

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 – REPLY SUBMISSIONS
TREATY 8 FIRST NATIONS OF ALBERTA**

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

COCHRANE SINCLAIR LLP

Swan Lake First Nation
115-300 Alpine Way
Headingley, MB R4H 0E1

HAROLD COCHRANE, K.C. / ALYSSA CLOUTIER

Ph. No.: (204) 594-6688

Email: hcochrane@cochranesinclair.ca / acloutier@cochranesinclair.ca

A. Introduction

1. The Attorney General of Canada ("**Canada**"), Chiefs of Ontario ("**COO**"), and Nishnawbe Aski Nation ("**NAN**"), oppose the motion for interested party status brought by Treaty 8 First Nations of Alberta ("**T8FNA**"), and all other prospective interested parties located outside of Ontario. In doing so, they argue that the outcome of the joint approval motion on the Ontario Final Agreement ("**OFA**") will have no impact on T8FNA, that the perspective of T8FNA is covered by the parties to the proceeding, and that the addition of T8FNA as an interested party will cause significant delays to the proceeding.

2. Respectfully, the addition of T8FNA as an interested party is justified in the circumstances, is in accordance with the law on the addition of interested parties before the Tribunal, and will not cause any undue delay to the proceeding. The outcome of the joint approval motion stands to have significant impacts on the interests of the 24 member First Nations that T8FNA advocates on behalf of, and those interests ought to be before the Tribunal for consideration when deciding the issues on the joint approval motion.

3. T8FNA provides the following submissions in reply to the points raised by Canada, COO and NAN in opposition to the within motion.

B. The Outcome of the Joint Motion Will Have Impacts on Long-Term Reform Outside of Ontario

4. In opposing T8FNA's motion for interested party status, Canada, COO and NAN state that the outcome of the joint approval motion will have no impacts outside of Ontario; however, this is simply not the case. The parties refer to the concerns of T8FNA, and the other prospective interested parties, respecting the impacts of the outcome of the motion

as merely “speculative” and “premature” at this stage.¹ These assertions seek to ignore the contextual reality surrounding the OFA and the motion before the Tribunal, which cannot be done.

5. The parties in opposition rely heavily upon the OFA being a region-specific agreement with no technical or operational application outside of the Province of Ontario. This reliance, however, misstates the position of T8FNA on this motion. T8FNA is not asserting that the OFA itself will have operational impacts on Treaty 8 First Nations. Rather, the concern is the extent to which the OFA will inform long-term reform of the FNCFS program for Treaty 8 First Nations, which is a matter that T8FNA has a direct interest in.

6. This concern is neither speculative nor premature at this stage. Canada openly stated, in its March 17, 2025, letter to the Tribunal, that the outcome of this 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 outside of Ontario.” Respectfully, Canada’s intention respecting the use of the OFA moving forward with the long-term reform of the FNCFS program outside of Ontario is clear – the OFA will be the framework used by Canada for long-term reform going forward.

7. Indeed, NAN acknowledges in its submissions that the Tribunal’s orders on the joint approval motion will have precedential value going forward.² This precedential value,

¹ Submissions of the Attorney General of Canada re: Motions for Interested Party Status in Ontario Final Agreement Motion at paras 3, 14, 16 and 18 [**Canada’s Submissions**]; Consolidated Responding Factum of the Interested Party, Chiefs of Ontario at paras 3, 57 and 202 [**COO’s Submissions**].

² Consolidated Responding Factum of the Interested Party, Nishnawbe Aski Nation at para 23 [**NAN’s Submissions**].

T8FNA submits, will have a direct impact on the interests of Treaty 8 First Nations in Alberta in any future negotiations respecting long-term reform of the FNCFS program.

8. Given the precedential value that the Tribunal's decision on the joint approval motion will have, it is imperative that the Tribunal have available to it the unique and diverse perspectives and expertise that T8FNA is able to bring on behalf of its member First Nations. This expertise will help inform the Tribunal's determinations on the joint approval motion when considering the broader context in which the OFA exists, which T8FNA respectfully submits cannot be ignored on this motion.

C. AFN and the Caring Society Do Not Represent the Interests of Treaty 8 First Nations in Alberta

9. As set out in detail in the written submissions in support of its motion, the unique perspective that T8FNA will bring to the Tribunal is not currently before the Tribunal and, without the addition of T8FNA as an interested party, will not be before the Tribunal at the hearing of the joint approval motion. This perspective, respectfully, is relevant to the issues the Tribunal is tasked with deciding on the joint motion and cannot be provided by the parties to the proceeding.

10. In opposing T8FNA's motion, COO suggests that any perspective to be brought by T8FNA at the hearing of the joint approval motion can be brought by the Assembly of First Nations ("**AFN**"), who is a party to the proceeding.³ This, however, completely disregards the fact that the Treaty 8 First Nations of Alberta are not members of AFN, and accordingly, AFN does not speak for or on behalf of these Nations. A point which COO

³ COO's Submissions at para 208.

goes on to acknowledge later in its submissions, stating that “Alberta has been without representation on the AFN since 2021”.⁴

11. The inability for AFN to represent the interests of Treaty 8 First Nations in Alberta has been the subject of many motions and resolutions, dating back to at least 2019, which have been communicated to both the AFN and Canada on many occasions. Attached to this Brief at Appendix “A” is one such example of a communication sent by T8FNA to AFN in 2019 terminating the *Protocol Agreement* previously in existence between the two parties.

12. As a result, the assertion that the AFN is able to represent the interests of Treaty 8 First Nations and provide their perspectives to the Tribunal is clearly contrary to the sovereign decision made by Treaty 8 Chiefs in that regard. T8FNA is the only entity with the authority to represent and advocate on behalf of its 24 autonomous member First Nations, who are the rights-holders, and any assertion to the contrary should be ignored.

13. Similarly, T8FNA is also not represented by the Caring Society, nor does it expect the Caring Society would purport to represent the rights-holders that T8FNA advocates on behalf of in this proceeding.

D. No Undue Delay to the Proceeding

14. The addition of T8FNA as an interested party, in accordance with the relief sought in T8FNA’s motion for interested party status, will not cause any undue delay in the hearing of the joint approval motion.

⁴ COO’s Submissions at para 194.

15. T8FNA has proposed reasonable and limited terms of participation in its motion for interested party status. The Tribunal has significant discretion when it comes to limiting the participation of interested parties to the proceeding, which it has exercised in past instances in this case and is capable of doing again to ensure that any delay to the proceeding is minimal.

16. Further, in light of the historical circumstances surrounding the subject matter of this case, T8FNA respectfully submits that any delay that may be caused as a result of their addition as an interested party is outweighed by the importance of the Tribunal having all relevant perspectives and expertise before it when determining the issues on the joint approval motion.

E. Conclusion

17. The parties opposing the interested party motion of T8FNA, and the prospective interested parties located outside of Ontario, ask the Tribunal to make a determination on the joint approval motion in a vacuum, without considering the important contextual circumstances surrounding long-term reform of the FNCFS program and the impacts of the decision on Nations across the country. Canada asks the Tribunal to do this despite expressly stating that the OFA will inform Canada's conduct outside of Ontario.

18. Given the stake of the interests at issue, this approach should be rejected in favour of one that allows for the important expertise and perspectives of all those that stand to be impacted by the outcome to inform the Tribunal's determination of the issues.

19. T8FNA respectfully submits that the interests of the 24 member First Nations it represents stand to be impacted by the outcome of the joint approval motion, and further, that without the addition of T8FNA as an interested party on this motion, the perspectives and knowledge that T8FNA will bring will not otherwise be before the Tribunal. Accordingly, T8FNA urges the Tribunal to grant its motion for interested party status.

DATED at the City of Winnipeg, in the Province of Manitoba, this 22nd day of May, 2025.



COCHRANE SINCLAIR LLP

Swan Lake First Nation
115-300 Alpine Way
Headingley, MB R4H 0E1

HAROLD COCHRANE, K.C.

hcochrane@cochranesinclair.ca

ALYSSA CLOUTIER

acloutier@cochranesinclair.ca

Appendix “A”



Treaty 8 First Nations of Alberta

To Protect, Promote, Bring to Life, Implement, and Sustain the True Spirit and Intent of Treaty No. 8 as long as the sun shines, the grass grows, and the waters flow.

c/o Santa Fe Plaza
18178 – 102 Avenue
Edmonton, Alberta T5S 1S7
Telephone: (780) 444-9366 Fax: (780) 484-1465
www.treaty8.ca

May 8, 2019

National Chief Perry Bellegarde
Assembly of First Nations
1600, 55 Metcalfe Street
Ottawa, ON K1P 6L5

RE: *Protocol Agreement* between Treaty 8 First Nations of Alberta and Assembly of First Nations

Dear National Chief,

On March 13, 2019, the Chiefs of the Treaty 8 First Nations of Alberta passed a motion to immediately terminate the *Protocol Agreement* that was agreed to on April 13, 1998, between the Treaty 8 First Nations of Alberta and the Assembly of First Nations (AFN).

The Sovereign Chiefs of Treaty 8 (Alberta) never delegated their authority and jurisdiction to the AFN. The jurisdiction of our land, nations, people, governance and resources belongs to us at all times. We are the rights holders.

Further, we never agreed to the current decision-making process currently used between the AFN and the Government of Canada. The nation to nation relationship is between our Treaty No. 8 First Nations and the Federal Government. It is not between the Assembly of First Nations and the Federal Government.

In saying that, the Assembly of First Nations should not be claiming, at any time, to represent or be acting on behalf of all First Nations.

The Treaty 8 First Nations in Alberta represent themselves at any and all times.

We expect any information regarding our Treaty 8 (Alberta) Nations, peoples or communities to be directed to our office.

Regards,

Arthur Noskey
Grand Chief
Treaty 8 First Nations of Alberta

cc: Treaty 8 Chiefs [Alberta]

Head Office:
Kee Tas Kee Now Tribal Council
P.O. Box 360
Red Earth Creek, Alberta T0G 1X0