AFN its costs based on a solicitor-and-client basis, and that the above provides a reasonable basis for doing so.

A. Could Canada's motion have been avoided or should not have been brought?

55. The AFN submits Canada's motion for stay could have been easily avoided and should not have been brought.

i. CHRT would have postponed the December 10th deadline in its Compensation Ruling (2019 CHRT 39) if Canada had requested it, but Canada did not explore this option

56. The CHRT's ruling on compensation is referred to as the "Compensation Ruling" in the *Decision*.[36] Although the details of the Compensation Ruling are not discussed in the *Decision*[37], the Compensation Ruling is the foundation Canada's application for judicial review

[35] *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13, para 86; also, *Quebec (AG) v. Lacombe*, 2010 SCC 38, para 67.
[36] *Supra* note 1, para 1.
[37] *Supra* note 1, para 6.

and motion for stay. The AFN submits the Compensation Ruling is an important factor to be weighed in the Courts discretion whether to award costs to the AFN.

57. Briefly, in the Compensation Ruling, the CHRT ordered Canada to pay compensation to individuals affected by Canada's discriminatory child and family services funding practices. The CHRT did not make a final order on compensation in its Compensation Ruling because there were some administrative matters to address in locating victims/survivors of Canada's discrimination. Rather, the CHRT ordered Canada to engage in discussions with the Caring Society and AFN, as well as the Commission and interested parties if they chose to participate, to discuss possible options regarding the process for compensation and then return to the Tribunal with propositions by December 10th. Afterward, the Tribunal would consider those propositions and make a determination on the appropriate process to locate victims/survivors and to distribute compensation.[38]

58. Canada did not engage in discussions with the Caring Society or AFN, or the Commission or any interested party, with respect to the process for compensation despite requests from the parties and being ordered to do so by the CHRT.[39] This particular fact was considered by this Court in its assessment and dismissal of Canada's motion for stay.

59. In order for Canada to succeed in its motion for stay it had the burden of satisfying the conjunctive three-part test as established in *RJR-MacDonald Inc.*[40] In the *Decision*, Justice Favel found that although there was a serious question to be tried, Canada would not suffer any irreparable harm if a stay was not ordered because Canada's harm as alleged was speculative. There was no need to consider the third stage of the test (balance of convenience) because Canada failed to meet the second stage of the test. As a result, Canada's motion for stay was dismissed.

[38] 2019 CHRT 39, para 269.
[39] *Supra* note 1, para 21. See also, Motion Record of the Respondent, AFN, November 19, 2019, Tab 7, Memorandum of Fact and Law, para 30.
[40] *RJR-MacDonald Inc. v. Canada (AG)*, [1994] 1 SCR 311.

60. The *Decision* discusses the process for compensation in its analysis of the second stage of the test (irreparable harm) at paragraphs 21-24 produced in full below, as follows:

> [21] I am not persuaded by the AGC's submissions that it has met this part of the test for the following reasons. First, I see no prejudice or harm to Canada in engaging in discussions with the parties on process and to report back to the CHRT by December 10, 2019. It was clear in the submissions of the parties that no such discussions had occurred as of the hearing dates. After the hearing, it was brought to my attention that, in response to a letter from the AGC, the CHRT agreed to extend the reporting deadline from December 10, 2019 to January 29, 2020.
>
> [22] Second, there is no order to pay compensation to any specific individuals by a specific date. The CHRT ordered the parties to discuss several areas including how to identify individuals and in what manner these individuals would be compensated (i.e. trust funds for minors, direct payments to adults, etc.). On the evidence, particularly that of Mr. Perron in cross-examination on his affidavit, there are no imminent compensation payments to be made by Canada. Of course that may change in the future, in which case the parties can consider their respective legal options at that point in time.
>
> [23] Third, in light of the first two reasons, there is no risk that any compensation will not be recovered because there is no compensation to be paid out at this time.
>
> [24] The AGC has not satisfied this part of the test because its claimed irreparable harms are speculative. Bearing in mind that the test is conjunctive, meaning all three parts of the test must be satisfied, I need not consider the third part of the test.

61. The significance of the above is that the *Decision* favoured the Respondent's arguments which led to the dismissal of Canada's motion for stay. With respect to these submissions on costs, the above is important because this Court found there was no prejudice or harm to Canada in engaging in discussions with the Caring Society, AFN, et al. regarding the process for compensation.

62. The AFN submits that had Canada complied with CHRT's orders with respect to the process for compensation[41] as set out in Compensation Ruling, then there would have been no need for Canada's motion for stay, meaning it could have been avoided and should not have been brought.

63. Based on the *Decision*, it is clear that the order in the Compensation Ruling regarding the process for compensation was simply an order that the parties engage in discussions about the process and then report back to the Tribunal, and that there were no orders requiring any payment of compensation, and thus no risk that any compensation could not be recovered.

64. An order for Canada to engage in discussions was found by this Court to be non-prejudicial to Canada's application for judicial review, and did not raise any non-speculative harm. This is a significant factor to be weighed in the Courts discretion whether to award the AFN its costs.

65. The AFN's position is supported by the CHRT's letter all parties dated November 27th in response to a letter from the AGC dated November 15th, referred to by this Court in the above passage from the *Decision* at paragraph 21. In the CHRT's letter, the Tribunal communicates its disappointment that Canada did not request an extension of the December 10th deadline with the Tribunal, but instead chose to unilaterally elect to not comply with the Tribunal's orders. An excerpt of this letter is provided above.

66. The significance of the letter is that Canada did not explore and did not exhaust all options available to it before proceeding to file its motion for stay. It is also clear from this letter that the Panel would have been receptive to a request for an extension from Canada even though it had already filed its application for judicial review. It begs the question that had Canada fully explored its options with the Panel, and arguably with the parties, it could have avoided filing its motion for stay with this Court which was ultimately unsuccessful.

[41] 2019 CHRT 39, paras 258-270 (Part XI – Process for Compensation).

67. In the alternative, Canada could have withdrawn the motion after it had been filed had it explored this option with the Panel.

68. The letter also supports the *Decision* insofar that the Compensation Ruling did not include an order for payment of compensation, but rather only an order that Canada engage in discussions. It is also clear that the Panel views Canada's decision not to make any effort to meet the initial December 10th deadline as non-compliance with its Compensation Ruling. The AFN submits the Tribunal's views as expressed in this letter is also a significant factor to be weighed in the Courts discretion whether to award costs to the AFN.

ii. AFN was amenable to postponing December 10th deadline but Canada did not take this opportunity and instead chose to proceed with its motion

69. In an effort of good faith, the AFN wrote to Canada on October 24th informing it the AFN will be opposing Canada's motion for stay and offering the opportunity to Canada to bring its concerns regarding the December 10th deadline to the CHRT by requesting an extension.

70. Canada did not respond to this letter. Had Canada responded to the letter, it is likely the December 10th deadline could have been postponed to a later date. If the CHRT had postponed the deadline, as it stated it would have in its letter of November 27th, Canada's motion could have been avoided altogether.

71. Canada had the option of working with the respondent parties or the Tribunal in postponing the December 10th deadline, but Canada deliberately chose not to explore either option.

72. The AFN submits its position as set out in its October 24th letter is validated by the *Decision* of this Court in dismissing Canada's motion. It is also validated in the subsequent letter from the CHRT dated November 27th, issued to all counsel days before the *Decision* of Justice Favel was rendered on November 29th. The AFN submits this must be a significant factor to be weighed in the Courts discretion whether to award the AFN its costs.

73. Together, the *Decision* and the letter from the CHRT show Canada had likely misunderstood the nature of the CHRT's orders, particularly with respect to the process for compensation,[42] and/or perhaps failed to explore all possible options before filing its motion for stay.

B. Should this Court exercise its discretion and award costs of Canada's motion for stay to the AFN in an amount to be fixed by the Court?

74. As a general rule, a successful party to a proceeding is entitled to its costs.[43] Canada's motion was dismissed in the *Decision*. As a result, the AFN is one of the successful respondent parties.

75. It should be acknowledged for the purposes of these submissions on costs the AFN is one of the co-complainants before the CHRT, the other being the Caring Society, meaning it is one of two main parties who has prosecuted the case against Canada at the Tribunal level since the complaint was filed in February 2007. It has adopted this same stance in proceedings before this Court.[44] As such, the AFN is fully invested in protecting and maintaining its case before the CHRT, and it maintains its own separate legal counsel in this pursuit.

76. Motions such as Canada's motion for stay could have significantly disrupted the work being done at the CHRT among the parties regarding compensation getting into the hands of vulnerable First Nations children and families across Canada. The AFN strived on its own accord, in conjunction with the other respondent parties, to ensure the work regarding compensation continued by opposing Canada's motion for stay.

77. The AFN requested its costs against Canada as set out in its factum thereby putting Canada on notice and providing the opportunity to respond.[45] As stated above, the AFN is proceeding on the basis that Canada would have sought costs against the AFN (and other respondents) had it been successful in its motion for stay.

78. The circumstances to be addressed in these submissions on costs is Canada bringing a motion to this Court that could have been easily avoided and should not have been brought. It is

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[42] *Supra* note 4, Part XV. Process for compensation, paras 258-270.
[43] *Sanofi-Aventis Canada Inc. v. Novopharm Limited*, 2009 FC 1139, para 4.
[44] For example, *Canada (Human Rights Commission) v. Canada (AG)*, 2012 FC 445, referring to Docket: T-638-11.
[45] *Exeter v. Canada (AG)*, 2013 FCA 134, paras 9-17.

submitted by the AFN that Canada's motion for stay was preventable and unnecessary litigation. More importantly, it delayed work being done at the CHRT among the parties regarding compensation.

79. The awarding of costs is one mechanism available to this Court to remedy these types of situations where an unnecessary legal proceeding was commenced that resulted in an avoidable delay.[46] As stated in *Sherman*:

> [46] It is now generally accepted that an award of costs may perform more than one function. Costs under modern rules may serve to regulate, indemnify and deter. They regulate by promoting early settlements and restraint. They deter impetuous, frivolous and abusive behaviour and litigation. They seek to compensate, at least in part, the successful party who has incurred, sometimes, large expenses to vindicate its rights.[47]

80. Although *Sherman* is oft-cited with respect to self-represented litigants, the principles enunciated with respect to costs have universal application, particularly the principle of indemnity whereby the successful party is entitled to recover the costs it incurred defending an action or motion, as the case may be.[48] Another principle to include is that the Court's goal in awarding costs should be "a compromise between compensating a successful party and not unduly burdening an unsuccessful party".[49]

81. Rule 400 of the *Federal Courts Rules*[50] permits the Court to award costs of a motion in an amount fixed by the Court. It provides the general framework for the awarding of costs between the parties, and it gives full discretionary powers over the amount and allocation of costs to the Court and sets out certain factors that may be considered by the Court.

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[46] *Fournier v. Canada*, 2005 FCA 131, para 12.
[47] *Sherman v. MNR*, 2003 FCA 202, [2003] 4 FC 865, para 46. See also, *Doig River First Nation and Blueberry First Nations v. Her Majesty the Queen in Right of Canada*, 2014 SCTC 4, paras 12-13.
[48] *Ethier v. Attorney General of Canada*, 2018 ONSC 7692, para 5; also, Eurocopter v. Bell Helicopter Textron Canada Limitee, 2012 FC 842, para 13.
[49] *Leuthold v. Canadian Broadcasting Corporation*, 2012 FC 1257, para 38, referring to *Apotex Inc. v. Wellcome Foundation Ltd.*, 1998 CanLII 8792 (FC), para 7
[50] *Federal Courts Rules*, SOR/98-106, R. 400

82. Rule 400(3) particularizes 13 additional factors which the Court may consider in exercising its discretion. This list is not exhaustive pursuant to Rule 400(3)(o) which allows the Court to take into account any other matter that it considers relevant. Overall, in deciding on an award of costs the Court must bear in mind the three-fold objective of (i) providing compensation, (ii) promoting settlement, and (iii) deterring abusive behaviour.[51]

83. In addition, Rule 400(2) permits costs to be awarded against the Crown, and is supported by section 28 of the *Crown Liability and Proceedings Act*[52] that makes the Crown subject to orders for costs in relation to proceedings against the Crown. Section 30 of this same Act creates a process for payment as an alternative to execution which cannot be had against the Crown.[53]

84. Rule 401 is also relevant in which permits the Court to award costs of a motion in an amount to be fixed by the Court. It also permits the Court to order costs of the motion be payable forthwith, where the Court is satisfied that a motion should not have been brought.[54] It permits a Judge the discretion to award the costs of a motion to either party, regardless of the outcome of the main matter.[55]

85. Canada's application for judicial review and its motion for stay are discreet from one another. As such, it is not necessary to await the final outcome in Canada's application for judicial review. The Court is permitted to address the AFN's costs in opposing Canada's motion at this time.[56]

86. The AFN submits Canada's motion for stay is discreet. Although the Court found in its analysis of *RJR-MacDonald* that there was a serious question to be tried, there was no determination made by the Court on the merits of the application for judicial review. Justice Favel wrote:

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[51] *Air Canada v. Thibodeau*, 2007 FCA 115, para 24.
[52] *Crown Liability and Proceedings Act*, RSC, 1985, c. C-50, s. 28 and 30.
[53] *Joseph v. Canada*, 2009 FC 900, para 5.
[54] *Federal Courts Rules*, SOR/98-106, R. 401.
[55] *Singer v. Enterprise Rent-A-Car Co.*, 1999 CanLII 8757 (FCA), para 6.
[56] *Laboratoires Servier v. Apotex Inc.*, 2007 FC 344, para 6-7;

> [17] Considering the above, I find that the AGC's stay motion is not premature. I find that the nature of the Compensation Ruling leaves room for further argument as to whether it is a final or interim decision, as evidenced by the parties' submissions on these motions. This allows me to exercise my discretion to consider the AGC's motion. By stating this, I take no position and make no finding on this issue as those arguments stray into the merits of the judicial review application, which is not appropriate at this stage.[57] (emphasis added)

87. There will be no need for the Court to revisit the determinations made by Justice Favel in the *Decision*, and thus the AFN submits it is appropriate to award costs on this motion separate from and in advance of the proceedings on the application for judicial review.[58]

i. The result of the proceeding;

88. Canada's motion for stay was dismissed in the *Decision* wherein Justice Favel ordered the parties to provide submissions on costs by January 7, 2020 (initially December 31, 2019).

ii. The amounts claimed and the amounts recovered;

89. Canada did not claim any amount in its motion for stay and none were recovered.

iii. The importance and complexity of the issues

90. Canada's motion for stay attempted to unduly delay the process for compensation and additional orders regarding compensation from the CHRT.

91. The AFN submits that matters regarding compensation before the CHRT are of national importance as well as being complex in nature. By association, the issues affected by Canada's motion for stay were highly important to the lives and well-being of thousands of First Nations children and families across Canada as it could have prevented compensation being awarded by the CHRT to a large group of people who are entitled to it by virtue of the CHRT's findings in its decision, 2019 CHRT 39.

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[57] *Supra* note 1, para 17.

[58] See FN 48, but also *Lifescan Inc. v. Novopharm Ltd.*, 2001 FCT 809, [2001] FCJ No 1176, paras 8-10; *Aic Ltd. v. Infinity Investment Counsel Ltd.*, 1998 CanLII 7972 (FC), 148 FTR 240, paras 5-6; *Tursunbayev v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 457, paras 27-29.

92. The issues are also complex being similar in kind to the Common Experience Payment compensation in the Indian Residential School Settlement Agreement. The CEP was the template and foundation of the discussions that have yet to occur regarding the process for compensation as ordered by the CHRT. Navigating the amount of victims/survivors involved with the jurisdiction of the CHRT makes this a complex discussion, in addition to other salient factors relating to the age of the victims/survivors and possible trust agreements that may need to be established and administered on a nationwide scale.[59]

iv. Apportionment of liability;

93. This factor is not applicable to Canada's motion for stay.

v. Written offer to settle;

94. Canada has not provided a written offer to settle.

95. However, the AFN's letter of October 24th could reasonably be considered as an offer to settle given that it extended the opportunity to Canada to avoid its motion for stay by showing the AFN was amenable to consenting to a postponement of the December 10th deadline. The AFN's letter does not contain discussion of any amounts or address costs. However, this deadline created urgency for Canada and was the reason behind its expedited motions timeline. Although this urgency was self-inflicted, Canada chose not to avail itself of the looming December 10th deadline by exploring the options available to it and instead chose pursue its motion, which could have been easily avoided and should not have been brought as submitted above.

96. The AFN submits that should the Court consider the AFN's October 24th letter as an offer to settle, that Rule 420(2)(b) and 420.1 would be of application meaning Canada's failure to accept the AFN's offer should be factored and weighed in this Court' discretion whether to award the AFN its costs.

[59] *Supra* note 4, para 259.

97. Under Rule 420(2)(b), where the plaintiff or applicant, as the case may be, fails to obtain judgment, the defendant or respondent, as the case may be, is entitled to party-and-party costs to the date of the service of the offer (i.e. October 24, 2019) and to costs calculated at double that rate (presumably, this means Column III x 2, according to Rule 407), but not to double disbursements, from that date to the date of judgment (i.e. November 29, 2019).

98. The Federal Court of Appeal in *Venngo* stated the following with respect to the double costs rule (Rule 420):

> [87] The case law regarding the types of offers that fall within the ambit of Rule 420 of the *Rules* establishes that, for the Rule to be engaged and a defendant to be presumptively entitled to double costs from the date of service of the offer, the offer in question must be clear and unequivocal, must contain an element of compromise, must comply with the time limits in the Rules and must bring the litigation to an end: *H-D U.S.A., LLC v. Berrada*, 2015 FC 189 (CanLII) at para. 32, 475 F.T.R. 311; *Syntex Pharmaceuticals International Ltd. v. Apotex Inc.*, 2001 FCA 137 (CanLII) at para. 10, 273 N.R. 217. In terms of timeliness, Rule 420(3) provides that costs consequences of rejecting an offer do not apply unless the offer is made at least 14 days before trial and is open for acceptance until the commencement of trial.[60] (emphasis added)

99. The AFN submits it is presumptively entitled to double costs from the date of its October 24th letter. The offer in the letter is clear and unequivocal and contains an element of compromise. Also, this letter was served upon Canada well in advance of the timeline in Rule 420(3), and it was not withdrawn nor did it expire. The AFN submits this factor ought to weigh heavily with the Court in its discretion whether to award the AFN its costs.

vi. The amount of work;

100. The AFN submits a significant amount of work and legal analysis was involved in responding to Canada's motion for stay that justified the involvement of several counsel. Although the hearing was not unusually long, it did involve reviewing a voluminous Tribunal

[60] *Venngo Inc. v. Concierge Connection Inc. (Perkopolis)*, 2017 FCA 96, para 87.

record, preparing and filing five (5) responding affidavits, as well as reviewing the volumes of materials from the other responding parties.

101. Due to the expedited motions timeframe, this amount of work was condensed into a number of weeks in the month of November which created certain challenges. For example, three of the AFN's affiants are very busy individuals, namely, Jon Thompson, Mary-Ellen Turpel Lafond and Peter Grant. The latter two affiants reside and are located outside the Province of Ontario which required the AFN to accommodate the changes in the time zone as well as their schedules.

102. The cases from the CHRT associated with Canada's motion for stay are also quite lengthy spanning thousands of pages in total. A review of these cases was required to respond to Canada's motion. In addition, the Tribunal record is quite substantial, the itemized list summarizing the material being itself 44-pages in length. Reviewing the Tribunal records was necessary to respond to Canada's motion.

vii. Whether the public interest in having the proceeding litigated justifies a particular award of costs;

103. The AFN has submitted that Canada's motion for stay could have been easily avoided and should not have been brought, that said, Canada's motion did not serve any public interest by having the proceeding litigated. On the contrary, it was in the public interest that Canada's motion be opposed because it served to unduly delay compensation reaching the hands of vulnerable First Nations children and families across Canada.

104. The AFN included in its statement of facts the APTN's request for television camera access to show the matter is a unique and important proceeding to many First Nations children and families across Canada who have been and continue to monitor the case, and which shows a public interest exists with respect to the advancement of their human rights.

viii. Whether any step in the proceeding was (i) improper, vexatious or unnecessary, or (ii) taken through negligence, mistake or excessive caution;

105. The AFN submits Canada's motion for stay was preventable and unnecessary litigation, which is submitted above throughout these submissions, that resulted in an avoidable delay, and which must be a significant factor to be weighed in the Courts discretion whether to award the AFN its costs.

ix. Whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;

106. The AFN submits that all respondent parties were represented by their own solicitors and as a result more than one set of costs should be allowed and be addressed to each respective respondent party.

x. Any other matter that it considers relevant.

107. The AFN is a non-profit organization with limited capacity to engage in costly and unnecessary litigation. The AFN maintains a budget to address a number of legal matters such as the protection of the human rights of its constituents. However, the budget is very limited. This ought to be considered by the Court in its discretion with respect to costs. The AFN submits Canada is the only Party to these proceedings that has the ability to pay costs.

PART IV – ORDER SOUGHT

108. The AFN requests this Honourable Court to award all of part of the AFN's costs on a solicitor-and-client basis pursuant to Rule 400(6)(c); and

109. The AFN requests this Honourable Court to award "double costs" applicable between October 24 to November 29 pursuant to Rule 420(2)(b); or

110. In the alternative, the AFN requests this Honourable Court grant its costs at the high-end of Column III in Tariff B.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 7, 2020

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PART V – LIST OF THE AUTHORITIES

1. **Appendix A – Statute or Regulation**

Federal Courts Rules, SOR/98-106.	Rules 400, 401, 407, 420 and 420.1
Crown Liability and Proceedings Act, RSC, 1985, c. C-50.	Section 28 and 30

2. **Appendix B – Authorities**

Canada (AG) v. First Nation Child and Family Caring Society of Canada, 2019 FC 1529 (Docket T-1621-19)(November 29, 2019).	1, 6, 17, 21 and 31
First Nations Child & Family Caring Society of Canada et al. v. AGC (representing the Minister of Indigenous and Northern Affairs Canada), 2019 CHRT 39 (File No. T1340/7008)(September 6, 2019).	269, 258-270
Aboriginal Peoples Television Network v. Canada (Human Rights Commission), 2011 FC 810.	28
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (Minister of Indigenous and Northern Affairs Canada), 2018 CHRT 4.	385
Shotclose v. Stoney First Nation, 2011 FC 1051.	7
King v. Canada (AG), 2000 CanLII 16124 (FCA).	4 and 5
Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick, 2002 SCC 13.	86
Quebec (AG) v. Lacombe, 2010 SCC 38.	67
RJR-MacDonald Inc. v. Canada (AG), [1994] 1 SCR 311.	
Sanofi-Aventis Canada Inc. v. Novopharm Limited, 2009 FC 1139	4
Canada (Human Rights Commission) v. Canada (AG), 2012 FC 445.	
Exeter v. Canada (AG), 2013 FCA 134.	9-17
Fournier v. Canada, 2005 FCA 131.	12
Sherman v. MNR, 2003 FCA 202, [2003] 4 FC 865.	46
Doig River First Nation and Blueberry First Nations v. Her Majesty the Queen in Right of Canada, 2014 SCTC 4.	12-13
Ethier v. Attorney General of Canada, 2018 ONSC 7692.	5

Eurocopter v. Bell Helicopter Textron Canada Limitee, 2012 FC 842.	13
Leuthold v. Canadian Broadcasting Corporation, 2012 FC 1257.	38
Apotex Inc. v. Wellcome Foundation Ltd., 1998 CanLII 8792 (FC).	7
Air Canada v. Thibodeau, 2007 FCA 115.	24
Joseph v. Canada, 2009 FC 900.	5
Singer v. Enterprise Rent-A-Car Co., 1999 CanLII 8757 (FCA).	6
Laboratoires Servier v. Apotex Inc., 2007 FC 344.	6-7
Lifescan Inc. v. Novopharm Ltd., 2001 FCT 809, [2001] FCJ No 1176.	8-10
Aic Ltd. v. Infinity Investment Counsel Ltd., 1998 CanLII 7972 (FC), 148 FTR 240.	5-6
Tursunbayev v. Canada (Public Safety and Emergency Preparedness), 2019 FC 457.	27-29
Venngo Inc. v. Concierge Connection Inc. (Perkopolis), 2017 FCA 96.	87

3. Appendix C – Other

Order issued by The Hon. Mr. Justice Paul Favel dated October 7, 2019.
Letter, David Taylor to Federal Court (Registrar) dated October 9, 2019.
Letter, Stuart Wuttke to The Hon. Mr. Justice Paul Favel dated October 10, 2019
Oral Direction issued by The Hon. Mr. Justice Paul Favel dated October 11, 2019.
Order issued by Chief Justice Paul S. Crampton dated October 11, 2019.
Letter, Robert Frater, Q.C. to Federal Court (Registrar) dated October 17, 2019.
Oral Direction issued by The Hon. Mr. Justice Paul Favel dated October 21, 2019.
Letter, Mark Blackburn to Chief Justice Paul S. Crampton dated October 22, 2019.
Letter, Stuart Wuttke to Robert Frater, QC dated October 24, 2019.
Letter, Gregory Miller to Robert Frater, QC dated October 24, 2019.
Minutes of the Case Management Conference issued by the Federal Court dated October 25, 2019.
Letter, Brian Smith for the Commission to Federal Court (Registrar) dated October 31, 2019.
Letter, David Taylor for the Caring Society to Federal Court (Registrar) dated November 1, 2019.

Letter, Julian Falconer for the Nishnawbe Aski Nation to Federal Court (Registrar) dated November 6, 2019.
Letter, Ben Kates for Amnesty International to Federal Court (Registrar) dated November 7, 2019.
Letter, Maggie Wente for Chiefs of Ontario to Federal Court (Registrar) dated November 7, 2019.
Letter, Robert Frater, QC for Canada to Federal Court (Registrar) dated November 8, 2019.
Letter, Stuart Wuttke for the AFN to Federal Court (Registrar) dated November 8, 2019.
Letter, David Taylor to Federal Court (Registry) dated November 5, 2019.
Letter, Robert Frater, QC to Respondent Counsel dated November 14, 2019.
Letter, Robert Frater, QC to Judy Dubois (Registry Officer) dated November 15, 2019.
Letter, David Taylor to Robert Frater, QC dated November 26, 2019.
Letter, David Taylor to Federal Court (Registrar) dated November 27, 2019.
Letter, Judy Dubois (Registry Officer) to All Counsel dated November 27, 2019.
Draft Bill of Costs