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

- and -

SOUTHERN CHIEFS' ORGANIZATION INC.

Applicant

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 the proceedings and nine years into the remedial phase, the Southern Chiefs' Organization Inc. ("SCO") bring a motion seeking to be granted interested party status in these proceedings. The SCO also seeks to be granted interested party status in the OFA approval motion, more than three months past the April 15, 2025 deadline for prospective interested parties set by the Tribunal. The SCO should not be granted interested party status at this late stage.

2. The SCO seeks 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 "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.

3. The SCO should not be granted interested party status in the OFA approval motion. The SCO's motion comes three months after the Tribunal-imposed deadline, demonstrating an unexplained disregard for the Tribunal's schedule. The SCO has no interest in the OFA approval motion and the SCO's regional expertise in the delivery of child and family services in southern Manitoba 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. Lastly, the SCO's proposed contribution will add nothing new to the proceedings as it is at its core repetitive of a position already taken by the Caring Society.

4. The SCO should not be granted interested party status in the proceedings as they concern 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. 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 SCO to the proceedings as concerns the national long-term reform of the FNCFS Program.

6. 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 wait any longer. The OFA approval motion and Jordan's Principle proceedings must be allowed to proceed without further delay.

B. Background

7. COO relies on the background as described in its Responding Factum regarding the AFNQL parties' motion for interested party status.[1]

PART II - ISSUES

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

   (a) To the OFA approval motion;

   (b) To the proceedings concerning Jordan's Principle; and

   (c) To long-term reform of the FNCFS Program outside of Ontario.

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[1] Chiefs of Ontario, "Responding Factum of Chiefs of Ontario on FNQLHSSC_AFNQL interested party status joint motion", 16 June 2025 at paras 8-24.

PART III - SUBMISSIONS

9. The SCO should not be granted interested party status in the OFA approval motion. Its motion comes well after the Tribunal-imposed deadline, and the admission of the SCO at this late stage poses a serious risk of further delaying the OFA approval motion. The outcome of the OFA approval motion will not have an impact on the SCO's interests and its 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.

10. The SCO 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 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.[2]

11. COO has no position on the addition of the SCO to the long-term reform of the FNCFS Program on a national level.

12. In the alternative, if the SCO is granted interested party status, it should be on the condition that the SCO 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 SCO to participate in the proceedings.

A. The test for interested party status

13. COO relies on the interested party status test as stated in its Consolidated Responding Factum regarding the motions for interested party status in the OFA approval motion.[3]

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[2] *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, 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 and *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 at s. 48.9(1) [*CHRA*].
[3] Chiefs of Ontario, "Consolidated Factum of Chiefs of Ontario on the interested party status motions", 15 May 2025 at paras 23-27.

B. The SCO should not be added as an interested party in the OFA approval motion

14. The SCO should not be granted interested party status in the OFA approval motion. The SCO submitted its motion for interested party status on July 24, 2025 – more than three months after the Tribunal deadline of April 15, 2025 for interested party status motions within the OFA approval motion. The SCO's unexplained delay in filing its motion should be dispositive of this issue.

15. If the failure to meet the deadlines set by the Tribunal is not dispositive of the application, the SCO also does not meet the test for interested party status in the OFA approval motion: the motion will not impact on the SCO's interests and its 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. The addition of the SCO risks delaying the OFA approval motion, particularly considering the SCO has already missed a Tribunal-imposed deadline. The SCO does not propose to add anything to the issues and positions are already before the Tribunal.

i. The OFA has no impact on the SCO's interests

16. 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".[4] 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 SCO argues its interests are at stake in the OFA approval motion. They are not. The SCO is based outside of Ontario and, as such, the OFA will not apply to it or its member communities.

17. The SCO seeks to make submissions about the impact of the Tribunal's decision concerning the OFA approval motion on long-term reform across the country, including southern Manitoba. The SCO argues the precedential value of the Tribunal's decision on

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[4] *Attaran v Immigration*, 2017 CHRT 16 at para 16.

the OFA gives it an interest in the OFA approval motion;[5] however, the precedential value of the Tribunal's decision does not mean the SCO has a direct interest in the OFA approval motion sufficient to ground interested party status.

ii. The SCO cannot provide assistance to the Tribunal

18. The SCO has not discharged its onus of demonstrating that its regional expertise in the delivery of child welfare services in southern Manitoba will be of assistance to the Tribunal in the determination of the issues in the OFA approval motion.[6] The SCO does not profess to have expertise in Ontario.

19. The interests of the SCO 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".[7] 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.[8]

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

20. Granting interested party status to the SCO would cause significant delays to the time-sensitive OFA approval motion that outweigh the benefit of its regional perspective.

21. 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

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[5] Southern Chiefs' Organization Inc., "Written Submissions – Motion for Interested Party Status", 24 July 2025 at para 15.
[6] 2022 CHRT 26 at para 29.
[7] 2022 CHRT 26 at para 48.
[8] 2016 CHRT 11 at para 16.

requiring prompt action.[9] The best interests of First Nations children and families in Ontario must no longer be compromised by inaction.

22. 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.[10] 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.

23. A flexible and holistic approach to this motion 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 the SCO far exceed any potential benefits. There is no discernible proportionate benefit to the Tribunal in allowing this to occur, as the perspective proposed by the SCO will not serve to answer the question at hand.

24. The addition of the SCO will add time, expense, and further delay to the proceedings. Despite arguing that it will not cause undue delay to the proceedings,[11] the SCO brings its motion three months past the Tribunal established cut-off date for interested party motions and does not address the reason for this delay in its submissions. There can be no denying that even bringing this motion is causing delay. If the SCO cannot adhere to already established deadlines it cannot be trusted to do so in the proceedings generally.

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[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 at paras 47, and 62.
[10] OFA at Appendix 12.
[11] Southern Chiefs' Organization Inc., "Notice of Motion for Interested Party Status", 24 July 2025 at para 6.

iv. The SCO has not proposed to add any new perspective to the proceedings

25. The SCO's materials regarding the OFA are repetitive of the Caring Society's known stated position on the OFA "model's" unsuitability for use as a model or template for long-term reform outside Ontario.[12] It is difficult to see how the SCO could add anything to the analysis of or argument about this question.

C. The SCO should not be added as an interested party to Jordan's Principle

26. The SCO 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.[13]

i. The SCO has a direct interest and relevant expertise

27. COO concedes that the SCO has an interest in Jordan's Principle reform and relevant expertise in the administration of Jordan's Principle in southern Manitoba. 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 SCO should not be granted interested party status in the proceedings concerning Jordan's Principle.[14]

ii. The addition of the SCO will delay Jordan's Principle reform

28. Granting interested party status to the SCO would cause significant delay to the proceedings that outweigh the benefit of its unique regional perspective. 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.

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[12] As detailed repeatedly in these proceedings, First Nations outside Ontario rejected the national proposed Final Settlement Agreement, on which the OFA is based. The Caring Society has explicitly stated that using a model for national reform outside Ontario that mirrors the OFA approach is unacceptable; see for example the Caring Society's letter to the Panel dated March 24, 2025 at p 8 in response to the letter from the Panel dated February 10, 2025 asking about the future direction of long-term reform.

[13] 2022 CHRT 26 at para 32, citing 2016 CHRT 11 at para 3 and *CHRA*, s. 48.9(1).

[14] 2022 CHRT 26 at para 35.

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.

29. The SCO's 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".[15] In 2025, the remedial stage is nine years further advanced and the addition of further interested parties should be even more rare.

30. 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".[16] Jordan's Principle reform has already been much delayed. More than two years have passed since the Agreement-in-Principle commitment to reform Jordan's Principle by March 2023,[17] and reform is currently incomplete. The Tribunal has also made the parties aware that Tribunal resources for mediation will expire as of September 9, 2025. The flexibility of this deadline is contingent upon the parties making significant progress in the mediation. 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 delay reform even further.

31. In taking a flexible and holistic approach to the SCO's motion, the Tribunal should consider the risk of further prospective interested parties seeking to be added to the proceedings.

32. Every First Nation community, First Nation organization, Agency, or Agency organization could advance the same arguments as the SCO: that it is impacted by Jordan's Principle reform and that it has unique expertise in the delivery of Jordan's Principle services in its region. The addition of the SCO to the proceedings risks setting a precedent that would open the floodgates to many more prospective interested parties seeking to be added to the

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[15] 2016 CHRT 11 at para 13.
[16] Letter from Canadian Human Rights Tribunal to Parties dated 10 Feb 2025 at p 2 [CHRT Letter, 10 Feb 2025].
[17] CHRT Letter, 10 Feb 2025 at p 1.

proceedings to represent their interests in Jordan's Principle reform before the Tribunal, which would make the proceedings "impossible to manage".[18]

33. 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.

34. 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".[19] 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".[20] This is why the Tribunal is informed by the AFN, COO, NAN, and the Caring Society.[21] 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 would face if every First Nation sought to participate in order to share its expertise and perspective.[22]

35. The SCO's interests can be (and, as argued above, effectively are) reasonably represented by the AFN and the Caring Society, through their own mandates and their historical positions and role as complainants in these proceedings. 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.

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[18] 2022 CHRT 26 at para 47.
[19] 2022 CHRT 26 at para 47.
[20] 2022 CHRT 26 at para 42.
[21] 2022 CHRT 26 at para 41.
[22] 2022 CHRT 26 at para 47.

36. Adding the SCO at this point in the proceedings will overburden the Tribunal, which 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 SCO's 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 the SCO far exceed any potential benefits.

D. No position on addition of the SCO to FNCFS reform outside Ontario

37. COO has no position on the addition of the SCO to long-term reform of the FNCFS Program on a national level.

PART IV - ORDER SOUGHT

38. COO respectfully requests that this Tribunal:

a) Dismiss the motion by the SCO to be granted interested party status in the OFA approval motion; and

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of August, 2025.

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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 et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2022 CHRT 26
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 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