FILE NO: 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 Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL CANADA and NISHNAWBE ASKI NATION

Interested Parties

FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION and
ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR

Applicants

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 proceedings and nine years into the remedial phase, the First Nations of Quebec and Labrador Health and Social Services Commission ("FNQLHSSC"), acting through the co-applicant, the Assembly of First Nations Quebec-Labrador ("AFNQL"; together the "AFNQL parties") bring a motion seeking to be granted interested party status in these proceedings. The AFNQL parties should not be granted interested party status at this late stage.

2. The AFNQL parties seek to be added to:

   (a) The joint motion brought by Chiefs of Ontario ("COO") and Nishnawbe Aski Nation ("NAN") for approval of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "OFA") and the Trilateral Agreement in Respect of Reforming the 1965 Agreement (the "Trilateral Agreement") (the "OFA approval motion");

   (b) The long-term reform of Jordan's Principle; and

   (c) The long-term reform of the First Nations Child and Family Services Program (the "FNCFS Program") outside of Ontario.

   The AFNQL parties also submit they should be granted interested party status to address their French language concerns.

3. The AFNQL parties should not be granted interested party status in the OFA approval motion. The OFA is an opportunity to bring about long-term reform of 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. The outcome of the OFA approval motion will not have an impact on the AFNQL parties' interests. Their regional expertise in the delivery of child and family services in Quebec and Labrador 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"). The OFA approval motion is not the forum to consider reform of the FNCFS Program outside of Ontario.

4. The AFNQL parties should not be granted interested party status in the proceedings, as concerns Jordan's Principle. The addition of any interested parties at this late stage of the proceedings risks further delaying Jordan's Principle reform, contrary to the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. The Tribunal must also consider the risk of a significant number of prospective interested parties seeking to insert themselves into the proceedings should the AFNQL parties be successful in their motion. While each of these prospective parties may have an interest and expertise in Jordan's Principle, the addition of every interested First Nation community or organization would make these proceedings impossible to manage and bring them to a halt. This is not in the best interests of First Nations children, and would leave First Nations children, families, and communities without the benefit of critical Jordan's Principle reform.

5. COO has no position on the addition of the AFNQL parties to the proceedings as concerns the national long-term reform of the FNCFS Program.

6. The interested party mechanism is not the appropriate method of addressing the AFNQL parties' concerns regarding their French language rights. COO has no position on the substance of the AFNQL parties' language rights concerns but submits the Office of the Commissioner of Official Languages is the correct forum to address any issues related to potential infringements on language rights.

7. First Nations children within Ontario and across Canada have waited too long for long-term reform. It is not in the best interests of these children to make them wait any longer. The OFA approval motion and Jordan's Principle proceedings must be allowed to proceed without delay.

B. Background

i. The originating complaint and finding of discrimination by the Tribunal

8. In 2007, the Caring Society and the AFN filed a human rights complaint with the Canadian Human Rights 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]

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

ii. The bifurcation of Jordan's Principle and FNCFS Program reform

10. On December 31, 2021, COO, the AFN, the Caring Society, NAN, and Canada (the "Parties") signed and executed the Agreement-in-Principle (the "AIP").[6] Canada agreed in the AIP to dedicate $19.807 billion over a five-year period for the FNCFS Program, major capital relating to the FNCFS Program, and Jordan's Principle.[7] In the AIP, the Parties committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan's Principle parties.[8] Shortly after the AIP was signed, the Parties began negotiating a final settlement agreement.[9]

11. In March 2023, the Caring Society and the AFN advised the other Parties of a new joint-proposal which proposed bifurcating the long-term reform of Jordan's Principle and the long-term reform of the FNCFS Program and negotiating the long-term of the FNCFS

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[1] *Canadian Human Rights Act*, R.S.C., 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 paras 63-65 [GC Abram Affidavit, 6 Mar 2025].
[7] GC Abram Affidavit, 6 Mar 2025 at paras 63-65.
[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)*, 2022 CHRT 8 at para 25.
[9] GC Abram Affidavit, 6 Mar 2025 at para 67.

Program first.[10] On or around October 24, 2023, Canada announced to the Parties that it had received a mandate to continue long-term reform negotiations based on the proposal.[11]

12. After Canada announced its new mandate, the Parties resumed negotiations towards a draft final agreement on long-term reform of the FNCFS Program.[12]

13. In or around December 2023, the Caring Society formally withdrew from AIP negotiations.[13] The remaining Parties—AFN, COO, NAN, and Canada—continued in their negotiations towards a final settlement agreement.[14]

iii. The draft national final agreement

14. On July 11, 2024, COO, NAN, the AFN, and Canada announced a draft Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program (the "national agreement").[15]

15. 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.[16]

16. On October 17, 2024, the First Nations-in-Assembly rejected the national agreement at an AFN Special Chiefs Assembly.[17]

iv. The OFA and OFA approval motion

17. 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.[18]

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[10] Affidavit of Amber Potts, affirmed 3 March 2025 [Potts Affidavit] at para 22.
[11] GC Abram Affidavit, 6 Mar 2025 at para 70.
[12] GC Abram Affidavit, 6 Mar 2025 at para 71.
[13] GC Abram Affidavit, 6 Mar 2025 at para 73.
[14] GC Abram Affidavit, 6 Mar 2025 at para 74.
[15] GC Abram Affidavit, 6 Mar 2025 at para 76.
[16] GC Abram Affidavit, 6 Mar 2025 at para 91.
[17] GC Abram Affidavit, 6 Mar 2025 at para 92.
[18] GC Abram Affidavit, 6 Mar 2025 at paras 93-94.

18. On January 30, 2025, the AFNQL parties brought a motion before the Tribunal seeking to intervene and participate in the proceedings relating to long-term reform of the FNCFS Program and Jordan's Principle.[19]

19. On February 10, 2025, COO, NAN, and Canada reached a draft Ontario-specific agreement.[20]

20. On February 25 and 26, 2025, the OFA and the Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly, respectively.

21. 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.[21] Resolution #25/02S also called on the Parties outside of the OFA, being Caring Society and AFN, to refrain from interfering with the approval or implementation of the OFA.

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

23. On April 15, 2025, the Tribunal received 11 motions for interested party status in the OFA approval motion from Chippewas of Georgina Island and Taykwa Tagamou Nation, Neqotkuk (Tobique) First Nation, Ugpi'ganjig (Eel River Bar) First Nation, Mi'gmaq Child and Family Services of New Brunswick Inc, Our Children Our Way Society ("OCOW"), Federation of Sovereign Indigenous Nations ("FSIN"), Council of Yukon First Nations ("CYFN"), Assembly of Manitoba Chiefs, Confederacy of Treaty Six First Nations, Treaty 8 First Nations of Alberta, and Treaty 7 First Nations Chiefs' Association.

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[19] AFNQL, "Requête en intervention_TCDP_APQNL_CSSSPNQL", 30 January 2025 [AFNQL Notice of Motion].
[20] GC Abram Affidavit, 6 Mar 2025 at para 99.
[21] GC Abram Affidavit, 6 Mar 2025 at Exhibit LL.

v. Status of Jordan's Principle long-term reform

24. In 2025 CHRT 6, the Tribunal ordered Canada to consult the parties on several issues to remedy the backlog of Jordan's Principle requests across the country. [22] The parties are currently in Tribunal-assisted mediation pursuant to this decision.

PART II – ISSUES

25. The issues in this motion are whether the AFNQL parties should be added as interested parties:

a) To the OFA approval motion;

b) To the proceedings concerning Jordan's Principle;

c) To long-term reform of the FNCFS Program outside of Ontario; and

d) To address the AFNQL's French language rights concerns.

PART III – SUBMISSIONS

26. The AFNQL parties should not be granted interested party status in the OFA approval motion. The outcome of the OFA approval motion will not have an impact on the AFNQL parties' interests. Their regional expertise in the delivery of FNCFS services 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 to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[23]

27. The AFNQL parties should not be granted interested party status in the proceedings as they concern Jordan's Principle. The addition of any interested parties risks further delaying the

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[22] *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6 at paras 552-566, 571-572, 577-580, 585.

[23] *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).

proceedings, contrary to the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[24]

28. COO has no position on the addition of the AFNQL parties to the long-term reform of the FNCFS Program on a national level.

29. The AFNQL parties should not be granted interested party status to address their French language concerns. Interested party status is the wrong mechanism to address their French language concerns, which were properly raised through a complaint to the Office of the Commissioner of Official Languages.[25]

30. In the alternative, if the AFNQL parties are granted interested party status, it should be on the condition that the AFNQL parties 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 should be deemed a renunciation by the AFNQL parties to participate in the proceedings.

C. The test for interested party status

31. 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.[26] The prospective interested parties have the onus of demonstrating that their respective expertise will be of assistance in the determination of the issues.[27]

32. 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

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[24] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA*, s. 48.9(1).
[25] Affidavit of Marc Boivin, affirmed 15 April 2024 at para 16 [Marc Boivin Affidavit].
[26] 2022 CHRT 26 at para 31 citing 2016 CHRT 11 at para 3.
[27] 2022 CHRT 26 at para 29.

b) The prospective interested party can provide assistance to the Tribunal in determining the issues before it.[28]

33. 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.[29] The assistance should add a different perspective to the positions taken by the parties and further the Tribunal's determination of the matter.[30]

34. 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 represent". [31] The Tribunal will "also consider the nature of the issue and the timing in which an interested party status seeks to intervene".[32]

35. The extent of an interested party's participation must also take into account the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[33]

D. The AFNQL parties should not be added as interested parties in the OFA motion

36. The AFNQL parties should not be granted interested party status in the OFA approval motion. The outcome of the OFA approval motion will not have an impact on the AFNQL parties' interests. Their regional expertise in the delivery of FNCFS services 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

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[28] 2022 CHRT 26 at paras 30, 32.
[29] 2022 CHRT 26 at para 30.
[30] 2016 CHRT 11 at para 3.
[31] 2022 CHRT 26 at para 37.
[32] 2022 CHRT 26 at para 37.
[33] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA* at s. 48.9(1).

the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[34]

i. The OFA has no impact on the AFNQL parties' interests

37. 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".[35] 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. The AFNQL parties argue their interests are at stake in the OFA approval motion. They are not. The AFNQL parties are based outside of Ontario and, as such, the OFA will not apply to them. The AFNQL parties largely seek to make submissions about whether the Tribunal's decision concerning the OFA approval motion will impact future negotiations and long-term reform in Quebec and Labrador. Possible future negotiations on the long-term reform of the FNCFS Program in Quebec and Labrador are outside of the scope of the OFA approval motion.

38. The AFNQL parties argue the precedential value of the Tribunal's decision on the OFA gives them an interest in the OFA approval motion;[36] however, the precedential value of the Tribunal's decision does not mean the AFNQL parties have a direct interest in the OFA approval motion sufficient to ground interested party status. The AFNQL parties are correct in stating that orders of the Tribunal establish precedents that any party can seek to rely on in the future. This is true of every legal proceeding. 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".[37] But that precedential value does not mean the AFNQL parties

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[34] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA*, s. 48.9(1).
[35] *Attaran v Immigration*, 2017 CHRT 16 at para 16 [*Attaran*].
[36] The First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador, "Joint response of the Applicant and the Co-Applicant seeking intervenor status in the motion to approve the Ontario Agreement on First Nations Child and Family Services" dated 22 May 2025 at paras 20-24 [AFNQL Parties OFA submissions, 22 May 2025].
[37] *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 at para 28 [2024 CHRT 95], 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.

have a direct interest in the OFA approval motion sufficient to ground interested party status.

39. The AFNQL parties similarly misapprehend Canada's letter to the Tribunal dated March 17, 2025, claiming the OFA "is currently being invoked by the Government of Canada as a binding precedent for other First Nations across Canada".[38] Canada's letter does 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.

40. Further, the intention of the OFA to reform the FNCFS Program in Ontario is reflected in the Preamble of the agreement and the stated purpose of the OFA.[39] The OFA approval motion only seeks relief related to the FNCFS Program as it applies to First Nations children and families ordinarily on-reserve in Ontario.[40]

41. 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 AFNQL 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 opine on the suitability of a non-existent model for program reform in Quebec and Labrador.

42. An appropriate time to admit new perspectives about long-term reform in Quebec and Labrador is when the Tribunal is considering proposed reforms in these regions. As there are none being proposed at this time, it is not an appropriate time to allow such perspectives.

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[38] The First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador, "Joint written submissions of the Applicant and the Co-Applicant seeking intervenor status in the proceedings" dated 16 May 2025 at para 43 [AFNQL Parties submissions, 16 May 2025]; Canada Letter to Canadian Human Rights Tribunal dated 17 March 2025 [Canada Letter to CHRT, 17 Mar 2025].

[39] Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario dated 26 February 2025 [OFA] at Preamble and para 1.

[40] Chiefs of Ontario and Nishnawbe Aski Nation, "Amended Joint Notice of Motion" dated 7 May 2025 at paras 1-4 (emphasis added).

43. The AFNQL parties note that some First Nations—including Akwesasne, Timiskaming, and Kebaowek—are AFNQL member communities who use child and family services in Ontario.[41] Akwesasne is a member community of COO, and its interests are represented in the proceedings through COO.

44. Without any evidence as to how the other communities stand to be impacted by the OFA, it remains unclear what, if any, interest these border communities (with the exception of Akwesasne) have in the OFA approval motion, and how the AFNQL parties propose to represent those interests in the OFA approval motion.

ii. The AFNQL parties cannot provide assistance to the Tribunal

45. The AFNQL parties have not discharged their onus of demonstrating that their regional expertise in the delivery of child welfare services in Quebec and Labrador will be of assistance to the Tribunal in the determination of the issues in the OFA approval motion.[42] The AFNQL parties do not profess to have expertise in Ontario.

46. The AFNQL parties seek to broaden the scope of the OFA approval 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 Quebec and Labrador. 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. Such expertise may be useful in determining whether a future, yet-to-exist reformed program is suitable for Quebec and Labrador.

47. 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 a similar viewpoint.[43] In other proceedings, the Tribunal stated a successful applicant for interested party status "must satisfy the Tribunal that they do possess some expertise or

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[41] AFNQL Parties OFA submissions, 22 May 2025 at para 14.
[42] 2022 CHRT 26 at para 29.
[43] 2024 CHRT 95 at para 31.

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".[44]

48. The interests of the AFNQL parties can reasonably be represented by the AFN and the Caring Society, through their own mandates and their historical positions and role as complainants 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".[45] 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.[46] The AFNQL parties' suggestion that AFN's representation is inadequate because it is not fully aware of the realities in Quebec and Labrador is irrelevant to a motion that is confined to Ontario.[47]

49. 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 undercuts any argument the submissions proposed advance a unique perspective.

50. Ten other prospective interested parties based outside of Ontario seek to be added to the OFA approval motion.[48] Most of these prospective interested parties—including the AFNQL parties—rely on the incorrect assumption that the OFA approval motion will have effect outside of Ontario or the submissions impermissibly seek to expand the scope of the OFA approval motion. For example, like the AFNQL parties, FSIN, CYFN, and OCOW misapprehend Canada's letter to the Tribunal dated March 17, 2025.[49] The Caring Society can be expected to address the concern of these prospective interested parties that the OFA

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[44] *Attaran* at para 16, citing 2016 CHRT 11 at paras 3-4, 10-11.
[45] 2022 CHRT 26 at para 48 and 2016 CHRT 11 at para 16.
[46] 2016 CHRT 11 at para 16.
[47] AFNQL Parties OFA submissions, 22 May 2025 at para 16.
[48] Neqotkuk (Tobique) First Nation, Ugpi'ganjig (Eel River Bar) First Nation, Mi'gmaq Child and Family Services of New Brunswick Inc, Our Children Our Way Society, Federation of Sovereign Indigenous Nations, Council of Yukon First Nations, Assembly of Manitoba Chiefs, Confederacy of Treaty Six First Nations, Treaty 8 First Nations of Alberta, and Treaty 7 First Nations Chiefs' Association.
[49] Federation of Sovereign Indigenous Nations, "Written Submissions" dated 7 March 2025 at paras 10, 20a; Our Children Our Way Society, "20250415 Factum of Interested Party_Our Children Our Way" dated 15 April 2025 at para 17; Council of Yukon First Nations, "Written Submissions of the Proposed Interested Party Council for Yukon First Nations" dated 7 March 2025 at para 2; Canada Letter to CHRT, 17 Mar 2025.

would not be appropriate in other regions: in other materials, the Caring Society has already stated that 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 that the OFA (which relies on similar mechanisms as the national agreement) is not appropriate in other regions (this question is not at issue in the OFA approval motion in any event).[50]

51. The AFNQL parties raise numerous concerns with the rejected national agreement.[51] The rejected national agreement is not before the Tribunal in the OFA approval motion. 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.

52. The AFNQL also raise concerns about Canada's alleged failure to renew national negotiations.[52] 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 currently before the Tribunal.

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

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

54. 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 has recognized as an urgent matter requiring prompt action.[53] The best interests of First Nations children and families in Ontario must no longer be compromised by inaction.

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[50] Caring Society, "Factum of Caring Society-FNCFS-17-MAR-2025" dated 17 March 2025 at paras 9-10, 37-41; Caring Society, "CS Letter to Panel (Long Term Reform)" dated 24 March 2025 at pp 1, 8.
[51] AFNQL Parties submissions, 16 May 2025 at paras 59, 66-69, 72-73.
[52] AFNQL Parties submissions, 16 May 2025 at paras 46-52; AFNQL Parties OFA submissions, 22 May 2025 at para 27.
[53] *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 paras 47, 62, 66.

55. Second, there is a risk of real prejudice to the First Nations and their children and families whose interests COO and NAN represent in these proceedings 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.[54] Accordingly, services to children and their families to prevent them from going into care, services through the First Nation Representative Services program, repatriation, and support for youth leaving care will all be further delayed or denied as will the significant remoteness funding which addresses the cost of providing services in remote communities.

56. 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.

E. The AFNQL parties should not be added as interested parties to Jordan's Principle

57. The AFNQL parties should not be granted interested party status in the Jordan's Principle proceedings. The addition of any interested parties risks further delaying Jordan's Principle reform, contrary to the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.[55]

i. The AFNQL parties' have a direct interest and relevant expertise

58. COO concedes that the AFNQL parties have an interest in Jordan's Principle reform and relevant expertise in the administration of Jordan's Principle in Quebec and Labrador.

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[54] OFA at Appendix 12.
[55] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA*, s. 48.9(1).

Nevertheless, the "proper analysis is a case-by-case holistic approach rather than a strict application of the factors" in the interested party test and the AFNQL parties should not be granted interested party status in the proceedings concerning Jordan's Principle.[56]

ii. The AFNQL parties' addition will delay Jordan's Principle reform

59. Granting interested party status to the AFNQL parties would cause significant delay to the proceedings that outweigh the benefit of their unique regional perspectives. The addition of any new interested party at this late stage in the proceedings, when the parties are already well into the remedial phase, risks delaying urgently needed reform of Jordan's Principle. Such reform is essential to ensuring that First Nations children and their families do not wait any longer for the child-focused and rights-based supports to which they are entitled.

60. The AFNQL parties' motion for interested party status comes at a late stage of the proceedings: nearly 20 years after the commencement of proceedings and nine years into the remedial phase. In 2016, in determining whether to grant NAN interested party status, 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".[57] In 2025, the remedial stage is nine years further advanced and the addition of further interested parties should be even more rare.

61. The Tribunal noted in its letter dated February 10, 2025, that it "is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time".[58] Jordan's Principle reform has already been much delayed. More than two years have passed since the AIP commitment to reform Jordan's Principle by March 2023,[59] and reform is currently stalled and far from complete. Adding an interested party who is not familiar with the extensive evidence, the interim reforms, nor Canada's implementation of Jordan's Principle to date would not be productive and would delay reform even further.

62. In taking a flexible and holistic approach to the AFNQL parties' motion, the Tribunal should consider the risk of unusually high numbers of prospective interested parties

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[56] 2022 CHRT 26 at para 35.
[57] 2016 CHRT 11 at para 13.
[58] Letter from Canadian Human Rights Tribunal to Parties dated 10 Feb 2025 at p 2 [CHRT Letter, 10 Feb 2025].
[59] CHRT Letter, 10 Feb 2025 at p 1.

seeking to be added to the proceedings if the AFNQL parties are granted interested party status.

63. Every First Nation community, First Nation organization, Agency, or Agency organization could advance the same arguments as the AFNQL parties: that they are impacted by Jordan's Principle reform and that they have unique expertise in the delivery of Jordan's Principle services in their region. The addition of the AFNQL parties to the proceedings risks setting a precedent that would open the floodgates to many more prospective interested parties seeking to be added to the proceedings to represent their interests in Jordan's Principle reform before the Tribunal, which would make the proceedings "impossible to manage". [60]

64. This Tribunal has had to balance the value of unique regional perspectives of First Nations and their organizations with the Tribunal's limited resources and its interest in resolving the matter expeditiously in its prior decisions on the inclusion of interested parties.

65. 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 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".[61] Even though every First Nation community or organization may have expertise to offer, "these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum of consultation".[62] This is why the Tribunal is informed by the AFN, COO, NAN and the Caring Society.[63] As a result, the Tribunal found that an argument based on "bringing a regional perspective is not the most compelling argument" given the risk the Tribunal

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[60] 2022 CHRT 26 at para 47.
[61] 2022 CHRT 26 at para 47.
[62] 2022 CHRT 26 at para 42.
[63] 2022 CHRT 26 at para 41.

would face if every First Nation sought to participate in order to share their expertise and perspective.[64]

66. The AFNQL parties' interests can reasonably be represented by the AFN and the Caring Society, through their own mandates and their historical positions and role as complainants 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".[65] 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.[66] The AFNQL parties' position that the AFN's representation is inadequate because the AFN is not fully aware of the realities in Quebec and Labrador is true of every First Nations community or organization in Canada, and allowing all prospective interested parties to join the proceedings would result in Jordan's Principle reform grinding to a halt.[67]

67. It is COO's position that at this stage, unique regional perspectives may be sought and advanced by the current parties using their internal mechanisms for seeking and representing those perspectives, as they have been doing for the entirety of this proceeding. This is the only practical way forward.

68. Adding the AFNQL parties at this point in the proceedings will overburden the Tribunal who is tasked with effectively managing its own limited resources while facilitating a fair and expeditious process. Further delay would bring the administration of justice into disrepute and cause significant prejudice to the victims of discrimination. A flexible and holistic approach to the AFNQL parties' motion requires a cost-benefit analysis that considers both the risk of significant numbers of prospective interested parties coming forward and further delay for First Nations children and families. The analysis leads to a clear conclusion: the costs of adding these parties far exceed any potential benefits.

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[64] 2022 CHRT 26 at para 47.
[65] 2022 CHRT 26 at para 48 and 2016 CHRT 11 at para 16.
[66] 2016 CHRT 11 at para 16.
[67] AFNQL Parties OFA submissions, 22 May 2025 at para 16.

F. No position on addition of the AFNQL parties to FNCFS reform outside Ontario

69. COO has no position on the addition of the AFNQL parties to long-term reform of the FNCFS Program on a national level.

G. The AFNQL parties' French language requests should be addressed in another forum

70. The AFNQL parties should not be conferred interested party status in the OFA approval motion or the proceedings concerning Jordan's Principle to address their language-related concerns.[68] COO is supportive of all critical documents relating to long-term reform of the FNCFS Program and Jordan's Principle being translated to French in a timely manner but maintains that the AFNQL does not need to be granted interested party status to achieve this result, which can occur with an order of the Tribunal.

71. The AFNQL parties have concerns with how the national agreement was distributed and translated.[69] The AFNQL parties made a complaint to the Office of the Commissioner of Official Languages suggesting that the manner and timing in which the national agreement was shared was prejudicial to First Nations communities with French as their preferred official language.[70] COO has no position on the substance of the complaint but reiterates its position that the Office of the Commissioner of Official Languages is the correct forum to address any issues related to potential infringements on language rights.

72. The AFNQL parties seek rights to participate in communications between the Parties and the Tribunal, the ability to seek orders, to submit documentary and testimonial evidence, to conduct cross-examinations, and to attend hearings. The extensive participation rights sought by the AFNQL parties risk delaying the proceedings, which is not in the best interests of First Nations children and their families.

73. These extensive participation rights are not required to achieve the result that the AFNQL parties seek in respect of challenges with French translation. Instead, an appropriate remedy to the issues raised by the AFNQL parties is that the Tribunal order or otherwise ensure that all critical documents are translated to French.

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[68] AFNQL Parties submissions, 16 May 2025 at para 8.
[69] AFNQL Parties submissions, 16 May 2025 at paras 12-14.
[70] Marc Boivin Affidavit at para 16.

PART IV – ORDER SOUGHT

74. COO respectfully requests that this Tribunal:

a) Dismiss the joint motion for the AFNQL parties to be granted interested party status in the OFA approval motion; and

b) Dismiss the joint motion for the AFNQL parties to be granted interested party status in the proceedings, as concerning Jordan's Principle.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June, 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*, R.S.C., 1985, c. H-6
CASE LAW	
2.	*Attaran v Immigration*, 2017 CHRT 16
3.	*First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6
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)*, 2018 CHRT 4
5.	*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
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)*, 2022 CHRT 8
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 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
9.	*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
OTHER SOURCES	
10.	Canada Letter to Canadian Human Rights Tribunal dated 17 March 2025
11.	Caring Society, "CS Letter to Panel (Long Term Reform)" dated 24 March 2025
12.	Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario dated 26 February 2025
13.	Letter from Canadian Human Rights Tribunal to Parties dated 10 Feb 2025