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May 8, 2025

Judy Dubois
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Dubois:

RE: *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL V ATTORNEY GENERAL OF CANADA – T#1340/7008*

We are counsel for the First Nations Child and Family Caring Society of Canada (the "**Caring Society**"). We write further to the Panel's direction of April 24, 2025, to provide the Caring Society's position on the various motions from those seeking to participate in the joint Ontario motion filed by the interested parties Chiefs of Ontario ("**COO**") and the Nishnawbe Aski Nation ("**NAN**") (the "**Ontario Motion**"). The Ontario Motion seeks an order approving the Ontario Final Settlement Agreement on the long-term reform of the First Nations Child and Family Services Program ("**Ontario FSA**") without condition, and an order that the Ontario FSA and the Trilateral Agreement in Respect of Reforming the 1965 Agreement (the "**Trilateral Agreement**") satisfy, supersede, and replace all orders of the Tribunal related to the discrimination found by the Tribunal concerning all elements of the complaint in Ontario relating to the FNCFS Program in Ontario and the 1965 Agreement. The Ontario Motion further seeks an order ending the Tribunal's jurisdiction in Ontario regarding the FNCFS Program. The Attorney General of Canada ("**Canada**") is supporting the Ontario Motion.

The Caring Society is filing consolidated submissions on the motions for interested party status in relation to the Ontario Motion in accordance with the Panel's April 29, 2025, direction.

For the reasons that follow, the Caring Society consents to, and supports, all of the motions for interested party status on the Ontario Motion.

THE MOVING PARTIES

On April 15 and 16, 2025, ten motions and two joint motions were filed seeking interested party status in response to the Ontario Motion filed by the COO, NAN and Canada on March 7, 2025.

Moving Parties Not Seeking to Adduce Affidavit Evidence

The following moving parties are not seeking to file evidence: (1) the Treaty 8 First Nations of Alberta; (2) the Confederacy of Treaty Six First Nations; (3) the Treaty 7 First Nations Chiefs Association; (4) and the Ugpi'ganjig (Eel River Bar) First Nation.

Moving Parties Seeking to Adduce Affidavit Evidence

The following moving parties are seeking to adduce affidavit evidence: (1) the Chippewas of Georgina Island and Taykwa Tagamou Nation (Ontario); (2) the Council of Yukon First Nations (Yukon); (3) the Federation of Sovereign Indigenous Nations (Saskatchewan); (4) Mi'gmaq Child and Family Services of New Brunswick Inc. (New Brunswick); (5) Neqotkuk (Tobique) First Nation of the Wolastoqey Nation (New Brunswick); (6) the Assembly of Manitoba Chiefs (Manitoba); (7) Our Children Our Way Society (British Columbia); and (8) the First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador ("**FNQLHSSC and AFNQL**" Quebec and Labrador).

In addition to the request to file affidavit evidence, the Assembly of Manitoba Chiefs is seeking the right to request orders from the Tribunal.

The FNQLHSSC and AFNQL sought interested party status on January 30, 2025 with respect to broader participation in the proceedings in any applications and/or cross applications regarding consultation, French translation barriers, and other matters. The FNQLHSSC and the AFNQL further clarified on April 15, 2025, that their request extends to participating in the Ontario Motion.

LAW AND ANALYSIS RESPECTING THE MOTIONS FOR INTERESTED PARTY STATUS

The *Canadian Human Rights Act*

The Tribunal has previously set out its jurisdiction for allowing an interested party to intervene before the Tribunal with respect to a human rights complaint.[1] Pursuant to the *Canadian Human Rights Act* ("***CHRA***"), the Chairperson may make rules of procedure governing the practice and procedure before the Tribunal, including rules respecting the addition of parties and interested persons to the proceedings.[2]

Subsection 50(1) for the *CHRA* also contemplates the participation of interested parties, as it confirms that the Tribunal has the authority to grant a request to become an interested party.[3] The *CHRA* also provides that proceedings before the Tribunal shall be conducted as

[1] 2022 CHRT 26 at para 28.
[2] *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s 48.9(2)(b).
[3] *CHRA*, s 50(1). See also 2022 CHRT 26 at para 28.

informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[4]

The Tribunal's Jurisprudence

As this Panel observed in 2022 CHRT 26 and reaffirmed in 2024 CHRT 95, the Panel's approach in past rulings on motions for interested party status is "the most relevant and authoritative to this motion given that this is the same case with the same historical context".[5] Notably, the Panel addressed the test for granting interested party status in 2016 CHRT 11.[6] In assessing Nishnawbe Aski Nation's motion for interested party status, the Panel's approach was as follows:

> An application for interested party status is determined on a case-by-case basis, in light of the specific circumstances of the proceedings and the issues being considered. A person or organization may be granted interested party status if they are impacted by the proceedings and can provide assistance to the Tribunal in determining the issues before it. That assistance should add a different perspective to the positions taken by the other parties and further the Tribunal's determination of the matter. Furthermore, pursuant to section 48.9(1) of the CHRA, the extent of an interested party's participation must take into account the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[7]

This Panel has also drawn on the Tribunal's jurisprudence in determining whether to grant interested party status. For example, on the First Nations Leadership Council's ("**FNLC**") motion for interested party status on the recent non-compliance motion on Jordan's Principle. The Panel affirmed that the Tribunal may consider the following factors: (a) whether the prospective interested party's expertise will be of assistance to the Tribunal; (b) whether its involvement will add to the legal positions of the parties; and (c) whether the proceeding will have an impact on the prospective party's interests.[8]

On the FNLC's motion for interested party status, the Panel reiterated what constitutes proper assistance to the Tribunal as it did in 2022 CHRT 26:

> In analyzing the expression "further the Tribunal's determination of the matter" the Tribunal considers the legal and factual questions it must determine, the adequacy

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[4] *CHRA*, s 48.9(1).
[5] 2022 CHRT 26 at para 38. See also 2024 CHRT 95 at para 28.
[6] 2020 CHRT 31 at para 27; 2016 CHRT 11 at para 3.
[7] 2016 CHRT 11 at para 3 (citations omitted). See also 2020 CHRT 31 at para 27.
[8] 2024 CHRT 95 at para 33. See also 2020 CHRT 31 at para 26, citing *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)*, 2011 CHRT 19 at para 23, 2022 CHRT 26 at para 30, and 2016 CHRT 11 at para 3.

> of the evidence and perspectives before it, the procedural history of the case, the impact on the proceedings as well as the impact on the parties and who they represent. The Panel also considers the nature of the issue and the timing in which an interested party status seeks to intervene. Moreover, if adding another interested party will positively or negatively impact the Tribunal's role to appropriately determine the matter. Finally, the Tribunal will consider the public interest in the matter.[9]

The Tribunal must also consider its obligations to conduct a proceeding expeditiously and informally within the confines of the *Rules of Procedure* and the boundaries of natural justice.[10]

National Resolutions

On December 3-5, 2024, Resolution 90/24 titled "Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations" was passed at the Assembly of First Nations Special Chiefs Assembly in Ottawa. This resolution supported both the participation of the FNLC in the consultation ordered by the Tribunal in their November 21, 2024 letter decision on Canada's non-compliance on Jordan's Principle and fully supported "**any request**, from **any other regions, to seek interested party status in this Canadian Human Rights Tribunal case**" [emphasis added]. This motion demonstrates the full and public support of the First Nations-in-Assembly for requests arising from any region in Canada seeking interested party status in the broader Tribunal proceedings.

THE CARING SOCIETY'S POSITION ON THE MOTIONS

Although the onus is on the groups seeking interested party status to demonstrate how their expertise will assist the Tribunal in its determination of the issues, the Caring Society submits:

> Factor A – the prospective interested parties' expertise will be of assistance to the Tribunal: The Caring Society recognizes that the moving parties each have unique and critical expertise in the area of child and family services that will be of assistance to the Tribunal, particularly on the issue of how the Ontario FSA may impact front-line service delivery and whether said agreement will accomplish its stated purpose of ending Canada's discrimination and preventing recurrence. Given the historic nature

[9] 2024 CHRT 95 at para 35, citing 2022 CHRT 26 at para 37.
[10] Canadian Human Rights Act, RSC 1985, c H6, section 48.9 (1). See also 2016 CHRT 11 at para 3; *Nkwazi v. Correctional Service Canada*, 2000 CanLII 28883 (CHRT) at paras 22-23; *Schnell v. Machiavelli and Associates Emprize Inc.*, 2001 CanLII 25862 (CHRT) at para 6; *Warman v. Lemire*, 2008 CHRT 17 at paras 6-8; and *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)*, 2011 CHRT 19 at paras 22-23).

of this case, the chance to remedy discrimination for generations to come, and the prospect of the Tribunal ending its jurisdiction in Ontario for child and family services, this expertise will be helpful in adjudicating the Joint Motion.

The Caring Society strongly supports the interested party status applications by the Chippewas of Georgina Island and the Taykwa Tagamou Nation which are both located in Ontario and directly impacted by these proceedings. They intend to make submissions on whether the Ontario FSA meets the requirements of the *CHRA* to stop the discrimination and prevent its recurrence and have valuable insight, expertise and evidence on the Ontario FSA's impacts on First Nations and their children, youth and families.

Consistent with Assembly of First Nations resolution 90/2024, the Caring Society supports the motions by the remaining moving parties that either represent, or will present the perspectives of, over 650,000 First Nations peoples located in their respective regions. While these moving parties are from outside of Ontario, the Caring Society submits that their knowledge and expertise are important for the Tribunal to weigh when considering the impact that the Ontario FSA may have and the precedent that it will set. Indeed, among other considerations, Canada, in its March 17, 2025, letter to the Panel, indicated that "the outcome of the joint motion [the Ontario Motion] is likely the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase of Ontario." Canada's intent is clear and thus the national implications of the Ontario Motion cannot be ignored at this phase of the proceeding.

The Caring Society further submits that the knowledge and perspectives of these moving parties will ensure that the Tribunal has sufficient evidence to determine whether the Ontario FSA fully satisfies the Tribunal's orders and prevents the recurrence of discrimination against First Nations children, youth and families.

The Tribunal will have to determine whether the evidence proffered in support of the Ontario Motion substantiates the claim that the Ontario FSA satisfies the Tribunal's orders. The Tribunal has stated that (1) it always relies on evidence to support its findings and orders; (2) it analyzes whether requested orders are in line with its previous reasons, findings and orders; and (3) the purpose of their retention of jurisdiction in this particular matter is to "achieve sustainable reform and long-term relief that build on short-term and long-term orders in the best interest of First Nations children and families as defined by First Nations themselves".[11]

The Caring Society submits that should the Ontario FSA be approved; it would be the first in the larger context of FNCFS reform. As such, consideration of the Ontario

[11] 2022 CHRT 41 at para 224.

Motion should be informed by evidence from those with expertise (which the moving parties have) in order to ensure a well-informed consideration of the path forward for First Nations children and their families in Ontario. Given the timing and the structure of the requests from the moving parties, the Caring Society submits that the Tribunal will benefit from the perspectives and evidence proffered by the moving parties, ranging from First Nations, First Nations child and family service agencies, and First Nations Provincial and Territorial Organizations from six provinces and the Yukon. All of the moving parties have important expertise and experience to inform the Tribunal's adjudication of the Ontario FSA motion.

Factor B – the prospective interested parties' expertise involvement will add to the legal positions of the parties: The Caring Society submits that, as rights holders, the Chippewas of Georgina Island and the Taykwa Tagamou Nation, in particular, ought to have the opportunity to share their voices, views and legal positions regarding the Ontario FSA to ensure a balanced consideration of the Ontario Motion. The Tribunal is owed the benefit of hearing from the range of perspectives in Ontario, and more importantly, directly from the rights holders themselves, who have specific and unique evidence regarding the impact of the Tribunal's past orders and the application of the Ontario FSA to their children and families. No other party to this proceeding can speak for them. Indeed, as set out in paragraph 10 of their written submissions in support of their motion, Taykwa Tagamou Nation and the Chippewas of Georgina Island both voted in opposition to the National FSA and the Ontario FSA when these agreements were tabled at the Assembly of First Nations Assembly in October of 2024 and the COO and NAN Assembly in February of 2025.

The Caring Society submits that the diversity of communities and service providers included in the cohort of remaining moving parties would provide the Panel and the parties with various rich and unique perspectives on the Ontario FSA.

Factor C – the proceeding will have an impact on the moving parties' interests: The Caring Society recognizes that the moving parties have a "significant interest" in the outcome of the Ontario Motion.

As it relates to Ontario, the Chippewas of Georgina Island and Taykwa Tagamou Nation stand to be directly and immediately impacted by the relief sought on the Ontario Motion. The Caring Society submits that this weighs heavily in favour of granting these First Nations interested party status with the largest bundle of participatory rights.

The Caring Society further submits that the Ontario FSA impacts on the remaining moving parties in a number of ways. For example, Canada has stated that the outcome of the Ontario Motion is likely to inform how long-term reform will proceed

outside of Ontario. To this end, the remaining parties will be directly impacted by the proceedings and any orders the Tribunal makes in relation to the Ontario FSA.

Commitment to Expediency

As recognized in most of the moving parties' submissions, the Panel has significant discretion to impose limitations on time for argument and page limits on written submissions in order to ensure that the participation of interested parties does not come at the cost of the efficient progress of the Ontario Motion. The Caring Society acknowledges the unprecedented number of requests for interested party status regarding the Ontario Motion. In our view, this heightened interest favourably reflects the high priority that First Nations across Canada place on ensuring the discrimination towards their children, youth and families ends and does not continue.

The Caring Society believes the high value of the moving parties' participation in this historic complaint eclipses any procedural concerns, which the Caring Society submits can be overcome. Indeed, any concerns about delay and duplication could be resolved through collaborative work between counsel. In addition, the Tribunal can exercise its authority to shape the nature of the moving parties' participation, just as it has done when granting interested party status in previous instances in this case, including for COO, NAN, Amnesty International, the Congress of Aboriginal Peoples, the Innu Nation, the Federation of Sovereign Indigenous Nations and, most recently, the First Nations Leadership Council.[12]

Chippewas of Georgina Island and Taykwa Tagamou Nation

The Caring Society fully supports the requests of the Chippewas of Georgina Island and Taykwa Tagamou Nation for interested party status, to lead evidence on the Ontario Motion and to conduct examinations.

The Caring Society is continuing to consider its position regarding the Ontario FSA. Irrespective of the position to be taken, the Caring Society proposes that the Chippewas of Georgina Island and Taykwa Tagamou Nation be granted adequate time to file their evidence in advance of the steps set out for the other CHRT Parties, namely the May 30, 2025 deadline for those taking no position or approving the Ontario FSA, and the June 16, 2025 deadline for those opposing the Ontario FSA. In their submissions, the Chippewas of Georgina Island and Taykwa Tagamou Nation raise significant concerns regarding the impact of the Ontario FSA, which could adversely affect them. They ought to be given a fair chance, as leading voices, to present their case on this historic motion. This will require an adjustment to the existing schedule to ensure that these First Nations in Ontario have sufficient time to prepare their evidence if granted leave to file same. While this will delay the schedule somewhat, the Chippewas of Georgina Island and Taykwa Tagamou Nation have access to direct evidence

[12] 2019 CHRT 11 at paras 28 and 52, 2020 CHRT 31 at paras 48 and 51, 2022 CHRT 26 at para 61(1) and 2024 CHRT 95 at para 43.

regarding the anticipated impacts of the Ontario FSA, which the Caring Society would appreciate having the opportunity to review as it marshals its response to the Ontario FSA.

Remaining Moving Parties

To the extent the remaining moving parties seek to advance evidence outside of the purview of the Ontario context, the Caring Society submits that this evidence will aid the Panel in determining the issues on the motion in at least three ways.

Consistent with the Tribunal's emphasis on "distinct community circumstances" in considering substantive equality, the moving parties are First Nations, First Nations regional organizations and First Nations Agencies from six different provinces and the Yukon. Their submissions in support of their respective applications point to unique and important matters that are material to the Ontario Motion that would not have otherwise been brought to the Panel's attention or alternatively not brought in the same rich detail. In addition, the remaining moving parties either are, or directly represent, First Nations rights holders and as such they intend to describe how the Ontario FSA motion would affect Canada's obligations to First Nations rights holders such as Honour of the Crown.

The Caring Society submits that granting the moving parties' participation at this juncture will be a more efficient use of process than requiring the same parties to join the process further down the road. This would mitigate the potential risk of procedural arguments around doctrines like issue estoppel that would arise from disjointed participation (i.e., there is a risk that there would be inefficiencies to the Tribunal's process, as additional evidence or arguments might be brought to the fore that could cause the Tribunal to revisit prior conclusions). Including a role for outside-Ontario parties at this juncture would also help mitigate the risk of abuse of process or collateral attack arguments being advanced later in the process as part of an attempt to disqualify the participation of these groups given that among other issues, Canada has expressly stated that the Ontario FSA will inform Canada's conduct outside of Ontario.

In closing, we recognize all of the Parties, the Commission, the Respondent, Interested Parties and applicants for Interested Party status, and we welcome their participation in these important proceedings.

Yours Truly,

Sarah Clarke

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