

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)**

Respondent

- and -

**CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION**

Interested Parties

**NOTICE OF MOTION FOR RELIEF OF THE COMPLAINANT
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

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NOTICE OF MOTION

TAKE NOTICE THAT THE COMPLAINANT, THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA (the “**Caring Society**”) makes this motion in writing to the Canadian Human Rights Tribunal located at 240 Sparks Street, 6th Floor West, Ottawa, Ontario.

This motion is for relief to ensure that this Tribunal’s Orders of 2016 CHRT 2, 2016 CHRT 10, 2016 CHRT 16, 2018 CHRT 4, 2022 CHRT 8 and all other orders related to First Nations Child and Family Services and Jordan’s Principle are effective, specifically regarding Canada’s legal obligation to consult with the co-complainants regarding the long-term reform of the First Nations Child and Family Services Program (“**FNCFS Program**”) and Jordan’s Principle.

AND TAKE NOTICE THAT THIS MOTION IS FOR:

1. An Order directing consultation between Canada, the Assembly of First Nations (the “**AFN**”) and the Caring Society on the national long-term reform of the FNCFS Program, First Nations federal child and family services and Jordan’s Principle in line with the Tribunal’s Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders.
2. An Order directing consultation between Canada, the AFN and the Caring Society on the Ontario-specific long-term reform announced January 7, 2025, in line with the Tribunal’s Order of February 1, 2018 (2018 CHRT 4) and its related consultation orders.
3. An Order that the Tribunal retain jurisdiction until such time as measures are in place to end the discrimination and prevent its recurrence.
4. Such further relief as the Caring Society may advise and this Tribunal may permit.

AND TAKE NOTICE THAT THE GROUNDS FOR THE MOTION ARE:

1. The Tribunal has made clear in all its rulings that a dialogic approach to crafting remedies is a critical tool in eliminating discrimination identified by the Tribunal in 2016 CHRT 2 (and Canada’s subsequent non-compliance) and preventing its recurrence. This approach was upheld and endorsed by the Federal Court in its September 29, 2021 order in 2021 FC 969.

2. On January 26, 2016, (2016 CHRT 2 – the “**Merits Decision**”) the Tribunal substantiated the complaint brought by the Caring Society and the AFN, determining that the FNCFS Program, corresponding funding formulas and other related child and family services provincial/territorial agreements, discriminated against First Nations children and families, contrary to s. 5 of the *Canadian Human Rights Act*. The Tribunal ordered Canada to (i) cease its discriminatory practices and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision; (ii) cease applying its narrow definition of Jordan’s Principle and to take measures to implement the full meaning and scope of Jordan’s Principle; and (iii) take measures to prevent the recurrence of the discrimination found by the Tribunal.

3. On February 1, 2018 (2018 CHRT 4 – the “**Actuals Decision**”) the Tribunal found that Canada was not in compliance with the Merits Decision and its previous orders and had not moved quickly enough in taking meaningful steps to cease its discriminatory practices under the FNCFS Program. The Tribunal made findings with respect to the ongoing lack of prevention services, including that “the current manner in which prevention funds are distributed while unlimited funds are allocated to keep children in care is harming children, families, communities and Nations in Canada. [...] This is a striking example of a system built on colonial views perpetuating historical harm against Indigenous peoples, and all justified under policy” (Actuals Decision at paras. 119 and 121). In the result, the Tribunal ordered Canada to pay the actual costs of, *inter alia*, prevention/least disruptive measures, intake and investigate, legal fees and building repairs by fully reimbursing First Nations Child and Family Services Agencies (“**FNCFS Agencies**”), retroactive to January 26, 2016.

4. In the Actuals Decision, the Tribunal also ordered Canada to “consult not only with the Commission, but also directly with the AFN, the Caring Society, the [Chiefs of Ontario (“**COO**”)] and the [Nishnawbe Aski Nation (“**NAN**”)] on the orders made in this ruling, the [*Merits Decision*] and its other rulings. [Canada] is ordered to enter into a protocol with the AFN, the Caring Society, the COO, the NAN and the Commission on consultations to ensure that consultations are carried out in a manner consistent with the honor of the Crown and to eliminate the discrimination substantiated in the *Decision* with the complainants [emphasis added]” (para. 400).

5. Pursuant to the Tribunal’s consultation order made in the Actuals Decision, on March 2, 2018, the Parties agreed to a consultation protocol, which, among other things, established the Consultation Committee on Child Welfare (“CCCW”). The consultation protocol contemplated consultation on both immediate relief measures and long-term reform: “The mandate of the CCCW is to oversee the development and implementation relief measures ordered by the Canadian Human Rights Tribunal (CHRT) and encompassed by the Consultation Protocol, including those relating to Jordan’s Principle, and its role shall be extended to mid and long term relief measures unless otherwise agreed to by the parties [emphasis added]”.

6. Between 2018 and 2020, the parties participated in the CCCW, and consultation took place on a number of important immediate measures, as well as the compensation framework in relation to 2019 CHRT 39.

7. In 2021, the parties negotiated an Agreement in Principle on long-term reform of the FNCFS Program and Jordan’s Principle (the “AIP”), which was signed on December 31, 2021. However, it was necessary for the Caring Society to end its involvement in the AIP in December 2023 to bring a motion for non-compliance in relation to Jordan’s Principle, to ensure that Canada fully complies with this Tribunal’s Jordan’s Principle orders and ends the resulting discrimination for First Nations children, youth and families. The parties were unable to agree to terms for the Caring Society’s return to negotiations outside the AIP framework.

8. On July 11, 2024, Canada, the AFN, COO and NAN released a draft final agreement on long-term reform of the FNCFS Program (the “**Draft FSA**”). Throughout August, September and October 2024, the Caring Society attempted to reconvene the CCCW to allow for consultation on the Draft FSA. In keeping with the consultation protocol, the Caring Society also shared with Canada (and with AFN, COO and NAN) its suggested amendments to the Draft FSA in an effort to directly engage with Canada on long term solutions in relation to the discrimination identified by the Tribunal. Canada refused to consult with the Caring Society on the long term reform solutions set out in the Draft FSA, in breach of the consultation order in the Actuals Decision, contrary to the consultation protocol, and contrary to the dialogic approach underscored by this Panel.

9. In October 2024, the First Nations-in-Assembly did not accept the Draft FSA and directed further negotiations to bring amendments to the Draft FSA in order to end Canada's discrimination in First Nations child and family services and Jordan's Principle and to prevent its recurrence, as set out in AFN Resolutions 60/2024 and 61/2024.

10. In December 2024, the First Nations-in-Assembly reiterated their commitment to a new negotiation process to seek amendments to the Draft FSA and called on Canada to obtain a new mandate by early January 2025, as set out in AFN Resolutions 88/2024, 89/2024, and 90/2024. AFN Resolution 90/2024 called on Canada to obtain a new negotiation mandate within thirty (30) days in full alignment with AFN Resolutions 60/2024 and 61/2024.

11. On December 9, 2024, the Caring Society sent a letter to Canada, the AFN, COO and NAN extending an invitation to meet to discuss returning to the negotiation table in light of, and in line with, the resolutions passed by the First Nations-in-Assembly.

12. On January 7, 2025, in response to the Caring Society's December 9, 2024, letter, Canada advised that Canada will negotiate an agreement on long-term reform of the FNCFS Program with COO and NAN, and that Canada does not currently have a mandate to negotiate a long term reform agreement on a national basis.

13. On January 8, 2025, the Caring Society wrote to Canada asking that it commit to return to the negotiation table, in line with the Actuals Decision, the CCCW Protocol and the resolutions passed by the First Nations-in-Assembly and requested a response by January 10, 2025. The Caring Society underlined that Canada's approach to negotiating only with COO and NAN raises serious concerns regarding the Honour of the Crown and retaliatory conduct pursuant to the *Canadian Human Rights Act*.

14. On January 10, 2025, Canada wrote to the Caring Society and advised it could not answer whether it would come back to the table.

15. On January 14, 2025, Canada wrote again to the Caring Society to advise that it was not prepared to negotiate long term reform of the FNCFS Program based on the First Nations-in-Assembly's resolutions. Canada's correspondence did not propose any path towards the identification and implementation of long term reforms outside of Ontario.

16. Section 53(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6;
17. Rules 1(6), 3(1), and Rule 3(2) of this Tribunal's Rules of Procedure; and
18. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will accompany this motion:

- (a) The affidavit of Katherine Quintana-James, affirmed January 14, 2025; and
- (b) Such further and other materials as counsel may advise and this Tribunal may permit.

Dated: January 14, 2025



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