

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**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 –

**INDIGENOUS CHILD & FAMILY SERVICES DIRECTORS OUR CHILDREN OUR
WAY SOCIETY**

Proposed Interested Party

**REPLY OF THE PROPOSED INTERESTED PARTY, INDIGENOUS CHILD &
FAMILY SERVICES DIRECTORS OUR CHILDREN OUR WAY SOCIETY**

(Pursuant to Rules 3, and 8(1) and (2) of the *Canadian Human Rights Tribunal Rules of
Procedure* (03-05-04))

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PART I – OVERVIEW

1. Throughout their submissions opposing Our Children Our Way Society’s interested party motion, COO, NAN, and Canada assert that the Joint Motion to approve the Ontario Agreement will have no direct impact on Our Children Our Way because the agreement does not apply outside of Ontario.¹

2. Yet, all three of them concede that the Joint Motion will impact Our Children Our Way in the future by establishing the precedent for the Tribunal’s approval of other regional or national agreements.

3. COO, NAN, and Canada cannot have it both ways. Either the Joint Motion only impacts interests in Ontario and thus has no “precedential value” outside that province, or it will set the primary precedent for “how the discrimination referred to in the Merits Decision is remedied,” thereby affecting the interests of Our Children Our Way and other interested parties outside of Ontario.

4. It is for that very reason that Our Children Our Way seeks leave to participate as an interested party—to ensure either that the outcome of the Joint Motion has no precedential value for what remedies may be appropriate in British Columbia, or to ensure that the result of the Joint Motion accounts for the unique challenges faced by the ICFSAs whose interests Our Children Our Way represents.

¹ The defined terms have the same meaning as in Our Children Our Way’s factum dated April 15, 2025.

PART II – ARGUMENT IN REPLY

A. COO and NAN’s Joint Motion Will Impact Our Children Our Way’s Interests

5. Despite their repeated claims to the contrary, COO, NAN, and Canada all admit that the Joint Motion will have an impact on Our Children Our Way’s interests, as well as the other parties outside Ontario who are seeking to participate in this Proceeding as interested parties.

6. Specifically, while COO insists that the outcome of the Joint Motion “will not have an impact on the prospective interested parties’ interests,”² it nonetheless admits that the determination of the Joint Motion “will invariably have precedential value for future national reform.”³ In fact, the COO goes so far to suggest that “[t]he Tribunal’s reasons of the OFA approval motion will be ‘the most relevant case law’ for the Tribunal’s approval of any other regional or national agreement ‘given that it’s the same case with the identical factual and evidentiary matrix’.”⁴

7. Likewise, NAN admits that “the Tribunal’s analysis of whether the OFA meets the Tribunal’s orders will have precedential value,” meaning that it will carry “weight or significance, shaping interpretations and future rulings.”⁵

8. Canada is even more transparent about the impact the Joint Motion will have on parties outside Ontario. It submits that “[t]he Joint Motion will provide the Tribunal with the opportunity

² Consolidated Responding Factum of the Interested Party, COO, dated May 15, 2025, at para. 21.

³ Consolidated Responding Factum of the Interested Party, COO, dated May 15, 2025, at para. 34.

⁴ Consolidated Responding Factum of the Interested Party, COO, dated May 15, 2025, at para. 34, citing *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2024 CHRT 95](#), at para. 28.

⁵ Consolidated Responding Factum of the Interested Party, NAN, at paras. 23-24.

to consider elements relevant to addressing how the discrimination referred to in the Merits Decision is remedied.”⁶

9. This is in line with Canada’s March 17, 2025 letter to the Tribunal, in which it made clear that its position on the Joint Motion will be that “the Tribunal’s Analysis of the Ontario Final Agreement will inform the next steps on national reform,”⁷ and that “the work of final national reforms will benefit from and be informed by the Tribunal’s review of the Ontario final reforms.”⁸ While purporting to identify potential topics that “the Tribunal may provide advice [on] which will assist in the future,” Canada signals in its written submissions one such issue it can be expected to advance on the Joint Motion: “whether the unanimous consent of every First Nation is required before the parties can move forward with long-term reform.”⁹

10. There can be no doubt that Canada intends to use the Joint Motion to advance its position for what “the next steps on national reform” in the rest of Canada should be. In doing so, Canada, (along with COO and NAN) has chosen to expand the impact of the Joint Motion beyond just Ontario and implicate the interests of parties in other jurisdictions, including Our Children Our Way.

11. It did not need to be this way. There is nothing inherent in the Joint Motion that requires the Tribunal to address how the discrimination referred to in the Merits Decision is remedied outside of Ontario. As a result, COO and NAN’s joint Notice of Motion could have expressly

⁶ Submissions of Canada re: Motions for Interested Party Status in Ontario Final Agreement Motion, at para. 16.

⁷ Letter to the Canadian Human Rights Tribunal from the Department of Justice of the Government of Canada, March 17, 2025, at p. 2.

⁸ Letter to the Canadian Human Rights Tribunal from the Department of Justice of the Government of Canada, March 17, 2025, at p. 3.

⁹ Submissions of Canada re: Motions for Interested Party Status in Ontario Final Agreement Motion, at para. 16.

stated that the relief being sought only applied in Ontario, and that the resulting order should include a declaration that the approval of the Ontario Agreement is without prejudice to the remainder of the Proceeding.¹⁰ And Canada could have simply consented to the Joint Motion and remained silent on what impacts, if any, it may have on the remainder of the Proceeding.

12. But COO, NAN, and Canada chose not to tailor the Joint Motion in this way. They opted instead to advance their own interests by seeking to broaden the impact of the Joint Motion beyond Ontario’s borders, with Canada in particular using it to create a precedent for what long-term reform should look like in other provinces and territories.

13. COO, NAN, and Canada have tried to minimize the consequences of this choice by asserting that the specific nature of this impact on other jurisdictions is “speculative”, as it is not presently known what the Tribunal’s decision on the Joint Motion will be or what “elements relevant to addressing how the discrimination referred to in the Merit Decision is remedied” may be considered.¹¹ However, the fact remains that they all concede that the Joint Motion will have an impact going forward on the Tribunal’s consideration of what the appropriate remedies should be in this Proceeding outside of Ontario. If the outcome of the Joint Motion will have an impact

¹⁰ Notably, it is unclear whether COO and NAN have the standing to bring the Joint Motion. They are not the complainants in this matter, but are both interested parties whose participation in the Proceeding is on limited terms. As a result, it is not clear on what basis COO and NAN can purport to cleave off a portion of the complaint—which is national in scope and is not separated into regional parts—and “settle” it without the consent of the complainants. In any event, OCOW understands that COO and NAN’s standing is the subject of a parallel motion to determine whether COO and NAN should be granted leave to amend their joint Notice of Motion to grant them the authority to bring the Joint Motion in the first place.

¹¹ Submissions of the Attorney General of Canada re: Motions for Interested Party Status in Ontario Final Agreement Motion, at para. 16; Consolidated Responding Factum of the Interested Party, NAN, at para. 24; and Consolidated Responding Factum of the Interested Party, COO, dated May 15, 2025, at paras. 116-117.

on the Tribunal's future determinations regarding reform outside of Ontario, then it follows that it will specifically impact the interests of Our Children Our Way and its members.

14. As a result, contrary to COO's submissions, it is insufficient for Our Children Our Way to be granted leave to participate in this Proceeding as an interested party only once such reform is before the Tribunal. By then it will be too late—any limits placed on the available remedies by the Tribunal's decision on the Joint Motion will have already been made, and Our Children Our Way will be unable to challenge those previous findings except by way of collateral attack.

15. In this respect, it is important to recall that Our Children Our Way is seeking leave to participate as an interested party in the Proceeding generally, and not simply in relation to the Joint Motion. It is precisely because COO, NAN, and Canada have attempted to resolve what had been a national complaint on a regional basis that it became necessary for Our Children Our Way to bring such a motion. If Our Children Our Way is granted leave to participate in the remainder of the Proceeding as an interested party, that participation should not be undercut before it even begins by denying Our Children Our Way's request to participate in the Joint Motion, where the limits on the available remedies will begin to be set.

16. Our Children Our Way's motion for leave to be added as an interested party should therefore be granted.

PART III - ORDER SOUGHT

17. Our Children Our Way respectfully requests that its motion be granted and that an order be made allowing it to participate in the Proceeding by adducing evidence through its witnesses, cross-examining the witnesses of other parties, and making written and oral submissions in accordance with this Tribunal's direction.

ALL OF WHICH IS RESPECTUFLLY SUBMITTED ON THIS 22nd DAY OF MAY 2025



Dan Goudge / Alexandra Heine

STOCKWOODS LLP

Barristers

TD North Tower

77 King Street West, Suite 4130

Toronto, ON M5K 1H1

Tel: (416) 593-7200

Fax: (416) 593-9345

Dan Goudge

Email: dang@stockwoods.ca

Alexandra Heine

Email: alexandrah@stockwoods.ca

**Counsel for the Proposed Interested Party,
Our Children Our Way**