Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

-and-

CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and NISHNAWBE-ASKI NATION

Interested Parties

-and-

NEQOTKUK (TOBIQUE) FIRST NATION OF THE WOLASTOQEY NATION and UGPI'GANJIG (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 YUON FIRST NATIONS and OUR CHILDREN OUR WAY SOCIETY and CONFEDERACY OF TREATY SIX FIRST NATIONS and TREATY 7 FIRST NATIONS CHIEFS' ASSOCIATION and TREATY 8 FIRST NATIONS OF ALBERTA

Prospective Interested Parties

REPLY OF THE MOVING PARTY UGPI'GANJIG (EEL RIVER BAR) FIRST NATION

May 22, 2025

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I. INTRODUCTION

1. Ugpi'ganjig (Eel River Bar) First Nation ("**Ugpi'ganjig**") provides this reply to the consolidated submissions and supplemental affidavits filed by the Canada (Respondent), Chiefs of Ontario ("**COO**") and Nishnawbe Aski Nation ("**NAN**") ("**Interested Parties**") (collectively, the "**Discriminating Party and Interested Parties**") with the Canadian Human Rights Tribunal ("**CHRT**" or "**Tribunal**") on May 15, 2025 opposing Ugpi'ganjig's motion for Interested Party Status in the motion brought by COO and NAN ("**COO and NAN Joint Motion**") on March 7, 2025 (amended on May 7, 2025).

2. This reply addresses whether the Tribunal should grant Interested Party Status to Ugpi'ganjig to participate in the COO and NAN Joint Motion, and if so, on what terms of participation.

3. Thirteen (13) prospective interested parties, including Ugpi'ganjig, currently have motions before the Tribunal seeking to be added as an interested party to the COO and NAN Joint Motion (the "**Prospective Interested Parties**"). One (1) of the Prospective Interested Parties had the opportunity to file affidavit evidence. Twelve (12) Prospective Interested Parties were restricted from providing affidavit evidence. The Tribunal permitted Canada, COO, and NAN to submit consolidated submissions opposing these motions on May 15, 2025, and they then each filed supplemental affidavit evidence.

4. It is procedurally inequitable for the Discriminating Party and Interested Parties to be permitted to file evidence while the Prospective Interested Parties are restricted from doing so.

5. The Discriminating Party and Interested Parties' May 15, 2025 submissions, in particular their supplementary affidavits, confound: (**i**) the issue of whether the Tribunal should grant interested party status to the Prospective Interested Parties, and (**ii**) the issue of whether the "Ontario Final Agreement" ("**OFA**") fully satisfies the Tribunal's Orders and can be permitted to supersede and replace the Tribunal's Orders related to the discrimination.

II. OBJECTION TO PROCEDURAL STANDING OF COO AND NAN'S JOINT MOTION

6. COO and NAN, as Interested Parties, do not have the authority to file a motion for substantive relief to vacate or supersede the Tribunal's orders and effectively terminate this Tribunal's jurisdiction over aspects of the proceeding.

7. The Tribunal should not grant this authority to the Interested Parties.

8. Rules 8(1) and 8(2) of the Tribunal's Rules of Procedure (03-05-04) govern interested party status. Interested parties' participatory rights are generally limited to those specified in their original motions for such status.

9. Pursuant to Rule 1(6), the Panel retains the jurisdiction to decide any matter of procedure not provided for by these Rules. This jurisdictional authority is being challenged by the OFA, which contains coercive provisions that would constrain the Tribunal's independent assessment by requiring that the Tribunal accept the OFA unconditionally without modification and approve the OFA by February 2026, after which Ontario First Nations would forfeit funding for the fiscal year 2025-26 and have the overall funding commitment reduced. These provisions place undue pressure on the Tribunal and improperly dictate the terms under which the Tribunal can exercise its jurisdiction.

10. It is contrary to principles of natural justice to allow interested parties to dramatically expand their participatory rights once admitted in such a manner that: (**i**) prejudices the actual parties and Prospective Interested Parties, (**ii**) attempts to alter or nullify the CHRT's existing orders through an agreement that Canada is at liberty to implement without Tribunal approval if it genuinely believes the agreement ends discrimination, and (**iii**) sows division amongst First Nations.

11. The primary onus for ending the discrimination identified by the Tribunal rests with Canada. Canada is free to enter into agreements such as the OFA with COO and NAN if their leadership supports it. However, COO and NAN, as Interested Parties, cannot be permitted to bring a motion for relief that would have the OFA supersede and replace the Tribunal's existing orders.

12. The outcome and the impact of the COO and NAN Joint Motion will not be confined to Ontario. If the Tribunal accepts the OFA as sufficient to supersede and replace the Tribunal's orders, this

will have an unprecedented national-scale intergenerational impact on First Nations children and families. Canada will then surely continue its paternalistic, old mindset of divide and conquer tactics.

13. If Canada genuinely believed the OFA would end discrimination against First Nations children in Ontario, it could simply implement it in good faith, consistent with the honour of the Crown, without seeking Tribunal approval. Canada's requirement for the Tribunal to unconditionally approve a pre-signed agreement with the Interested Parties to vacate existing orders indicates Canada's goal is to escape Tribunal jurisdiction and its legal obligations rather than to ensure the elimination of Canada's systemic discrimination against First Nations children and families in Ontario.

III. CANADA'S (IN)ACTION BRINGS THE HONOUR OF THE CROWN INTO DISREPUTE

14. The Agreement in Principle (2021) required the Caring Society to end its participation in the negotiations and, in December of 2023, to make a motion for relief regarding Canada's failure to adhere to the Tribunal's orders on Jordan's Principle. In the Caring Society's absence, Canada, COO and NAN continued to negotiate a national long term reform agreement with Canada. In October 2024, First Nations-in-Assembly voted to reject the draft Final Settlement Agreement on Long-Term Reform between AFN, COO, NAN and Canada, released in July 2024 ("**dFSA**")[1]. Ugpi'ganjig voted to reject the dFSA.

15. Canada's funding approaches in the OFA are essentially similar to those in the dFSA (and closely reflect Program Directive 20-1) which First Nations-in-Assembly determined are insufficient to remedy the systemic discrimination identified by this Tribunal. Canada's actions and inactions precipitating the COO and NAN Joint Motion bring the Honour of the Crown into disrepute and violate the Crown's duty to diligently implement the Tribunal's orders as well as the parties' expectations during negotiations to further reconciliation.

16. The dFSA contained clauses 379 and 380 that: (**i**) committed AFN, COO and NAN to "speak publicly in favour of this Final Settlement Agreement and […] make best efforts to procure [its]

[1] The July 11, 2024 Draft National Final Settlement Agreement is Exhibit V of the Affidavit of GC Joel Abram affirmed March 6, 2025 tendered by Chiefs of Ontario in support of the COO and NAN Joint Motion.

endorsement … by First Nations leadership…" (379); and (**ii**) make its coming into force "contingent on the endorsement of First Nations leadership and approval by the Tribunal" (380).

17. Clause 379 of the dFSA, requiring AFN to speak publicly in favour and make best efforts to procure its endorsement by First Nations leadership, sowed significant distrust that AFN would be able to provide accurate information regarding the dFSA. Further, when AFN representatives and Canada came to New Brunswick on August 14, 2024, for the regional engagement on the dFSA, it was clear their purpose was to speak publicly in favour of the agreement and not about its serious shortcomings. First Nations were well-briefed on the shortfalls of the dFSA and expressed their serious concerns to the AFN notably on Canada's funding approach. However, AFN's document entitled "First Nations Child and Family Services Long-Term Reform: Regional Engagement Summary," dated September 17, 2024, did not at all reflect the major concerns about the dFSA expressed by First Nations leadership in New Brunswick.[2]

18. Clause 380 of the dFSA grounded the reasonable expectation of First Nations that they would be able to provide constructive amendments to any long term reform agreement, to ensure a national long term reform sufficiently eliminates Canada's systemic discrimination against First Nations children and families. However, Canada unilaterally ended national long term reform negotiations nationally in July 2024, then decided to only pursue regional negotiations with the First Nations organizations who were prepared to accept the failed dFSA. This approach bypasses and undermines the collective decision making of First Nations-in-Assembly. It is disrespectful and exhibits Canada's intransigent attitude by refusing to engage in dialogue based on constructive feedback from Chiefs.

19. The main obstacle to national long-term reform is Canada's intransigence and its refusal to continue consultations and negotiations to meaningfully engage in a dialogic approach for developing a national agreement that allows for variation for distinct regional circumstances.

[2] AFN Affidavit of Amber Potts, affirmed March 3, 2025, at Exhibit C, First Nations Child and Family Services Long-Term Reform: Regional Engagement Summary" dated September 17, 2024.

IV. THE TEST FOR INTERESTED PARTY STATUS AND UGPI'GANJIG'S POSITION

20. The core arguments in Ugpi'ganjig's April 15, 2025, Motion for Interested Party Status are: (**i**) Ugpi'ganjig's participation will assist the Tribunal and contribute distinct legal perspectives beyond those of existing parties; (**ii**) the outcome of this proceeding, particularly the COO and NAN Joint Motion, will directly impact Ugpi'ganjig's interests; and (**iii**) Ugpi'ganjig's participation will not unduly delay the proceedings. Ugpi'ganjig seeks Interested Party Status with participatory rights equivalent to those of COO and NAN.

21. The Discriminating Party and Interested Parties' opposition to Ugpi'ganjig's Motion for Interested Party Status rests on the misconception that the COO and NAN Joint Motion concerns Ontario alone. In reality, Canada has acknowledged the national implications of the motion.

22. Canada references the 2016 CHRT 2 Merit Decision as if the systemic discrimination found by the Tribunal is historical and has been effectively remedied. In determining the COO and NAN Joint Motion, the Tribunal needs to decide if, with the OFA, Canada sufficiently structurally overhauls its discriminatory systems to forever eliminate Canada's discrimination against First Nations children and families. Ugpi'ganjig's participation will provide the Tribunal with a unique and helpful perspective that is not currently represented and that will assist it in addressing the inadequacies of Canada's current funding approach reflected in the OFA. This perspective is essential for the Tribunal to fully understand the implications of its decision in the COO and NAN Joint Motion for First Nations children across Canada.

23. Canada's funding approaches remain discriminatory because they are not based on actual need, but rather on flawed assumptions and Indian Registration System population levels, leading to inadequate funding, adverse impacts, and setting up First Nations to fail their children and families. Canada continues to rely on Indian Registry System registered population-on reserve calculations, which risk duplicating the discriminatory per-capita models condemned by the Tribunal.

24. Ugpi'ganjig's direct experience reveals how this model creates chronic underfunding by basing future allocations on artificially constrained historical expenditures. The reference years used to establish the base funding do not provide accurate data for determining the needs, most notably because of the unprecedented impacts of the COVID-19 pandemic during which unusual period

many First Nations and agencies were unable to fully build capacity, construct capital and infrastructure, and implement programs and services. While modifiers have been added, it remains fundamentally unsound to base needs assessments on data obtained during COVID-19. This creates a structural disadvantage that will perpetuate rather than remedy discrimination.

25. The Discriminating Party and Interested Parties' submissions fundamentally misconceive the nature of Canada's consultation obligations, by failing to recognize that AFN, the Caring Society, COO, and NAN themselves are not rights holders. Ugpi'ganjig's unique experience and perspective are not represented by the AFN, the Caring Society, COO, or NAN, who cannot speak with the authority of rights holders or service providers on the ground. Ugpi'ganjig can provide a unique Atlantic perspective of a First Nation without an incorporated agency on how any long-term reform agreement approved by the Tribunal must meet the standards of non-discriminatory, culturally appropriate, needs-based, and substantively equal services, and how Canada's current funding approaches (including within the OFA) may replicate discriminatory models. Ugpi'ganjig's participation will add to the legal positions, potentially challenging inaccurate representations made by other parties, without broadening the issues, and respecting all Tribunal-imposed conditions on Ugpi'ganjig's participation as an interested party.

26. The Discriminating Party and Interested Parties' submissions grossly exaggerate any potential procedural delays that would result from Ugpi'ganjig's participation. Ugpi'ganjig commits to (i) filing only concise and relevant submissions focused strictly on issues within the scope of the COO and NAN Joint Motion; (ii) adhering to all Tribunal deadlines; and (iii) limiting evidence to addressing gaps in the record.

V. CONCLUSION AND RELIEF SOUGHT

27. For these reasons, Ugpi'ganjig respectfully requests that the Tribunal grant its motion for interested party status with participation rights as outlined in its original motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of May, 2025.

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