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## Via Email

Our File Number: LEX-500219273

May 28, 2025

Canadian Human Rights Tribunal  
240 Sparks Street, 6th Floor West  
Ottawa, Ontario K1A 1J4

Dear Members Marchildon and Lustig:

**Re: First Nations Child and Family Caring Society of Canada et al. v.  
the Attorney General of Canada et al.  
Tribunal File: T1340/7008**

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We write in response to the Tribunal's request for Canada's detailed submissions on COO and NAN's request for expanded participatory rights (if those rights are required).

As Canada's detailed submissions are brief, Canada is providing them in this letter.

In summary, Canada's position is that if expanded participatory rights are required for COO and NAN to seek the relief set out in their joint motion, the Tribunal should grant those expanded rights as set out in para. 5 of the COO and NAN's Amended Joint Notice of Motion. Such an order would further the important causes of reconciliation and self-determination in relation to First Nations in Ontario. Alternatively, if the Tribunal is not prepared to grant the requested relief, Canada asks that it be added as a moving party to the existing motion, which in its view will render the issue moot.

### **A. If required, the Tribunal should grant the expanded participatory rights**

Two principal reasons strongly militate in favor of the Tribunal granting COO and NAN the additional participatory rights to settle the elements of this Complaint that relate to the delivery of the FNCFS Program in Ontario and the 1965 Agreement.

#### *1. Expanded participatory rights accord with reconciliation and self-determination*

COO and NAN have persistently and diligently negotiated with Canada in good faith towards long-term reform of the FNCFS Program, including working to create the draft National Final Agreement. Through COO and NAN, Ontario First Nations organize and govern themselves

in line with their right to participate in decision-making matters that affect their rights.<sup>1</sup> Granting their sought relief would affirm their efforts to resolve aspects of the underlying Complaint for Ontario First Nations and the ultimate causes of reconciliation and self-determination.

After the First Nations-in-Assembly rejected the draft National Final Agreement in October 2024, COO invited Canada to negotiate a reformed FNCFS Program. In January 2025, COO, NAN, and Canada began intensive negotiations that led to the provisional Ontario Final Agreement and the provisional Trilateral Agreement, both of which the First Nations-in-Assembly of COO and NAN subsequently approved.<sup>2</sup> As evidenced below, the agreements reflect the objectives of reconciliation and self-determination as well as the Tribunal’s findings:

#### Ontario Final Agreement

- COO and NAN worked extensively with Ontario First Nations and political-territorial organizations in creating the Ontario Final Agreement and the Trilateral Agreement, including engaging in extensive consultation.<sup>3</sup>
- The Ontario Final Agreement was negotiated in the spirit of reconciliation and in the exercise of Ontario First Nations’ inherent right to self-determination.<sup>4</sup>
- The Ontario Final Agreement represents substantial reform to the FNCFS Program in Ontario: it “remedies the systemic discrimination”; its purpose and principles reflect the Tribunal’s orders; it is evidence-based; and it contains elements that are intended to give Ontario First Nations a significant role in overseeing the implementation of the Final Agreement.<sup>5</sup>

#### The Trilateral Agreement

- The Trilateral Agreement addresses the Tribunal’s order on the 1965 Agreement.<sup>6</sup>
- The Trilateral Agreement details how COO and NAN will work with Canada to engage with the Government of Ontario to reform the 1965 Agreement.<sup>7</sup>
- The Trilateral Agreement respects and enhances Ontario First Nations’ self-determination by allowing COO and NAN to participate in the re-negotiation of—and potentially become parties to—a reformed 1965 Agreement.<sup>8</sup>

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<sup>1</sup> COO and NAN’s Amended Joint Notice of Motion, at para. 21, filed X 2025, [“JNM”].

<sup>2</sup> JNM, at paras. 17-20.

<sup>3</sup> JNM, at para. 22.

<sup>4</sup> JNM, at para. 20-21.

<sup>5</sup> JNM, at para. 23-25, 30, 42.

<sup>6</sup> JNM, at para. 52.

<sup>7</sup> JNM, at para. 52.

<sup>8</sup> JNM, at para. 53.

2. *The Tribunal is the master of its own procedure and can expand COO and NAN's participatory rights at this stage in the proceeding*

Section 48.9(1) of the *Canadian Human Rights Act* provides the Tribunal the jurisdiction to conduct proceedings in an informal and expeditious manner that complies with natural justice and procedural fairness. Granting interested parties the exceptional right to partially settle a complaint is within that jurisdiction. The remedy, however, should be limited to exceptional circumstances where natural justice and procedural fairness are not compromised; where the interested party is working on behalf of individuals most affected by the Complaint's resolution; and where the increased rights will bring about the most expeditious and fair determination of an inquiry on its merits.

Here, these exceptional circumstances are present. This proceeding is the most protracted proceeding in the Tribunal's history; COO and NAN have been involved in the proceedings since 2009 (COO) and 2016 (NAN) and have extensively and consistently participated in hearings and motions before (COO) and after the *Merits* decision (COO and NAN); COO and NAN work on behalf of many affected First Nations; and granting the expanded rights (if required) will not compromise natural justice or procedural fairness:

- COO and NAN's work on behalf of Ontario First Nations strongly militates in favor of expanding their rights. Ontario First Nations have indicated their support for COO and NAN's work by ratifying the Ontario Final Agreement through the First Nations-in-Assembly of COO and NAN.<sup>9</sup> If COO and NAN's technical status as interested parties precludes them from finally settling aspects of the Complaint for Ontario First Nations, the Tribunal should expand their litigation rights to align with the practical reality of the interests they represent.
- COO and NAN's extensive involvement in the proceedings and their significant contributions strongly militate in favor of expanding their rights in these exceptional circumstances. Nine years have passed since the *Merits* decision, and providing COO and NAN further rights may finally resolve a substantial part of the Complaint for Ontario First Nations.<sup>10</sup>

**B. Alternatively, Canada requests that it be added as a moving party**

If expanded participatory rights are required for COO and NAN but the Tribunal is not prepared to grant expanded participatory rights to them, Canada asks that it be added as a moving party. Both COO and NAN have indicated their consent to this step.

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<sup>9</sup> JNM, at para. 21.

<sup>10</sup> Of course, the Tribunal will continue to have jurisdiction over interpreting, applying, and implementing Jordan's Principle for First Nations children in Ontario.

In these unique circumstances, however, it is Canada's view that the principles of reconciliation and self-determination militate in favor of COO and NAN being themselves directly able to act on behalf of First Nations in Ontario and that they be granted whatever further participatory rights are needed to enable this to occur.

Sincerely,



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