

**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, AMNESTY INTERNATIONAL  
and NISHNAWBE ASKI NATION**

RESPONDENTS

**AMENDED NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

**TO THE RESPONDENTS:**

**A PROCEEDING HAS BEEN COMMENCED** by the Applicant. The relief claimed by the Applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

October 4, 2019  
Amended March 5, 2021

Issued by:

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## APPLICATION

This is an application for judicial review in respect of the Canadian Human Rights Tribunal's ("Tribunal") decisions in file no. T1340/7008 dated: September 6, 2019 ~~and cited as (2019 CHRT 39)~~ as modified by the Tribunal's decisions of April 16, 2020 (2020 CHRT 7), May 28, 2020 (2020 CHRT 15), February 11, 2021 (2021 CHRT 6) and February 12, 2021 (2021 CHRT 7). In the first decision, the Tribunal awarded statutory compensation to a group of recipients. The four subsequent decisions clarify the compensation order, add additional beneficiaries, and set out the process for compensation.

The Applicant makes application for:

1. An order setting aside the Tribunal's decision in 2019 CHRT 39 and dismissing the claim for monetary compensation;
2. ~~In the alternative, an order setting aside the Tribunal's decision and referring the matter to the Tribunal for determination in accordance with the directions of this Court;~~
3. An order setting aside the Tribunal's decisions in 2020 CHRT 7, 2020 CHRT 15, 2021 CHRT 6, and 2021 CHRT 7;
4. In the alternative, an order setting aside the Tribunal's decisions and referring the matter to a differently constituted Panel for determination in accordance with the directions of this Court;
5. Such further and other relief as this Honourable Court may deem appropriate and just in the circumstances.

Canada acknowledges the finding of systemic discrimination and does not oppose the general principle that compensation to First Nations individuals affected by a discriminatory funding model can be made in appropriate circumstances. Awarding compensation to individuals in this claim, however, was inconsistent with the nature of the complaint, the evidence, past jurisprudence and the *Canadian Human Rights Act*.

The grounds for the application are that the Tribunal erred in:

1. Ordering monetary compensation to First Nations Children, their parents or grandparents under ss. 53(2)(e) and 53(3) of the *Canadian Human Rights Act* for the necessary or unnecessary removal of children in the child welfare system in light of the nature of the complaint before the Tribunal and the evidence presented;
2. Ordering monetary compensation to First Nations children, their parents or grandparents under s. 52(2)(e) and 53(3) of the *Canadian Human Rights Act* for the unnecessary removal of children to obtain essential services and/or for children who experienced gaps, delays and denials of services that would have been available

- under Jordan's Principle, in light of the nature of the complaint before the Tribunal and the evidence presented;
3. Determining that discrimination is ongoing with respect to Canada's funding for child and family services on reserve and in the Yukon;
  4. Establishing a process for the payment of compensation that requires the retention of jurisdiction by the Tribunal and permits the establishment of new categories of persons who may receive compensation;
  5. Adopting unreasonably broad definitions of the terms "essential services", "service gaps", and "unreasonable delays", for the purposes of statutory compensation for delays and denials of "Jordan's Principle" services and awarding the maximum available statutory compensation for all beneficiaries including family members, children not eligible for *Indian Act* status or resident on reserve and children who never requested services;
  6. The foregoing errors were made without jurisdiction or beyond the Tribunal's jurisdiction, denied procedural fairness to the Applicant, erroneously relied on factual material, erroneously interpreted provisions of the *Canadian Human Rights Act* or were otherwise unreasonable, and thus there are permissible grounds for review under s. 18.1 of the *Federal Courts Act*;
  7. Such further and other grounds as counsel may advise and this Honourable Court permit.

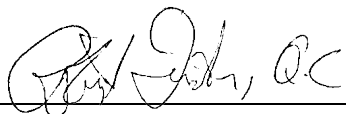
This application will be supported by the following material:

1. The Certified Tribunal Record.
2. Such further and other materials as counsel may advise and this Honourable Court should permit.

The Applicant requests that the Canadian Human Rights Tribunal send a certified copy of the record upon which its decision was based to the Applicant and to the Registry within 20 days.

The Applicant requests this matter be heard in Ottawa, Ontario.

DATED AT OTTAWA, ONTARIO, the 4th day of October, 2019, and amended March 5, 2021.



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