

FEDERAL COURT

BETWEEN

Attorney General of Canada

Applicant

and

First Nations Child and Family Caring Society of Canada, Assembly of First Nations, Canadian Human Rights Commission, Chiefs of Ontario, Nishnawbe Aski Nation and Amnesty International Canada

Respondents

NOTICE OF MOTION

(re: motion for leave to intervene)

TAKE NOTICE THAT the moving party, Confederacy of Treaty Six First Nations (the “**Proposed Intervener**” / “**CT6FN**”), will make a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the “*Rules*”).

THIS MOTION IS FOR an Order granting CT6FN the following:

- a) leave to intervene in the application for judicial review filed by the Attorney General of Canada (“**Canada**”) pursuant to [Rule 109\(1\)](#) of the *Rules*;
- b) leave to file a memorandum of fact and law not exceeding twenty (20) pages in length;
- c) leave to present oral submissions at the hearing of the judicial review;
- d) CT6FN will not seek costs and no costs shall be awarded against it; and
- e) such further and other relief as counsel may advise and this Court may allow.

THE GROUNDS FOR THE MOTION ARE:

A. Factual Basis

The Moving Party

1. CT6FN is a non-profit Treaty rights advocacy organization that was created in the Spring of 1993 to serve as the united political voice for affiliated Treaty No. 6 Nations in what is now called Alberta for the continued protection of the fundamental Treaty, inherent, and human rights of the Treaty Peoples of Treaty No. 6. CT6FN is dedicated to ensuring that the terms, spirit, and intent of Treaty No. 6 and the rights of the Treaty No. 6 First Nations to self-determination are honoured and respected.

2. CT6FN represents a total of 15 Treaty No. 6 First Nations, including Cree, Dene, Nakota, and Saulteaux/Anishinaabe Peoples located in present-day Alberta: Alexander First Nation, Alexis Nakota Sioux Nation, Beaver Lake Cree Nation, Cold Lake First Nations, Enoch Cree Nation, Ermineskin Cree Nation, Frog Lake First Nation, Heart Lake First Nation, Kehewin Cree Nation, Louis Bull Tribe, Montana First Nation, Paul First Nation, Samson Cree Nation, Sunchild First Nation, and Whitefish Lake First Nation #128.¹

3. CT6FN plays a vital role in advocating on behalf of Treaty No. 6 Nations in Alberta and engages in this advocacy on behalf of its member First Nations through a variety of channels. CT6FN has a long history of interest and involvement in matters concerning the health and safety of children, as well as the provision of child and family services in Treaty No. 6.

4. CT6FN has also been instrumental in ensuring that its member Nations are kept updated on proposed long-term reform to the federal First Nations Child and Family

¹ At the time of filing, the O'Chiese First Nation is no longer represented by the CT6FN.

Services program (“**FNCFS Program**”), and the Canada Human Rights Tribunal (the “**CHRT**” or “**Tribunal**”) court cases that are driving reform.

5. The Grand Chief of CT6FN is a sitting Chief of a Treaty No. 6 member Nation, a situation unique among provincial Treaty organizations, which facilitates direct cultural and practical perspectives on the issue of reform of the FNCFS Program through leadership selected directly by the Nations.

6. Additionally, CT6FN’s advisor, Dr. Wilton Littlechild, has worked nationally and internationally to advance Indigenous rights and Treaties, including at the UN.

CHRT Background

7. In January 2016, the CHRT released its merits decision in the matter of *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2 (the “**Merits Decision**”). The Tribunal found that the federal government’s underfunding and management of its FNCFS Program was discriminatory under the *Canadian Human Rights Act* and ordered, *inter alia*, that Canada cease its discriminatory practices and take measures to redress them and prevent them from reoccurring.² In light of the complexity and far-reaching effects of the relief sought, the Tribunal determined it would proceed in phases to ensure additional orders made were appropriate for the immediate short and long-terms.³

8. The Tribunal’s decision in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 86 (“**Interested Party Status Decision**”) provides a timeline of proceedings that are applicable to this motion. On March 7, 2025, the Chiefs of Ontario and the Nishnawbe Aski Nation brought a joint motion for approval of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program

² *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, [2016 CHRT 2](#) [Merits Decision] at paras [474-484](#).

³ Merits Decision at para [483](#).

in Ontario (“**OFA**”) and the Trilateral Agreement in Respect of Reforming the *1965 Agreement*.⁴ On August 11, 2025, Canada filed an amended joint motion (“**OFA Joint Motion**”), including Canada as a co-moving party. Recently, the CHRT granted the motion and approved the OFA, finding that it satisfied the Tribunal’s Orders with respect to ending discrimination within the FNCFS Program for First Nations in Ontario.

9. On April 15, 2025, CT6FN and a number of other parties applied to the Tribunal for interested party status in the OFA Joint Motion proceedings.⁵ CT6FN applied for interested party status to ensure that Tribunal determinations concerning the OFA do not set legal precedents that may infringe Treaty rights or restrict the CT6FN’s ability to negotiate independent and tailored agreements aligned with its Treaty obligations.⁶ CT6FN ultimately wants to ensure that Treaty-protected jurisdiction over child and family services remains intact.⁷

10. The Tribunal, in the Interested Party Status Decision, denied CT6FN’s interested party status motion, as well as those of 11 other First Nations and tribal councils, based on the Tribunal’s decision in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 80⁸ (“**CHRT 80**”). The Interested Party Status Decision stated that the basis for denying these motions was because “the OFA joint motion proceeding will not have an impact on” any of the moving parties, including CT6FN.⁹ The Tribunal further stated that the OFA Joint Motion “is limited to long-term reform within the Ontario region”, and that the OFA Joint Motion “will not impact the moving parties’ treaty-protected authority, as the proceeding is limited to long-term reform within the Ontario

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)*, [2025 CHRT 86](#) [Interested Party Status Decision] at paras [13](#), [15](#).

⁵ Interested Party Status Decision at paras [16](#), [19](#) and [76](#).

⁶ Interested Party Status Decision at para [38](#).

⁷ Interested Party Status Decision at para [39](#).

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)*, [2025 CHRT 80](#) [CHRT 80].

⁹ Interested Party Status Decision at para [87](#).

region, in accordance with the Tribunal's recent ruling in CHRT 80."¹⁰ These findings were premised on determinations made by the Tribunal in CHRT 80, which was made after the submissions of the interested party motions but issued just prior to the Tribunal's denial of the moving parties' requests for interested party status.

Decision under Judicial Review

11. On August 20, 2025, and as amended on September 17, 2025, the CHRT issued its most recent substantive order in relation to the Merits Decision, CHRT 80, relating to the long-term reform of the FNCFS Program. The Tribunal, in CHRT 80, determined that: "The OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a federal FNCFS long-term reform remedy."¹¹

12. In CHRT 80, the Tribunal ordered, *inter alia*, that within four months of the Order, the First Nations Child & Family Caring Society ("**Caring Society**") and the Assembly of First Nations ("**AFN**") shall consult with the National Children's Chiefs Commission ("**NCCC**"), First Nations Chiefs and other experts, both within and outside of Ontario, and those parties who have filed interested party motions, to develop a comprehensive plan for long-term reform of the FNCFS program;¹²

13. As noted above, the CHRT, approximately two weeks after the CHRT 80 decision was released, rendered the Interested Party Status Decision which denied CT6FN's (and others') motions for interested party status in the OFA Joint Motion on the premise that the CHRT 80 decision confirmed and ordered that the OFA will focus solely on the Ontario region and not on federal long-term reform outside of Ontario.¹³ This includes providing a mechanism for CT6FN and other Indigenous groups nation-wide to be consulted and

¹⁰ Interested Party Status Decision at para [91](#).

¹¹ CHRT 80 at para [98](#). See also para [100](#).

¹² CHRT 80 at para [120](#). Emphasis added.

¹³ Interested Party Status Decision at paras [84-85](#).

have their feedback incorporated into the CHRT process and development of federal reform.¹⁴

14. Canada filed its application for judicial review of CHRT 80 on September 19, 2025.

Legal Basis

15. CT6FN relies on Rules 3, 109 and 369 of the *Rules* in support of this motion to intervene.

16. In accordance with Rule 109(2)(a), the full name and address of the Proposed Intervener is:

Confederacy of Treaty Six First Nations
17816 118 Ave
Edmonton, AB T5S 2W3
Phone: (780) 944-0334

17. Section 109(2)(b) of the *Rules* provides that a notice of motion to intervene must describe how the proposed intervenor wishes to participate in the proceeding, and how that participation will assist the Court in determining factual or legal issues related to the proceeding.

18. *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66, at paragraph 7, sets out the three elements of the test for intervention at the Federal Court:

- (a) The usefulness of the intervener's participation pertaining to the issues the Court must decide;
- (b) A genuine interest in the issues raised by the appeal on the part of the intervener; and
- (c) A consideration of the interests of justice.

¹⁴ CHRT 80 at para [110](#).

CT6FN will make useful submissions pertaining to the issue the Court must decide

19. If granted leave to intervene, CT6FN will provide the Court with the unique perspectives of its 16 member First Nations located in Alberta, all of whom will be impacted by the outcome of the Court's decision on this judicial review application. The inclusion of these perspectives is of particular importance in light of the nature of the Tribunal's orders in the CHRT Decision, which specifically calls for consultation on long-term reform of the FNCFS Program with CT6FN, and by extension its member First Nations, by the parties to that Tribunal proceeding.

20. CT6FN's participation will not introduce new issues or re-argue the merits of CHRT 80. Rather, its submissions will be distinct and provide the Court with useful context about the operation of CHRT 80 within Treaty No. 6 in Alberta, which will be of assistance to the Court in determining the issues in this proceeding. Of particular importance in CT6FN's submissions will be that of ensuring regional First Nations' considerations are represented in any discussion and/or negotiation with the named parties concerning long-term reform of the FNCFS Program.

21. Specifically, if granted leave to intervene, CT6FN anticipates making submissions regarding the following:

- (a) Emphasizing the need for regional considerations to be at the forefront of long-term reform of the FNCFS Program;
- (b) That rights holders, including the Treaty No. 6 member Nations, be involved in the implementation of reform, once accepted (particularly since CT6FN and First Nations in the Alberta region are not represented by the AFN at the Executive level, or any other named party to this proceeding on this issue, which will be discussed further below);
- (c) The difficulty First Nations outside of Ontario may have in light of the willingness, or lack thereof, of various provincial or territorial governments to negotiate reform of the FNCFS Program, and thereby the inability to use

the OFA as a template for the unique situations of First Nations located in other jurisdictions;

- (d) Consideration of the fact that there are a wide variety of child and family service issues within individual First Nations, including Treaty No. 6 Nations, and the importance of all Nations and representative organizations, such as the CT6FN, whether or not delegated or affiliated with a named party to the proceeding, being involved in the long-term reform to the FNCFS Program; and
- (e) The need to ensure any agreement and/or reform of the FNCFS Program be consistent with the orders of the CHRT, the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, and similar provincial and territorial statutes where such legislation is in place.

22. CT6FN's role as an advocacy organization for Treaty No. 6 member Nations is made all the more important by the fact that they have been without representation at the Assembly of First Nations Executive level since 2021, meaning that the AFN's submissions as a respondent to the judicial review does not and cannot represent the specific interests of and realities faced by these First Nations. The AFN Executive has not requested input from CT6FN or its member Nations, and has not identified a method for the AFN member Nations in Treaty No. 6 in Alberta to provide feedback on this issue. The CT6FN's participation as an intervenor would assist the Court in ensuring that the views of CT6FN's member Nations, and the views of rights-holders and non-Ontario First Nations, are adequately represented in these crucial proceedings which stand to impact the implementation of child and family reform for First Nations across the country.

CT6FN has a genuine interest in the issues raised on this application

23. CT6FN has a genuine and demonstrated interest in the outcome of this judicial review. The member First Nations that it advocates on behalf of stand to be adversely impacted by the outcome of this Court's decision. If this Court overturns or modifies CHRT

80, it will threaten the opportunity of CT6FN's member Nations to participate in the consultative process that has been ordered by the Tribunal with respect to national reform of the FNCFS Program. This, in turn, will have an impact on the regional considerations required to ensure adequate provision and funding of child and family services by CT6FN's member Nations.

24. CT6FN had originally sought interested party status in the OFA Joint Motion proceedings, which concerned the approval of the OFA,¹⁵ due to the prospective impact of the outcome of the motion on Treaty No. 6 member Nations. Canada has submitted to the Tribunal that, in their view, the OFA should inform the long-term reform of the FNCFS Program.¹⁶ The Tribunal, upon receipt of CT6FN's motion for interested party status, along with those filed by other First Nations and child and family services stakeholders, ordered the Caring Society and AFN to consult with all parties who filed applications for interested party status through CHRT 80 that Canada now asks this Court to overturn. Notably, the denial of CT6FN's interested party status in the OFA Joint Motion was premised on CHRT 80, which confirmed and ordered that the OFA apply solely to the Ontario region and not on the federal long-term reform of the FNCFS Program outside Ontario.¹⁷

25. Canada's application for judicial review will impact the consultative process required to be undertaken with all interested parties, including CT6FN, as ordered by the Tribunal.

26. The outcome of this judicial review may threaten the Tribunal's order to ensure that regional cultural and practical perspectives be considered when undertaking long-term reform of the FNCFS Program. CT6FN's unique position as a representative organization of Treaty No. 6 member First Nations, which stand to be impacted by this proceeding, led by a sitting Chief of a member Treaty No. 6 Nation, and the fact that

¹⁵ Interested Party Status Decision at para [17](#).

¹⁶ CHRT 80 at paras [45-46](#).

¹⁷ Interested Party Status Decision at paras [84-85](#).

CT6FN is not represented by the AFN at the Executive level, create a genuine interest in the outcome of this judicial review.

27. CT6FN's mandate includes a broad variety of relevant duties and responsibilities, which include assisting member Nations in navigating the FNCFS Program. CT6FN thus possesses direct, practical knowledge of the issues at stake in this application for judicial review and has the resources to dedicate them to the matter before this Court.

The interests of justice will be served by CT6FN's intervention

28. It is in the interests of justice to permit CT6FN to intervene in this matter. The outcome of this Court's decision is of significant public importance and complexity as it involves nationwide strategies to redress systemic discrimination against First Nations children, and the design and implementation of long-term reform to the FNCFS Program. CHRT 80 provides an opportunity to positively influence the wellness of Indigenous Peoples for generations, including those of CT6FN's member Nations, after generations of harmful policies enacted by Canada and its provinces and territories.

29. In determining whether the Tribunal was reasonable in issuing its recent orders, the Court should consider the perspectives of those First Nations and representative First Nations organizations that are directly impacted by the Tribunal's orders, including CT6FN. CT6FN and its member Nations accepted the opportunity for consultation provided by CHRT 80 and poured their resources and time into undertaking a significant effort to meaningfully engage on this complex issue. As this judicial review application will affect these determinations by the Tribunal in particular, as well as Treaty No. 6 member Nations' treaty rights, the CT6FN ought to be permitted to intervene in this application.

30. CT6FN's participation will provide additional, distinct context and insight that promotes fair, informed and effective adjudication of the issues. Its involvement is consistent with Rule 3 of the *Rules* and will assist the Court in achieving a just, expeditious and economic resolution of this matter.

31. CT6FN's involvement will not disrupt the judicial review. CT6FN will comply with all timelines and play a limited role in the proceeding.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

32. Affidavit of Sam Hull, affirmed August 17, 2026; and

33. Such further and other material as counsel may advise and this Court may permit.



AARON CHRISTOFF

September 1, 2026

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