

**CANADIAN HUMAN RIGHTS TRIBUNAL**

BETWEEN:

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 and Northern Affairs Canada)

Respondent

-and-

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

Interested Parties

-and-

NEQOTKUK (TOBIQUE) FIRST NATION  
OF THE WOLASTOQEY NATION

Moving Party

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**MOTION FOR INTERESTED PARTY STATUS – NEQOTKUK (TOBIQUE) FIRST  
NATION OF THE WOLASTOQEY NATION**

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April 15, 2025

**NEQOTKUK (TOBIQUE) FIRST NATION  
OF THE WOLASTOQEY NATION**

Neqotkuk Chief Ross Perley  
*per se*

**ORIGINAL TO :**

**CANADIAN HUMAN RIGHTS TRIBUNAL**

c/o Judy Dubois, Registry Officer  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, ON K1A 1J4

**AND TO:**

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NEQOTKUK (TOBIQUE) FIRST NATION  
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Moving Party

**NOTICE OF MOTION**

**TAKE NOTICE** that **Neqotkuk (Tobique) First Nation of the Wolastoqey Nation** (“**Neqotkuk First Nation**”) makes a motion to the Canadian Human Rights Tribunal (“**CHRT**” or the “**Tribunal**”) located at 240 Sparks Street, 6<sup>th</sup> Floor West, Ottawa, Ontario.

**THE MOTION IS FOR:**

1. An Order pursuant to paragraph 48.9(2)(b) of the *Canadian Human Rights Act* (the “**CHRA**”) and Rules 3 and 8(1) of the Tribunal’s *Rules of Procedure* (03-05-04), granting Neqotkuk First Nation interested party status in the joint motion made by the Interested Party Chiefs of Ontario (“**COO**”) and the Interested Party Nishnawbe Aski Nation (“**NAN**”) on March 7, 2025 (“**Ontario LTR Motion**”), with full participation rights equivalent to those granted to COO and NAN as interested parties, including rights to:

- i. make oral and written submissions, present evidence and cross-examine witnesses, as may apply in the course of the Motion, of a length that may be fixed by the Tribunal and according to the timeline set by the Tribunal;
  - ii. participate in case conferences, mediation, negotiation or other dispute resolution or administrative processes in respect of the Motion; and
  - iii. such other terms as the Tribunal deems just.
2. Neqotkuk First Nation's participation shall be on a without costs basis.

**THE GROUNDS FOR THE MOTION ARE:**

1. Neqotkuk First Nation has expertise and knowledge that will be of assistance to the Tribunal in determining the Motion.
2. Neqotkuk First Nation will bring a unique perspective.
3. Neqotkuk First Nation's involvement will add to the legal position of the Parties with respect to the Motion.
4. Neqotkuk First Nation and Neqotkuk Persons' interests are engaged by the issues in the Motion.
5. Neqotkuk First Nation will not unduly delay the Motion.

**THE FOLLOWING DOCUMENTS** will be referred to in support of this motion for leave to intervene as a proposed interested party:

1. The written submissions of the Moving Party, Neqotkuk First Nation.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of April, 2025.

Dated: April 15, 2025

  
Chief Ross Perley (Apr 15, 2025 16:29 ADT)

**Neqotkuk Chief Ross Perley, per se**

E-mail: ross.perley@neqotkuk.ca

For the Moving Party,  
**Neqotkuk (Tobique) First Nation  
of the Wolastoqey Nation**

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NEQOTKUK (TOBIQUE) FIRST NATION  
OF THE WOLASTOQEY NATION

Moving Party

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**WRITTEN SUBMISSIONS OF NEQOTKUK (TOBIQUE) FIRST NATION OF THE  
WOLASTOQEY NATION on its motion for interested party status in the joint-motion filed  
by Chiefs of Ontario and Nishnawbe Aski Nation**

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**INTRODUCTION**

1. Neqotkuk (Tobique) First Nation of the Wolastoqey Nation (“**Neqotkuk First Nation**” or “**Neqotkuk**”) makes this motion pursuant to sub-sections 50(1) and 48.9(2)(b) of the *Canadian Human Rights Act* (the “**CHRA**”) and Rules 3 and 8(1) of the *Tribunal’s Rules of Procedure* (03-05-04) to be added as an interested Party to participate in the motion brought jointly on March 7, 2025 by the Interested Party Chiefs of Ontario (“**COO**”) and the Interested Party Nishnawbe Aski Nation (“**NAN**”) (the “**Ontario LTR Motion**”).

2. The Ontario LTR Motion, made under Rule 3 of the *Canadian Human Rights Tribunal Rules of Procedure (Proceedings Prior to July 11, 2021)*, seeks orders under paragraph 53(2) of

the *CHRA*, Rules 1(6), 3(1), and 3(2)(3), and pursuant to the Canadian Human Rights Tribunal’s (“CHRT” or the “Tribunal”) continuing jurisdiction in this matter [i] to approve, without condition, the “Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the “Ontario Final Agreement”), executed by [COO], [NAN], and His Majesty the King in right of Canada on February 26, 2025”; [ii] to satisfy, supersede, replace all orders of the Tribunal related to the discrimination found by the Tribunal concerning all elements of the Complaint in Ontario (except Jordan’s Principle); [iii] to end “...the Tribunal’s jurisdiction over the elements of the Complaint and all associated remedial proceedings with respect to Ontario[(except Jordan’s Principle)]”; and [iv] to continue the orders of the Tribunal relating to Jordan’s Principle with respect to First Nations children in Ontario.

3. The Ontario LTR Motion engages systemic issues of national importance concerning the long-term reform for First Nations child and family services, Jordan’s Principle as well as Canada’s funding approaches, Canada’s compliance with the Tribunal’s Orders, and the requirements of substantive equality. The Tribunal’s disposition of the Ontario LTR Motion, including its assessment of the proposed funding approach and agreement structure, will have precedential value and systemic implications. For example, Canada has repeatedly advised Neqotkuk, in Neqotkuk’s own coordination agreement and funding negotiations for the implementation of Neqotkuk’s inherent jurisdiction in relation to children and families, that Canada’s coordination agreement funding approach for Neqotkuk will be largely based on the settlement agreements it is negotiating with the Parties to the CHRT.

## LEGAL FRAMEWORK

4. Section 48.9(1) of the CHRA mandates proceedings be conducted expeditiously while upholding natural justice and the CHRT Rules of Procedure. In 2022 CHRT 26, the Tribunal writes,

[28] The CHRA contemplates interested parties in s. 50(1) and 48.9(2)(b) and accordingly confirms the Tribunal's authority to grant a request to become an interested party. The procedure for adding interested parties is set out in Rule 8 of the Tribunal's Rules. Consequently, the Tribunal has the jurisdiction to allow any interested party to intervene before this Tribunal in regard to a complaint.

[...]

[30] In determining the request for interested party status, the Tribunal may consider among other factors if:

- A) the prospective interested party's expertise will be of assistance to the Tribunal;
- B) its involvement will add to the legal positions of the parties; and
- C) the proceeding will have an impact on the moving party's interests.

## NEQOTKUK MEETS THE TEST FOR INTERESTED PARTY STATUS

5. **Neqotkuk’s expertise and unique perspective will be of assistance to the Tribunal:** Neqotkuk First Nation governs the Wolastoqey (Maliseet) Neqotkuk persons who are rights-holders of constitutionally protected Wolastoqey, Aboriginal, and Treaty rights. Neqotkuk persons are people of the Wolastoq (the Sparkling Beautiful Bountiful River). The Wolastoqey worldview is rooted in Wolastoq, its waters, its watershed, the lakes, and the inland hunting grounds – the unceded and unsurrendered Wolastoqey traditional territory reserved and protected by the

Wolastoqey Treaties of Peace and Friendship with the Imperial Crown. Situated in northwestern New Brunswick near the international border with the State of Maine, Neqotkuk First Nation is primarily Anglophone within a predominantly Francophone region, with few (<60) surviving fluent Wolastoqey speakers.

6. Wolastoqey child-care practices reflect a deep commitment to nurturing children, families, and kinship through a physical, spiritual, emotional, cognitive approach to well-being. Neqotkuk First Nation believes in upholding human rights and seeks to contribute to ending Canada's systemic discrimination against all First Nations children, building on legacies like that of former Senator Sandra Lovelace Nicholas from Neqotkuk whose appeal to the UN Human Rights Committee in 1997 (UN DOC. CCPR/C/D/24/1077) to end the discrimination of the *Indian Act* toward women and is preserved in Neqotkuk's culture as an example of Neqotkuk's belief in human rights. It led the way to the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Doc A/RES/61/295) (“**UNDRIP**”).

7. Neqotkuk First Nation has over 40 years of operational experience delivering child and family services, starting in 1984, to combat the high rate of Wolastoqey children being placed in non-First Nation foster care, including outside Canada due to proximity to the US border. In 2007, Neqotkuk First Nation constituted Tobique Child and Family Services Agency Inc. (“**TCFSA**”), with the Chief as sole shareholder in trust for all Neqotkuk persons.

8. In 2019, Neqotkuk First Nation began preparing its own child and family well-being legislation. Between 2019 and 2022, TCFSA conducted a needs assessment and gaps analysis, drawing on approximately 204 meetings, 245 experts/users/administrators, and 13,698 person-hours. This assessment identified five main structural drivers impacting the First Nation: poverty, substance misuse/addiction, inadequate housing, loss of language/culture, and geographic/linguistic remoteness. Neqotkuk First Nation designed its law, programs, services, and capital infrastructure to address these drivers.

9. On June 8, 2022, Neqotkuk First Nation notified Canada and New Brunswick that it had enacted *Neqotkuk Wasis Naka Siwiyik Wolankeyotikon 'Tpaskuwakon*, 2022 NWT c 1 (“**the Neqotkuk Law**”) and invited Canada and the Province to start discussions to conclude a coordination agreement regarding the Neqotkuk Law. Canada initially attempted to require Neqotkuk to sign a confidentiality and non-disclosure agreement as a condition to starting coordination agreement negotiations; however, Neqotkuk declined, instead, insisting that all meetings be audio and video recorded with detailed summary reports and meeting minutes.

10. Neqotkuk's coordination agreement discussions with Canada and New Brunswick have been ongoing since December of 2022 with 2-day in-person meetings occurring almost monthly, producing approximately 500 pages of summary reports/meeting minutes as well as recordings of every meeting. From the outset, Canada has exhibited a pattern of paternalism and dishonourable behaviour –notably, delay tactics, narrow restrictive interpretations, and intransigence relating to funding –postponing progress on negotiating the fiscal transfer agreement pending a final settlement on long-term reform by the Parties involved in the CHRT case. Neqotkuk has frequently raised concerns about these delays, emphasizing the detrimental impact on Neqotkuk's children and families who are going without needed services despite the Neqotkuk Law being enacted and TCFSA having built a prevention-oriented wrap-around service delivery model. Without needs-based, sustainable and predictable funding, Neqotkuk Government will be unable to exercise its



legislative authority effectively to eliminate the discrimination and secure long-term positive outcomes for Neqotkuk children, families and community.

11. Neqotkuk First Nation's expertise and experiences, gained through direct experience negotiating its own coordination and fiscal agreements with Canada, reveals Canada's current funding approaches, relevant to the Ontario LTR Motion, perpetuate the very systemic discrimination this Tribunal repeatedly ordered Canada to eliminate and ensure does not reoccur. These approaches, including under the *Act respecting First Nation, Inuit and Métis children, youth and families*, S.C. 2019, c. 24 ("*FNIMCYF Act*"), continue to be discriminatory. They fail to provide the sustainable, needs-based funding required to effectively eliminate Canada's discrimination against First Nations children and families and achieve substantive equality aligning with the Tribunal's Orders in this proceeding. Canada's current funding approaches remain fundamentally discriminatory and would set First Nations up to fail the children and families they serve, thereby perpetuating systemic discrimination.

12. The Ontario LTR Motion addresses core issues (funding, jurisdiction, substantive equality) that directly impact Neqotkuk, notably its ability to implement its law and TCFSA's operations. The outcome will set a precedent impacting Neqotkuk's coordination agreement negotiations as well as the interpretation of Canada's obligations under the *CHRA*, the *FNIMCYF Act* and the Treaties. Excluding Neqotkuk would contravene Canada's duty under Articles 21(2) and 22(2), and 37 of UNDRIP, and under the *UNDRIP Act*, S.C. 2021, c. 14, to ensure equitable access to social services and protect First Nations children from systemic discrimination.

13. **Neqotkuk First Nation's expertise will add to the legal positions of the parties:** Neqotkuk First Nation adds crucial practical expertise to the existing legal positions. Neqotkuk has a deep understanding of these CHRT proceedings and the evidentiary record. Through TCFSA, one of the longest continuously operating First Nation child welfare agencies in Canada, Neqotkuk possess extensive operational knowledge in delivering culturally appropriate services, building capacity and defining the infrastructure needed to address the structural drivers that put children at increased risk of being taken into care. Neqotkuk's expertise will assist the Tribunal by providing context on the practical impacts of Canada's funding approaches, the importance of regional-specific considerations, and the challenges in implementing Inherent jurisdiction over First Nations children and families, particularly when Canada is basing its funding approaches under the *FNIMCYF Act* on the long-term reform negotiations with the Parties at the CHRT instead of the needs-based funding ordered by the CHRT.

14. **Neqotkuk's participation will not broaden the scope:** Neqotkuk First Nation's submissions will focus strictly on issues already within the complaint's scope, specifically in relation to the Ontario LTR Motion, including systemic underfunding of child and family services and needs-based culturally appropriate service delivery models. Neqotkuk commits to addressing these established issues without expanding the matters before the Tribunal, recognizing the importance of maintaining procedural efficiency while adding valuable current perspectives.

15. Neqotkuk intends to make submissions on the Ontario LTR Motion regarding: [i] the necessity for any long term reform ("**LTR**") agreement approved by the Tribunal to meet the standards of non-discriminatory, culturally appropriate and needs-based substantively equal services established by the *CHRA* and previous Tribunal orders; [ii] how Canada's current funding approaches (reflected in the Ontario Final Agreement) may replicate discriminatory models condemned by the Tribunal and undermine the objectives of the *FNIMCYF Act*; [iii] the critical

importance of ensuring that long term reform is accomplished nationally, rather than allowing Canada, the discriminator, to choose which of its victims will receive remedy; [iv] the implications of the Ontario LTR Motion's approach to Jordan's Principle for Neqotkuk children and families; [v] the need for transparency and Canada to act honourably and in good faith in negotiation processes for LTR and contribution agreements; and [vi] ensuring the Canada's conduct and the Tribunal's orders respect First Nations Inherent jurisdiction over children and families affirmed by the *FNIMCYF Act*.

16. **Neqotkuk's participation will not duplicate existing perspectives:** Neqotkuk First Nation's participation will provide a distinct perspective, avoiding duplication. Neqotkuk is uniquely positioned as a Wolastoqey First Nation in New Brunswick, a party to the Wolastoqey Peace and Friendship Treaties with the Imperial Crown, operating its own child welfare program and agency (TCFSA) for over 40 years, having enacted its Inherent rights-based child and family well-being law, and currently negotiating coordination and related fiscal agreements with Canada for over two years. This unique combination is a distinct perspective concerning federal responsibilities (under s. 91(24) and s. 35 of the *Constitution Acts*, the *CHRA*, and this Tribunal's Orders) and Canada's failure to reconcile specific Wolastoqey Peace and Friendship Treaty obligations, thereby perpetuating systemic discrimination – arguments absent from other parties' submissions. This perspective is critical for the Tribunal's assessment of federal accountability under the *CHRA*. Specifically, Neqotkuk addresses the unique intersection of Wolastoqey Treaty rights, Canada's constitutional and honour of the Crown duties (including, the duty of diligent implementation), Canada's systemic underfunding of child and family services, and Canada's incorrect operation of Jordan's Principle, a perspective that no other party provides.

17. **Whether participation would delay proceedings:** Neqotkuk First Nation's participation will adhere to all Tribunal timelines and will not cause undue delay. Neqotkuk will adhere to all procedural directions and timelines set by the Tribunal.

## CONSTITUTIONAL AND STATUTORY CONTEXT

18. Neqotkuk First Nation's interest in these proceedings is grounded in the following Constitutional and statutory law and principles:

- a) Federal Jurisdiction Under Section 91(24): Parliament's authority over "Indians, and Lands reserved for the Indians" under s. 91(24) of the *Constitution Act, 1867* encompasses matters central to First Nations identity and cultural survival, including child and family services, which the Supreme Court has recognized as "absolutely indispensable and essential to [First Nations] cultural survival" (*Canadian Western Bank v. Alberta*, 2007 SCC 22, para. 61). The *FNIMCYF Act* falls squarely within this jurisdiction, as its purpose is to protect First Nation's children's well-being through culturally appropriate services and reconciliation (*Reference re FNIMCYF Act*, 2024 SCC 5, paras. 93–95).
- b) Provincial Authority - Delegated and Limited: Provincial jurisdiction over First Nations child welfare derives not from inherent authority under Section 92 of the *Constitution Act, 1867* but from federal delegation via section 88 of the *Indian Act*. This delegated authority is explicitly subject to Treaty rights and federal law.
- c) Treaty Protections and Inherent Rights: Neqotkuk's Inherent rights, including self-determination and self-government over child and family services and well-being, were never surrendered, ceded, or extinguished. Constitutional protection was recognized and

affirmed in section 35 of the *Constitution Act, 1982*. These rights are shielded from infringement. Laws and policies affecting Indigenous families must not conflict with federal protections of Indigenous identity (*Natural Parents v. Superintendent of Child Welfare*, [1976] 2 S.C.R. 751). Moreover, federal law under the *FNIMCYF Act* and the *UNDRIP Act* S.C. 2021, c 14 limits jurisdiction and laws over First Nations child welfare.

d) *FNIMCYF Act* Framework: The *FNIMCYF Act* operationalizes reconciliation through four pillars:

- i. Affirmation of Jurisdiction: Subsections 8(a) and 18(1) recognize First Nations self-determination and self-government over child and family services as an Inherent right protected under Section 35 of the *Constitution Act, 1982*. This statutory recognition binds the Crown (*Reference re FNIMCYF Act*, 2024 SCC 5, para. 62).
- ii. Binding Crown Obligations: Section 7 obligates both federal and provincial governments to comply with the Act. For the federal government, the combined effect of Subsections 7, 8(a), and 18(1) creates an irreversible statutory commitment to respect First Nations jurisdiction, precluding federal denial of self-government rights (*Reference re FNIMCYF Act*, 2024 SCC 5, paras. 62, 87–89).
- iii. Federal Paramountcy: Section 22(3) of the *FNIMCYF Act* ensures First Nation's laws prevail over conflicting provincial and Federal laws, consistent with Parliament's authority under s. 91(24) (*Reference re FNIMCYF Act*, 2024 SCC 5, paras. 63, 137).
- iv. UNDRIP Alignment: The *FNIMCYF Act* advances Canada's UNDRIP commitments by mandating "needs-based, predictable, and sustainable" funding for Indigenous child welfare. The Supreme Court affirmed this alignment in *Reference re FNIMCYF Act*, 2024 SCC 5, noting the Act's role in operationalizing reconciliation through concrete measures (para. 87–89).

e) Supreme Court's 2024 Clarification: In *Reference re FNIMCYF Act*, 2024 SCC 5, the Supreme Court conclusively barred the federal government from contesting Indigenous self-government rights over child services, noting:

"The federal government can now no longer assert, in any proceedings or discussions, that there is no Indigenous right of self-government in relation to child and family services" (para. 62).

This holding flows from Parliament's statutory recognition under the *FNIMCYF Act* and its alignment with Subsection 91(24) of the *Constitution Act, 1867*. The decision reinforces the CHRT's Orders.

f) Funding and Cultural Continuity: Neqotkuk's ability to exercise its legislative authority effectively to secure long-term positive outcomes for its children and families depends on needs-based, predictable and sustainable funding to maintain kinship systems and family structures—matters at the core of "Indianness" (*Daniels v. Canada*, 2016 SCC 12, para. 51)—as mandated by the *FNIMCYF Act*'s reconciliation framework and the honour of the Crown (*Reference re FNIMCYF Act*, 2024 SCC 5, paras. 10, and 12). Canada's approach in Ontario likely reflects its national strategy, which Neqotkuk is currently experiencing in

its own negotiations. In October 2024, First Nations-in-Assembly, through AFN Resolutions 2024/60 and 2024/61, overwhelmingly rejected a draft final settlement agreement, and reaffirmed this rejection in December 2024, through AFN Resolutions 2024/88, 2024/89 and 2024/90. Neqotkuk is deeply concerned that the Ontario Final Agreement contains many of the same shortcomings that were in the draft final settlement agreement rejected by First Nations-in-Assembly. In particular, Canada's proposed funding approach replicates discriminatory per-capita models condemned by this Tribunal. The Tribunal's assessment of the Ontario Final Agreement will likely inform whether Canada is genuinely moving away from discriminatory practices nationally.

- g) Treaty of Peace and Friendship Framework: Neqotkuk's inherent rights are vested in the Wolastoqey Treaties of Peace and Friendship, which protect and reserve Wolastoqey sovereignty over Neqotkuk persons. These treaties obligate Canada to respect Neqotkuk's jurisdiction over children and families as a matter of reconciliation. The Supreme Court's decision in *Ontario v. Restoule*, 2024 SCC 27 reinforces the Crown's constitutional duty to diligently implement treaty and statutory promises, including needs-based funding (paras. 62, and 89)

## ORDER SOUGHT

19. Neqotkuk First Nation seeks an Order granting it leave to intervene as an interested party status in the Ontario LTR Motion, on the following terms, or such other terms as the Tribunal deems just:

- i. Interested Party status for Neqotkuk First Nation, specifically limited to the Ontario LTR Motion, with full participation rights equivalent to those granted to COO and NAN as interested parties.
- ii. In the Ontario LTR Motion, Neqotkuk shall be permitted to:
  1. make oral and written submissions, present evidence and cross-examine witnesses, as may apply in the course of the Motion, of a length that may be fixed by the Tribunal and according to the timeline set by the Tribunal;
  2. participate in case conferences, mediation, negotiation or other dispute resolution or administrative processes in respect of the Motion; and

20. Neqotkuk First Nation's participation shall be on a without costs basis.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of April, 2025.

Dated: April 15, 2025

  
Chief Ross Perley (Apr 15, 2025 16:29 ADT)

**Neqotkuk Chief Ross Perley, per se**

E-mail: ross.perley@neqotkuk.ca

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