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Registry Office  
Canadian Human Rights Tribunal  
240 Sparks St., 6th Floor West  
Ottawa, ON K1A 1J4

Dear Madam Registrar:

**Re: COO Response to the AGC's Cross-Motion and to the FNLC's Factum (First Nations Child and Family Caring Society of Canada et al v. Attorney General of Canada - T#1340/7008)**

I write on behalf of the Chiefs of Ontario, in response to the Attorney General of Canada's ("Canada") cross-motion dated March 15, 2024 and the First Nations Leadership Council ("FNLC") written submissions dated July 16, 2024.

Having reviewed all materials, the Chiefs of Ontario respects the positions of the Caring Society, the Assembly of First Nations, and the aspects of the FNLC written submissions that engage the requested relief relating to urgency, payment timelines, backlogs, the *Financial Administration Act*, and providing adequate supports to organizations Canada enters contribution agreements with. We acknowledge and respect that Canada's Jordan's Principle backlogs and delays affect children and families across the country, and so we appreciate the FNLC bringing its BC experiences to bear for the Parties' benefit in this motion.

The Chiefs of Ontario would clarify certain aspects of FNLC's submissions relating to individual First Nation agreement-making and, by necessity, negotiation, as found in their submissions at paragraph 8 (re FPIC) and 16 (re right to FPIC when administrative or legal decisions will affect rights).

COO submits that it is important for the Tribunal to be mindful of a distinction between AFN (or any other representative body) advancing claims and advocating for the interests of individual First Nations and the binding nature of decisions and settlements about those claims. Settlements and claims to which representative organizations are a party should not be taken as binding individual First Nations without appropriate authorizations and consent to be bound.<sup>1</sup> As


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<sup>1</sup> For example, see the First Nations Class Member definition in Appendix 1 of the decision in *Tataskweyak et al v Attorney General of Canada*, [2021 FC 1415](#). See also *Kelly v Canada (Attorney General)*, [2014 ONCA 92](#) at [para 21](#), which COO does not necessarily endorse but is a part of the body of law which speaks of how a representative body can bring a claim on behalf of individual Nations.

such, COO agrees that the positions by the representative bodies are not an expression of the free, prior, and informed consent of each First Nation the organizations represent with respect to the positions taken. The advocacy by the representative organizations should not be mistaken as assent to bind the individual First Nations – there are mechanisms by which this can happen in Canadian law, such as class action lawsuits with opt-ins or opt-outs, or by resolution of individual First Nations. While questions of free prior and informed consent are extremely important to the Chiefs of Ontario, however, COO suggests that the Tribunal should not be tempted to make findings in this regard, either because there is no jurisdiction under the *Canadian Human Rights Act* to do so, and no factual record in this instance upon which to base a finding. If it is appropriate for the Tribunal to consider such matters in a finding of jurisdiction, it should do so on a factual record.

COO reserves the right to make brief oral submissions on the position of FNLC at the hearing of this matter.

Yours truly,  
Olthuis, Kleer, Townshend LLP

  
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ASSOCIATE

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