

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 Services Canada)

Respondent

-and-

CHIEFS OF ONTARIO,

AMNESTY INTERNATIONAL CANADA and NISHNAWBE-ASKI NATION

Interested Parties

-and-

FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Moving Party

MOTION RECORD

of the Proposed Interested Party, Federation of Sovereign Indigenous Nations, for
involvement specific to the joint motion filed by Chiefs of Ontario and Nishnawbe Aski
Nation on March 7, 2025

JFK Law LLP

260 – 200 Granville Street
Vancouver, BC V6C 1S4

Tel: (604) 687-0579

Fax: (888) 687-8388

kunrau@jfkllaw.ca

Kaelan Unrau, Counsel for the
Proposed Interested Party,
Federation of Sovereign Indigenous
Nations

**ORIGINAL TO: Canadian Human
Rights Tribunal**

CANADIAN HUMAN RIGHTS TRIBUNAL
c/o Judy Dubois, Registry Officer
240 Sparks Street, 6th Floor West Ottawa, ON
K1A 1J4

AND TO:

CLARKE CHILD & FAMILY LAW

Sarah Clarke
36 Toronto Street, Suite 950
Toronto, ON M5C 2C5

Counsel for the Complainant, First Nations
Child and Family Caring Society of Canada

ASSEMBLY OF FIRST NATIONS

Stuart Wuttke, Adam Williamson
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5

Counsel for the Complainant, Assembly of
First Nations

DEPARTMENT OF JUSTICE CANADA

Dayna Anderson, Kevin Staska and Samantha
Gergely
Department of Justice Canada
50 O'Connor Street
Ottawa, ON K1A 0H8

Counsel for the Respondent, Attorney General
of Canada

CONWAY BAXTER WILSON LLP

David Taylor and Kevin Droz
400 - 411 Roosevelt Avenue
Ottawa, ON K2A 3X9

CANADIAN HUMAN RIGHTS COMMISSION

Brian Smith
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1

Counsel for the Canadian Human Rights
Commission

MANDELL PINDER LLP

Crystal Reeves and Dawn Johnson
Suite 422 – 1080 Mainland St.
Vancouver, BC V6B 2T4

Counsel for the Interested Party, First Nations
Leadership Council

OLTHUIS KLEER TOWNSHEND LLP

Maggie E. Wente, Jessie Stirling and Ashley
Ash
250 University Avenue, 8th Floor Toronto, ON
M5H 3E5

Counsel for the Interested Party, Chiefs of
Ontario

STOCKWOODS LLP

Justin Safayeni and Stephen Aylward TD
North Tower
77 King Street West, Suite 4130 Toronto, ON
M5K 1H1

Counsel for the Interested Party, Amnesty
International

FALCONERS LLP

Julian Falconer, Christopher Rapson, and
Natalie Posala

10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Counsel for the Interested Party, Nishnawbe
Aski Nation

MOTION RECORD OF FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

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FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Moving Party

NOTICE OF MOTION

TAKE NOTICE that the Moving Party, Federation of Sovereign Indigenous Nations (“**FSIN**”), makes a motion to the Canadian Human Rights Tribunal (the “**Tribunal**”) located at 240 Sparks Street, 6th Floor West, Ottawa, Ontario.

THE MOTION IS FOR:

1. An order granting FSIN leave to intervene to become an interested party in this proceeding on the following terms or such other terms as the Tribunal deems just:
 - a. FSIN's participation shall be specifically limited to the joint motion filed by the Interested Parties Chiefs of Ontario and Nishnawbe Aski Nation on March 7, 2025 (the "**Motion**");
 - b. FSIN shall be permitted to make oral and written arguments, 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;
 - c. FSIN shall be permitted to adduce limited affidavit evidence of a length that may be fixed by the Tribunal and according to the timeline set by the Tribunal;
 - d. FSIN shall be permitted to participate in case conferences, mediation, negotiation, or other dispute resolution or administration processes in respect of the Motion;
 - e. FSIN's participation shall be on a without-cost basis; and
 - f. the motion shall be decided without prejudice to FSIN's right to seek interested party status in the respect of other matters arising in these proceedings; and
2. Any further or other order that the Tribunal may deem appropriate.

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

1. FSIN has expertise, knowledge, and experience that will be of assistance to the Tribunal in determining the Motion;

2. FSIN will bring a unique perspective;
3. FSIN's involvement will add to the legal position of the parties with respect to the Motion; and
4. FSIN's interests are engaged by the issues in the Motion.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of the said motion:

1. Affidavit of Grand Chief Joel Abram, dated March 6, 2025;
2. Affidavit of Duncan Farthing, dated March 7, 2025; and
3. The written argument of the moving party, FSIN.

DATED April 15, 2025



KAELAN UNRAU

JFK Law LLP
260 – 200 Granville Street
Vancouver, BC V6C 1S4

Tel: (604) 687-0579

Fax: (888) 687-8388

kunrau@jfkllaw.ca

Counsel for the Proposed Interested
Party, Federation of Sovereign
Indigenous Nations

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FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Moving Party

**WRITTEN SUBMISSIONS OF FEDERATION OF SOVEREIGN INDIGENOUS
NATIONS**
on its motion for interested party status

I. INTRODUCTION

1. The Federation of Sovereign Indigenous Nations (“**FSIN**”) brings this motion for interested party status further to the directions of the Canadian Human Rights Tribunal (the “**Tribunal**”) made April 2, 2025, in which the Tribunal directed FSIN to file its notice of motion and 10-page submissions by April 15, 2025, with no supporting affidavit.
2. FSIN is a political organization representing 75 First Nations in what is now Saskatchewan. It has a highly diverse membership consisting of the Dakota, Dene, Nahkawe (Saulteaux), Nakota, Swampy Cree, Plains Cree, and Woodland Cree Nations. Like other Indigenous groups across what is now Canada, FSIN and its member First Nations have a profound interest in the wellbeing of their families and children and, by extension, in the long-term reform of the First Nations Child and Family Services Program (the “**FNCFS Program**” or the “**Program**”).
3. FSIN seeks limited leave to intervene as an interested party in the joint motion brought by Chiefs of Ontario (“**COO**”) and Nishnawbe Aski Nation (“**NAN**”) dated March 7, 2025 (the “**Ontario Agreement Motion**” or the “**Motion**”). The Motion, which is supported by Canada, asks the Tribunal to approve a Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the “**Ontario Agreement**”). FSIN’s request for interested party status follows on Canada’s recent statement to the Tribunal that “the outcome of the joint motion is likely to inform the path forward in these proceedings, including ... the completion of the long-term remedial phase outside of Ontario.”¹
4. To the extent that the Motion will set the approach to long-term reform elsewhere in Canada, FSIN considers it vital that the Tribunal and the parties appreciate (1) how the Tribunal’s findings and orders on the Motion risk impacting Saskatchewan-

¹ Letter from Department of Justice Canada to the Canadian Human Rights Tribunal dated March 17, 2025 [**March 17, 2025 Letter**], accessible at: fncairingsociety.com/sites/default/files/2025-03/March%2017%2C%202025%20Letter%20to%20CHRT.pdf.

specific interests and (2) the key points on which the Ontario Agreement should not be generalized to the Saskatchewan regional context. These are narrow topics on which FSIN is uniquely qualified to address.

5. As an interested party, FSIN will help the Tribunal ensure that the outcome of the Ontario Final Settlement Motion does not inadvertently impede long-term reform elsewhere in Canada. It is on this basis that FSIN requests leave to intervene as an interested party in the Motion, make written and oral submissions, and file limited affidavit evidence as necessary to explain the regional context in Saskatchewan.

II. STATEMENT OF FACTS

6. In 2007, the First Nations Child and Family Caring Society (the “**Caring Society**”) and Assembly of First Nations (“**AFN**”) filed the complaint that gave rise to the underlying proceedings. In 2016, the Tribunal found the complaint substantiated, ordered that Canada cease the discriminatory conduct, and exercised its discretion over the matter until its orders were fully implemented.²
7. In 2024, NAN, COO, AFN, and Canada negotiated a draft final agreement directed at remedying the discrimination found by the Tribunal (the “**National Agreement**”). Although the National Agreement, which aimed at nation-wide reform, was ratified by the NAN and COO Chiefs-in-Assembly in October 2024, it was rejected by the AFN First Nations-in-Assembly at a Special Chiefs Assembly (“**SCA**”) held on October 19, 2024.³ Among other things, the Nations-in-Assembly heard concerns around accountability, regional representation, and funding levels.⁴ The National Agreement was not presented to the Tribunal for approval following the unsuccessful AFN vote.

² *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, [2016 CHRT 2](#).

³ Affidavit of Duncan Farthing, dated Marh 7, 2025 [**Farthing Affidavit**], at paras 24–25; Affidavit of Grand Chief Joel Abram, dated March 6, 2025 [**Grand Chief Abram Affidavit**], at para 92, Ex CC.

⁴ See, e.g., Grand Chief Abram Affidavit at paras 86–88, Ex Z.

8. On January 14, 2025, the Caring Society brought a motion to direct consultation between Canada, AFN, and the Caring Society on the subject of long-term reform, in accordance with the Tribunal's past orders (the "**Consultation Motion**").⁵ The Consultation Motion has yet to be heard.
9. On March 7, 2025, COO and NAN brought the Ontario Agreement Motion asking that the Tribunal approve the Ontario Agreement "without condition."⁶ The Ontario Agreement reproduces most of the key terms from the National Agreement.
10. While Canada is not a moving party on the Motion, it wrote to the Tribunal that same day to say that it "is extremely pleased to consent to the relief sought in the motion."⁷ Canada filed a further letter on March 17, 2025, saying, *inter alia*, that:
 - a. the Tribunal ought to "first consider" the Ontario Agreement Motion before considering the Consultation Motion; and
 - b. "the outcome of the [Ontario Agreement 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."⁸
11. FSIN and its member First Nations – whose Chiefs voted against the National FSA at the SCA – have a profound interest in the long-term reform of the FNCFS Program. Given the likelihood that the Ontario Agreement Motion will impact reform "outside of Canada," as highlighted in Canada's comments above, FSIN notified the Tribunal in March 2025 of its intent to intervene in both the Motion and the proceedings more generally on a prospective basis.
12. On April 2, 2025, the Tribunal directed FSIN "to file its notice of motion and submissions of ten pages maximum, by April 15, 2025" in the event that it wished to

⁵ Amended Notice of Motion dated January 14, 2025, as amended January 27, 2025.

⁶ Joint Notice of Motion dated March 7, 2025.

⁷ Letter from Department of Justice Canada to the Canadian Human Rights Tribunal dated March 7, 2025, accessible at: fncaringssociety.com/sites/default/files/2025-03/AGC%20Letter%20to%20CHRT.pdf.

⁸ March 17, 2025 Letter [emphasis added].

intervene in the Ontario Agreement Motion. The Tribunal further directed that “No affidavit will be filed.” FSIN brings this motion further to those directions.

III. ISSUES

13. The sole issue to be decided on this motion is whether FSIN should be granted limited interested party status to participate in the Ontario Agreement Motion and, if so, on what terms.

IV. LAW & ARGUMENT

Legal Framework

14. The Tribunal has broad jurisdiction to allow any interested party to intervene in an inquiry further to a complaint.⁹

15. On a motion for interested party status, the Tribunal will consider the following factors:

- a. whether the proposed interested party brings expertise that will be of assistance to the Tribunal;
- b. whether the involvement of the proposed interested party will add to the legal positions of the other parties; and
- c. whether the proceeding will have an impact on the proposed interested party’s interests.¹⁰

16. The proposed interested party need not satisfy each factor in order to be granted interested party status. Rather, the Tribunal will conduct its analysis on a “case-by-case” basis, applying a “flexible” and “holistic” approach.¹¹ The Tribunal will also

⁹ *Canadian Human Rights Act*, [RSC 1985](#), c H-6 [**CHRA**], [s. 50](#); *Rules of Procedure* (03-05-04), s 8(1). The Tribunal has confirmed that the former *Rules* apply to this proceeding: *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, [2022 CHRT 26](#) [**2022 CHRT 26**] at para [1](#).

¹⁰ 2022 CHRT 26 at para [30](#).

¹¹ 2022 CHRT 26 at para [31](#).

consider its responsibility to conduct proceedings as expeditiously and informally as the requirements of natural justice and rules of procedure allow.¹²

17. As a preliminary matter, FSIN observes that the Tribunal's direction not to receive affidavit evidence on this motion raises a procedural fairness concern, insofar as evidence may be required to satisfy one or more of the applicable factors.¹³ FSIN asks that it be provided with an opportunity to submit supporting evidence on this motion if necessary to satisfy the legal test for interested party status.

FSIN Will Be Impacted by the Motion

18. FSIN and its member First Nations represent a significant population of First Nations rightsholders in what is now Saskatchewan, with diverse cultural, linguistic, socio-economic, geographic, and demographic circumstances.¹⁴ Its mandate includes honouring the spirit and intent of the Treaties, as well as promoting, protecting, and implementing the Treaty promises made more than a century ago.

19. FSIN acts on behalf of these rightsholders through its Chiefs-in-Assembly – a duly called and properly constituted meeting of the elected Chiefs of its 75 member First Nations – whose mandate includes issues faced by First Nations people and communities in the context of First Nations child health and welfare.¹⁵

20. While the Motion relates immediately to the Ontario Agreement, there is good reason to think that its outcome will impact long-term reform elsewhere in Canada, including in Saskatchewan:

¹² CHRA, [s 48.9\(1\)](#); *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](#).

¹³ See, e.g., *Moll v College of Alberta Psychologists*, [2011 ABCA 110](#) at para [179](#), citing e.g., *Re Cluney and Registrar of Motor Vehicles of Nova Scotia* (1975), [53 DLR \(3d\) \(NSCA\)](#) at 474.

¹⁴ 2022 CHRT 26 at paras [18–20](#).

¹⁵ 2022 CHRT 26 at para [22](#). FSIN's current membership list includes 75 First Nations, up from the 74 member First Nations represented by FSIN in 2022.

- a. as mentioned above, Canada has expressly acknowledged the likelihood that the Motion will inform approaches “outside of Ontario,” which would include the Saskatchewan region;
- b. Canada has further requested that the Tribunal place the Consultation Motion in abeyance in favour of the Ontario Agreement Motion¹⁶ – something which would increase the likelihood that the Motion will entrench the approach for national reform;
- c. in its affidavit evidence on the Motion, Canada alludes to the intended or anticipated impacts of the Ontario Agreement on the FNCFS Program in general, not just in Ontario, stating that:
 - i. the Ontario Agreement is a “landmark agreement” that “seeks to chart a new path for the Program,” being a nation-wide program, and which reflects “the reformed Program” in general, without qualifying the scope of the Program only to Ontario;¹⁷ and
 - ii. the Ontario Agreement employs mechanisms originally developed for the National Agreement, as rejected by AFN in October 2024, including a “Reformed FNCFS Funding Approach”;¹⁸
- d. Canada, COO, and NAN, in support of the Ontario Agreement, seek to rely on remoteness-related and other evidence pertaining to regions both within and outside of Ontario;¹⁹
- e. it is unclear whether and to what extent the Ontario Agreement itself may directly lead to impacts elsewhere in Canada – see, for instance, article 3, which provides that “[u]nless the context necessitates a different interpretation, all terms of this Final Agreement are to be interpreted as

¹⁶ March 17, 2025 Letter.

¹⁷ Farthing Affidavit at paras 5–6, 8.

¹⁸ Farthing Affidavit at paras 10–11, 36.

¹⁹ See, e.g., Farthing Affidavit at paras 98, 103, Exs G, I.

applying only in Ontario and only to First Nations and FNCFS Service Providers in Ontario.”²⁰

21. As the representative of 75 First Nations with a significant population of children and families, FSIN cannot responsibly wait on the sidelines in respect of a motion that is “likely” to impact long-term reform for its communities, families, and children.

FISN Will Bring a Unique and Focused Perspective

22. FSIN does not seek to oppose the Ontario Agreement. But it is very concerned that the outcome of the Motion will unintentionally entrench findings and approaches to long-term reform that, even if appropriate to the Ontario context, would not be sufficient to remedy discrimination in the provision of child welfare services in Saskatchewan. FSIN seeks interested party status to ensure that any findings and orders made in respect of the Motion remain limited to the Ontario context only and that they will not unduly hinder approaches to long-term reform elsewhere.

23. If granted leave to participate, FSIN would focus on those points where the outcome of the Ontario Agreement Motion holds the greatest risk of inadvertently affecting interests in Saskatchewan. In particular, FSIN would make narrow submissions (and file limited affidavit evidence, if needed) on the following topic:

- a. the extent to which the mechanisms contained in the Ontario Agreement, such as in respect of funding, governance, and representation, are grounded in Ontario-specific considerations that cannot and should not be extended to the Saskatchewan region.

24. FSIN’s submissions will help the Tribunal ensure that its findings and orders on the Motion do not inadvertently limit the approaches to reform elsewhere in Canada. Its submissions will also assist the immediate parties, including Canada, to better chart “the path forward” toward nation-wide reform following the determination of the Motion.

²⁰ Grand Chief Abram Affidavit at para 2, Ex A [emphasis added.]

FSIN Has Expertise that Will Assist the Tribunal

25. FSIN remains one of the largest and most long-standing Indigenous political organizations in Canada. For the purposes of this limited intervention, it will be able to draw from its extensive institutional knowledge and experience as an advocate, representative, and support provider of First Nations in Saskatchewan.²¹ It will also be able to draw on its extensive intervener experience in other important Indigenous rights and public interest matters.²²
26. The Ontario Agreement Motion does not exist in a vacuum. As explained above, it will likely inform approaches to long-term reform elsewhere in Canada, including in Saskatchewan. FSIN, as the representative of the vast majority of Saskatchewan First Nations, is uniquely well-situated to provide focused submissions on those areas in which the Ontario Agreement, as well as the Tribunal's findings and orders on the Motion, risk impacting interests in the specific Saskatchewan context. It is also well-situated to explain why any such impacts must be avoided.
27. At the same time, FSIN recognizes the social cost of adding further procedural complexity and delay to this matter. It does not seek to expand the scope of the Motion and takes no position on its merits. Its submissions will be limited to ensuring that the Tribunal does not make findings or orders that will inadvertently prejudice the rights and interests of First Nations, families and children in Saskatchewan. FSIN

²¹ See 2022 CHRT 26 at para 44.

²² Cases in which FSIN has acted as intervener include *John Howard Society of Saskatchewan v Saskatchewan (Attorney General)*, [2025 SCC 6](#); *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, [2025 SCC 4](#); *Ontario (Attorney General) v Restoule*, [2024 SCC 27](#); *Shot Both Sides v Canada*, [2024 SCC 12](#); *Dickson v Vuntut Gwitchin First Nation*, [2024 SCC 10](#); *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#); *R v Sharma*, [2022 SCC 39](#); *Southwind v Canada*, [2021 SCC 28](#); *Mikisew Cree First Nation v Canada (Governor General in Council)*, [2018 SCC 40](#); and *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, [2018 SCC 4](#). In respect of the present proceedings, FSIN obtained limited leave to act as intervener on a motion brought by AFN on July 22, 2022: 2022 CHRT 26. FSIN did not participate in the motion hearing itself, as it was later able to determine that the views it wished to advance as an interested party would be adequately addressed by the other parties.

is otherwise committed to keeping its submissions and evidence as narrow as possible, in accordance with the topics identified above; to avoiding duplication with the other parties; and to abiding by any timetables the Tribunal sees fit to order.

V. ORDER SOUGHT

28. FSIN seeks an order granting it leave to intervene as an interested party in this proceeding on the following terms or on such terms as the Tribunal deems just:

- a. FSIN's participation shall be specifically limited to the Ontario Agreement Motion;
- b. FSIN shall be permitted to make oral and written arguments, 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;
- c. FSIN shall be permitted to participate in case conferences, mediation, negotiation, or other dispute resolution or administration processes in respect of the Motion;
- d. FSIN shall be permitted to adduce limited affidavit evidence of a length that may be fixed by the Tribunal and according to the timeline set by the Tribunal;
- e. FSIN's participation shall be on a without-cost basis; and
- f. the motion shall be decided without prejudice to FSIN's right to seek interested party status in the respect of other matters arising in these proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of April, 2025.



KAELAN UNRAU

JFK Law LLP
260 – 200 Granville Street
Vancouver, BC V6C 1S4

Tel: (604) 687-0579

Fax: (888) 687-8388

kunrau@jfkllaw.ca

Counsel for the Proposed Interested
Party, Federation of Sovereign
Indigenous Nations

VI. TABLE OF AUTHORITIES

#	Authority	Paragraph
Case Law		
1.	<i>Dickson v Vuntut Gwitchin First Nation</i> , 2024 SCC 10	
2.	<i>First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2022 CHRT 26	1, 18–20, 22, 30–31, 44
3.	<i>First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada</i> , 2016 CHRT 2	
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5.	<i>John Howard Society of Saskatchewan v Saskatchewan (Attorney General)</i> , 2025 SCC 6	
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9.	<i>R v Sharma</i> , 2022 SCC 39	
10.	<i>Re Cluney and Registrar of Motor Vehicles of Nova Scotia (1975)</i> , 53 DLR (3d) (NSCA)	Page 474
11.	<i>Reference re An Act respecting First Nations, Inuit and Métis children, youth and families</i> , 2024 SCC 5	
12.	<i>Saskatchewan (Environment) v Métis Nation – Saskatchewan</i> , 2025 SCC 4	
13.	<i>Shot Both Sides v Canada</i> , 2024 SCC 12	

14. *Southwind v Canada*, [2021 SCC 28](#)
15. *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, [2018 SCC 4](#)

Legislation

16. *Canadian Human Rights Act*, [RSC 1985](#), c H-6 ss. 48.9(1);
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17. *Rules of Procedure* s 8(1)