

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 and Northern Affairs Canada)**

Respondent

- and -

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

Interested Parties

**CHIEFS OF ONTARIO WRITTEN SUBMISSIONS RE: CANADA'S CURRENT
FINANCIAL APPROACH IN LINE WITH THE *FINANCIAL ADMINISTRATION ACT*
AND TREASURY BOARD AUTHORITIES
October 2, 2020**

Maggie Wenté and Sinéad Dearman

Olthuis Kler Townshend LLP
250 University Avenue 8th Floor
Toronto, ON
M5H 3E5
Tel.: 416-981-9330
Fax: 416-981-9350
mwente@oktlaw.com
sdearman@oktlaw.com

Counsel for the Interested Party Chiefs of Ontario

1. By way of letter dated August 11, 2020 and accompanying the Tribunal's decision cited at 2020 CHRT 24 the Panel asked the Parties to make submissions on:

...the relationship between the Financial Administration Act (FAA), Treasury Board policies and the systemic racial discrimination found in this case. For clarity, the Panel made additional comments concerning Canada's interpretation of the FAA in its recent ruling on Band Representatives (see paragraphs 37-38). Given the Panel seeks to ensure its orders are effective in eliminating discrimination and will not remain seized of this case indefinitely, the Panel requests the parties' views on this question. More precisely, does Canada's current financial approach, in line with the FAA and Treasury Board's authorities, support the implementation of the Panel's orders effectively, hinder the effectiveness of the implementation of the orders or neither support nor hinders the effectiveness of the Panel's orders?

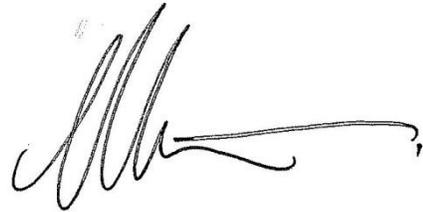
2. Chiefs of Ontario (COO) understands that in asking these questions, the Panel is seeking the Parties' views generally, and not only with respect to the question of major capital and small agencies.
3. COO has had the opportunity to review the submissions of the First Nations Child and Family Caring Society on this question and adopts those. COO has some additional remarks, contained herein.
4. In COO's view, the *Financial Administration Act*, RSC 1985, c F-11 (*FAA*) and the Treasury Board authorities process are not themselves the barrier to effective implementation of the Tribunal's orders.
5. COO acknowledges Canada's submissions which set out the primacy of the *Canadian Human Rights Act*, RSC 1985, c H-6 (*CHRA*) and the *FAA*. Those submissions also fairly reflect what COO understands to be the process of expenditure of public funds and the relationship between the *FAA* and *CHRA*.
6. The process of implementing the Tribunal's orders was in part described in the cross examination of Ms. Joanne Wilkinson, with respect to implementation of long term relief and the Ontario Special Study. Ms. Wilkinson described that, in respect of implementation of the Ontario Special Study, if an expenditure or program was not within the authorities

that had been obtained, there may need to be new authorities sought in order to implement the Ontario Special Study (and presumably other immediate and/or long term relief).

Cross Examination of Joanne Wilkinson, May 14, 2019, at pp. 174
line 18175 line 16.

7. COO suggests that the effective implementation of the Tribunal's orders is therefore best supported by Canada seeking and obtaining the appropriate authority for a robust and full implementation of all of the Tribunal's orders.
8. Layered onto the *FAA* and Treasury Board processes is the Consultation Committee on Child Welfare (a product of 2018 CHRT 2) which is a mechanism by which Canada seeks the views of the Applicants and the Interested Parties on implementation of the Tribunal's orders.
9. At times, the Applicants and Interested Parties disagree with Canada that Canada's authorities and policies comply with the Tribunal's orders. Some of those disputes have made their way to the Panel to determine, such as the compliance motions made in March 2019 that are still under reserve with the Panel.
10. The Tribunal has been of assistance in resolving these disputes. Unfortunately such disputes have continued to arise.
11. Ultimately, in COO's opinion, the Parties have been well-served by the Tribunal's intervention on such points of disagreement. There is no other mechanism for disputing Canada's interpretations and assertions of compliance, be it in this Tribunal application or in fresh applications and judicial reviews. Returning to the Tribunal on points of dispute is an effective way of resolving disputes when they arise.
12. COO submits that the best approach to effective implementation of the Tribunal's orders is for agreement on long-term reform, as soon as possible. Such agreement will best be reached by negotiations in good faith, taking the research and work done thus far as well as the First Nations' perspectives and knowledge seriously. This requires an all-party commitment to substantive equality and the best interests of children at all times, as supported and guided by the Tribunal orders in 2016 CHRT 2 and those that follow, with funding authorities to support full implementation.

All of which is respectfully submitted this 2nd day of October 2020.

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'M' and 'S', followed by a long horizontal flourish.

Maggie Wente and Sinéad Dearman
Counsel for Chiefs of Ontario