

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-

UGPI'GANJIG (EEL RIVER BAR) FIRST NATION

Moving Party

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**MOTION FOR INTERESTED PARTY STATUS – UGPI'GANJIG (EEL RIVER BAR)  
FIRST NATION**

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April 15, 2025

**UGPI'GANJIG FIRST NATION**

Director of Ugpi'ganjig Child and Family Services - Shawn Boucher  
*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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Moving Party

**NOTICE OF MOTION**

**TAKE NOTICE** that Ugpi'ganjig (Eel River Bar) First Nation ("**Ugpi'ganjig**") makes a motion to the Canadian Human Rights Tribunal located at 240 Sparks Street, 6<sup>th</sup> Floor West, Ottawa, Ontario.

**THE MOTION IS FOR:**

1. An Order pursuant to sub-section 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 Ugpi'ganjig leave to intervene as an interested party in the joint motion made on March 7, 2025 by Chiefs of Ontario ("**COO**") and Nishnawbe Aski Nation ("**NAN**") ("**COO and NAN Joint Motion**"), with full participation rights, including rights to:

- a) make oral and written submissions, present evidence and cross-examine witnesses as may apply in the course of the COO and NAN Joint Motion, of a length that may be fixed by the Tribunal and according to the timeline set by the Tribunal;
- b) participate in case conferences, mediation, negotiation or other dispute resolution or administrative processes in respect of the COO and NAN Joint Motion; and
- c) such other terms as the Tribunal deems just.

2. Ugpi'ganjig's participation shall be on a without costs basis

**THE GROUNDS FOR THE MOTION ARE:**

- a) Ugpi'ganjig has expertise and knowledge that will be of assistance to the Tribunal in determining the Motion.
- b) Ugpi'ganjig will bring a unique perspective
- c) Ugpi'ganjig's involvement will add to the legal position of the Parties with respect to the Motion.
- d) Ugpi'ganjig and its citizens interests are engaged by the issues in the Motion.
- e) Ugpi'ganjig will not unduly delay the Motion.

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

- a) The written submissions of Ugpi'ganjig.

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

Dated:

2025-04-15



Director of Ugpi'ganjig Child and Family Services  
Shawn Boucher *per se*  
E-mail: schawn.boucher@gnb.ca

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UGPI'GANJIG (EEL RIVER BAR) FIRST NATION  
Moving Party

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**WRITTEN SUBMISSIONS OF UGPI'GANJIG (EEL RIVER BAR) FIRST 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. Ugpi'ganjig First Nation ("**Ugpi'ganjig**") makes this motion 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) to be added as an interested Party to participate in the motion brought jointly on March 7, 2025 by Chiefs of Ontario ("**COO**") and the Nishnawbe Aski Nation ("**NAN**") ("**COO and NAN Joint Motion**").

2. The COO and NAN Joint Motion asks the Tribunal to issue orders that:
  - a) Approve unconditionally the final agreement on long-term reform of the First Nations Child and Family Services Program in Ontario, signed February 26, 2025.
  - b) Satisfy, supersede, and replace all prior Tribunal orders concerning discrimination findings in Ontario (except those related to Jordan's Principle) with the terms of the approved agreement.
  - c) End the Tribunal's jurisdiction over the complaint elements and associated remedial proceedings concerning Ontario, except for matters related to Jordan's Principle
  - d) Continue the Tribunal's existing orders relating to Jordan's Principle for First Nations children in Ontario.
  
3. Ugpi'ganjig submits that it meets the criteria for interested party status and can provide valuable assistance to the Tribunal in its determination of the Joint Motion

## **BACKGROUND**

4. Ugpi'ganjig is a Mi'kmaw First Nation located in New Brunswick. Like other First Nations across Canada, Ugpi'ganjig has been directly affected by the discriminatory practices in the First Nations Child and Family Services Program that were found by this Tribunal in its 2016 Merit Decision.
5. Ugpi'ganjig has been actively engaged in the development and implementation of its own child and family services laws and practices, drawing on Mi'kmaw traditions and legal orders. This work has given Ugpi'ganjig significant expertise in the challenges and considerations relevant to the provision of culturally appropriate services for First Nations children and families.

## **APPLICABLE LAW**

6. This Tribunal has consistently recognized that the participation of interested parties can assist the Tribunal in understanding the full context and implications of the matters before it. The criteria for granting interested party status were outlined in this Tribunal's rulings, including 2022 CHRT 26, where the Tribunal emphasized a holistic, case-by-case approach to determining requests for interested party status.
7. In determining requests for interested party status, the Tribunal considers whether:
  - 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.
8. Section 48.9(1) of the CHRA mandates proceedings be conducted expeditiously while upholding natural justice. The procedure for adding interested parties is set out in Rule 8 of the Tribunal's Rules of Procedure. Under Rule 8(1), the Tribunal has the jurisdiction to allow any interested party to intervene before this Tribunal in regard to a complaint.

## **UGPI'GANJIG MEETS THE TEST FOR GRANTING INTERESTED PARTY STATUS**

9. Ugpi'ganjig's expertise and unique perspective will be of assistance to the Tribunal. Ugpi'ganjig governs the Mi'kmaq persons in its Ugpi'ganjig. Situated in northern New Brunswick along the Bay of Chaleur near the Quebec border, Ugpi'ganjig operates within both Anglophone and Francophone regions, navigating unique cross-border jurisdictional challenges related to child welfare service delivery.
10. Mi'kmaw child-care practices reflect a deep commitment to nurturing children, families, and kinship through a physical, spiritual, emotional, cognitive approach to well-being. Ugpi'ganjig believes in upholding human rights and seeks to contribute to ending Canada's systemic discrimination against all First Nations children, building on their community's history of advocacy for the rights of Indigenous peoples.
11. As one of the few unincorporated First Nations child welfare agencies in the Atlantic region, Ugpi'ganjig occupies a distinctive position to examine the effects of systemic underfunding through the perspective of its unincorporated governance model. This structural distinction has profound implications for funding models and service delivery. Ugpi'ganjig operates under ministerial delegation without separate corporate status, with Chief and Council directly responsible for child welfare operations. Unlike incorporated agencies, this structure creates direct liability exposure for elected officials and restricts financial flexibility in three key ways:
  - a) Inability to carry deficits across fiscal years, as demonstrated when Ugpi'ganjig's child welfare program face a budget shortfall yet is ineligible for ISC's Transitional Funding Mechanism available to incorporated agencies;
  - b) Documented disparities in management allowances based on auditor reports identifying "higher risk profiles" for unincorporated entities.
12. The Ontario Final Agreement, while comprehensive in addressing numerous systemic issues, contains a significant gap regarding governance structures. The Agreement presupposes incorporated status by establishing funding formulas based on "organizational capacity assessments" that inherently disadvantage unincorporated agencies by measuring against corporate governance benchmarks. This governance blind spot leaves unincorporated agencies vulnerable to continued discriminatory funding practices, as their operational realities differ fundamentally from the Ontario model.
13. Ugpi'ganjig's cross-border operations along the Quebec/New Brunswick boundary create unique funding and service delivery challenges. Social workers face significant delays accessing Quebec health records for children with interprovincial families due to provincial portal restrictions. Language barriers with French-dominant service providers disadvantage English/Mi'kmaw-speaking members, limiting equitable access to culturally safe services. These systems gaps compound risks for children in need of timely, culturally appropriate care.
14. The unincorporated structure directly correlates with funding disparities, exemplifying the discriminatory impact of funding mechanisms that fail to account for governance structure differences.



15. Ugpi'ganjig has designed its service delivery model to implement culturally appropriate practices that exceed provincial standards, such as daily child check-ins (vs. quarterly provincial requirements) and Mi'kmaw-specific reunification protocols.
16. Ugpi'ganjig's expertise will add to the legal positions of the parties: Ugpi'ganjig adds crucial practical expertise to the existing legal positions. Through its experience as an unincorporated agency operating across provincial boundaries, Ugpi'ganjig possesses 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. Ugpi'ganjig's expertise will assist the Tribunal by providing context on:
  - a) The practical impacts of Canada's funding approaches on unincorporated agencies, where staffing ratios of 8 social workers funded for 3 positions reveal structural deficits in claims on actuals model;
  - b) Cross-border service delivery challenges unique to agencies operating near provincial boundaries, including significant delays accessing Quebec health records and case resolution times significantly longer than single-province agencies;
  - c) The implementation of culturally-appropriate child and family services within the context of unincorporated governance structures, particularly when Canada is basing its coordination agreement funding approaches on the long-term reform negotiations with the Parties at the CHRT.
17. Ugpi'ganjig's participation will not broaden the scope and submissions will focus strictly on issues already within the complaint's scope, including systemic underfunding of child and family services, coordination agreement implementation, and culturally appropriate service delivery models. Specifically, Ugpi'ganjig will address three core issues within the complaint's scope, introducing targeted evidence to enhance the Tribunal's remedial framework without expanding its scope:
  - a) Systemic Underfunding of Child and Family Services
    - Structural deficits in "claims on actuals" model (e.g., 8 social workers funded for 3 positions since 2019)
  - b) Coordination Agreement Implementation Barriers
    - Interprovincial jurisdictional challenges causing longer case resolution times
    - Incompatible provincial data systems violating CHRT Order timelines
  - c) Culturally Appropriate Service Delivery Standards
    - Mi'kmaw-specific prevention practices (daily child check-ins vs. quarterly provincial requirements)
    - Implementation challenges for culturally-based services in rural communities with limited resources

- Need for specialized training in Mi'kmaw traditions and approaches to wellness for all service providers
  - Integration of traditional knowledge and practices into formal service delivery models
  - Barriers to recruiting qualified staff who possess both professional credentials and cultural competency
18. Whether participation would duplicate existing perspectives: Ugpi'ganjig offers perspectives absent from other parties' submissions, centering on three insufficiently examined dimensions of systemic discrimination faced by unincorporated Mi'kmaw agencies. First, its experience with "claims on actuals" funding model exposes structural inequities in resource allocation, engaging Section 15 Charter protections against discriminatory fiscal policies. The impact of this funding model is quantifiable: Ugpi'ganjig experiences lengthy reimbursement delay for emergency child protection expenses compared to incorporated agencies with established credit facilities. This directly results in service disruptions affecting high-risk cases where intervention is delayed due to budget constraints.
19. Also, cross-border service delivery challenges—including longer case resolution times due to Quebec/New Brunswick jurisdictional conflicts—directly implicate failures to ensure interprovincial coordination.
20. Whether participation would delay proceedings: Ugpi'ganjig's participation will adhere to all Tribunal timelines and will not cause undue delay. Ugpi'ganjig will adhere to all procedural directions and timelines set by the Tribunal.

## **LEGAL CONTEXT**

21. Ugpi'ganjig's interest in these proceedings is anchored in the following legal principles:
22. Federal Jurisdiction: Parliament's constitutional authority obligates Canada to ensure culturally grounded child welfare services that reflect the needs of First Nations communities. This principle directly applies to Ugpi'ganjig's unincorporated agency model operating under ministerial delegation.
23. Provincial Authority – Delegated and Limited: New Brunswick's jurisdiction over Ugpi'ganjig's child welfare services derives from federal delegation that recognizes the unique needs of First Nations children.
24. Federal Responsibility for Equitable Funding: The Supreme Court has recognized Canada's obligations to address the systemic inequities in funding for First Nations children and families, which extends to the operational realities of unincorporated agencies like Ugpi'ganjig.
25. Substantive Equality: The Tribunal's jurisprudence—particularly in 2016 CHRT 2 and 2019 CHRT 39—establishes Canada's obligations to ensure substantive equality in the provision of child welfare services to First Nations children, requiring consideration of governance structure impacts like those faced by Ugpi'ganjig.

## GROUNDS FOR MOTION

26. Ugpi'ganjig's unique operational and legal circumstances necessitate Interested Party status to address systemic inequities disproportionately impacting its unincorporated Mi'kmaw child welfare agency.
27. Governance-Based Funding Disparities: Canada's application of uniform funding mechanisms to Indigenous governance structures—despite their diversity—perpetuates systemic underfunding of First Nations child and family services. Unincorporated First Nations child welfare agencies receive significantly less funding per capita than incorporated agencies with comparable service populations. This disparity stems directly from governance-related funding criteria that disadvantage agencies lacking corporate structures, including:
- a) Risk assessment matrices that assign higher administrative burden percentages to unincorporated agencies (requiring more documentation for equivalent expenses);
  - b) Prevention funding formulas that presuppose separate legal entities for capital investments, excluding Band-operated services from available infrastructure funding streams; and
  - c) Financial reporting requirements that fail to account for the integrated nature of Band administration, imposing unrealistic segregation of duties expectations.
28. The Tribunal's 2016 CHRT 2 ruling explicitly condemned federal policies which impose one-size-fits-all formulas that disregarded the actual costs of culturally grounded service delivery. While the decision did not explicitly analyze governance structures, its finding that underfunding stems from federal policy failures logically extends to all agency models, confirming that structural inequities arise from Canada's refusal to address diverse governance realities, not local agency choices.
29. Structural Distinctions from Incorporated Agencies: Operating under Chief and Council governance—rather than an incorporated board—creates distinct liability and governance challenges that directly relate to the substantive funding issues in the Ontario LTR Motion. Unlike incorporated agencies, Ugpi'ganjig lacks legal separation from the Band, exposing Council members to personal liability and restricting financial flexibility. These structural distinctions translate into concrete funding inequities:
- a) Administrative Penalties: Ugpi'ganjig has documented instances where service funding was reduced due to "insufficient organizational separation" between child welfare operations and other Band programs—a standard impossible to meet without incorporation;
  - b) Capital Investment Barriers: The Ontario Final Agreement's infrastructure funding model presumes incorporated status by requiring "independent business plans" and "separate organizational assets"—criteria inherently excluding unincorporated agencies like Ugpi'ganjig;
  - c) Cash Flow Constraints: Without separate corporate credit facilities, Ugpi'ganjig faces cash flow challenges under the "claims on actuals" reimbursement model

employed by Indigenous Services Canada (ISC). When emergency intervention costs arise, Ugpi'ganjig must regularly borrow from other Band funds to cover immediate expenses while awaiting ISC reimbursement. This internal borrowing process creates administrative burdens, delays in other community services, and financial strain on the Band's overall operations. The reimbursement cycle perpetuates a systemic disadvantage, as the First Nation must continually divert resources from other essential programs to maintain child welfare services, only to wait for after-the-fact compensation from ISC. This structural funding approach disadvantages communities with limited financial reserves and creates unnecessary administrative complications for service delivery.

30. This structure exacerbates chronic under resourcing under the "claims on actuals" funding model, which allocates resources reactively rather than through needs-based formulas. For example, the agency employs 8 social workers but receives funding for only 3 positions, forcing staff to manage unsustainable caseloads.
31. Geographic and Jurisdictional Complexities: Ugpi'ganjig's cross-border operations along the Quebec/New Brunswick boundary present unique service delivery challenges. Staff face significant delays accessing health and family service records across provincial boundaries, and language barriers create additional hurdles for service delivery. These jurisdictional realities—not addressed by the Ontario Final Agreement—compound the discrimination experienced by Mi'kmaw children and families in Ugpi'ganjig's service area.
32. Culturally Grounded Service Model: The agency implements prevention-focused practices exceeding provincial standards, such as daily child check-ins (vs. quarterly provincial requirements) and family reunification protocols rooted in Mi'kmaw kinship systems.
33. Systemic Underfunding Impacts: Persistent underfunding directly undermines service quality and safety:
  - a) Infrastructure Gaps: Bureaucratic hurdles further delay critical infrastructure projects, perpetuating overcrowded facilities and unsafe conditions. These inequities align with the Tribunal's finding in 2016 CHRT 2 that Canada's "restrictive and inadequate" funding formulas knowingly deprived First Nations children of essential services.
34. Ugpi'ganjig's participation ensures the Tribunal addresses these interconnected barriers, which remain unexamined in other submissions. Its evidence on unincorporated agency operations, cross-border coordination failures, and culturally specific infrastructure needs will inform equitable remedies that recognize the diversity of First Nations child welfare governance structures.

## **ORDER SOUGHT**

Ugpi'ganjig seeks an order granting it leave to intervene as an interested party in this proceeding, on the following terms:

- a) Ugpi'ganjig shall have the right to make written and oral submissions on the Ontario LTR Motion, on a timeline prescribed by the Tribunal;
- b) Ugpi'ganjig shall have the right to participate in case management conferences, hearings, mediation, dispute resolution, or other processes related to the Ontario LTR Motion; and
- c) Ugpi'ganjig shall participate without costs being awarded for or against it.

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

Dated:

2025-04-15



Director of Ugpi'ganjig Child and Family Services  
Shawn Boucher *per se*  
E-mail: schawn.boucher@gnb.ca