

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

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

Complainants

and

THE CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

and

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

Interested Parties

**SUBMISSIONS OF THE
CANADIAN HUMAN RIGHTS COMMISSION
(further to Panel's Direction of May 14, 2025)**

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OVERVIEW

1. On May 14, 2025, this Panel directed the parties to provide submissions on the Chiefs of Ontario (COO) and the Nishnawbe Aski Nation's (NAN) ability to bring their amended joint motion and to seek the relief specified in that motion.
2. On May 28, 2025, Canada stated that it agrees to being added to the joint motion as a moving party. No party objects. In fact, the parties, including the Commission, consent to this proposal apart from the Assembly of First Nations, which remains neutral. Adding Canada as a moving party resolves the controversy of COO and NAN's ability to bring the motion. Accordingly, this Panel should accept Canada as a moving party and find the matter is moot.
3. Without a live issue between the parties and instead unity, this Panel should not exercise its discretion to consider a purely academic issue considering 1) judicial economy, 2) the adjudicative function of this Tribunal, and 3) its mandate to proceed as expeditiously and simply as the requirements of natural justice and the rules of procedure allow.

Acknowledgement

4. The Commission wishes to stress its respect for the sovereignty of First Nations communities and the rightsholders in this proceeding. Nothing in the Commission's submissions is intended as a critique or comment on the substantive remedies sought or offered by the parties, or what would be a good resolution for the rightsholders. The Commission also recognizes the importance of reconciliation, long-term reform for Indigenous children and families, and the timeliness of remedies to end discrimination.
5. The Canadian *Constitution*, the *Charter of Rights and Freedoms*, and the *Canadian Human Rights Act* recognize and affirm "the existing aboriginal and treaty rights of the aboriginal peoples of Canada".¹ These legal instruments and the processes that

¹ Part II of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s [35](#); *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s [25](#). 'Aboriginal' appears in lowercase in

flow from them, must not be construed to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada.²

6. The preliminary issue raised by this Panel does not affect the sovereignty or self-determination of COO and NAN. Rather, this is a purely procedural question to identify the appropriate moving party or parties. Further, identification of the appropriate moving party/parties does not interfere with or derogate from the rights set out in the *United Nations Declaration on the Rights of Indigenous Peoples*, the *United Nations Declaration on the Rights of Indigenous Peoples Act*, and *An Act respecting First Nations, Inuit and Métis children, youth and families*.³

PART I – STATEMENT OF FACTS

A. Panel’s directions on preliminary issue

7. By letter dated May 14, 2025, this Panel asked the parties to make submissions on the following paragraph in COO and the NAN’s amended joint notice of motion:

5. If COO’s and NAN’s status as interested parties restricts them from filing this motion to partially settle the Complaint as it relates to Ontario as described in paragraph 2, COO and NAN request that the Tribunal make an order granting COO and NAN additional participation rights for the purposes of bringing this motion or whatever relief the Tribunal deems just pursuant to its responsibility under s.48.9(1) of the *Canadian Human Rights Act* to ensure proceedings are conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

B. Development: Canada proposes to be added as a moving party

8. By letter dated May 28, 2025, Canada wrote that “if the Tribunal is not prepared to grant the requested relief, Canada asks that it be added as a moving party to the

the original text of both citations. *Canadian Human Rights Act*, RSC, 1985, c H-6, s [1.1](#).

² *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s [25](#); *Canadian Human Rights Act*, RSC, 1985, c H-6, s [1.1](#).

³ [United Nations Declaration on the Rights of Indigenous Peoples](#), 13 September 2007, 61/295 UN General Assembly; [United Nations Declaration on the Rights of Indigenous Peoples Act](#), SC 2021, c 14; [An Act respecting First Nations, Inuit and Métis children, youth and families](#), SC 2019, c 24.

existing motion, which in its view will render the issue moot.”

C. Overview of parties’ positions

9. The positions of the parties are set out below:

Party	Canada’s request to be added as a moving party	If Canada is a moving party, the matter is moot	COO and NAN have sufficient participatory rights to bring the motion and seek the specified remedies	Should expanded participatory rights be required, the Tribunal should grant these to COO and NAN
COO and NAN (Interested parties)	Agree	COO and NAN have not had an opportunity to make submissions on this point but may do so in their reply	Agree	Agree
Canada (Respondent)	Agree	Agree	Implicitly agree that this is a preferred option	Agree that this is a preferred option
Assembly of First Nations (Complainant)	Neutral	Neutral	Neutral	Neutral
Caring Society (Complainant)	Agree but ask Canada to serve and file a fresh as amended notice of motion	Agree	Disagree	Disagree
Canadian Human Rights Commission (Party)	Agree	Agree	Ask this Panel to not consider or decide this academic question	Ask this Panel to not consider or decide this academic question

PART II – POINTS IN ISSUE

10. Considering the development on May 28, 2025, there are two issues before this Panel:
 - a) Is the question raised by this Panel moot as Canada has offered to be a moving party to the joint motion?
 - b) If so, should this Panel exercise its discretion to decide this matter?
11. The Commission's position is that the first question should be answered in the affirmative, and the second question in the negative.

PART III – SUBMISSIONS

A. No opposition to Canada being named as a moving party

12. None of the parties – including both complainants – oppose Canada being named as a moving party to COO and NAN's joint motion. The Caring Society argues that Canada should file a fresh as amended notice of motion. However, whether Canada a) is added to the existing motion, or b) files a fresh as amended motion, there will be no practical impact on the substance of the issues to be heard and decided in the motion.

B. Question raised by Panel is now moot

13. The parties, other than COO and NAN who have not had a chance to make submissions on this issue, do not disagree that this renders the issue moot. Once COO and NAN have had an opportunity to respond, the Panel may decide this matter is moot based on the consent of the parties and the neutrality of the Assembly of First Nations.
14. As the controversy between the parties no longer exists, this matter neither needs to nor should be addressed by this Panel. The doctrine of mootness, as set out by

the Supreme Court of Canada in *Borowski*, is settled law that applies to courts and tribunals.⁴

15. The doctrine of mootness is part of a general policy or practice that an adjudicative body may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the adjudicator will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the adjudicator will have no practical effect on such rights, the matter is moot and should not be decided.

C. Criteria for Panel to exercise discretion to decide moot issues are not satisfied

16. Courts may exercise discretion to depart from the policy or practice to not address moot issues, in limited circumstances. In doing so, they must consider three factors:
 - a. the presence of an adversarial relationship,
 - b. the need to promote judicial economy, and
 - c. the adjudicative role, which is distinct from the legislative role.⁵
17. None of these factors are present in the matter at hand. Further, the preliminary issues at hand are not purely legal but rather highly factual as they concern the exceptional role and involvement of COO and NAN in this matter.
18. As mentioned earlier, there is no controversy about Canada being named as a moving party. Amending the notice of motion is the simplest and quickest way to resolve the issues, thus, saving adjudicative resources. This is in stark contrast to the resources needed for this Panel and the parties to engage in an academic debate on issues that are novel, complex, divisive, and ultimately unnecessary to

⁴ [*Borowski v Canada \(Attorney General\)*](#), [1989] 1 SCR 342; *Beattie and Bangloy v Indigenous and Northern Affairs Canada*, 2019 CHRT 45 at para [48](#).

⁵ [*Borowski v Canada \(Attorney General\)*](#), [1989] 1 SCR 342. See also *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 at para [16](#); *Beattie and Bangloy v Indigenous and Northern Affairs Canada*, 2019 CHRT 45 at para [48](#).

decide. Stopping at a finding of mootness fulfills this Tribunal's adjudicative role and avoids making law outside of dispute resolution.

D. Adding Canada as a moving party reflects agreement between parties and fulfils Tribunal's mandate

19. It is well recognized that this Tribunal is the master of its own house. Further, this Tribunal must proceed as informally and quickly as natural justice and the rules of procedure allow.⁶ Thus, a finding of mootness falls within this Panel's authority and statutory duty.
20. The Caring Society's submissions on this preliminary issue delve into the merits of COO and NAN's motion regarding the nature of the remedies and whether or not Canada has satisfied the orders against it. These arguments are premature and not relevant in determining the current issue, which is a technical legal question of capacity. None of the parties dispute that Canada has this capacity.
21. All the parties – including Canada as the respondent – will have an opportunity to make submissions on whether the proposed remedies satisfy the Tribunal's orders. This may include addressing "Canada's role as the perpetrator of discrimination, the duties it owes to First Nations children, youth and families, and [...] any clear commitment from Canada that the discrimination will not be repeated."⁷ Further, there will also be an opportunity for the parties to speak to "the Respondent's distinct identity, duties and responsibilities to First Nations writ large, and duty to remedy the discrimination in this case."⁸
22. The central question remains whether the Ontario Final Agreement and the Trilateral Agreement Respecting Reform of the 1965 Agreement satisfy the Tribunal's order for remedies in Ontario relating to the First Nations Child and Family Services Program in Ontario and the Memorandum of Agreement Respecting Welfare Programs for Indians (1965 Agreement), save for proceedings related to Jordan's Principle, and end the Ontario complaint. Canada filing a fresh as amended notice

⁶ *Canadian Human Rights Act*, RSC 1985, c H-6, s [48.9](#).

⁷ Caring Society's factum at para 60.

⁸ Caring Society's factum at para 60.

of motion will not change the essential issues to be determined by this Tribunal or the relief being sought in the motion.

23. Accordingly, this Panel should avoid considering an issue where the dispute is only academic and it would have no practical effect in resolving the issues in the case.

PART IV – CONCLUSION

24. The Commission asks this Panel to:

- a. allow Canada to be added as a moving party or in the alternative, to file a fresh as amended notice of motion as a moving party;
- b. find that the issue at hand is moot; and
- c. not exercise its discretion to consider or decide the moot issues.

DATED at Ottawa this 11th day of June 2025,

Anshumala Juyal and Khizer Pervez
Legal Services Branch
Canadian Human Rights Commission

PART V – LIST OF AUTHORITIES

Legislation

An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24, <<https://canlii.ca/t/56fd0>>

Part II of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, section 35, <<https://canlii.ca/t/ldsx>>

Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, section 25, <<https://canlii.ca/t/ldsx>>

Canadian Human Rights Act, RSC, 1985, c H-6, sections 1.1 and 48.9, <<https://canlii.ca/t/56cjq>>

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14, <<https://canlii.ca/t/56fdv>>

Jurisprudence

Amgen Canada Inc v Apotex Inc, 2016 FCA 196 (CanLII), <<https://canlii.ca/t/gsklp>>

Beattie and Bangloy v Indigenous and Northern Affairs Canada, 2019 CHRT 45 (CanLII), <<https://canlii.ca/t/j3wzq>>

Borowski v Canada (Attorney General), 1989 CanLII 123 (SCC), [1989] 1 SCR 342, <<https://canlii.ca/t/1ft7d>>

International Authorities

United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, 61/295 UN General Assembly, online:

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf