



Department of Justice
Canada

Ministère de la Justice
Canada

Prairie Regional Office
(Winnipeg)
National Litigation Sector
601-400 St. Mary Avenue
Winnipeg, MB R3C 4K5

Bureau régional des Prairies (Winnipeg)
Secteur national du contentieux
400, avenue St. Mary, pièce 601
Winnipeg (Manitoba) R3C 4K5

Telephone/Téléphone: 204-294-5563
Fax /Télécopieur: 204-983-3636
Email/Courriel: Dayna.Anderson@justice.gc.ca

Via Email

Our File Number: LEX-500219273

March 17, 2025

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Registry,

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

We write in response to the Tribunal's request for the parties' views on proceeding with long term reform of the First Nations Child and Family Services (FNCFS) Program, and specifically options for moving forward in light of the Tribunal's observation as to the passage of time since the Tribunal's signal in 2018 CHRT 4 that the parties had entered the "long term remedial phase".

As the Tribunal is aware, Canada, the Chiefs of Ontario (COO) and the Nishnawbe Aski Nation (NAN) recently entered into an agreement to reform the FNCFS Program in Ontario (Ontario Final Agreement), as well as a Trilateral Agreement respecting the 1965 Agreement. These agreements were ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively. On March 7, 2025, COO and NAN filed a joint motion for approval of the Ontario Final Agreement, which Canada has supported.

These agreements come after years of research, study, consultation and negotiation with the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), COO and NAN, all in an effort to secure agreement on the long-term reform of the FNCFS Program nationally, the specifics of which are set out in the Affidavit of Duncan Farthing-Nichol, filed on March 13, 2025 in response to the Caring Society's consultation motion. These specifics include:

- completion of the December 31, 2021 Agreement in Principle;
- the funding and work of multiple committees and tables to provide advice and consider general and specific reform issues;

Canada 

- regular meetings between the parties, including multiple full day negotiation meetings;
- Indigenous Services Canada's (ISC) financial support of the development of research in a number of areas. This included funding, amongst other research, of contracts between the AFN and the Institute of Fiscal Studies and Democracy (IFSD), and between the Caring Society and IFSD, to inform the development of an alternative funding system.

It is of note that during most of the period of consultation and negotiation on long-term reform of the FNCFS Program, the Caring Society, the AFN, COO and NAN were active participants in either consultations or negotiations with Canada. The Caring Society ceased their participation in negotiations between December 2023 and February 2024. The AFN did not participate in the negotiation of the Ontario specific agreement in January 2025, but was otherwise an active participant in the negotiations.

With this context in mind, Canada respectfully submits that the best way to move forward with the long-term remedial phase is for the Tribunal to first consider the joint motion from COO and NAN respecting long-term reform of the FNCFS program in Ontario. This motion, if granted, would finally resolve and remedy all issues respecting the FNCFS Program in Ontario. For the benefit of First Nation children and families in Ontario, it is imperative that this motion proceed without delay. Further, the outcome of the joint motion is likely to inform the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase outside of Ontario.

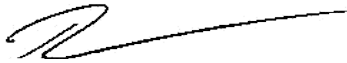
We respectfully urge the Tribunal to honour the effort and urgency expressed by COO and NAN to address the joint motion. We urge the Tribunal to facilitate the consideration of the Ontario Final Agreement, which is conditional on Tribunal approval, by placing the Caring Society's consultation motion temporarily into abeyance.

Consideration of national reform continues to be extremely important to Canada. It is Canada's perspective that the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform.

The FNCFS Program today is very different than it was in 2016. Canada has done significant work and has implemented important reforms. During consultations and negotiations, Canada made considerable reforms to the Program in keeping with the parties' recommendations and the orders from this Tribunal (including on consent). Canada has and continues to implement this Tribunal's orders. Further, Canada has and continues to provide funding beyond the Tribunal's orders, including with respect to housing and First Nations Representative Services outside Ontario. Recipients who are eligible to receive funding under the FNCFS Program continue to benefit from these reforms. Approximately \$3.6 billion in funding was provided in 2023-2024, which stands in stark contrast with the \$676.8 million in funding spent on the FNCFS Program in 2015-2016, when this complaint was substantiated. Effectively Canada is more than honouring the Tribunal's orders. As

such, Canada is asking the Tribunal to honour the urgency of COO and NAN's joint motion and focus first on Ontario Final Agreement. It is Canada's perspective that the work of final national reforms will benefit from and be informed by the Tribunal's review of the Ontario final reforms.

Sincerely,



Dayna Anderson
General Counsel

CC:

David Taylor and Kiana Saint-Macary
Conway Baxter Wilson LLP
400-411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9
Email: dtaylor@conwaylitigation.ca
ksaintmacary@conwaylitigation.ca

Sarah Clarke
Clarke Child and Family Law
36 Toronto Street, Suite 950
Toronto, Ontario M5C 2C5
Email: sarah@childandfamilylaw.ca

Maggie Wente, Jessie Stirling-Voss,
Ashley Ash, Katelyn Johnstone and
Jenna Rogers
Olthuis Kleer Townshend LLP
250 University Avenue, 8th Floor
Toronto, Ontario M5H 3E5
Email: mwente@oktlaw.com
jstirling@oktlaw.com
aash@oktlaw.com
kjohnstone@oktlaw.com
jrogers@oktlaw.com

Adam Williamson
Assembly of First Nations
55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5
Email: awilliamson@afn.ca

Anshumala Juyal and Khizer Pervez
Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Email: Anshumala.Juyal@chrc-ccdp.gc.ca
khizer.pervez@chrc-ccdp.gc.ca

Julian N. Falconer, Asha James,
Shelby Percival and Meghan Daniel
Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9
Email: julianf@falconers.ca
ashaj@falconers.ca
shelbyp@falconers.ca
meghand@falconers.ca

Justin Safayeni and Stephen Aylward
Stockwoods LLP
TD North Tower
77 King Street West, Suite 4130
Toronto, Ontario M5K 1H1
Email: justins@stockwoods.ca
stephenA@stockwoods.ca