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April 15, 2024

Delivered via Email to:

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Re: Treaty 8 CHRT Submissions

Please find enclosed the Notice of Motion and Written Submissions of the Treaty 8 First Nations of Alberta for interested party status in the hearing of the Joint Approval Motion brought by the Chiefs of Ontario, Nishnawbe Aski Nation, and Canada with respect to the Ontario Final Agreement on Long-Term Reform of the FNCFS Program. The enclosed is hereby served upon you in accordance with the Canadian Human Rights Tribunal Rules of Procedure.

Should you have any questions with respect to the foregoing, please advise.

Yours Truly,

COCHRANE SINCLAIR
Per:

HAROLD COCHRANE
HC/AC/ts

Enclosure.

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File No. T1340/7008

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
(MINISTER OF INDIGENOUS AND NORTHERN AFFAIRS CANADA)

Respondent,

- and -

CHIEFS OF ONTARIO

- and -

NISHNAWBE ASKI NATION

- and -

AMNESTY INTERNATIONAL

Interested Parties.

NOTICE OF MOTION FOR INTERESTED PARTY STATUS – TREATY 8 FIRST NATIONS OF ALBERTA

Pursuant to Rule 27 of the Canadian Human Rights Tribunal Rules of Procedure, SOR/2021-137

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File No. T1340/7008

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
(MINISTER OF INDIGENOUS AND NORTHERN AFFAIRS CANADA)

Respondent,

- and -

CHIEFS OF ONTARIO

- and -

NISHNAWBE ASKI NATION

- and -

AMNESTY INTERNATIONAL

Interested Parties.

NOTICE OF MOTION

TAKE NOTICE THAT the Treaty 8 First Nations of Alberta ("**T8FNA**") apply to the Tribunal under rule 27 of the *Canadian Human Rights Tribunal Rules of Procedure*, SOR/2021-137, for an order granting T8FNA:

(a) Interested party status in the OFA Approval Joint Motion filed by the Chiefs of Ontario ("**COO**"), Nishnawbe Aski Nation ("**NAN**"), and Canada;

(b) Leave to file written submissions on the substance of the OFA Approval Joint Motion not exceeding twenty (20) pages;

(c) Leave to make oral submissions at the hearing of the OFA Approval Joint Motion; and

(d) Such further and other order as the Tribunal may deem appropriate.

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

A. The Applicant

1. T8FNA is a non-profit organization that was established to represent and advocate on behalf of Treaty 8 First Nations located in present-day Alberta. Initially, Treaty 8 First Nations located in Alberta were part of an interprovincial treaty organization – the Grand Council of Treaty 8; however, due to governmental policies creating differing provincial statutory funding regimes, the Grand Council dispersed into provincially organized political organizations. T8FNA represents a total of 24 First Nations located in Alberta.

2. T8FNA is the political assembly wherein member First Nations meet to establish legal, political, fiscal and economic relationships between themselves. The organization advocates on behalf of its member First Nations for recognition of the inherent and Treaty rights held by each Treaty 8 First Nation, to ensure adherence with the spirit and intent of the Treaty.

3. T8FNA engages in advocacy on behalf of its member First Nations through various methods, including through formal advocacy efforts in court, where organizations supported by T8FNA have been recognized as intervenors, as well as political advocacy

at the regional and national levels. T8FNA is also actively supporting an ongoing provincial superior court case in Alberta seeking remedies for Indigenous children and families residing off-reserve who have experienced similar discriminatory harms that the Tribunal found in the within case for First Nation children and families on-reserve.[1] Additionally, a number of the Treaty 8 First Nations located in Alberta are involved in ongoing litigation relating to the communal impacts that First Nations across Canada have experienced as a result of the mass removal of their children, including through Canada's operation of the FNCFS Program, over the last three decades.[2]

B. The Applicant's Interest and Perspective

4. T8FNA can provide the Tribunal with the unique perspectives of its member First Nations located in Alberta, all of whom will be impacted by the ultimate outcome of the Tribunal's decision on the OFA Joint Approval Motion. Without the participation of T8FNA as an interested party, the Tribunal will not have the benefit of these perspectives when determining the motion.

5. T8FNA will bring a perspective that differs from those of the parties to the proceeding, given the unique circumstances and experiences of its member First Nations. Specifically, the member First Nations that T8FNA advocates on behalf of have unique experiences relating to past colonial practices and policies implemented Canada, which create a unique set of circumstances that have impacted these Nations throughout

[1] See the proposed class action in the Alberta Court of King's Bench styled as *Natasha Dawn Yellowknee v His Majesty the King in Right of Alberta and Attorney General of Canada*, Court File No. 2301 01977.
[2] See the recently certified Federal Court class action styled as *Crate et al. v The Attorney General of Canada*, T-213-23, which includes five Treaty 8 First Nations located in Alberta, namely, Horse Lake First Nation, Swan River First Nation, Whitefish Lake First Nation, Sucker Creek First Nation, and Dene Thá First Nation.

history. As the Treaty region with the highest concentration of residential schools, Treaty 8 First Nations have experienced unique harms, including in relation to population loss, that need to be accounted for when determining the appropriate manner in which to deliver child and family services to these Nations in a non-discriminatory way.

C. The Applicant Will Be Impacted by the Tribunal's Decision

6. The member First Nations that the Applicant advocates on behalf of, including their children and families, stand to be adversely impacted by the Tribunal's decision as to whether the OFA is sufficient to end the discrimination that the Tribunal found existed within the FNCFS program. Should the Tribunal approve the OFA, it will be used by Canada as the framework under which any future negotiations on long-term reform of the FNCFS program across Canada, including any future negotiations with the Treaty 8 First Nations represented by the Applicant.

7. These potential adverse impacts extend to the Nations individually, to the extent that they may be actively involved in ongoing negotiations with Canada to take back jurisdiction over child and family services through *An Act respecting First Nations, Inuit and Metis children, youth and families* ("**C-92**"), and on a regional level with respect to their ability to negotiate a regional agreement with Canada regarding long-term reform of the FNCFS program.

D. The Applicant's Proposed Submissions

8. If granted interested party status, T8FNA anticipate making submissions regarding whether the OFA, as drafted, is sufficient to put an end to the discriminatory practices the

Tribunal found to exist within Canada's administration of the FNCFS program. Specifically, the Applicant anticipates making submissions in the following three areas:

a. Issues with the OFA as a model or precedent for funding arrangements in Alberta and other jurisdictions across Canada;
b. Risk of further discrimination to First Nations children and families under the OFA;
c. Liability exposure to First Nations under the OFA and prospective similar agreements to be negotiated in Alberta and other jurisdictions across Canada; and
d. Potential implications of the OFA for the Treaty 8 First Nations of Alberta in the negotiation of regional funding arrangements and the ongoing provision of child and family services to their children and families.

April 15, 2025

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File No. T1340/7008

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
(MINISTER OF INDIGENOUS AND NORTHERN AFFAIRS CANADA)

Respondent,

- and -

CHIEFS OF ONTARIO

- and -

NISHNAWBE ASKI NATION

- and -

AMNESTY INTERNATIONAL

Interested Parties.

MOTION FOR INTERESTED PARTY STATUS – WRITTEN SUBMISSIONS
TREATY 8 FIRST NATIONS OF ALBERTA

Pursuant to Rule 27 of the Canadian Human Rights Tribunal Rules of Procedure, SOR/2021-137

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A. Introduction

1. The Chiefs of Ontario ("**COO**"), Nishnawbe Aski Nation ("**NAN**") and Canada have brought a joint motion seeking the Tribunal's approval of the Ontario Final Settlement Agreement on Long-Term Reform of the First Nation Child and Family Services ("**FNCFS**") Program (the "**OFA**" or the "**Agreement**").

2. Treaty 8 First Nations of Alberta ("**T8FNA**" or the "**Applicant**") brings this motion for interested party status as a political advocacy group advocating on behalf of the interests of its members – the 24 Treaty 8 First Nations located in present-day Alberta. T8FNA is not a rights-holding group, the rights belong to the autonomous First Nations that the Applicant represents and advocates on behalf of. T8FNA brings this motion on behalf of, and at the direction of, those member First Nations.

3. As outlined below, T8FNA's expertise will be of assistance to the Tribunal, its involvement will add to the legal positions of the parties, and the outcome of the OFA Approval Joint Motion will have a significant impact on the 24 First Nations, including their children and families, that T8FNA represents.

B. Legal Test for Interested Party Status

4. Pursuant to Rule 27 of the *Canadian Human Rights Tribunal Rules of Procedure*, SOR/2021-137 ("***CHRT Rules***"), a party who wishes to be recognized as an interested party in a proceeding before the Tribunal may bring a motion for interested party status which sets out the manner in which the party intends to provide assistance to the Tribunal and the extent of their desired participation.[1]

[1] *Canadian Human Rights Tribunal Rules of Procedure*, SOR/2021-137 at Rule 27 [***CHRT Rules***].

5. The legal test for a party to be granted interested party status before the Tribunal is well-established. The test was outlined in the case of *Walden v Canada (Treasury Board)*, 2011 CHRT 19 ("***Walden***") as follows:

> [23] Concisely put, the case law indicates that interested party status has been granted in the past by the Tribunal in situations where:
>
> 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.[2]

6. Subsequent case law confirms that the above test is to be applied flexibly, holistically and on a case-by-case basis, as opposed to a rigid analysis of each of the identified criteria.[3] Further, the Tribunal has rejected the argument that a party may only be granted interested party status if all three of the above-noted criteria are met.[4] Rather, the Tribunal has found that a party may be granted interested party status in cases where some, but not all, of the criterion are specifically met, where a holistic analysis supports the participation of the party as an interested party.[5]

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[2] *Walden v Canada (Treasury Board)*, 2011 CHRT 19 at para 23 [***Walden***].

[3] *Letnes v Royal Canadian Mounted Police*, 2021 CHRT 30 at paras 12-18 [***Letnes***]; See also: *Attaran v Citizenship and Immigration Canada*, 2018 CHRT 6 at paras 12 and 22 [***Attaran***]; *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 11 at para 3 [***NAN***].

[4] *Letnes* at para 12.

[5] *Letnes* at para 16, citing *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs of Canada)*, 2020 CHRT 31 [***Innu Nation***]. See also *NAN* at paras 3 and 8-11; *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 11 [***CAP***].

C. The Applicant Satisfies the Test for Interested Party Status

a) Holistic Analysis of the Criteria Supports Recognition of Applicant as Interested Party

7. A holistic analysis of the contribution that the Treaty 8 First Nations of Alberta will be able to provide in determining the outcome of the parties' joint motion supports the Applicant being recognized as an interested party. The Applicant's submissions will provide a perspective that differs from the perspective to be provided by each of the parties, and its expertise will be of assistance to the Tribunal in rendering its decision on the joint approval motion.

8. Furthermore, as will be discussed at length below, each of the member First Nations that the Applicant advocates on behalf of stand to be impacted by the Tribunal's decision on the motion. These Nations, along with many other Nations across the country, rejected the very agreement that the parties ask the Tribunal to accept on this motion. This was done for numerous reasons, including the fact that the agreement, as drafted, is insufficient to adequately address the discrimination identified by the Tribunal in *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (the "***Merits Decision***").

9. When considering the test for a prospective party to be added as an interested party before the Tribunal, the holistic and flexible analysis outlined in the case law favours a finding that the Applicant be granted interested party status herein. Such a decision would be in line with recent case law, including past hearings in the within case regarding

the addition of interested parties, and would not prejudice or delay the process leading up to the hearing of the motion.

b) The Applicant's Participation Will Be of Assistance to the Proceeding

10. The Applicant's participation in the OFA Joint Approval Motion, and in particular, the Applicant's anticipated submissions on whether the Agreement that is the subject of that motion adequately ends the past discriminatory practices that exist in Canada's administration of the FNCFS program. The unique perspectives of the 24 member First Nations that T8FNA represents will be of assistance to the Tribunal in determining the motion, and absent the addition of T8FNA as an interested party, the Tribunal will be without the benefit of these perspectives.

11. The member First Nations represented by T8FNA, along with other Treaty 8 First Nations, have experienced unique circumstances and harms associated with past colonial policies and practices implemented by Canada, which create a unique set of circumstances that have impacted these Nations throughout history. Treaty 8 was the region in Canada with the highest concentration of residential schools, which led to a unique experience of harm amongst Treaty 8 First Nations, including in relation to the loss of population amongst these Nations.

12. The intergenerational trauma and lasting impacts of these colonial practices and policies on Treaty 8 First Nations need to be accounted for when determining the appropriate manner in which to deliver child and family services to these Nations – one that takes a needs-based approach specific to these communities' experiences – so as to ensure that discrimination truly does come to an end.

13. As stated above, the Applicant brings a unique perspective that would otherwise not be before the Tribunal. This is true both as a result of the contextual realities of the member First Nations that the Applicant advocates on behalf of, and as a result of the lack of representation of the perspectives of these Nations at the national level.

14. The Treaty 8 First Nations of Alberta left the Assembly of First Nations ("**AFN**") in 2022, and there has been no regional chief for Alberta on the AFN since 2021. As a result, there was no representative voice for the Treaty 8 First Nations of Alberta involved in the negotiation of the draft national Final Settlement Agreement on the Long-Term Reform of the FNCFS Program (the "**Draft FSA**").

15. Accordingly, the Draft FSA was prepared without appropriate consultation with Treaty 8 First Nations located in Alberta and therefore lacked the terms required to sufficiently address the discrimination experienced by these Nations. With respect to the joint motion brought by the parties in the within proceeding, the parties have acknowledged that the OFA is a scaled back, regional version of the Draft FSA, which only includes the long-term reform provisions applicable to Ontario First Nations, but substantively contains the same provisions and funding commitments that were found within the Draft FSA.

16. This is problematic from T8FNA's perspective, as it is the position of T8FNA that the Draft FSA was insufficient in addressing the discrimination the Tribunal identified within the FNCFS program, especially as it relates to Treaty 8 First Nations located in Alberta. In fact, from T8FNA's perspective, certain components of the Draft FSA, and therefore the OFA, may ultimately result in further discrimination to First Nations children and families.

c) The Outcome of the Joint Approval Motion Will Impact the Applicant's Interests

17. Ultimately, the outcome of the joint motion brought by the COO, NAN and Canada will impact the interests of the member First Nations that the Applicant represents. As previously outlined, the Chiefs of these Nations, and others across the country, previously rejected the Draft FSA, which forms the basis for the OFA, in part because it does not adequately put an end to the discrimination for all First Nations children and families that the Tribunal found to exist within the FNCFS program. Rather, the Agreement has the effect of causing further discrimination amongst First Nations children and families, based on whether they reside on or off-reserve, as a result of the restrictions placed on the funding provisions by Canada.

18. If the Tribunal approves the OFA, it will be used by Canada as the framework for any future negotiations on long-term reform of the FNCFS program across the country. Indeed, the AFN Executive submitted to the CHRT on March 24, 2025, that "this Panel's determination on the Ontario Final Agreement could set a benchmark to guide further discussions on a national process and may very well inform proposed relief to end Canada's discrimination."

19. This creates significant risk for the member First Nations that T8FNA represents, as well as other Nations across the country, as it fails to account for the unique circumstances of each Nation that ought to be taken into account when determining whether discrimination in the provision of child and family services will continue.

20. Each region of the country, and arguably each individual First Nation, will have unique experiences and circumstances that ought to be taken into consideration when

reforming the FNCFS program. What works for one First Nation or group of Nations will not necessarily work for others. The OFA, the Applicant respectfully submits, fails to take this into consideration in an adequate manner, and instead applies a generalized approach to reform that will not necessarily work for each individual First Nation's needs. Further, when looking at this on a national basis – as the discrimination found to exist by the Tribunal was nation-wide – the "one size fits all" approach becomes even more concerning and incapable of ending discrimination for everyone.

21. Additionally, if the Tribunal approves the OFA and Canada moves forward with using the Agreement as a template for other regional or province-specific agreements on long-term reform, this will directly conflict with the wishes of the rights-holding, sovereign First Nations who voted to reject the Draft FSA. Thereby ignoring the autonomy and sovereignty of these First Nations, an ongoing colonial practice that is not only problematic, but is in direct contradiction of the Truth and Reconciliation Commission's Calls to Action.

22. In addition to these broad impacts to T8FNA, there are also risks to each of the member First Nations individually should the OFA be approved by the Tribunal. Many of these Nations are actively involved in ongoing negotiations with Canada to take back jurisdiction over child and family services to their members through *An Act respecting First Nations, Inuit and Metis children, youth and families* ("**C-92**"). The approval of the OFA carries with it potential adverse impacts on these negotiations, as again Canada may utilize the funding provisions as a benchmark to be applied to all First Nations across the country. This fails to recognize that these funding levels may not only be insufficient to end the discrimination found by the Tribunal but may also be insufficient to ensure that

ongoing discrimination does not occur when a First Nation assumes control over child and family services under C-92.

23. This places an inherent risk on these First Nations going forward that may ultimately result in First Nations being in similar positions to Canada in this proceeding, where they are forced to discriminate against their members in the provision of child and family services as a result of insufficient funding and held liable for that discrimination. This emphasizes the interest that the Applicant has not only in the funding provisions of the OFA, but also in the releases of liability provided for by the Agreement.

24. Therefore, the importance of ensuring that the terms of the OFA, and any similar regional agreement, are sufficient to adequately address the discrimination identified by the Tribunal cannot be understated. In making that assessment, it will be essential for the Tribunal to have the perspectives of those who have identified flaws and inadequacies in the OFA, including the Applicant herein. If granted interested party status, the Applicant intends to provide the Tribunal with submissions as to how the OFA fails to end the discrimination found by the Tribunal to exist on a nation-wide basis, including by putting First Nations in a position where they may discriminate amongst their members on and off-reserve, among other issues as identified in the Applicant's Notice of Motion.

D. Conclusion

25. In conclusion, the Applicant respectfully requests that its motion for interested party status in the hearing of the OFA Approval Joint Motion be granted as set out in the Applicant's Notice of Motion. Specifically, that the Applicant be granted leave to provide written submissions of no more than twenty (20) pages on the substance of the OFA Approval Joint Motion, and to make oral submissions at the hearing of the motion. The

Applicant does not intend to file any additional evidence or to participate in the cross-examination of any witnesses.

26. The Applicant satisfies the requirements to be granted interested party status in the hearing of the OFA Approval Joint Motion and accordingly, the motion should be granted.

DATED at the City of Winnipeg, in the Province of Manitoba, this 15th day of April, 2025.

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