

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**

Interested Parties

REPLY SUBMISSIONS TO CANADA'S SUBMISSIONS ON REMEDY

1. Chiefs of Ontario (COO) supports the submissions of the First Nations Child and Family Caring Society and adds the following further submissions.
2. COO is concerned about Canada's ongoing delays in implementing the orders already made by the Tribunal to cease discrimination. It appears from Canada's submissions on remedy that Canada has taken no steps to cease discrimination thus far.

1965 Agreement

3. Chiefs of Ontario disagrees that reform to the 1965 Agreement is necessarily in the medium or long term and that there can be no short term relief as submitted by Canada.
4. As it stands, there is nothing in the budget announcement from Canada, as summarized by the Caring Society in its submissions on today's date, that suggests that Ontario First Nations will receive any additional funding from this budget to immediately remedy the discrimination that the Tribunal has already found to exist in Ontario.
5. It is unacceptable to allow the children of Ontario to continue to be discriminated against by the federal government while the federal government plays "catch-up" with respect to funding child welfare services in the rest of Canada. The alleviation of discrimination against First Nations children in all of Canada is not an "either-or" proposition, and especially so in light of the Tribunal's decision that Ontario children are being discriminated against. Immediate relief should be ordered in respect of Ontario as well as the other provinces.
6. COO agrees that any reforms to the formula under the 1965 Agreement itself will require more study. COO is willing and able to participate in such studies and welcomes and awaits the invitation to commence immediate discussions with Canada and Ontario.
7. Canada has stated that Ontario is a necessary party in the reform of the 1965 Agreement, and therefore no immediate relief can be provided until it has obtained Ontario's consent.
8. However, COO repeats its submissions made in response to the Tribunal's clarification questions about process and timeline that reform to update the schedules of funded

services under the 1965 Agreement using the current funding model should proceed immediately and does not require lengthy negotiations between Canada and Ontario.

9. There is no evidence to suggest that Ontario is an unwilling party to make the amendments necessary to cease discrimination and indeed Canada's submissions suggests that Canada has not to this point contacted Ontario to initiate discussions to remedy the inequality found by the Tribunal.
10. COO submits that the Tribunal should order Canada to proceed immediately with initiating such discussions to seek the consent of Ontario to update the schedule of funded services to fund such services at the levels already existing in the 1965 Agreement in the short term.
11. Canada does not explicitly state in its submissions that it considers COO to be a "necessary party" to discussions about reforms and amendments to the 1965 Agreement. Instead it refers to COO, First Nations, and leadership as "stakeholders".
12. COO takes issue with the characterization of COO member First Nations as "stakeholders" in the political relationship with Canada which has been stated by this government to be a Nation-to-Nation relationship. The First Nations of Ontario are rights-holders and have more than a mere stake in the lives and well-being of children from their communities.
13. COO repeats its submission that it is a necessary party and it and its member First Nations are not a mere stakeholder in negotiations and discussions about the 1965 Agreement. It is entirely inappropriate to have bi-lateral negotiations between the Province and Canada about funding and program arrangements for child welfare, which have a direct impact on Ontario First Nations' jurisdiction for child welfare and family relationships. More importantly, such arrangements have tremendous impacts on children of Ontario First Nations. No one has more of a stake in this discussion than the First Nations themselves, who COO represents in this litigation.
14. In short, COO submits that immediate relief in respect of the 1965 Agreement should follow, that COO should be included in any discussions that need to take place in order to effect such relief, and requests that the Tribunal so order.

Legal Fees

15. Canada has suggested in its submissions at paras. 23-25 of their submissions that legal aid tariff rates set by the provinces for child welfare matters are the appropriate rates for agencies to use. Canada submitted that the complainants' proposal to use the Justice Canada external counsel rates as published on their website is not necessarily a useful substitution for legal services related to child welfare. There is no submission beyond Canada's bald statement about why Justice Canada rates are not appropriate for child welfare agencies.
16. COO submits that using the legal aid tariff rates from various provinces is entirely inappropriate, for the reasons that follow.
17. Given that legal aid rates vary vastly across the country by Canada's own submissions¹, COO submits that relying on the legal aid rates set by a third party (the provinces) may lead to further inequality from province to province in terms of agencies' ability to access quality legal services. Such rates do vary vastly from province to province, by Canada's own submission at footnote 1 on page 6 of their submissions.
18. Secondly, COO submits that there is no evidence to suggest that the legal aid rates appropriate for families in the child welfare system are appropriate for agencies' legal needs. Agencies are in a different position than families in the child welfare system, with a different set of duties, responsibilities and obligations than the families who access legal aid lawyers in child welfare cases.
19. In COO's submission it would be inappropriate to tether agencies' rates for legal counsel to rates set by provincial legal aid organisations. Doing so would lead to inequalities in terms of access to quality legal services from province to province. COO submits that the Department of Justice rates are appropriate for any immediate relief orders.

¹ See footnote 1 on page 6 of Canada's submissions on remedy dated March 10, 2016. COO notes that Canada did not produce the legal aid tariff rate for Ontario, which ranges from 109.14/hour-136.43 per hour in the south and \$120.05/hour - \$150.06/hour in the North. Travel is reimbursed at much lower rates, as per the tariff. Northern travel is long and costly. See: http://www.legalaid.on.ca/en/info/tariff_billing.asp

All of which is respectfully submitted this 31st day of March, 2016.

A handwritten signature in black ink, appearing to read 'Maggie Went', with a long horizontal flourish extending to the right.

Maggie Went

Olthuis Kler Townshend LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
416-981-9340 (t)
416-981-9350 (f)
mwente@oktlaw.com
Counsel for the Interested Party, Chiefs of Ontario