

**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

ATTORNEY GENERAL OF CANADA  
(representing the Minister of Indian and Northern Affairs)

Respondent

and

CHIEFS OF ONTARIO and AMNESTY INTERNATIONAL CANADA  
and NISHNAWBE ASKI NATION

Interested Parties

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**REPLY SUBMISSIONS ON REMEDY OF THE  
CANADIAN HUMAN RIGHTS COMMISSION**

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1. The present are the Commission's written representations in response to the Tribunal's request in its letter of June 14, 2016 for further submissions on the Chief of Ontario's and the Caring Society's most recent submissions.

2. There have been many submissions presented to the Tribunal at this time from all parties. Notwithstanding these numerous submissions, a number of questions still remain.

### **First Nations are more than Stakeholders**

3. In its submissions of March 31 2016, the Chiefs of Ontario (“COO”) take issue, at paragraph 12, with the Respondent’s characterization of COO, First Nations, and leadership as “stakeholders” and mentioned this again in its submissions of May 24, 2016. The Commission submits that one of the identified flaws with the 1965 Ontario Agreement was that it did not include First Nations as a party; it was a bi-lateral agreement.
4. The Treasury Board of Canada Secretariat defines “Stakeholders” as “individuals, groups or organizations that have an interest or share in an undertaking or relationship and its outcome - they may be affected by it, impact or influence it, and in some way be accountable for it.”<sup>1</sup>
5. First Nations, their governments and members can be “stakeholders”. However, In the matter of finding remedies for the identified long standing discriminatory practice, they must be partners. It is noteworthy that several examples of provincial Child welfare legislation filed into evidence provide for agreements with individual First Nations when providing Child welfare services on reserves.<sup>2</sup> Just like Provinces are not just “stakeholders”, First Nations must be partners to ensure that the discriminatory practice ceases.
6. The Commission strongly supports the inclusion of all partners in the discussions in respect of remedying the ongoing discriminatory practice. In light of the

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<sup>1</sup> [http://www.tbs-sct.gc.ca/cioscripts/gloss/gloss-alpha\\_e.asp?SubjectID=128&who=/im-gi/#S](http://www.tbs-sct.gc.ca/cioscripts/gloss/gloss-alpha_e.asp?SubjectID=128&who=/im-gi/#S)

<sup>2</sup> See for example Exhibit HR-8, Tab 120, section 23(2) of the *Child and Family services Authorities Act*, C.C.S.M. c. C90; or Exhibit HR-7, Tab 98, section 61 of the *Child and Family Services Act*, Chapter C-7.2 of the Statutes of Saskatchewan, 1989-90 as amended by the Statutes of Saskatchewan, 1990-91, c.10 and c.C-8.1; 1992, c.21; 1994, c.27 and 35; 1996, c.1t; 1999, c.14; 2000, c.6; 2001, c.33; 2004, c.5 and 65; and 2006, c.19.

evidence adduced at the hearing in respect of the differences in the Federal funding when that funding is provided to provinces as opposed to First Nations agencies, First Nations ought to be considered full partners in the process to follow.

**The party that possesses the information has the burden to provide it**

7. A number of submissions by COO and the Caring Society outline a number of specific amounts provided by the Respondent, but underline that there is no information or data supporting the amounts being provided (for example, paragraphs 56 and following of the Caring Society's submission of June 8, 2016 and paragraph 17 of COO's Submissions of May 24, 2016).
8. The Commission submits the Complainants do not have to provide evidence. The party in possession of the information has the burden to provide it (see by analogy *Walden v Canada (Social Development)*, 2011 FCA 202 at paras 29 and 30). There is no evidence substantiating the sufficiency of the amounts being suggested by the Respondent or background analysis of the discriminatory practice. It is as though the Respondent was looking at remedying this long lasting discriminatory practice through funding lenses and not Human Rights lenses.

**Jordan's Principle**

9. The Commission supports the Caring Society's statement that simply broadening the definition of Jordan's Principle (at paragraph 72 of its June 8 submissions) is not sufficient if there is no evidence of an actual change of practice.

All of which is respectfully submitted this 24<sup>th</sup> day of June, 2016.



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Daniel Poulin  
Counsel  
Canadian Human Rights Commission  
344 Slater Street, 9<sup>th</sup> Floor  
Ottawa, ON  
K1A 1E1

Tel: (613) 947-6399  
Fax: (613) 993-3089

Counsel for the Commission

TO: Canadian Human Rights Tribunal  
160 Elgin Street  
Ottawa, ON

AND TO: Jonathan Tarlton  
Melissa Chan  
Patricia MacPhee  
Ainslie Harvey  
Terry McCormick

Counsel for the Respondent  
Attorney General of Canada

AND TO: David Taylor  
Counsel for the Complainant  
First Nations Child and Family Caring Society of Canada

AND TO: David C. Nahwegahbow  
Stuart Wuttke  
Counsel for the Complainant  
Assembly of First Nations

AND TO: Maggie Wente  
Counsel for the Interested Party  
Chiefs of Ontario

AND TO: Justin Safayeni  
Counsel for the Interested Party  
Amnesty International

AND TO: Julian Falconer  
Akosua May Matthews  
Counsel for the Interested Party  
Nishnawbe Aski Nation