

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

THE FIRST NATIONS CHILD AND FAMILY CARING SOCIETY

– and –

THE ASSEMBLY OF FIRST NATIONS

Complainants

– and –

THE CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

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

Respondent

– and –

**THE CHIEFS OF ONTARIO
AMNESTY INTERNATIONAL CANADA
THE NISHNAWBE ASKI NATION
THE FIRST NATIONS LEADERSHIP COUNCIL**

Intervenors

– and –

**THE FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL
SERVICES COMMISSION**

Applicant

– and –

THE ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR

Co-Applicant

**Amended notice of motion of the Applicant and Co-Applicant to be recognized as
interested persons in respect of the proceedings
(*Canadian Human Rights Tribunal Rules of Procedure, s. 27*)**

TO ACKNOWLEDGE that the Applicant, the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) was mandated to act as an interested person before the Canadian Human Rights Tribunal (hereinafter the “Tribunal”), in relation to the files regarding the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program* (hereinafter the “FNCFS Agreement”) and Jordan’s Principle (file no T1340/7008), by the Assembly of First Nations Quebec-Labrador (AFNQL) Chiefs in order to be recognized as interested persons in respect of the proceedings.

TO ACKNOWLEDGE that the Applicant and Co-Applicant wish to act as interested persons in respect of the proceedings for the following reasons:

1. Their expertise will benefit the Tribunal, especially with regard to the particular situation of First Nations in Quebec, with a view to diligently resolving this enduring dispute.
2. Canada’s management of the negotiation process has negative repercussions on the linguistic, ancestral and inherent rights of First Nations in Quebec. This particularly affects the governance structures established by the AFNQL Chiefs, as well as the linguistic, ancestral and cultural specificities of First Nations who use French as their working language.
3. The work of First Nations Child and Family Services (FNCFS) Agencies and the funding of Jordan’s Principle in Quebec use processes that are unique to them, which can lead to inconsistencies in the execution of the Tribunal’s orders, or even result in no real benefit for the First Nations in Quebec.
4. Canada disregards the negotiation process democratically established by the First Nations in Canada, to which the First Nations in Quebec contributed.

CONSEQUENTLY, the Applicant and Co-Applicant wish to participate in the proceedings as interested persons to act in relation to the Consultation Protocol (**2018 Canadian Human Rights Tribunal 4**) and provide evidence indicating “that readjustments of this order need to be made to overcome specific unforeseen challenges and is accepted by the Panel.” More specifically, the Applicant and Co-Applicant wish to act as interested persons to overcome the barriers to the French translation of the documents necessary so that the

First Nations in Quebec may be consulted in a manner consistent with the honour of the Crown, which requires:

1. Participating in an ongoing way to communications between the parties and the Tribunal.
2. Seeking orders.
3. Submitting documentary and testimonial evidence.
4. Performing cross-interrogations.
5. Attending hearings.

The whole applying only to the issues surrounding negotiations and consultations, when real challenges are encountered in relation to the French translation of relevant documents.

FURTHERMORE, the Applicant and Co-Applicant wish to act as interested persons in relation to other applications and cross-applications in file no T1340/7008, to:

1. Participate in an ongoing way to communications between the parties and the Tribunal.
2. Collaborate orally on case management.
3. Submit written observations of up to 25 pages as necessary, without repeating the positions of other parties, regarding the negotiation of the FNCFS Agreement or Jordan's Principle.

TO ACKNOWLEDGE THAT THE APPLICANT AND CO-APPLICANT ALLEGE THE FOLLOWING IN SUPPORT OF THEIR APPLICATION:

The Co-Applicant The AFNQL

1. Created in 1985, the AFNQL is a collective of First Nations governments in Quebec.
2. The Chiefs and Grand Chiefs of the governments of the 43 First Nations located in Quebec and on the Labrador border form the Quebec-Labrador Chiefs Assembly, and are thus brought together under the auspices of the AFNQL. Together, they represent a total of 10 First Nations: Abenaki (W8banaki), Algonquin (Anishinaabeg), Atikamekw

Nehirowisiwok, Cree (Eeyou), Huron-Wendat, Malecite (Wolastoquiyik), Mi'gmaq, Mohawk (Kanien'kehá:ka), Innu and Naskapi.

3. In accordance with the decision-making authority of First Nations governments, which are represented by Chiefs and Grand Chiefs, the AFNQL plays a key role as the main intermediary between the First Nations in Quebec and the governments of Quebec and Canada. This allows them to influence the development of the statutory regimes that affect them.

The Applicant: the FNQLHSSC

4. The FNQLHSSC is a non-profit association created and mandated in 1994 through resolutions of the Co-Applicant, the AFNQL.

5. Its mission is to help the First Nations in Quebec accomplish their goals in terms of health, wellness, culture and self-determination.

6. Notably, it has the expertise necessary to accomplish this mission, and it is part of the commissions and organizations created by the AFNQL Chiefs.

Involvement of the AFNQL and the FNQLHSSC

7. In the legal sphere, the AFNQL and the FNQLHSSC have notably taken part in proceedings concerning the distribution of jurisdictions and the promotion of First Nations rights recognized and confirmed by section 35 of the *Constitution Act, 1982*. The FNQLHSSC developed expertise in several domains, including that of services offered to First Nations children and families in Quebec.

11. In their respective roles as political intermediary and technical support to First Nations, the AFNQL and the FNQLHSSC have greatly contributed to the work of Indigenous and parliamentary bodies, as well as to the development and amendment of laws, regulations, policies and programs concerning child and family services.

12. The AFNQL and the FNQLHSSC have extensive knowledge of the profound negative impacts of the Canadian and Quebec governments' laws, regulations, policies and programs regarding First Nations families and children, impacts which span decades and persist today. These are realities they are confronted with daily.

LINGUISTIC ISSUES

13. On July 11, 2024, the government of Canada, the Assembly of First Nations (AFN), the ~~First Nations Child and Family Caring Society~~, the Chiefs of Ontario (COO) and the Nishnawbe Aski Nation (NAN) agreed on a first draft of the final agreement on the long-term reform of the FNCFS Program in English, of which copy was provided to First Nations across Canada.

14. On July 25, 2024, a joint letter from Joanna Bernard, Regional Chief of New Brunswick, Ghislain Picard, Regional Chief for Quebec-Labrador, Bobby Cameron, Regional Chief of Saskatchewan and Terry Teegee, Regional Chief of British Columbia, was addressed to the AFN executive to raise concerns about the FNCFS Agreement, mentioning in passing that it was not available in French (**Exhibit CA-1**).

15. A month later, following the release of the FNCFS Agreement in English, a French version of the same was made available around August 12, 2024.

16. That same day, the FNQLHSSC quickly identified that the French version contained linguistic errors.

17. An amended version of the FNCFS Agreement was made available on the AFN's website on August 19, 2024.

18. On August 23, 2024, following a special assembly of the AFNQL, the AFNQL Chiefs passed, through digital means, resolution 10 /2024 (**Exhibit CA-2**), which reaffirmed the linguistic specificity of the First Nations in Quebec who use French, among other languages, as a working language, as well as the necessity of obtaining an adequate

and official French version of the FNCFS Agreement. The resolution denounces the short time the First Nations in Quebec had to analyze the FNCFS Agreement.

19. On August 28, 2024, the FNQLHSSC received a summary linguistic analysis of the FNCFS Agreement, which it requested from an external firm mandated to identify linguistic inconsistencies between the English and French versions of the FNCFS Agreement's August 19, 2024 version, as appears from a copy of said summary analysis from the firm Elite Communications (**Exhibit CA-3**).

20. On October 15, 2024, the AFNQL Chiefs passed resolution 11/2025 (**Exhibit CA-4**), in which they affirm their rejection of the FNCFS Agreement, notably due to its failure to align with the governance structures they put in place and its disregard for their cultural and linguistic specificities, including the use of French as a working language in many communities.

21. The same day, Interim Chief Lance Haymond provided the Honourable Patty Hajdu, Minister of Indigenous Services, and National Chief Cindy Woodhouse Nepinak a letter outlining the AFNQL Chiefs' concerns regarding the FNCFS Agreement (**Exhibit CA-5**).

22. On January 17, 2025, the Department of Justice Canada answered for Indigenous Services Canada (ISC) to the November 21, 2024, Summary Ruling and the December 18, 2024, Direction through a letter and an appendix thereto (**LEX-5000166425**), to clarify the operational concerns regarding the processing of funding applications under Jordan's Principle (**Exhibit CA-6**). However, this important document is only available in English.

23. On January 27, 2025, the FNQLHSSC further communicated with the Court Registry and ISC to obtain a French version of Document **LEX-5000166425**, which outlines the operational concerns regarding the processing of funding applications under Jordan's Principle.

24. These communications confirmed that Document **LEX-5000166425** remained unavailable in French as of January 27, 2025 (**Exhibits CA-7**, bundled).

25. The federal government has not abided by its constitutional obligations, notably those under sections 15, 16 and 20 of the *Canadian Charter of Rights and Freedoms*, nor by its quasi-constitutional obligations under subsection 3(1) and paragraph 5b) of the *Canadian Human Rights Act*, by allowing the First Nations engagement process under the FNCFS Agreement (in which it actively participates) to proceed without regard to the considerable time required to obtain a French version of the same, and it has proved incapable of having important documents translated into French in response to orders of a systemic nature, resulting in the unfair and discriminatory treatment of the First Nations who use French as a working language.

26. Under subsection 82(2) of the *Official Languages Act*, the issue surrounding discrimination against First Nations communities that use French as a working language supersedes those that concern official languages, and so the Court does not act outside of its remit by establishing that these communities were discriminated against in the course of the negotiations and consultations in respect of the FNCFS Agreement, and that measures, such as the right to have documents of importance to these proceedings translated through orders, must be available to them to protect their fundamental right to equitable treatment and respectful consultations, the whole in the context of the upcoming negotiations and consultations regarding the FNCFS Agreement and Jordan's Principle.

A JUSTIFIED AND NECESSARY INTERVENTION

A necessary contribution to the proceedings

27. Both the AFNQL and the FNQLHSSC can contribute to the proceedings in a significant, relevant and useful manner. They both receive their mandates directly from the AFNQL Chiefs and have developed expertise in representing the interests of these communities with government bodies over the course of the last three decades.

28. The AFNQL and the FNQLHSSC actively participated in the reflections, consultations and work surrounding the FNCFS reform.

29. They then led consultations and information sessions aiming to reform and adapt the funding of FNCFS agencies within First Nations communities in Quebec.

30. The AFNQL also participates in the health and social services governance process coordinated by the FNQLHSSC, notably with the aim of introducing a regional health and wellness body.

31. This process falls within the ongoing negotiations with ISC regarding the transfer of health and social services responsibilities to this body under its enabling law, i.e., sections 7 and 9 of the *Department of Indigenous Services Act*.

32. In 2019, ISC signed a tripartite memorandum of understanding with the AFNQL and the government of Quebec to consolidate their partnership and develop a health and social services governance model for the First Nations in Quebec.

FNCFS agencies

33. Currently, there are 16 FNCFS Agencies in Quebec. These agencies serve 23 First Nations communities.

34. They provide first-line and youth protection services, while three provincial establishments (integrated health and social services centres and integrated university health and social services centres) provide youth protection services to four communities.

35. Among these FNCFS agencies are three tribal councils, which bring together communities with shared interests to whom they provide services: the Mamit Innuat Tribal Council (Pakua Shipu, Ekuatnishit and Unamen Shipu), the W8banaki Tribal Council (Odanak and Wolinak) and the Atikamekw Nation Council (Manawan and Wemotaci).

36. First-line prevention services were first implemented after the First Nations Socio-Economic Forum, which was held in Mashteuiatsh in October 2006. The federal and provincial governments then announced an investment to enhance access to culturally appropriate prevention and intervention services for First Nations children, youth and families living in communities.

37. The FNQLHSSC continued to work with government actors and First Nations communities by introducing a *Partnership Framework for the Enhanced Prevention Focused Approach* (EPFA Framework), which was finalized in 2011 (**Exhibit CA-8**).

38. From 2011 to 2017, a majority of FNCFS agencies implemented prevention action plans under the EPFA Framework, with a view to meeting the needs identified and prioritized by First Nations communities in Quebec.

39. In 2017, after these consultations, the FNQLHSSC provided the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs Canada (now ISC), with a report entitled *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families*, the will and the vision of the First Nations in Quebec may be represented in the reform (**Exhibit CA-9**).

40. In December 2018, the regional funding model of the FNCFS Program was reviewed pursuant to the February 1, 2018, order (**2018 Canadian Human Rights Tribunal 4**).

41. Thus, from 2018 on, the First Nations communities in Quebec, excluding those who are party to a self-government agreement (the so-called “agreement communities”), have been responsible for providing first-line prevention services to their populations through FNCFS agencies. The FNQLHSSC helps FNCFS agencies develop their five-year action plans and provide their services.

42. A majority of First Nations communities in Quebec have assumed youth protection responsibilities, excluding the Eeyou Istchee and the Inuit, who manage their services in

accordance with the *James Bay and Northern Quebec Agreement* and the *James Bay and Northeastern Quebec Agreement*.

43. In June 2019, the FNQLHSSC reviewed the EPFA Framework to adapt it to legislative and political amendments, and to address concerns expressed during the consultations with the First Nations in Quebec, as appears from the *First-Line Prevention Services Framework (Exhibit CA-10)*.

44. In December 2021, after Canada, the AFN, the First Nations Child & Family Caring Society of Canada, the COO and the NAN signed the agreement in principle on the long-term reform of the FNCFS Program and Jordan's Principle, the FNQLHSSC held consultations with concerned communities and organizations to inform discussions regarding the final settlement agreement on the FNCFS reform and Jordan's Principle.

45. In November 2022, the FNQLHSSC presented its report to the AFN in order to have the interests, the will and the vision of the First Nations in Quebec represented in the long-term reform of the FNCFS Program and of Jordan's Principle (**Exhibit CA-11**).

46. Upon reading the draft final agreement on the long-term reform of the FNCFS Program presented by the parties on July 11, 2024, the FNQLHSSC noted that almost none of its 22 recommendations were considered.

47. Among these important recommendations was the necessity of accounting for the fact that the First Nations in Quebec have created FNCFS agencies whose responsibilities include the provision of first-line services.

48. Yet, per the FNCFS Agreement, FNCFS agencies were to present a multi-year plan and a child and community wellness plan (s. 43 and 134), which created a risk of overlap.

The health and social services governance process

49. On June 12, 2012, the AFNQL Chiefs-in-Assembly passed resolution 08/2012, which aimed to launch a joint initiative between the First Nations and the federal and provincial governments. The FNQLHSSC was charged with coordinating this initiative (**Exhibit CA-12**).

50. Launched in 2013, the Quebec First Nations health and social services governance process results from the First Nations' finding that the current health and social services governance model must be overhauled to adequately address their realities and needs.

51. On February 19, 2014, the AFNQL Chiefs-in-Assembly passed a motion confirming the implementation of a draft project for the creation of a First Nations health and wellness governance structure (**Exhibit CA-13**).

52. The FNQLHSSC coordinates the Quebec First Nations health and social services governance process. Its objectives include ensuring the involvement of all communities and organizations so that an effective health and wellness governance model may be co-created to reflect the realities and needs of the First Nations in Quebec.

53. On April 28, 2016, the AFNQL Chiefs-in-Assembly passed Resolution 10/2016 to prolong the mandate and charged the FNQLHSSC to initiate steps and discussions with federal and provincial governments with a view to formally agreeing on a transition process toward a new model of governance providing the First Nations in Quebec with more autonomy (**Exhibit CA-14**).

54. The concept of effective governance hinges on accomplishing collective goals through the implication of all stakeholders in management, responsibility sharing, decision-making and service delivery.

55. The final FNCFS Agreement completely ignores the recommendations made by the FNQLHSSC in its final report, presented to the AFN in November 2022, which took into

account the realities of First Nations in Quebec in terms of self-determination during the repatriation of ISC's responsibilities in relation to the governance process.

Jordan's Principle

56. Contrary to communities in Canada, communities in Quebec have obtained funding for the introduction of local Jordan's Principle coordinators. These coordinators' remit is mainly to inform the population and stakeholders about available services, and to support people who wish to apply. The FNQLHSSC supports the work of these community resources and of organizations, notably by coordinating regional meetings of that network.

57. The introduction of local coordinators for Jordan's Principle strongly favours the application of this principle. The flexibility of this structure consolidates the implementation of a holistic approach tailored to the specific needs of each First Nation. Furthermore, local coordination facilitates the development of an integrated and global vision of the services offered, in a manner complementary to existing services.

CURRENT STATE OF NEGOTIATIONS

58. Following the rejection of the FNCFS Agreement by the AFN Chiefs-in-Assembly on October 16 through 18 and the passing of resolutions 60/2024 and 61/2024, the Chiefs passed resolutions to introduce a new negotiation framework, which was set out in resolutions 87/2024, 88/2024 and 90/2024, passed on December 3 through 5, 2024 (**Exhibits CA-15**, bundled).

59. Resolution 88/2024 notes the failure to obtain the English and French versions simultaneously, and that Canada is not obligated to provide additional funding to regions in response to circumstances, or with the assurance that the services will be culturally appropriate (paragraph L).

60. Resolution 89/2024 reiterates several of the elements put in place by the AFN's democratic process, notably the creation of the National Children's Chiefs Commission (NCCC), which is charged with forming a negotiation team (paragraph 3).

61. The AFNQL Chiefs appointed Chief Vicky Chief of the Timiskaming First Nation as regional representative for Quebec.

62. As of now, the NCCC has met four times.

63. Resolution 90/2024 calls for Canada to resume negotiations with the NCCC within 30 days.

64. On January 6, 2025, the government of Canada declared, in a letter to the AFN, that the latter didn't have the remit to negotiate the FNCFS reform at the national level (**Exhibit CA-16**).

65. On January 14, 2025, the government of Canada reaffirmed, in a letter to the Child & Family Caring Society, its refusal to negotiate with the other parties concerned, except for the COO.

FINDINGS

66. Thus, the execution of a final FNCFS Agreement on current terms would cause great harm to the rights of First Nations in Quebec, for the following reasons:

- 1) The difficulty of obtaining a confirmed version of the FNCFS Agreement in August 2024 caused difficulties during consultations, as about 20 First Nations communities use French as a working language. This resulted in a breach of fundamental and inherent rights.
- 2) The communications protocol between the parties in these proceedings, which are conducted exclusively in English, is problematic, as First Nations communities that use French as a working language need to consult important documents on the FNCFS Agreement or Jordan's Principle.
- 3) The relative content and funding proposed during negotiations are insufficient, as they fail to take into account the health and social services governance process established by the First Nations in Quebec, as well as

communities' different realities, i.e., the fact that they all have FNCFS agencies who provide first-line services, and that a regional action plan had already been co-created with the FNQLHSSC and the First Nations.

4) The negotiations do not account for the governance structures and organizations (i.e., regional commissions and organizations) created and implemented by the AFNQL Chiefs.

5) The right to self-determination of the First Nations in Quebec would be compromised, as the projected contents of the final FNCFS Agreement completely disregard the fact that the First Nations in Quebec are currently negotiating the repatriation of ISC'S responsibilities (sections 7 and 9 of the *Department of Indigenous Services Act*), the whole falling within the implementation of a regional health and wellness body under the direction of the First Nations in Quebec.

6) The final FNCFS Agreement left no place for regional representations, and the government of Canada openly admits its inability to negotiate with regional representatives, save for the COO.

7) The Canadian government's position completely disregards the democratic process implemented by the First Nations of Canada through resolutions 60/2024, 61/2024, 87/2024 and 88/2024, and constitutes a refusal to collaborate with First Nations under resolution 90/2024. The resolutions underline the need to adapt the funding to regional realities during the negotiations between the parties, and to negotiate in good faith with the negotiation team formed by the NCCC. Chief Vicky Chief serves on the NCCC.

67. The AFNQL and the FNQLHSSC are aware that this dispute is complex. The orders they intend to seek, if necessary, will be submitted diligently and in a manner that minimizes the possibility of harm to the parties or to the Tribunal.

68. For this reason, the AFNQL and the FNQLHSSC are willing to observe any reasonable timeline established by the parties, including if a party alleges that the processing of the previous motion and countermotion might constitute a procedural precedent.

TO ACKNOWLEDGE THAT THE FOLLOWING EVIDENCE WILL ACCOMPANY THIS MOTION:

Affidavits

- 1) Affidavit of Ghislain Picard, Regional Chief, AFNQL
- 2) Affidavit of Marjolaine Sioui, Executive Director, FNQLHSSC
- 3) Affidavit of Richard Gray, Social Services Manager, FNQLHSSC
- 4) Affidavit of Jessie Messier, Health Services Manager, FNQLHSSC

Documentary evidence

- 1) Exhibits **GP-1 to GP-11**, in support of the affidavit of Ghislain Picard
- 2) Exhibits **MS-1 to MS-15**, in support of the affidavit of Marjolaine Sioui
- 3) Exhibits **RG-1 to RG-4**, in support of the affidavit of Richard Gray
- 4) Exhibit **JM-1**, in support of the affidavit of Jessie Messier

The following exhibits, in support of this joint motion to intervene of the FNQLHSSC and the AFNQL (“CA”):

Exhibit CA-1: Joint letter of the Regional Chiefs to the AFN, dated July 25, 2024, in English and French

Exhibit CA-2: Resolution 10 /2024 of the AFNQL, dated August 23, 2024, in English and French

Exhibit CA-3: Email of the firm Elite Communications with its summary evaluation, dated August 28, 2024

Exhibit CA-4: Resolution 11/2025 of the AFNQL dated October 15, 2024, in English and French

Exhibit CA-5: Letter from Interim Chief Lance Haymond to the Honourable Patty Hajdu and Chief Cindy Woodhouse Nepinak, outlining the AFNQL Chiefs’ concerns regarding the FNCFS Agreement, dated October 15, 2024, in English and French

Exhibit CA-6: Letter entitled LEX-5000166425 and its appendix, in English

Exhibits CA-7: Email exchanges between the FNQLHSSC, the Registry of the Canadian Human Rights Tribunal and Indigenous Services Canada, to obtain a French version of the document entitled LEX-5000166425 (bundled)

Exhibit CA-8: *Partnership Framework for the Enhanced Prevention Focused Approach* (EPFA Framework), 2011, in English and French

Exhibit CA-9: Report entitled *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families*, 2017, in English and French

Exhibit CA-10: *First-Line Prevention Services Framework* (New EPFA Framework), revised in 2019, in English and French

Exhibit CA-11: November 2022 report of the FNQLHSSC to the AFN as part of the long-term reform of the FNCFS Program and Jordan's Principle

Exhibit CA-12: Resolution 08/2012 of the AFNQL Chiefs dated June 12, 2012, in English and French

Exhibit CA-13: Motion of the AFNQL Chiefs dated February 19, 2014, for the creation of a First Nations health and wellness governance structure, in English and French

Exhibit CA-14: Resolution 10/2016 of the AFNQL dated April 28, 2016, in English and French

Exhibits CA-15: Resolutions 60/2024 and 61/2024, passed on October 16 through 18, 2024, and resolutions 87/2024, 88/2024 and 90/2024, passed on December 3 through 5, 2025, by the AFN (bundled)

Exhibit CA-16: Letter of the Department of Justice Canada to the AFN dated January 6, 2025



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