

Court File No.

**FEDERAL COURT OF APPEAL**

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

**NOTICE OF APPEAL**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL 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 appellant. The appellant requests that this appeal be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Court Rules, 1998* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Court Rules, 1998* instead of serving and filing a notice of appearance.

Copies of the *Federal Court Rules, 1998*, 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 APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: October 29, 2021

Issued by: \_\_\_\_\_  
(Registry Officer)

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**APPEAL**

**THE APPELLANT APPEALS** to the Federal Court of Appeal pursuant to s. 27 of the *Federal Courts Act*, from the Order and Judgement of Mr. Justice Favel dated September 29, 2021, in *AGC v. First Nations Child and Family Caring Society of Canada et al* (T-1621-19 & T-1559-20) in which he dismissed the Appellant's judicial review of the decisions of the Canadian Human Rights Tribunal 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)*, 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).

**THE APPELLANT ASKS for the following relief:**

1. An order setting aside the decision of the Federal Court in *AGC v. First Nations Child and Family Caring Society of Canada et al* (T-1621-19) and making the decision the Federal Court should have made by allowing the underlying judicial review application;
2. An order setting aside the Tribunal's decision and orders;
3. In the alternative, an order setting aside the Tribunal's decision and referring the matter to a differently constituted Panel for determination in accordance with the directions of this Court;
4. The Appellant does not seek costs; and
5. Such further and other relief as counsel may advise and this Honourable Court permits.

Canada acknowledges the finding of systemic discrimination and does not oppose the general principle that compensation to First Nations individuals who experienced pain and suffering as a result of government misconduct should be provided. Awarding compensation to individuals in the manner ordered by the Tribunal, however, was inconsistent with the nature of the complaint, the evidence, past jurisprudence and the *Canadian Human Rights Act*.

**THE GROUNDS OF APPEAL are as follows:**

1. The Federal Court erred by finding that the Tribunal in decision 2019 CHRT 39 acted reasonably in the context of the evidence before it in ordering:
  - a) 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;
  - b) Monetary compensation to First Nations children, their parents or grandparents under s. 53(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;
  - c) Determining that there is no end date for the compensation awarded in relation to removals; and
  - d) 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, and children who never requested services;
2. The Federal Court further erred in concluding that the Tribunal's consideration

and application of the principles of proportionality and causation when determining the applicability of compensation awards pursuant to the statutory framework of the *Canadian Human Rights Act* was reasonable;

3. The Federal Court further erred by finding reasonable the Tribunal's decision that the fact of underfunding was, in itself, sufficient to award the maximum compensation in all cases of removals and denials, delays and service gaps in Jordan's Principle services, and by extending that maximum award to parents and caregivers;

4. The Federal Court further erred by finding as reasonable the Tribunal's conclusion that every removed child, their parents or caregivers and every child who experienced denials, delays and service gaps in Jordan's Principle services and their caregivers, was entitled to the maximum award of damages under the *Act* despite the fact it was not supported by the record before it;

5. The Federal Court further erred by failing to recognize that the order for "compensation" is factually and legally different from the "Merits Decision" and the appellant was not estopped from seeking judicial review of the "compensation" decision;

6. The Federal Court further erred in finding that the Tribunal's decision to award maximum compensation for "wilful and reckless" conduct for both those who experienced denials, delays and service gaps in Jordan's Principle services and those children who were necessarily or unnecessarily removed, and their parents or caregivers was reasonable;

7. The Federal Court further erred by failing to find that the foregoing errors were made without jurisdiction or beyond the Tribunal's jurisdiction, erroneously relied on factual material, erroneously interpreted provisions of the *Canadian Human Rights Act* or

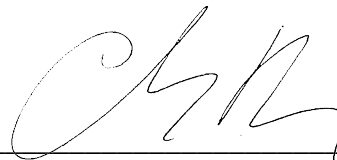
were otherwise unreasonable, and thus there were permissible grounds for review under s. 18.1 of the *Federal Courts Act*;

8. The Federal Court further erred through misapprehension of the record and evidence before the Tribunal; and

9 Such further and other grounds as counsel may advise and this Honourable Court permits.

The Attorney General of Canada proposes Ottawa, Ontario for the hearing.

October 29, 2021



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