Court File No.: T1340/7008

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 Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION

Interested Parties

- and -

NEQOTKUK (TOBIQUE) FIRST NATION OF THE WOLASTOQEY NATION and UGPI'GANIJG (EEL RIVER BAR) FIRST NATION and MI'GMAQ CHILD AND FAMILY SERVICES OF NEW BRUNSWICK INC. and FEDERATION OF SOVEREIGN INDIGENOUS NATIONS and ASSEMBLY OF MANITOBA CHIEFS and COUNCIL OF YUKON FIRST NATIONS and OUR CHILDREN OUR WAY and CONFEDERACY OF TREATY SIX FIRST NATIONS and TREATY 7 FIRST NATIONS CHIEFS ASSOCIATION and TREATY 8 FIRST NATIONS OF ALBERTA

Prospective Interested Parties

CONSOLIDATED RESPONDING FACTUM OF THE INTERESTED PARTY, CHIEFS OF ONTARIO

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PART I - STATEMENT OF FACTS

A. Overview

1. Nearly 20 years after the commencement of these proceedings, there is an opportunity to bring about long-term reform of the First Nations Child and Family Services Program (the "FNCFS program") in Ontario, which is essential to the sustained well-being and security of First Nations children, families, and communities within the province. This long-awaited opportunity is at risk of being derailed by a seemingly coordinated and unprecedented number of prospective interested parties based outside of Ontario who seek to broaden the scope of the underlying joint motion to consider FNCFS reform outside of Ontario. The OFA approval motion is not the forum to consider reform of the FNCFS program outside of Ontario.

2. On March 7, 2025, Chiefs of Ontario ("COO") and Nishnawbe Aski Nation ("NAN") brought a joint motion for approval of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "OFA") and Trilateral Agreement in Respect of Reforming the 1965 Agreement (the "Trilateral Agreement") (the "OFA approval motion"). The OFA and the Trilateral Agreement are the collective expression of the self-governance and self-determination rights of the 133 First Nations in Ontario through COO and NAN. If approved, both of these agreements would only apply to First Nations and FNCFS Agencies within Ontario and would have significant positive impact on First Nations children, youth, and their families in Ontario.

3. Ten prospective interested parties based outside of Ontario seek an order granting them interested party status within the OFA approval motion. The admission of 10 new interested parties at this late stage of the proceedings—all of whom are based outside of Ontario, most of whom seek extensive participation rights—risks unacceptably delaying the OFA approval motion. The prospective interested parties ask the Canadian Human Rights Tribunal (the "Tribunal") to permit them to bring forward concerns about speculative impacts of the OFA outside of Ontario which have not (and may never) come to fruition.

4. The outcome of the OFA approval motion will not have an impact on the 10 prospective interested parties' interests. Their regional expertise in the delivery of child and family services from outside of Ontario will not assist the Tribunal in its determination of the issues within the OFA approval motion, which are confined to whether the OFA meets the Tribunal's orders to cease discrimination in Ontario, prevent its recurrence in Ontario, and reform The Memorandum of Agreement Respecting Welfare Programs for Indians (the "1965 Agreement").

5. Moreover, the perspectives of these prospective interested parties are already meaningfully represented by the existing parties to the proceedings, namely the Assembly of First Nations ("AFN") and the First Nations Child and Family Caring Society of Canada (the "Caring Society").

6. None of the 10 prospective interested parties should be granted interested party status within the OFA approval motion. In the alternative, any additional interested parties should be granted only extremely limited participation rights, subject to the conditions proposed in this factum, to minimize the delay caused by the addition of an interested party.

7. COO's resistance to the interested party applications should not be taken as COO's rejection of the crucial interests the proposed interested parties are trying to represent. Rather, COO supports the efforts of First Nations leadership outside Ontario to reach an agreement that addresses their unique needs and aspirations. It is not for COO to determine what happens in other regions, and the inverse is also true: other regions should not interfere with COO's aspirations nor the will of the Ontario Chiefs-in-Assembly. However, raising issues about long-term reform outside of Ontario in the OFA approval motion is misplaced, not helpful to the Tribunal, and an impermissible attempt to expand the scope of the motion.

8. Like First Nations children across Canada, the First Nations children, families, and communities within Ontario have waited too long for long-term reform. It is not in the best interests of these children to make them wait even longer. The OFA approval motion must be allowed to proceed without delay.

B. Background

9. In 2007, the Caring Society and the AFN filed a human rights complaint (the "Complaint") with the Canadian Human Rights Commission (the "Commission"). They alleged that the Department of Indian and Northern Affairs Canada ("Canada") was violating the Canadian Human Rights Act[1] (the "CHRA") by discriminating against First Nations children and families on-reserve through the underfunding of child and family services and the failure to implement Jordan's Principle.[2]

10. On January 26, 2016, the Tribunal found that Canada's underfunding and implementation of the FNCFS Program and their narrow approach for eligibility for Jordan's Principle resulted in systemic discrimination (the "Merit Decision").[3] The Tribunal found that Canada violated s. 5 of the CHRA's prohibition against discrimination on the basis of race and nation or ethnic origin.[4] The Tribunal ordered Canada to cease its discriminatory practices, implement actions to remedy and prevent its recurrence, and reform the FNCFS program and the 1965 Agreement.[5]

11. On July 11, 2024, COO, NAN, the AFN, and Canada announced a draft Final Agreement (the "national agreement").[6]

12. On October 9 and 10, 2024, respectively, NAN Chiefs-in-Assembly and Ontario Chiefs-in-Assembly ratified the national agreement at their Special Chiefs Assemblies.[7]

13. On October 17, 2024, at an AFN Special Chiefs Assembly held in Calgary, the national agreement was put to a vote by the First Nations-in-Assembly and was rejected.[8]

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[1] *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*].
[2] *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 2 at para 6 [Merit Decision].
[3] Merit Decision.
[4] Merit Decision at paras 456-459.
[5] Merit Decision at para 481.
[6] Affidavit of Grand Chief Joel Abram, affirmed 6 March 2025 at para 76 [GC Abram Affidavit, 6 Mar 2025].
[7] GC Abram Affidavit, 6 Mar 2025 at para 91.
[8] GC Abram Affidavit, 6 Mar 2025 at para 92.

14. First Nations in Ontario remained committed to reforming the FNCFS Program in Ontario. In November 2024, at COO's Annual General Assembly, the Ontario Chiefs-in-Assembly mandated COO to pursue an Ontario-specific agreement.[9]

15. On February 10, 2025, after five weeks of negotiations, COO, NAN, and Canada reached a provisional OFA and a provisional Trilateral Agreement.[10]

16. On February 25 and 26, 2025, the provisional OFA and the provisional Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly, respectively.[11]

17. On February 26, 2025, the Ontario Chiefs-in-Assembly passed Resolution #25/02S affirming that the Chiefs-in-Assembly had expressed their will to move ahead with reforms outlined in the OFA and the Trilateral Agreement.[12] Resolution #25/02S also called on the other parties in the Tribunal proceedings to refrain from interfering with the approval or implementation of the OFA.

18. On March 7, 2025, COO and NAN jointly brought the OFA approval motion.

19. On April 15, 2025, the Tribunal received 11 motions for interested party status in the OFA approval motion. This factum will address the submissions of the 10 non-Ontario applicants:

    (a) Neqotkuk (Tobique) First Nation ("Neqotkuk First Nation")

    (b) Ugpi'ganjig (Eel River Bar) First Nation ("Ugpi'ganjig First Nation")

    (c) Mi'gmaq Child and Family Services of New Brunswick Inc ("MCFSNB")

    (d) Our Children Our Way ("OCOW")

    (e) Federation of Sovereign Indigenous Nations ("FSIN")

[9] GC Abram Affidavit, 6 Mar 2025 at paras 93-94.
[10] GC Abram Affidavit, 6 Mar 2025 at para 99.
[11] GC Abram Affidavit, 6 Mar 2025 at para 106.
[12] GC Abram Affidavit, 6 Mar 2025 at Exhibit LL.

(f) Council of Yukon First Nations ("CYFN")

(g) Assembly of Manitoba Chiefs ("AMC")

(h) Confederacy of Treaty Six First Nations ("CT6FN")

(i) Treaty 8 First Nations of Alberta ("T8FNA")

(j) Treaty 7 First Nations Chiefs Association ("T7FNCA")

PART II - ISSUES

20. The issue on these motions is whether any of the prospective interested parties should be admitted into the OFA approval motion as an interested party, and the terms of participation if any prospective interested party is added.

PART III - SUBMISSIONS

21. The 10 non-Ontario moving parties should not be granted interested party status. The outcome of the OFA approval motion will not have an impact on the prospective interested parties' interests. Their regional expertise in the delivery of FNCFS services from outside of Ontario will not assist the Tribunal in its determination of the issues within the OFA approval motion, and their participation will not add to the legal positions of the parties. The addition of any interested parties risks delaying the OFA approval motion, contrary to the Tribunal's responsibility pursuant to s. 48.9(1) of the CHRA to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[13]

22. In the alternative, if the Tribunal grants any of the moving parties interested party status, COO submits it should do so on a limited basis subject to the following conditions:

(a) The interested party's status and participation will be limited solely to the OFA approval motion.

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[13] *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 26 at para 32 [2022 CHRT 26], citing *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 [2016 CHRT 11] and *CHRA*, s 48.9(1).

(b) The interested party will not be permitted to participate in case management or case conferences.

(c) The interested party will not be permitted to participate in any mediation, negotiations, settlement discussions, dispute resolution, or administration processes related to the OFA approval motion.

(d) The interested party will not be permitted to seek orders.

(e) The interested party will not be permitted to adduce any further evidence, raise new issues, or otherwise supplement the record of the parties. The interested party will not be permitted to cross-examine on the evidence. The interested party must take the evidentiary record as it is.

(f) The interested party will not be permitted to make oral submissions.

(g) The interested party may file written submissions of not more than 10 pages addressing the unique perspective of the interested party and must not repeat the positions of other parties. The interested party must work collaboratively with any other additional interested parties added as a result of this motion or as a result of CSSSPNQL-AFNQL's motion in advance of filing their submissions to avoid duplication of submissions. Interested party submissions should not re-open matters already determined by the Tribunal.

(h) The interested party must abide by the timelines set out by the Tribunal and will not delay the proceedings, including because of party or counsel availability. Any delay will be deemed a renunciation by the interested party to participate in the proceedings.

(i) The current parties and interested parties will be provided an opportunity to respond to the interested party's submissions on the OFA approval motion.[14]

[14] These conditions are similar to those imposed by the Tribunal on the Congress of Aboriginal Peoples and the BC First Nations Leadership Council: see *First Nations Child & Family Caring Society of Canada et al v Attorney General*

A. The Test for Interested Party Status

23. The Tribunal's determination of whether to grant interested party status requires a "flexible and holistic approach" on a case-by-case basis, in light of the specific circumstances of the proceedings and the issues being considered.[15] The 10 prospective interested parties have the onus of demonstrating their respective expertise will be of assistance in the determination of the issues.[16]

24. In determining the request for interested party status, the Tribunal may consider, amongst other factors, if:

    (a) The proceeding will have an impact on the prospective interested party's interests; and

    (b) The prospective interested party can provide assistance to the Tribunal in determining the issues before it.[17]

25. In determining whether the prospective interested party can provide assistance to the Tribunal, the Tribunal will consider the prospective interested party's expertise and whether its involvement will add to the legal positions of the parties.[18] The assistance should add a different perspective to the positions taken by the parties and further the Tribunal's determination of the matter.[19]

26. In analyzing whether a prospective interested party will "further the Tribunal's determination of the matter" the Tribunal considers the legal and factual questions it must determine, the adequacy 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

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of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2019 CHRT 11 and *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 [2024 CHRT 95].

[15] 2022 CHRT 26 at paras 31-32, citing 2016 CHRT 11 at para 3.

[16] 2022 CHRT 26 at para 29.

[17] 2022 CHRT 26 at paras 30, 32.

[18] 2022 CHRT 26 at para 30.

[19] 2016 CHRT 11 at para 3.

represent.[20] The Tribunal will also consider the nature of the issue and the timing in which an interested party status seeks to intervene.[21]

27. The extent of an interested party's participation must also take into account the Tribunal's responsibility pursuant to s. 48.9(1) of the CHRA to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[22]

i. The prospective interested parties' proposed submissions are duplicative

28. In taking a flexible and holistic approach to these motions, the Tribunal should consider both the unusually high number of prospective interested parties and the duplicative nature of their proposed submissions. The duplicative nature of the proposed submissions suggests coordination amongst the prospective interested parties and undercuts any argument the submissions proposed advance a unique perspective.

29. Most of the interested party submissions state that the prospective party seeks to intervene in the OFA approval motion to provide information to the Tribunal about a proposal for long-term reform outside Ontario that does not exist. This is not useful to the question in the OFA approval motion. The prospective interested parties are attempting to expand the scope of the motion to introduce an issue into the OFA approval motion which is not before the Tribunal and then argue that they have an interest in the issue they seek to introduce. This is not an appropriate reason to grant interested party status and risks opening this proceeding to parties seeking determination of unlimited numbers of issues that have not crystallized and are not before the Tribunal for determination.

30. These duplicative proposed submissions—which either rely on the incorrect assumption the OFA approval motion will have effect outside of Ontario or impermissibly seek to expand the scope of the OFA approval motion— include:

(a) Misapprehending Canada's letter: FSIN, CYFN and OCOW claim Canada's letter to the Tribunal dated March 17, 2025 is 'evidence' the OFA will be applied outside of

[20] 2022 CHRT 26 at para 37.
[21] 2022 CHRT 26 at para 37.
[22] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA*, s 48.9(1).

Ontario. These arguments demonstrate a misapprehension of Canada's letter, as described below at paragraph 33.

(b) Misreading Canada's affidavit: FSIN and CYFN both allege that statements from Canada's affidavit from Duncan Farthing-Nichol affirmed March 7, 2025 are 'evidence' the OFA will be applied outside of Ontario.[23] These arguments demonstrate a misreading of Canada's affidavit, as described below at paragraphs 131(c) and 149(c).

(c) Misconstruing the OFA: FSIN and CYFN both argue paragraph 3 of the OFA is 'evidence' the OFA will be applied outside of Ontario. These arguments misconstrue the OFA, as described below at paragraph 35.

(d) OFA is similar to the rejected national agreement: FSIN, CYFN, CT6FN, and T8FNA suggest that the similarities between the OFA and the rejected national agreement mean the OFA will be applied outside of Ontario. The fact that many of the mechanisms in the OFA were originally developed for the national agreement does not mean the joint motion seeks relief outside of Ontario. As is abundantly clear, there is no national agreement under consideration. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

(e) Matters already determined by the Tribunal: some of the proposed interested parties advance perspectives that have already been identified by the Tribunal and are foundational to its jurisprudence on this matter, including that the one-size-fits-all solution is not an appropriate approach to remedy discrimination in this case.[24] The addition of an interested party is not necessary to relitigate an issue that has already been decided by the Tribunal (see paragraph 4446 below).

(f) Use of regional evidence from outside of Ontario: FSIN and CYFN suggest that Canada's, COO's, and NAN's intention to rely on evidence from regions outside of Ontario

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[23] Affidavit of Duncan Farthing-Nichol, affirmed 7 March 2025 at para 5 [Farthing-Nichol Affidavit, 7 Mar 2025].
[24] 2022 CHRT 26 at para 55; *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 7 at para 24 [2020 CHRT 7]; *First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 at para 67 [2018 CHRT 4].

mean the OFA will be applied outside of Ontario. Canada's, COO's, and NAN's intention to rely on evidence arising from studies conducted both within and outside of Ontario does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

(g) Canada's failure to renew national negotiations: FSIN and CYFN raise concerns about Canada's alleged failure to consult or negotiate regarding national level reform. These concerns are not before the Tribunal in the OFA approval motion and are properly addressed in the motion filed by the Caring Society on January 14, 2025 (the "Consultation Motion") currently before the Tribunal.

(h) Matters outside the scope of the Complaint: some of the prospective interested parties raise concerns about Canada's conduct in negotiations outside of the scope of the Complaint underlying these proceedings, such as coordination agreement negotiations. These concerns are wholly unrelated to the scope of the OFA approval motion and to the long-term reform of the FNCFS program in Ontario.

ii. The OFA has no impact on any of the prospective interested party's interests

31. The determinative question in the OFA approval motion is whether the OFA remedies the systemic discrimination found by the Tribunal with respect to First Nations children in Ontario. It is an agreement that has been executed by COO and NAN and ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly. The OFA is the collective expression of the self-governance and self-determination rights of the First Nations in Ontario through COO and NAN.

32. The prospective interested parties' motions argue their interests are at stake in the OFA approval motion. They are not. All of the prospective interested parties are based outside of Ontario and, as such, the OFA will not apply to them. The prospective interested parties largely seek to make submissions about whether the Tribunal's decision about whether the OFA meets the Tribunal's past orders will impact future negotiations and long-term reform in the rest of the country. These issues are outside of the scope of the OFA approval motion. The Tribunal has been clear that interested party status "should not be conferred to give a

third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[25]

33. FSIN, CYFN, and OCOW misapprehend Canada's letter (see paragraph 3030(a)), claiming it states the approval of the OFA has wide-ranging implications outside of Ontario. On that issue, the letter stated:

(a) "…the outcome of the [OFA approval 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".[26]

(b) "It is Canada's perspective that the Tribunal's analysis of the Ontario Final Agreement will inform the next steps on national reform".[27]

(c) "It is Canada's perspective that the work of final national reforms will benefit from and be informed by the Tribunal's review of the Ontario final reforms".[28]

34. These statements do not state that Canada intends to impose the OFA outside of Ontario. Rather, Canada acknowledges that the Tribunal's analysis of whether the OFA meets the Tribunal's orders will inevitably have precedential value for future national reform. The Tribunal's reasons on 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".[29] But that precedential value does not mean the prospective interested parties' have a direct interest in the OFA approval motion sufficient to ground interested party status.

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[25] *Attaran v Immigration*, 2017 CHRT 16 at para 16 [*Attaran*].
[26] Canada Letter to Canadian Human Rights Tribunal dated 17 March 2025 at page 2 [Canada Letter to CHRT, 17 Mar 2025].
[27] Canada Letter to CHRT, 17 Mar 2025 at page 2.
[28] Canada Letter to CHRT, 17 Mar 2025 at page 3.
[29] 2024 CHRT 95 at para 28, citing 2022 CHRT 26 at para 38: the Tribunal's comments were in the context of a motion to grant interested party status, but the principle remains the same.

35. FSIN and CYFN both misconstrue the OFA (see paragraph 30(c)), pointing to paragraph 3 of the OFA to demonstrate the agreement has potential to apply outside of Ontario.[30] However, paragraph 3 of the OFA stipulates that the OFA is confined to Ontario:

> Unless the context necessitates a different interpretation, all terms of this Final Agreement are to be interpreted as applying only in Ontario and only to First Nations and FNCFS Service Providers in Ontario.[31]

The context may necessitate the OFA applying outside of Ontario if a child or youth who is a member of and ordinarily resident on a First Nation in Ontario was located outside of Ontario, but entitled to services under the FNCFS program, which could include community-based prevention, First Nations Representative Services or repatriation services.[32]

36. Further, the intention of the OFA to reform the FNCFS Program in Ontario is reflected in the Preamble of the agreement[33] and the stated purpose of the OFA, which reads:

> The Parties enter into this Final Agreement to reflect their agreement to long-term reform of the FNCFS Program in Ontario, which is intended to eliminate the discrimination in Ontario identified by the Tribunal in *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 2 and all subsequent rulings by the Tribunal and to prevent its recurrence…[34]

37. The OFA approval motion only seeks relief related to the FNCFS program as it applies to First Nations children and family ordinarily on reserve in Ontario:

> 1. An order that the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "Ontario Final Agreement"), executed by Chiefs of Ontario ("COO"), Nishnawbe Aski Nation ("NAN"), and His Majesty the King in Right of Canada on

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[30] Federation of Sovereign Indigenous Nations, "Written Submissions", 7 March 2025 at para 20e [FSIN, Written Submissions]; Council of Yukon First Nations, "Written Submissions of the Proposed Interested Party Council for Yukon First Nations", 7 March 2025 at para 12e [CYFN, Written Submissions].
[31] Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario dated 26 February 2025 at para 3 [OFA] (emphasis added).
[32] See, for example, OFA at para 29c.
[33] OFA at Preamble.
[34] OFA at para 1.

> February 26, 2025, be and is hereby approved by the Canadian Human Rights Tribunal (the "Tribunal"), without condition.
>
> 2. An order that the Ontario Final Agreement and the Trilateral Agreement Respecting Reform of 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 First Nations Child and Family Services ("FNCFS") Program in Ontario and the Memorandum of Agreement Respecting Welfare Programs for Indians (the "1965 Agreement").
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> 3. An order ending the Tribunal's jurisdiction over the elements of the Complaint and all associated remedial proceedings with respect to Ontario, save for jurisdiction over those aspects of the within Complaint and associated proceedings related to the interpretation and implementation of Jordan's Principle.[35]

38. Any suggestion the OFA could apply to members of First Nations outside of Ontario based on paragraph 3 is contrary to the text of the provision and the agreement as a whole, and contrary to the OFA approval motion, which only address long-term reform of the FNCFS program in Ontario.

39. There can be no question that the OFA model is not suitable and could not apply outside Ontario: the OFA is specifically designed to work in Ontario in the context of the 1965 Agreement, which is a unique situation within Canada. Therefore, the non-existent factual situation that the prospective interested parties seek to introduce and have the Tribunal opine on is one that could never come to pass; the OFA model and funding could not be applied in a context outside the 1965 Agreement. It is of no use to any parties or prospective interested parties to opine on the suitability of a non-existent model for program reform. A decision of the Tribunal on the subject of the OFA's suitability outside Ontario would be of no value to the prospective interested parties because it would be based on a program reform model that does not exist and that would not have sufficient similarity with the OFA to draw a useful conclusion because of the operation of the 1965 Agreement.

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[35] Chiefs of Ontario and Nishnawbe Aski Nation, "Amended Joint Notice of Motion", 7 May 2025 at paras 1-3 (emphasis added).

40. An appropriate time to admit new perspectives about long-term reform outside of Ontario is when the Tribunal is considering actual existing proposed reforms outside of Ontario. As there being none proposed at this time, it is not an appropriate time to allow such perspectives.

iii. The prospective interested parties cannot provide assistance to the Tribunal

41. In the interested party motions currently before the Tribunal, the moving parties include agencies, agency advocates, individual First Nations, and Treaty and regional advocacy bodies. These groups have expertise in relation to the regional agencies, agency advocates, and First Nations they represent. However, none profess to have expertise in Ontario.

42. The prospective interested parties have not discharged their onus of demonstrating their respective regional expertise in the delivery of FNCFS services will be of assistance to the Tribunal in the determination of the issues in the OFA approval motion.[36] All of the prospective interested parties seek to broaden the scope of the joint motion to raise issues about whether the Tribunal's decision regarding the OFA should be permitted to impact future negotiations and long-term reform in the regions they represent, which is outside of the scope of the joint motion.

43. The prospective interested parties have not articulated how their regional expertise in the delivery of FNCFS services will assist the Tribunal in determining whether the OFA meets its orders with respect to long-term reform of the FNCFS program in Ontario. It is not disputed that every region has its own unique needs and considerations. However, regional expertise in the delivery of FNCFS services based outside of Ontario is not helpful to the Tribunal's determination of whether the OFA meets its orders with respect to long-term reform of the FNCFS program in Ontario. It may be useful in determining whether a future, yet-to-exist reformed program is suitable for their regions, however this is not the question at hand in the OFA approval motion.

44. The Tribunal has previously held in these proceedings that interested party status will not be granted if it does not add "significantly" to the legal positions of the parties representing

[36] 2022 CHRT 26 at para 29.

a similar viewpoint.[37] In other proceedings, the Tribunal stated a successful applicant for interested party status "must satisfy the Tribunal that they do possess some expertise or perspective that is not already available or before the Tribunal…Participation should be limited to parties who can demonstrably add to the deliberations of the Tribunal".[38]

45. The interests of the prospective interested parties can reasonably be represented by the AFN or the Caring Society, through their own mandates and their historical positions and role as representatives in these proceedings. Throughout these proceedings, the Tribunal has relied on the AFN "for a broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First Nations in Canada".[39] Additionally, the Tribunal has relied on the Caring Society to represent the interests of First Nations children, youth and families, along with the agencies that serve them.[40] The Caring Society can be expected to address many of the concerns raised by the interested parties; for instance, in other materials, the Caring Society has already stated the national agreement would not have eliminated the discrimination found by the Tribunal and prevent its recurrence, so it can be expected to advance the position the OFA (which relies on similar mechanisms as the national agreement) would not be appropriate in other regions (which is not at issue in the OFA approval motion anyways).[41]

46. Further, many of the parties propose to relitigate matters already determined by the Tribunal (see paragraph 30(e)), including that the one-size-fits-all solution is not an appropriate approach to remedy discrimination in this case.[42] The addition of the prospective interested parties is not necessary to bring these perspectives and legal positions before the Tribunal; it will only serve to delay the OFA approval motion.

47. Finally, the issues raised are more appropriately considered at a future time, when there is an outside-of-Ontario reformed program for consideration and a decision can be made on a full record. The issues may also be better dealt with and canvassed in the Caring Society's

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[37] 2024 CHRT 95 at para 31.
[38] *Attaran* at para 16, citing 2016 CHRT 11 at paras 3-4, 10-11.
[39] 2022 CHRT 26 at para 48 and 2016 CHRT 11 at para 16.
[40] 2016 CHRT 11 at para 16.
[41] Caring Society, "Factum of Caring Society-FNCFS-17-MAR-2025", 17 March 2025 at paras 9-10, 37-41; Caring Society, "CS Letter to Panel (Long Term Reform)", 24 March 2025 at pages 1, 8.
[42] 2022 CHRT 26 at para 55; 2020 CHRT 7 at para 24; 2018 CHRT 4 at para 67.

Consultation Motion and its letter to the Tribunal regarding long-term reform dated March 24, 2025.

iv. Any additional interested parties will disrupt the OFA approval motion

48. Granting interested party status to the prospective interested parties would cause significant delays to the time-sensitive OFA approval motion that outweigh the benefit of their unique regional perspectives.

49. There are two primary concerns regarding the issue of delay in the OFA approval motion. First, and most critically, the motion must proceed without further delay as it addresses the mass removal of children, a circumstance the Tribunal itself has recognized as an urgent matter requiring prompt action.[43] The best interests of First Nations children and families in Ontario must no longer be compromised by inaction. There is an urgent need to prioritize ending the devasting practice of removing children from their families and communities.

50. Second, there is a risk of real prejudice to the First Nations, children and families that COO and NAN represent should the OFA not be approved by the Tribunal and come into effect by March 31, 2026. If the OFA does not come into effect by March 31, 2026, the funding amount allocated for fiscal year 2025–26 will be forfeited and the overall funding commitment for the Term of the OFA will be consequently reduced.[44] Accordingly, services to children and their families to prevent them from going into care, services to represent the First Nations in the child welfare system through the First Nations Representative Services program, and repatriation and support of youth leaving care will all be further delayed or denied.

51. These motions for interested party status have also come at a late stage of the proceedings: nearly 20 years after the commencement of proceedings and nine years into the remedial phase, after an agreement has already been negotiated, finalized, signed, and ratified. In 2016, the Tribunal held that adding interested parties at the remedial stage of proceedings is "not only rare, but adds to the challenge of effectively managing this case".[45]

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[43] 2018 CHRT 4 at paras 47, 62, 66.
[44] OFA at Appendix 12.
[45] 2016 CHRT 11 at para 13.

In 2025, the remedial stage is nine years further advanced and the addition of further interested parties should be even more rare.

52. This Tribunal has had to balance the value of unique regional perspectives of First Nations with the Tribunal's limited resources and interest in resolving the matter expeditiously in the best interests of children in its prior decisions on the addition of interested parties.

53. In determining whether to admit FSIN as an interested party to the approval motion for the *Final Settlement Agreement on Compensation for First Nations Children and Families*, the Tribunal found that an argument based on "bringing a regional perspective is not the most compelling argument" given the risk the Tribunal faces if every First Nation sought to participate in order to share their expertise and perspective.[46] In the OFA approval motion, the scope of the OFA relates to Ontario-only. As such, the Tribunal's remarks on the regional perspective not being the most compelling are even more applicable where the perspectives from regions outside of Ontario do nothing to further the Tribunal's determination on the joint motion and only risk further delay.

54. The Tribunal and the Caring Society both aptly note in their correspondence that this is an "unprecedented" number of prospective interested parties.[47] The Tribunal has previously noted that having every First Nation bring its expertise and specific view forward would "not only be impossible to manage for this Tribunal but it would also have the detrimental effect of halting the proceedings for months or possibly years. This would not be in the best interest of First Nations children and families".[48] Adding the 10 prospective parties at this point in the proceedings will overburden the Tribunal who, pursuant to s. 48.9 (1) of the CHRA, is tasked with effectively managing its own limited resources while facilitating a fair and expeditious process, not only for this motion but for all complaints before the Tribunal.

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[46] 2022 CHRT 26 at para 47.
[47] Canadian Human Rights Tribunal, "CHRT-Status motion schedules-FNCFCSC and AFN v AGC-T1340", 25 April 2025 at page 1; Caring Society, "CS Responding Submissions re Interested Parties", 7 May 2025 at page 7 [CS Responding Motion Submissions].
[48] 2022 CHRT 26 at para 47.

55. Disruption and delay would be inevitable given the number of prospective interested parties seeking to be added to this joint motion. Some moving parties claim they will not broaden the scope of the proceedings, will adhere to all timelines, and will not cause delays.[49] However, these assurances are contradicted by the overbroad arguments they raise, the introduction of new issues, the evidence they seek to adduce, the cross examination which would inevitably ensue, and the extra time required for parties to address the evidence and submissions of all the prospective interested parties.

56. Further delay would bring the administration of justice into disrepute and cause significant prejudice to the victims of discrimination. The OFA offers timely and appropriate remedies to address the discrimination identified, and its approval and implementation should not be adjourned any longer to accommodate the objections of non-Ontario stakeholders who seek to dissect the details of a reformed program that will have no bearing on them. The Tribunal itself has noted "it is not interested in drafting policies, choosing between policies, supervising policy-drafting or unnecessarily embarking in the specifics of the reform. It is interested in ensuring previous discriminatory policies are reformed and no longer used".[50]

57. A flexible and holistic approach to these motions requires a cost-benefit analysis that considers both the unusually high number of prospective interested parties and the very real risk of further delay for First Nations children and families in Ontario. The analysis leads to a clear conclusion: the costs of adding these parties far exceed any potential benefits. There is no discernible proportionate benefit to the Tribunal in allowing this to occur, as the perspectives and evidence proposed will not serve to answer the question at hand. Rather, the prospective interested parties seek to add time, expense, and delay in order to answer questions and seek determinations that the moving parties have not posed to the Tribunal, that rely on hypothetical assumptions, and that will not be of benefit to the future because of their speculative nature.

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[49] Neqotkuk (Tobique) First Nation, "Neqotkuk Motion to CHRT", 15 April 2025 at para 14 [Neqotkuk First Nation, Motion Materials]; Ugpi'ganjig (Eel River) First Nation, "Ugpiganjig-NOM-SKM", 15 April 2025 at para 17 [Ugpi'ganjig First Nation, Motion Materials]; CYFN, Written Submissions at paras 32-33; FSIN, Written Submissions at para 27; Our Children Our Way, "20250415 Factum of Interested Party_Our Children Our Way", 15 April 2025 at paras 26-27 [OCOW, Written Submissions].

[50] 2018 CHRT 4 at para 48.

v. It is not efficient to add the prospective interested parties now

58. The suggestion by Caring Society that granting the moving parties interested party status would "mitigate the potential risk of procedural arguments around doctrines like issue estoppel[,]…abuse of process or collateral attack" misconceives a core feature of all of these doctrines: the same issue must have already been decided by the Tribunal for these doctrines to apply.[51] As the OFA approval motion is concerned with Ontario only, the Tribunal's analysis of any future agreement that applies in a region other than Ontario will not be subject to these doctrines.

59. Issue estoppel precludes the relitigation of issues previously decided in court in another proceeding.[52] For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same.[53] Since the OFA approval motion is concerned only with Ontario, the first eponymous precondition of the test would not be met in a potential future motion to consider reform to the FNCFS program outside of Ontario.

60. The rule against collateral attack states that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed.[54] A collateral attack is an attack "upon the judgment itself" and the legal force of the previous decision, not simply an attempt to relitigate facts or contest the correctness of the decision.[55] This means the doctrine of collateral attack would prevent the prospective interested parties from challenging the Tribunal's decision regarding the OFA as it applies to the OFA and Ontario, but not from arguing the Tribunal's reasons regarding the OFA are inapplicable to future litigation regarding FNCFS reform outside of Ontario.

61. The doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would…bring the administration of justice into

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[51] CS Responding Motion Submissions at page 8.
[52] *Toronto (City) v CUPE*, 2003 SCC 63 at para 23 [*Toronto (City) v CUPE*].
[53] *Toronto (City) v CUPE* at para 23.
[54] *Toronto (City) v CUPE* at para 33.
[55] *Toronto (City) v CUPE* at paras 33-34; note that while attempts to relitigate facts or contest the correctness of the decision are not collateral attacks, they may be impermissible under the doctrines of issue estoppel or abuse of process.

disrepute".[56] The "primary focus of the doctrine of abuse of process is the integrity of the adjudicative functions of the courts".[57] Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.[58] However, the Supreme Court has specifically noted that there "may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system, for example:…when fairness dictates that the original result should not be binding in the new context".[59] In these proceedings, fairness would dictate that the Tribunal's decision on the OFA and its applicability within Ontario should not be binding on any potential future litigation regarding FNCFS reform outside of Ontario. Abuse of process would not act as a bar to litigate potential reform of the FNCFS program outside of Ontario.

B. Neqotkuk (Tobique) First Nation

62. Neqotkuk First Nation should not be granted interested party status in the OFA approval motion.

63. Neqotkuk First Nation, located in what is now known as New Brunswick, governs the Wolastoqey (Maliseet) Neqotkuk members. It has its own child and family well-being law and began coordination agreement negotiations with Canada in 2022.[60]

64. Neqotkuk First Nation asserts it will not broaden the scope, yet its request for extensive participation rights in the OFA approval motion, with full participation rights equivalent to those of COO and NAN, would, in effect, result in a significant expansion of the scope of the joint motion.[61] Its request includes the right to make oral and written submissions,

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[56] *Toronto (City) v CUPE* at para 37.
[57] *Toronto (City) v CUPE* at para 43.
[58] *Toronto (City) v CUPE* at para 37.
[59] *Toronto (City) v CUPE* at para 52.
[60] Neqotkuk First Nation, Motion Materials at para 10.
[61] Neqotkuk First Nation, Motion Materials at paras 14, 19i.

present evidence, cross-examine witnesses, and participate in case conferences, mediation, negotiation or other dispute resolution processes in respect of the motion.[62]

i. The OFA has no impact on Neqotkuk First Nation's interests

65. Neqotkuk First Nation's interests are not impacted as the OFA will not apply to it.

66. Neqotkuk First Nation agues that the OFA approval motion, including the Tribunal's assessment of the reformed funding approach and agreement structure, will have precedential value and systemic implications. As noted in its submissions, "the [OFA approval motion] addresses core issues (funding, jurisdiction, substantive equality) that directly impact Neqotkuk, notably its ability to implement its law and [Agency] operations."[63] Neqotkuk First Nation further alleges that Canada has repeatedly advised that the funding approach to be taken in coordination agreement negotiations will be based on the settlement agreements it is negotiating with Parties to the Tribunal.[64]

67. Neqotkuk First Nation's concern regarding the OFA setting a precedent for other settlement discussions, a matter outside the scope of the Complaint (see paragraph 30(h)), is not a direct interest sufficient to ground interested party status. The OFA motion does not request or suggest that the Tribunal apply its findings in this motion outside of the Ontario context. This would be contrary to the Tribunal's clear direction against a "one-size-fits-all approach" to remedy discrimination.[65] Neqotkuk First Nation's concerns about how long-term reform of the FNCFS program will be implemented in New Brunswick is conjecture at this point in the proceedings.

68. Neqotkuk First Nation argues its participation will not broaden the scope and that its submissions "will focus strictly on issues already within the complaint's scope".[66] Despite this claim, Neqotkuk First Nation focuses a considerable amount of its submissions on Canada's conduct in its coordination agreement negotiations, a matter outside the scope of

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[62] Neqotkuk First Nation, Motion Materials at para 19ii.
[63] Neqotkuk First Nation, Motion Materials at para 12.
[64] Neqotkuk First Nation, Motion Materials at para 3.
[65] 2022 CHRT 26 at para 55.
[66] Neqotkuk First Nation, Motion Materials at para 14.

the Complaint (see paragraph 30(h)) and the OFA approval motion.[67] While these concerns may be valid, they could and should be raised in a forum outside of the Complaint about the FNCFS program, which does not engage the topic of coordination agreement negotiations. They are not appropriate for consideration within the current motion.

69. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

70. Neqotkuk First Nation has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[68]

71. Adding Neqotkuk First Nation as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. Neqotkuk First Nation cannot provide assistance to the Tribunal

72. Neqotkuk First Nation's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

73. Neqotkuk First Nation's submissions focus considerably on its own individual experience negotiating with Canada in coordination agreement negotiations. While its individual challenges about coordination agreements may be valid, the matter is outside the scope of the Complaint (see paragraph 30(h)). Neqotkuk First Nation also notes it "addresses the unique intersection of Wolastoqey Treaty rights, Canada's constitutional and honour of the Crown duties (including, the duty of diligent implementation), Canada's systemic

[67] Neqotkuk First Nation, Motion Materials at para 10.
[68] *Attaran* at para 16.

underfunding of child and family services, and Canada's incorrect operation of Jordan's Principle."[69] It argues this perspective is one no other party offers.

74. These issues are wholly outside the scope OFA motion. Addressing the issue of Canada's systemic underfunding of child and family services is an attempt to relitigate a matter that was already determined by the Tribunal in the Merit Decision (see paragraph 30(e)). Neqotkuk First Nation proposes to raise its perspectives on Canada's constitutional obligations and honor of the crown. This matter, as it relates to the OFA, has well been addressed by COO and was already opined on and discussed in the Caring Society's Consultation Motion. Lastly, Canada's implementation and funding of Jordan's Principle is not a matter within the scope of the OFA approval motion and has already been determined by the Tribunal (see paragraph 30(e)).

75. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[70] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[71] Neqotkuk First Nation's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

76. Neqotkuk First Nation is properly represented in these proceedings by the AFN, through the New Brunswick Regional Chief. The Tribunal itself has recognized and long relied on the AFN to bring a "broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First Nations in Canada."[72]

77. Neqotkuk First Nation further submits that its expertise and unique perspective will be of assistance to the Tribunal. It has over 40 years of operational experience delivering child

[69] Neqotkuk First Nation, Motion Materials at para 16.
[70] 2022 CHRT 26 at para 55.
[71] 2022 CHRT 26 at para 55.
[72] 2022 CHRT 26 at para 48.

and family services and have constituted its own agency, the Tobique Child and Family Services Agency Inc.

78. There is no doubt that Neqotkuk First Nation possesses significant expertise in the delivery of child and family services to Neqotkuk First Nation members. However, The Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society). Neqotkuk First Nation has no expertise in the delivery of child and family services in Ontario.

79. Neqotkuk First Nation, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

C. Ugpi'ganjig (Eel River Bar) First Nation

80. Ugpi'ganjig First Nation is a Mi'kmaw First Nation located in what is now known as New Brunswick. Ugpi'ganjig First Nation operates along the cross-border of Quebec and New Brunswick.[73] Ugpi'ganjig First Nation has been engaged in the development and implementation of its own child and family services laws and practices.[74]

81. Ugpi'ganjig First Nation states it will not broaden the scope and submissions.[75] Despite this claim, it seeks extensive participation rights in the OFA approval motions, including: rights to make oral and written submissions; present evidence and cross-examine witnesses; and participate in case conferences, mediation, negotiation, or other dispute resolution or administrative processes.[76]

i. The OFA has no impact on Ugpi'ganjig First Nation's interests

82. Ugpi'ganjig First Nation's interests are not impacted as the OFA will not apply to it.

[73] Ugpi'ganjig First Nation, Motion Materials at para 13.
[74] Ugpi'ganjig First Nation, Motion Materials at para 5.
[75] Ugpi'ganjig First Nation, Motion Materials at para 17.
[76] Ugpi'ganjig First Nation "Ugpi'ganjig-NOM-SKM", April 15, 2025 [Notice of Motion]. at para 1.

83. Ugpi'ganjig First Nation's submissions on its interest in the proceedings highlight its own operational difficulties in delivering child and family services, rather than addressing the issue of how the OFA would affect them as a non-Ontario region. Ugpi'ganjig First Nation submits that its "operational and legal circumstances necessitate Interested Party status to address systemic inequities disproportionately impacting its unincorporated Mi'kmaw child welfare agency".[77]

84. Ugpi'ganjig First Nation's concerns arise from a specific set of circumstances that are not implicated or engaged by the OFA approval motion. Ugipi'ganjig primarily focuses its submissions on interest on its challenges operating its unincorporated Mi'kmaw child welfare agency and on its experiences as a cross-border First Nation. The OFA approval motion is not the appropriate forum to discuss Ugpi'ganjig First Nations child welfare agency governance structure or its geographic and jurisdictional complexities.

85. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

86. Ugpi'ganjig First Nation has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[78]

87. Adding Ugpi'ganjig First Nation as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

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[77] Ugpi'ganjig First Nation, Motion Materials at para 26.
[78] *Attaran* at para 16.

ii. Ugpi'ganjig First Nation cannot provide assistance to the Tribunal

88. Ugpi'ganjig First Nation's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

89. Ugpi'ganjig First Nation argues that should it participate, it will focus strictly on the issues already within the Complaint's scope. In the following sentence, Ugpi'ganjig First Nation states it will address three core issues and introduce targeted evidence on the following:

> (a) Systemic underfunding of child and family services, particularly structural deficits in "claims on actuals" model;
>
> (b) Coordination agreement implementation barriers; and
>
> (c) Culturally appropriate service delivery standards including Mi'kmaw-specific prevention practices, implementation challenges for culturally-based services in rural communities with limited resources, the need for specialized training in Mi'kmaw traditions and approaches to wellness, integration of traditional knowledge and practice into formal service delivery models, and barriers to recruiting qualified staff who posses both professional credential and cultural competency.[79]

90. The issues Ugpi'ganjig First Nation seeks to address will broaden the scope of the motion. The first core issue it seeks to address is an attempt to relitigate a matter that was already determined by the Tribunal in the Merit Decision (see paragraph 30(e)). The Tribunal has also recognized the importance of culturally appropriate services for First Nations.[80] Further, while its individual challenges about coordination agreements may be valid, the matter is outside the scope of the Complaint (see paragraph 30(h)). They are not appropriate for consideration within the current motion and should not be re-litigated.

91. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the

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[79] Ugpi'ganjig First Nation, Motion Materials at para 17.
[80] 2018 CHRT 4 at para 163.

specific needs of First Nations children, families and communities.[81] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[82]

92. Ugpi'ganjig First Nation is properly represented in these proceedings by the AFN, through the New Brunswick Regional Chief. The Tribunal itself has recognized and long relied on the AFN to bring a "broader First Nations perspective across Canada, given its mandate and structure, representing the views of over 600 First Nations in Canada". Ugpi'ganjig First Nation's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

93. Ugpi'ganjig First Nation further submits that its expertise and unique perspective will be of assistance to the Tribunal. It submits that it possesses extensive operational knowledge in delivering culturally appropriate services, building capacity, and defining the infrastructure needed to address the structural drivers of kids coming into care.[83]

94. There is no doubt that Ugpi'ganjig First Nation possesses significant expertise in the delivery of child and family services to Ugpi'ganjig First Nation members. However, the Tribunal is already informed by four three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society).

95. Ugpi'ganjig First Nation, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with its determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

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[81] 2022 CHRT 26 at para 55.
[82] 2022 CHRT 26 at para 55.
[83] Ugpi'ganjig First Nation, Motion Materials at para 16.

D. Mi'gmaq Child and Family Services of New Brunswick Inc.

96. Mi'gmaq Child and Family Services of New Brunswick Inc. ("MCFSNB") should not be granted interested party status in the OFA approval motion.

97. MCFSNB is a not-for-profit child and family well being organization serving six Mi'gmaq communities in what is now known as New Brunswick. MCFS provides both prevention and protection services and receives funding through a five-year agreement with Indigenous Services Canada. MCFS is also in the early stages on pursuing its own child and family well being law.[84]

98. MCFSNB seeks interested party status specifically limited to participation in the OFA approval motion, with the ability to file evidence and make oral and written arguments.[85]

i. The OFA has no impact on MCFSNB's interests

99. MCFSNB's interests are not impacted as the OFA will not apply to it.

100. MCFSNB misstates the scope of the OFA approval motion. It argues it has a "direct and significant interest" in any orders made by the Tribunal in the OFA motion given Canada's position that the OFA will inform next steps on national reform.[86] Canada's acknowledgement of the precedential value of the Tribunal's decision in the OFA approval motion does not give MCFSNB a direct interest in the outcome of a motion that will only impact Ontario.

101. MCFSNB's submissions highlight concerns with the OFA's proposed funding approach, which bases funding components on on-reserve population figures from the Indian Registry System.[87] MCFSNB member communities are small populated First Nations, who stand to be further marginalized by the Indian Act Registry System's second generation cut-off

[84]Mi'gmaq Child and Family Services of New Brunswick Inc., "Motion Record- T1340_7008 - Migmaq Child and Family Services of New Brunswick Inc", 15 April 2025 at paras 12, 18 [MCFSNB, Motion Materials].
[85] MCFSNB, Motion Materials at para 57.
[86] MCFSNB, Motion Materials at para 48.
[87] MCFSNB, Motion Materials at para 49.

rule.[88] MCFSNB argues that this is further reason to not use the OFA as a template for national reform.

102. These concerns do not create an interest in the OFA approval motion sufficient to ground interested party status. There is no template for national reform under consideration. This submission is based on speculation. The OFA and the relief requested in the joint notice of motion define the scope of the OFA approval motion, which is limited to Ontario. MCFSNB's concerns regarding population figures should be addressed in conversations about national reform and in the First Nations-led forums it already participates in, not the OFA approval motion.

103. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

104. MCFSNB has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[89]

105. Adding MCFSNB as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. MCFSNB cannot provide assistance to the Tribunal

106. MCFSNB's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

107. MCFSNB submits it will provide a helpful perspective to the issues in the motion as a new organization who delivers child and family services to multiple First Nations communities

[88] MCFSNB, Motion Materials at para 52.
[89] *Attaran* at para 16.

in New Brunswick.[90] MCFSNB would also draw attention to the terms and conditions of the OFA while speaking on how these features will impact on its operational stability as a new agency transitioning to a Reformed FNCFS Program.[91]The issues of new organizations delivering services in New Brunswick are beyond the scope of the OFA. There is no agreement or proposed reform before the Tribunal applying the OFA to New Brunswick. MCFSNB seeks to make submissions about a situation that does not exist.

108. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[92] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[93]

109. There is no doubt that as an FNCFS Agency, MCFSNB has significant expertise in the operation and delivery of child and family services to MCFSNB communities, children and families. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society). MCFSNB professes no expertise regarding the delivery of child and family services in Ontario. Additionally, the Tribunal has relied on the Caring Society to represent the interests of Agencies.[94]

110. MCFSNB, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

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[90] MCFSNB, Motion Materials at paras 30-31.
[91] MCFSNB, Motion Materials at paras 45-46.
[92] 2022 CHRT 26 at para 55.
[93] 2022 CHRT 26 at para 55.
[94] 2016 CHRT 11 at para 16.

E. Our Children Our Way

111. OCOW should not be granted interested party status in the OFA approval motion.

112. OCOW is a BC society that has a membership of 24 Indigenous Child & Family Service Agencies in BC, which serve 120 different First Nations.[95]

113. OCOW is seeking leave to extensively participate in all hearings, appearances, motions, case conferences, mediations, negotiations or other dispute resolution or administrative processes in respect of the OFA approval motion; to adduce evidence through up to three witnesses, and conduct examinations in chief and cross-examinations; and to file written submissions and to make oral submissions before the Tribunal.[96] OCOW states its participation shall be limited to issues bearing on the delivery of child and family services in BC, and undertakes not to re-open matters that have already been decided by the Tribunal in the Proceeding; not to duplicate the evidence or submissions of other parties; and not to delay the Proceeding or request postponements or changes to any timetable, schedule, or hearing dates established by the Tribunal in the Proceeding and accepted by the other parties.[97] OCOW seeks interested party status in the proceedings generally, including the OFA approval motion;[98] this factum only addresses OCOW's request to be granted interested party status in the OFA approval motion.

i. The OFA has no impact on OCOW's interests

114. OCOW's interests are not impacted as the OFA will not apply to First Nations in the BC region.

115. OCOW misstates the scope of the OFA approval motion. It suggests the "long-term reform in British Columbia squarely at issue" and that the Tribunal "is now being asked to find that the proposed long-term reform in Ontario will achieve [long-term reform], not just in Ontario, but across the country".[99] These statements are not a reasonable interpretations of

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[95] OCOW, Written Submissions at para 6.
[96] Our Children Our Way, "20250415 Notice of Motion of Interested Party_Our Children Our Way", 15 April 2025 at paras 1a, 1c, 1d [OCOW, Notice of Motion].
[97] OCOW, Notice of Motion at paras 1b, 1e, 1f.
[98] OCOW, Notice of Motion at para 4.
[99] OCOW, Written Submissions at paras 17, 19.

the OFA nor the relief sought on the OFA approval motion, both of which are limited to Ontario. These submissions are based on a fiction and pure speculation.

116. OCOW argues that Canada has taken the position that the outcome of the OFA approval motion will inform Canada's subsequent approach to long-term reform, misapprehending Canada's March 17, 2025 letter (see paragraph 30(a)).[100] OCOW's submission overstates the significance of the letter: a statement the OFA approval motion is "likely to inform" long-term reform outside of Ontario is a commentary on the precedential nature of the Tribunal's reasons in the motion, which is not sufficient to grant OCOW an interest in the joint motion.

117. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

118. OCOW has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[101]

119. Adding OCOW as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. OCOW cannot provide assistance to the Tribunal

120. OCOW's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

121. OCOW submits it will lead evidence and make submissions regarding how the OFA "is not a suitable template for remedying the continued discrimination against First Nation children, families, and communities in British Columbia, and that any remedy crafted by

[100] OCOW, Written Submissions at para 17; Canada Letter to CHRT, 17 Mar 2025 at pages 2-3.
[101] *Attaran* at para 16.

the Tribunal must account for the unique challenges" faced by OCOW's members.[102] Whether the OFA is a suitable template for long-term reform in BC is not an issue in the OFA approval motion. This introduces a question not before the Tribunal and seeks to have it answered. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

122. OCOW further submits that it has significant expertise relevant to the proceeding.[103] There is no doubt that OCOW possesses significant expertise in the delivery of child and family services in the BC region. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society). OCOW professes no expertise regarding the delivery of child and family services in Ontario.

123. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[104] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[105] OCOW's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

124. Additionally, the Tribunal has relied on the Caring Society to represent the interests of agencies.[106] OCOW acknowledges in its submissions that the "Caring Society may advance a similar position on the adequacy of the proposed long-term reform for provinces outside of Ontario".[107] Its suggestion that Caring Society's representation is inadequate because it lacks experience in the day-to-day operations in BC is irrelevant to a motion that is confined to Ontario.[108]

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[102] OCOW, Written Submissions at para 4.
[103] OCOW, Written Submissions at para 20.
[104] 2022 CHRT 26 at para 55.
[105] 2022 CHRT 26 at para 55.
[106] 2016 CHRT 11 at para 16.
[107] OCOW, Written Submissions at para 22.
[108] OCOW, Written Submissions at para 22.

125. OCOW, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

F. Federation of Sovereign Indigenous Nations

126. FSIN should not be granted interested party status in the OFA approval motion.

127. FSIN is a political organization representing 75 First Nations in what is now Saskatchewan.[109]

128. FSIN claims it is seeking "limited leave to intervene", but instead seeks extensive participation rights in the OFA approval motion, including the rights to make oral and written arguments; adduce limited affidavit evidence; and participate in case conferences, mediation, negotiation, or other dispute resolution or administration processes.[110]

i. The OFA has no impact on FSIN's interests

129. FSIN's interests are not impacted as the OFA will not apply to First Nations in the Saskatchewan region.

130. FSIN submits it 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 FNCFS program.[111] FSIN argues that to the extent the joint motion will set the approach to long-term reform elsewhere in Canada, it is vital the Tribunal and the parties appreciate (1) how the Tribunal's findings and orders on the motion risk impacting Saskatchewan-specific interests and (2) the key points on which the OFA should not be generalized to the Saskatchewan regional context.[112]

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[109] FSIN, Written Submissions at para 2.
[110] FSIN, Written Submissions at para 3; Federation of Sovereign Indigenous Nations, "Notice of Motion", 7 March 2025 at para 1.
[111] FSIN, Written Submissions at para 2.
[112] FSIN, Written Submissions at para 4.

131. FSIN argues that the outcome of the OFA approval motion is likely to impact long-term reform elsewhere in Canada, including in Saskatchewan. COO does not dispute the precedential value of the Tribunal's decision in the OFA approval motion, but that precedential value does not give FSIN a direct interest in the outcome of a motion that will only impact Ontario. Specifically:

(a) FSIN misapprehends Canada's letter to the Tribunal dated March 17, 2025:[113] this argument is addressed at paragraph 30(a) and 33 of this factum. Canada's acknowledgement of the precedential value of the decision does not give FSIN an interest in the OFA approval motion sufficient to ground interested party status.

(b) FSIN argues Canada's request to place the Consultation Motion in abeyance in favour of the OFA approval motion "increase[s] the likelihood that the Motion will entrench the approach for national reform":[114] as stated previously, Canada's March 17, 2025 letter states the "outcome of the joint motion is likely to inform the path forward in these proceedings",[115] alluding to the precedential value of the Tribunal's reasons in the OFA approval motion. A statement the OFA approval motion is "likely to inform" long-term reform outside of Ontario is not an entrenchment of the approach for national reform.

(c) FSIN misreads Canada's affidavit evidence (see paragraph 30(b)), arguing it alludes to the intended or anticipated impacts of the OFA on the FNCFS program "in general".[116] FSIN specifically states Canada's affidavit affirms:

(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":[117] The paragraphs of Canada's affidavit referenced are under the subheading "Reform of the FNCFS Program in

[113] FSIN, Written Submissions at para 20a.
[114] FSIN, Written Submissions at para 20b.
[115] Canada Letter to CHRT, 17 Mar 2025 at page 2.
[116] FSIN, Written Submissions at para 20c.
[117] FSIN, Written Submissions at para 20(c)(i).

Ontario as reflected in the Ontario Final Agreement",[118] specifically qualifying the statements as applying to the FNCFS program in Ontario, contrary to FSIN's argument.

(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"":[119] The fact many of the mechanisms in the OFA were originally developed for the national agreement and that the OFA is similar to the rejected national agreement (see paragraph 30(d)) does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

(d) FSIN alludes to the use of regional evidence from outside of Ontario (see paragraph 30(f)):[120] Canada's, COO's, and NAN's decision to rely on evidence arising from studies conducted both within and outside of Ontario does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

(e) FSIN misconstrues the OFA (see paragraph 30(c)):[121] this argument is addressed at paragraph 35 of this factum. Paragraph 3 of the OFA operates to limit the scope of the OFA to Ontario.

132. It is also notable that FSIN and CYFN raise nearly identical arguments (compare paragraphs 131 and 149 of this factum in particular). The similarity in both prospective interested parties' arguments undercuts the argument the submissions proposed advance a unique perspective.

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[118] Farthing-Nichol Affidavit, 7 Mar 2025 at para 5 (emphasis added).
[119] FSIN, Written Submissions at para 20(c)(ii).
[120] FSIN, Written Submissions at para 20d.
[121] FSIN, Written Submissions at para 20e.

133. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

134. FSIN has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[122]

135. Adding FSIN as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. FSIN cannot provide assistance to the Tribunal

136. FSIN's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

137. FSIN suggests that its involvement will help the Tribunal ensure that the outcome of the OFA approval motion does not inadvertently impede long-term reform elsewhere in Canada, particularly Saskatchewan.[123] However, this perspective can and is being brought forward by the Caring Society and AFN. FSIN seeks to provide information and submissions to the Tribunal about a question that has not been posed in the OFA approval motion about a plan for long-term reform outside Ontario that does not exist. This is not useful to the question in the OFA approval motion.

138. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[124] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the

[122] *Attaran* at para 16.
[123] FSIN, Written Submissions at para 5.
[124] 2022 CHRT 26 at para 55.

different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[125]

139. FSIN is properly represented in these proceedings by the AFN, through the Saskatchewan Regional Chief. The Tribunal itself has recognized and long relied on the AFN to bring a "broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First Nations in Canada".[126] FSIN's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

140. FSIN further submits that its expertise and unique perspective will be of assistance to the Tribunal. FSIN points to its extensive institutional knowledge and experience as an advocate, representative, and support provider of First Nations in Saskatchewan.[127]

141. There is no doubt that FSIN possesses significant expertise in the delivery of child and family services in the Saskatchewan region. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society).

142. FSIN, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

G. Council of Yukon First Nations

143. CYFN should not be granted interested party status in the OFA approval motion.

144. CYFN is the representative body for 10 of the 14 First Nations in the Yukon, including 10 of the 11 self-governing First Nations.[128]

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[125] 2022 CHRT 26 at para 55.
[126] 2022 CHRT 26 at para 48.
[127] FSIN, Written Submissions at para 25.
[128] CYFN, Written Submissions at para 18.

145. CYFN is seeking leave to make oral and written arguments that are not duplicative of the parties' submissions; to participate in case conferences, mediation, negotiation or other dispute resolution or administrative processes in respect of the OFA approval motion; and to adduce one affidavit containing evidence that is not duplicative of the parties' evidence.[129]

i. The OFA has no impact on CYFN's interests

146. CYFN's interests are not impacted as the OFA will not apply to First Nations in Yukon region.

147. CYFN argues there is a "serious risk that this motion will impact the delivery of child and family services in Yukon", misapprehending Canada's letter to the Tribunal dated March 17, 2025 (see paragraph 30(a) and 33).[130] Canada's acknowledgement of the precedential value of the Tribunal's decision in the OFA approval motion does not give CYFN a direct interest in the outcome of a motion that will only impact Ontario.

148. Similarly, CYFN's statement that its members have a "significant concern" the Tribunal's decision and orders about the OFA will inadvertently influence negotiation of any future agreement in Yukon does not mean that concern is founded nor does it create an interest in the OFA approval motion sufficient to ground interested party status.[131] The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

149. CYFN points to many factors it argues "strongly suggest" the OFA and the Tribunal's decision on the OFA approval motion will "impact or even guide reform in other regions like Yukon".[132] This is pure speculation. Notwithstanding the fact the Tribunal's reasons in the joint motion may be of precedential value for reform in other regions is not a direct interest in the motion sufficient to ground interested party status, the significance of the factors referenced are overstated:

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[129] Council of Yukon First Nations, "Notice of Motion", 7 March 2025 at para 1a.
[130] CYFN, Written Submissions at para 2; Canada Letter to CHRT, 17 Mar 2025 at page 2.
[131] CYFN, Written Submissions at para 3.
[132] CYFN, Written Submissions at para 12.

(a) CYFN states there "is no indication Canada will re-engage in national level reform negotiations" and "Canada now says that it does not have the mandate to negotiate a national-level agreement, nor is it prepared to negotiate long term reform of the FNCFS based on resolutions passed by the First Nations-in-Assembly in 2024".[133] Concerns about Canada's failure to renew national negotiations are properly addressed in the Consultation Motion currently before the Tribunal, not the OFA approval motion (see paragraph 30(g)).

(b) CYFN argues that Canada is focused on advancing the OFA and sought to place the Consultation Motion in abeyance in favour of the OFA approval motion.[134] Canada's March 17, 2025 letter requested the abeyance because (1) "the OFA would finally resolve and remedy all issues respecting the FNCFS Program in Ontario" and it is "imperative" the motion proceed without delay for the benefit of First Nations children in Ontario and (2) the "outcome of the joint motion is likely to inform the path forward in these proceedings".[135] These statements show Canada's awareness of the urgency of FNCFS reform for First Nation children, families, and communities in Ontario, and the inevitable precedential nature of the Tribunal's reasons in the OFA approval motion decision. Neither of these statements change the scope of the OFA approval motion, which is limited to Ontario.

(c) CYFN misreads Canada's affidavit (see paragraph 30(b)), arguing Canada recognizes the outcome of the OFA approval motion will likely inform approaches outside of Ontario, stating "Canada states that the Ontario Final 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. It does so without qualifying the scope of the Program to Ontario".[136] The paragraphs of Canada's affidavit referenced are under the subheading "Reform of the FNCFS

[133] CYFN, Written Submissions at paras 12a, 26.
[134] CYFN, Written Submissions at para 12b.
[135] Canada Letter to CHRT, 17 Mar 2025 at page 2.
[136] CYFN, Written Submissions at para 12c (emphasis original to CYFN).

Program in Ontario as reflected in the Ontario Final Agreement",[137] specifically qualifying the statements as applying to the FNCFS program in Ontario, contrary to CYFN's argument.

(d) CYFN points to Canada's, COO's, and NAN's use of regional evidence from outside of Ontario (see paragraph 30(f)).[138] Canada's, COO's, and NAN's intention to rely on evidence arising from studies conducted both within and outside of Ontario does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

(e) CYFN misconstrues the OFA (see paragraph 30(c)), arguing paragraph 3 of the OFA extends the applicability of the agreement outside of Ontario.[139] This argument is addressed at paragraph 35 of this factum. Paragraph 3 of the OFA operates to limit the scope of the OFA to Ontario.

(f) CYFN argues the OFA has "substantive similarity" to the national agreement.[140] The fact the OFA is similar to the rejected national agreement (see paragraph 30(d)) does not mean the joint motion seeks relief outside of Ontario. As is abundantly clear, there is no national agreement under consideration. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

150. It is also notable that FSIN and CYFN raise nearly identical arguments (compare paragraphs 131 and 149 of this factum in particular). The similarity in both prospective interested parties' arguments further undercuts the argument the submissions proposed advance a unique perspective.

151. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of

[137] Farthing-Nichol Affidavit, 7 Mar 2025 at para 5 (emphasis added).
[138] CYFN, Written Submissions at para 12d.
[139] CYFN, Written Submissions at para 12e.
[140] CYFN, Written Submissions at para 26.

Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

152. CYFN has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[141]

153. Adding CYFN as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. CYFN cannot provide assistance to the Tribunal

154. CYFN's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

155. CYFN claims it "does not seek to expand the scope" of the OFA approval motion,[142] while also arguing the OFA, if applied in the Yukon, will not remedy discrimination in the provision of child welfare services.[143] The OFA approval motion is concerned only with the remedying of the discrimination found by the Tribunal in Ontario; CYFN's proposed submissions on the "significant contextual differences between Ontario and Yukon" are irrelevant to the determination of the OFA approval motion.[144] CYFN's argument relies on facts that do not exist and, as stated at paragraph 39, can not exist because the OFA could never be applied to other regions.

156. CYFN proposes its submissions would address: "(1) how the Tribunal's findings and orders on the [OFA approval] Motion risk impacting Yukon-specific interests; and (2) why the Tribunal ought not approach the [OFA] as a national model, including for Yukon, and should instead ensure such findings are limited to the Ontario context".[145]

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[141] *Attaran* at para 16.
[142] CYFN, Written Submissions at para 32.
[143] CYFN, Written Submissions at para 29.
[144] CYFN, Written Submissions at para 31.
[145] CYFN, Written Submissions at para 6.

157. On the first point, there is no risk the Tribunal's findings and orders on the OFA approval motion will impact Yukon-specific interests beyond the precedential value of the Tribunal's reasoning. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

158. On the second, the OFA approval motion does not ask the Tribunal to approach the OFA as a national model. CYFN seeks to provide information and submissions to the Tribunal about a question that has not been posed in the OFA approval motion about a plan for long-term reform outside Ontario that does not exist. Arguments ensuring the findings from the motion are limited to the Ontario context perspective can be brought forward by Caring Society and AFN, as CYFN is properly represented in these proceedings by the AFN, through the Yukon Regional Chief. CYFN disputes the sufficiency of this representation,[146] referencing a CYFN Leadership Resolution which states "no other party, including the AFN, has any authority to represent Yukon First Nations in such decisions or negotiations or to enter any agreements [with Canada relating to child welfare matters] that bind or apply to Yukon First Nations, without their express written authorization, agreement, or delegation".[147] The Resolution has no relation to the OFA approval motion, which will not bind or apply to Yukon First Nations. The Caring Society and AFN are still well-positioned to bring arguments about inadvertent impacts the Tribunal's orders may have outside of Ontario and they are doing so. The Tribunal itself has recognized and long relied on the AFN to bring a "broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First Nations in Canada".[148]

159. CYFN further submits that its expertise and unique perspective will be of assistance to the Tribunal. CYFN points to the fact it is mandated to serve as a political advocacy organization for Yukon First Nations to protect their rights, title, and interests, including the rights of children and families, and has direct experience in the delivery of child and family services to Yukon First Nation citizens.[149]

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[146] CYFN, Written Submissions at paras 8, 27.
[147] CYFN, Written Submissions at para 27 (emphasis added).
[148] 2022 CHRT 26 at para 48.
[149] CYFN, Written Submissions at para 18.

160. There is no doubt that CYFN possesses significant expertise about the delivery of child and family services to the Yukon First Nations it represents. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society), and CYFN has no expertise in matters relating to Ontario First Nations.

161. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[150] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the Tribunal.[151] CYFN's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

162. CYFN, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

H. Assembly of Manitoba Chiefs

163. AMC should not be granted interested party status in the OFA approval motion.

164. AMC is the political and technical coordinating organization for all 63 First Nations in Manitoba.[152]

165. AMC seeks extensive participation rights in the OFA approval motion, including the rights to make oral and written arguments; to submit documentary and testamentary evidence, and conduct cross-examinations; to seek orders in the proceedings; and to participate in hearings, case conferences, mediation, negotiation or other dispute resolution or

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[150] 2022 CHRT 26 at para 55.
[151] 2022 CHRT 26 at para 55.
[152] Assembly of Manitoba Chiefs, "AMC Written Submissions - Interested Party Status", 15 April 2025 at para 4 [AMC, Written Submissions].

administrative processes in respect of the proceedings.[153] AMC seeks interested party status in the proceedings generally, including the OFA approval motion;[154] this factum only addresses AMC's request to be granted interested party status in the OFA approval motion.

i. The OFA has no impact on AMC's interests

166. AMC's interests are not impacted as the OFA will not apply to First Nations in the Manitoba region.

167. AMC states it brought its motion "because of the potential significant impact of these proceedings on First Nations in Manitoba".[155] This is a bare statement with no further argument from AMC on how the OFA approval motion will impact its interests or those of AMC's members (see the argument beginning at paragraph 31 regarding the prospective interested parties' interests). To be clear, the OFA will not impact the interests of AMC. The OFA itself and the relief requested in the joint notice of motion define the scope of the OFA approval motion, which is limited to Ontario.

168. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

169. AMC has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[156]

170. Adding AMC as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

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[153] Assembly of Manitoba Chiefs, "Interested Party Motion", 15 April 2025 at para 1 [AMC, Notice of Motion].
[154] AMC, Notice of Motion at para 2.
[155] AMC, Written Submissions at para 2.
[156] *Attaran* at para 16.

ii. AMC cannot provide assistance to the Tribunal

171. AMC's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

172. AMC submits its expertise and knowledge will be of assistance to the Tribunal in determining the issues in the proceedings, and can contribute to the proceedings in a significant, relevant and useful manner.[157]

173. AMC submits it has long advocated for a "distinctions-based approach that rightfully acknowledges the unique position of First Nations as Treaty partners with the Crown and as the original inhabitants of the land that is now called Manitoba and Canada".[158] The AMC further advocates for an approach that is centred in the understanding that "Self-determination in services is consistent with a growing focus on cultural safety in service provision, and is increasingly recognized as being fundamental to fostering the health and wellbeing of Indigenous children".[159]

174. To the extent AMC's arguments are limited to Manitoba, they are outside the scope of the OFA approval motion. To the extent AMC's arguments could assist in the Tribunal's determination of the OFA approval motion, this perspective can be brought forward by the AFN, as AMC is properly represented in these proceedings by the AFN through the Manitoba Regional Chief. The Tribunal itself has recognized and long relied on the AFN to bring a "broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First Nations in Canada".[160]

175. The Tribunal has consistently ruled that a one-size-fits-all approach will not work to remedy the discrimination found and that meaningful reform must take into account the specific needs of First Nations children, families and communities.[161] The Tribunal has noted, and COO agrees, that distinct regional perspectives can be considered via the different First Nations-led committees, forums, and tables informing the parties and the

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[157] AMC, Written Submissions at para 21.
[158] AMC, Written Submissions at para 23.
[159] AMC, Written Submissions at para 23.
[160] 2022 CHRT 26 at para 48.
[161] 2022 CHRT 26 at para 55.

Tribunal.[162] AMC's distinct perspectives should be considered and put forward via the First Nations-led forums it already participates in.

176. AMC further submits that its expertise and unique perspective will be of assistance to the Tribunal. AMC points to its extensive institutional knowledge, experience as an advocate, and its provisions of supports and programs to First Nations citizens in Manitoba.[163]

177. There is no doubt that AMC possesses significant expertise in the delivery of child and family services in the Manitoba region. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society). AMC has no expertise regarding Ontario First Nations.

178. AMC, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

I. Confederacy of Treaty Six First Nations

179. CT6FN should not be granted interested party status in the OFA approval motion.

180. CT6FN is a non-profit Treaty rights advocacy organization created in 1993 to serve as a united political voice for affiliated Treaty No. 6 Nations for the protection of treaty, inherent, and human rights of its Nation's members.[164]

181. CT6FN, if granted interested party status, seeks to provide written submissions, 20 pages in length, on the substance of the OFA approval motion, and to make oral submissions at

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[162] 2022 CHRT 26 at para 55.
[163] AMC, Written Submissions at para 24.
[164] CT6FN, "Treaty 6 Motion for Interested Party Status Written Submissions", 15 April 2025 at para 2 [CT6FN, Written Submissions].

the hearing of the motion.[165] CT6FN does not seek to file additional evidence or to participate in cross-examination of witnesses.[166]

i. The OFA has no impact on CT6FN's interests

182. CT6FN's interests are not impacted as the OFA will not apply to First Nations in the Alberta region.

183. CT6FN misstates the scope of the OFA approval motion. It suggests that "if the Tribunal approves the OFA, it will be used by Canada as the framework for any future negotiations on long-term reform of the FNCFS Program across the country".[167] This concern is speculative and unfounded and does not create an interest in the OFA motion sufficient to ground interested party status. The OFA itself and the relief requested in the joint motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

184. CT6FN argues that the OFA stands to impact ongoing negotiations with Canada where Treaty 6 Nations are exercising their jurisdiction over child and family services to their members, which is a matter outside the scope of the Complaint (see paragraph 30(h)).[168] It suggests that Canada may use the funding provisions in the OFA as a benchmark to be applied to all First Nations across the country resulting in insufficient funding levels in other regions who are assuming control over child and family services.[169]

185. CT6FN's concerns regarding the OFA setting a precedent for coordination agreement discussions is outside the scope of the Complaint, which is about the FNCFS program, and does not ground a direct interest sufficient to ground interested party status. The OFA motion does not request or suggest that the Tribunal apply its findings in this motion outside the Ontario context or in the context of coordination agreements. This would be contrary to the Tribunal's clear direction against a "one-size-fits-all approach" to remedy discrimination.

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[165] CT6FN, "Notice of Motion for Interested Party Status - Confederacy of Treaty Six First Nations", 15 April 2025.
[166] CT6FN, Written Submissions at para 25.
[167] CT6FN, Written Submissions at para 21.
[168] CT6FN, Written Submissions at para 23.
[169] CT6FN, Written Submissions at para 23.

186. An appropriate time to consider perspectives about the suitability of proposed reforms in settlement agreement discussions outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

187. CT6FN has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[170]

188. Adding CT6FN as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. CT6FN cannot provide assistance to the Tribunal

189. CT6FN's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

190. If granted interested party status, CT6FN intends to argue that the OFA is similar to the rejected national agreement (see paragraph 30(d)) and fails to end the discrimination found by the Tribunal to exist on a national level.[171] These proposed arguments mischaracterize the Tribunal's exercise in this motion, which is to determine whether the OFA ends the discrimination found in Ontario only. The fact that many of the mechanisms in the OFA were originally developed for the national agreement does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

191. CT6FN submits it will be able to speak to the unique challenges of Alberta and Treaty 6 Nations. As an example, it notes that Treaty 6 has the most non-delegated agencies in Alberta, a perspective that was not taken into consideration in the OFA or the prior national

[170] *Attaran* at para 16.
[171] CT6FN, Written Submissions at para 17.

agreement.[172] The OFA was drafted for Ontario only. As such, there was no need to consider the significance of the number of non-delegated agencies in Alberta.

192. CT6FN further argues that will be able to speak to practical considerations in the OFA such as concerns regarding the administration and secretariat to be established, data sovereignty, and lack of clarity when it comes to funding and how it will impact delegated agencies.

193. There is no doubt CT6FN possesses significant expertise in the delivery of child welfare service to its member Nations. However, the Tribunal is already informed by three organizations representing First Nations (COO, NAN, and the AFN). CT6FN does not possess any knowledge or expertise about Ontario.

194. COO acknowledges CT6FN's argument that Alberta has been without representation on the AFN since 2021.[173] However, the CT6FN perspective is not relevant to the resolution of the issues in the OFA motion. To the extent CT6FN is concerned about the application of the OFA outside of Ontario—despite the express terms of the OFA and the relief sought on the joint motion—AFN and Caring Society are able to bring this perspective. Both representative bodies are well poised to raise CT6FN's concerns regarding administration, governance, data, and funding for delegated agencies.

195. CT6FN, at this late stage of the proceedings, when an agreement has already been concluded an approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

J. Treaty 8 First Nations of Alberta

196. T8FNA should not be granted interested party status in the OFA approval motion.

197. T8FNA is a political advocacy group that advocates on behalf of 24 Treaty 8 First Nations located in present-day Alberta.

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[172] CT6FN, Written Submissions at para 18.
[173] CT6FN, Written Submissions at para 9.

198. T8FNA is seeking leave to file written submissions not exceeding 20 pages and to make oral submissions.[174]

i. The OFA has no impact on T8FNA's interests

199. T8FNA's interests are not impacted as the OFA will not apply to First Nations in the Alberta region.

200. T8FNA submits that the member nations of T8FNA "rejected the very agreement that the parties ask the Tribunal to accept on this motion":[175] this is false. Even if the OFA is similar to the rejected national agreement (see paragraph 30(d)), the OFA is not the national agreement. The fact that many of the mechanisms in the OFA were originally developed for the national agreement does not mean the joint motion seeks relief outside of Ontario. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

201. T8FNA argues that Canada will use the OFA as the framework for any future negotiations on long-term reform of the FNCFS program across the country, relying on the AFN March 24, 2025 letter that has since been withdrawn.[176] As stated previously, Canada's March 17, 2025 letter states the "outcome of the joint motion is likely to inform the path forward in these proceedings",[177] alluding to the precedential value of the Tribunal's reasons in the OFA approval motion. A statement that the OFA approval motion is "likely to inform" long-term reform outside of Ontario does not give T8FNA a direct interest in the OFA approval motion.

202. The only interests T8FNA articulates rely on hypothetical assumptions and are speculative in nature. It is concerned that Canada may use the OFA as a "framework" for other regional or province-specific agreements or use the funding provisions as a "benchmark" in negotiations.[178] There can be no question that the OFA model is not suitable and could not

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[174] Treaty 8 First Nations of Alberta, "Notice of Motion for Interested Party Status - Treaty 8 First Nations of Alberta", 15 April 2025.
[175] Treaty 8 First Nations of Alberta, "Notice of Motion for Interested Party Status - Treaty 8 First Nations of Alberta", 15 April 2025 at para 8 [*TFNA8, Written Submission*].
[176] *TFNA8, Written Submission* at para 18. AFN Letter to CHRT dated April 4, 2025.
[177] Canada Letter to CHRT, 17 Mar 2025 at page 2.
[178] *TFNA8, Written Submission* at para 18.

apply outside Ontario: the OFA is specifically designed to work in Ontario, in the context of the 1965 Agreement, which is a unique situation within Canada. Therefore, the non-existent factual situation that T8FNA seeks to introduce and have the Tribunal opine on is one that could never come to pass: the OFA model and funding could not be applied in a context outside the 1965 Agreement. A decision of the Tribunal on the subject of the OFA's suitability to the T8FNA First Nations would be of no value because it would be based on a program reform model that does not exist and that would not have sufficient similarity with the OFA, because of the 1965 Agreement.

203. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

204. T8FNA has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[179]

205. Adding T8FNA as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

ii. T8FNA cannot provide assistance to the Tribunal

206. T8FNA's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

207. T8FNA submits that its expertise and unique perspective will be of assistance to the Tribunal.[180] There is no doubt that T8FNA possesses significant expertise in the delivery of child and family services to its 24 member First Nations. However, the Tribunal is

[179] *Attaran* at para 16.
[180] *TFNA8, Written Submission* at paras 10-13.

already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society).

208. T8FNA submits it does not have representation on the AFN.[181] However, the particular perspective of the T8FNA is not relevant to the resolution of the issues in the OFA motion. To the extent T8FNA is concerned about the application of the OFA outside of Ontario—despite the express terms of the OFA and the relief sought on the joint motion—AFN and Caring Society are able to bring this perspective.

209. T8FNA argues that each "region of the country, and arguably each individual First Nation, will have unique experiences and circumstances that ought to be taken into consideration when reforming the FNCFS program".[182] While that may be true, that does not mean each of those parties should be granted interested party status. The Tribunal has already found that arguments based on "bringing a regional perspective is not the most compelling argument" given the risk the Tribunal faces if every First Nation sought to participate in order to share their expertise and perspective.[183] In the OFA approval motion, the scope of the OFA relates to Ontario-only. As such, the Tribunal's remarks on the regional perspective not being the most compelling are even more applicable, where the perspectives from regions outside of Ontario do nothing to further the Tribunal's determination on the joint motion and only risk further delay.

210. Further, T8FNA's argument that a one-size-fits-all solution is not an appropriate approach to remedy discrimination in this case is a matter already determined by the Tribunal (see paragraph 30(e)).[184] The addition of T8FNA is not necessary to reiterate this position before the Tribunal.

211. T8FNA, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its

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[181] *TFNA8, Written Submission* at para 14.
[182] *TFNA8, Written Submission* at para 20.
[183] 2022 CHRT 26 at para 47.
[184] *TFNA8, Written Submission* at para 20; 2022 CHRT 26 at para 55; 2020 CHRT 7 at para 24; 2018 CHRT 4 at para 67.

'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

K. Treaty 7 First Nations Chiefs Association

212. T7FNCA should not be granted interested party status in the OFA approval motion.

213. T7FNCA is a non-profit Treaty organization created in May 2005 to serve as the political voice and advocacy body for Treaty No. 7 Nations.[185]

214. T7FNCA did not indicate in its submissions the extent of its proposed participation in the OFA approval motion.

i. The OFA has no impact on T7FNCA's interests

215. T7FNCA's interests are not impacted as the OFA will not apply to First Nations in the Alberta region.

216. T7FNCA argues that the Tribunal's decision on the OFA approval motion will impact T7FNCA's member Nations and their children and families.[186] It argues that this will call into question whether the OFA is sufficient to end discrimination within the FNCFS Program and could result in Canada using the OFA as a framework for future negotiations on long-term reform.[187] It notes that a blanket framework applied to all First Nations does not account for unique circumstances and could result in continued discrimination.[188]

217. T7FNCA notes it intends to make submissions in the following three areas:

(a) Issues with the OFA as a model or precedent for funding arrangements in Alberta and other jurisdictions across Canada;

[185] Treaty 7 First Nations Chiefs Association "Treaty 7 Intent to file Interested party submissions- T1340", 16 April 2025 at page 1 [T7FNCA, Motion Materials].
[186] T7FNCA, Motion Materials at page 2.
[187] T7FNCA, Motion Materials at page 2.
[188] T7FNCA, Motion Materials at page 2.

(b) Implications of the OFA for Treaty 7 Nations who are negotiating regional funding arrangements, Nation sovereignty, and the ongoing provisions of child and family services; and

(c) Risk of further discrimination to First Nations children and families due to the OFA.[189]

218. The only interests T7FNCA articulates rely on hypothetical assumptions and are speculative in nature. There can be no question that the OFA model is not suitable and could not apply outside Ontario: the OFA is specifically designed to work in Ontario, in the context of the 1965 Agreement, which is a unique situation within Canada. Therefore, the non-existent factual situation that T7FNCA seeks to introduce and have the Tribunal opine on is one that could never come to pass: the OFA model and funding could not be applied in a context outside the 1965 Agreement. A decision of the Tribunal on the subject of the OFA's suitability to the T7FNCA First Nations would be of no value because it would be based on a program reform model that does not exist and that would not have sufficient similarity with the OFA, because of the 1965 Agreement.

219. An appropriate time to consider perspectives about the suitability of proposed reforms outside of Ontario is when the Tribunal is assessing proposed reforms for outside of Ontario. There being none proposed at this time, it is not an appropriate time to allow such perspectives.

220. T7FNCA has not demonstrated it will add to the deliberation of the Tribunal on the determinative issue in the OFA motion. The Tribunal has been clear that interested party status "should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal".[190]

221. Adding T7FNCA as an interested party in this motion, where its interests and positions lay outside the determinative issue before the Tribunal in the OFA motion, risks significant delay to the proceedings.

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[189] T7FNCA, Motion Materials at page 2.
[190] *Attaran* at para 16.

ii. T7FNCA cannot provide assistance to the Tribunal

222. T7FNCA's proposed submissions go well beyond the scope of the OFA approval motion and do nothing to further the Tribunal's determination of the OFA approval motion.

223. T7FNCA submits that its expertise and unique perspective of its 4 member First Nations in Alberta will be of assistance to the Tribunal. There is no doubt that T7FNCA possesses significant expertise in the delivery of child and family services to its member First Nations. However, the Tribunal is already informed by three organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare services (Caring Society). T7FNCA has no expertise with respect to matters in Ontario.

224. T7FNCA submits it does not have representation on the AFN.[191] However, the particular perspective of the T7FNCA is not relevant to the resolution of the issues in the OFA motion. To the extent T7FNCA is concerned about the application of the OFA outside of Ontario—despite the express terms of the OFA and the relief sought on the joint motion—AFN and Caring Society are able to bring this perspective.

225. T7FNCA, at this late stage of the proceedings, when an agreement has already been concluded and approved by Ontario First Nations leadership, does not have all the relevant context and information that will assist the Tribunal with their determination. Its 'assistance' will instead cause further confusion for the Tribunal, confound the proceedings, and risk significant delays.

PART IV - ORDER SOUGHT

226. COO respectfully requests that this Tribunal:

(a) Dismiss the motions for interested party status; or

(b) In the alternative, grant limited interested party status with the following conditions:

[191] T7FNCA, Motion Materials at page 2.

(i) The interested party's status and participation will be limited solely to the OFA approval motion.

(ii) The interested party will not participate in case management or case conferences.

(iii) The interested party will not be permitted to participate in any mediation, negotiations, settlement discussions, dispute resolution, or administration processes related to the OFA approval motion.

(iv) The interested party will not be permitted to seek orders.

(v) The interested party will not be permitted to adduce any further evidence, raise new issues, or otherwise supplement the record of the parties. The interested party will not be permitted to cross-examine on the evidence. The interested party must take the evidentiary record as it is.

(vi) The interested party will not be permitted to make oral submissions.

(vii) The interested party may file written submissions of not more than 10 pages addressing the unique perspective of the interested party and must not repeat the positions of other parties. The interested party must work collaboratively with any other additional interested parties added as a result of this motion or as a result of CSSSPNQL-AFNQL's motion in advance of filing their submissions to avoid duplication of submissions. These submissions should not re-open matters already determined.

(viii) The interested party must abide by the timelines set out by the Tribunal and will not delay the proceedings, including because of party or counsel availability. Any delay will be deemed a renunciation by the interested party to participate in the proceedings.

(ix) The parties will be provided an opportunity to respond to the interested party's submissions on the OFA approval motion.

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

Maggie Wente, Jessie Stirling Voss, Katelyn Johnstone, and Ashley Ash
Olthuis, Kleer, Townshend LLP

Counsel for the Interested Party, Chiefs of Ontario

PART V - LIST OF AUTHORITIES

STATUTES	
1.	*Canadian Human Rights Act*, RSC 1985, c H-6
CASE LAW	
2.	*Attaran v Immigration*, 2017 CHRT 16
3.	*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 2
4.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 26
5.	*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
6.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 11
7.	*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
8.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 7
9.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4
10.	*Toronto (City) v CUPE*, 2003 SCC 63
OTHER SOURCES	
11.	Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario dated 26 February 2025