



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

Legal Services  
Division

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## ***By E-filing***

January 7, 2019

Administrator  
Federal Court of Canada  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5<sup>th</sup> floor  
Ottawa, Ontario K1A 0H9

Dear Administrator:

**Re: *AGC v. First Nations Child and Family Caring Society et al.*  
Submissions regarding Costs of the Stay Motions  
Federal Court File No. T-1621-19**

In its Order and Reasons dated November 29, 2019 (the "Decision")<sup>1</sup>, the Court (per Justice Favel) dismissed two motions. It directed the parties to make submissions on costs by December 31, 2019. Justice Favel subsequently extended that deadline to today's date, by way of a Direction issued December 30, 2019.

We ask that the Registry please provide this letter to Justice Favel for his consideration, as the submissions of the Canadian Human Rights Commission (the "Commission") with respect to costs. As explained below, the Commission does not seek any costs in respect of the motions, and submits no costs should be awarded against it.

### **The Motions**

The Attorney General of Canada brought a motion (the "AGC Motion"), seeking to stay the ongoing proceedings of the Canadian Human Rights Tribunal (the "Tribunal") with respect to financial compensation, pending the resolution of this Application. The Commission opposed the AGC Motion, on the basis that refusing the stay would not cause irreparable harm.<sup>2</sup>

The First Nations Child and Family Caring Society (the "Caring Society") brought a motion (the "Caring Society Motion"), seeking to adjourn this Application, pending the completion

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<sup>1</sup> *Canada (Attorney General) v. First Nation Child and Family Caring Society of Canada*, 2019 FC 1529 ("Decision").

<sup>2</sup> Written Representations of the Canadian Human Rights Commission dated November 19, 2019, at paras. 2-3 and 18-28 ("CHRC Written Representations").

of the Tribunal proceedings with respect to financial compensation. The Commission took no position in response to the Caring Society Motion.<sup>3</sup>

### The Decision

The Court dismissed the AGC Motion, for the same reason the Commission had opposed it – namely, that the Attorney General had not shown that irreparable harm would result if the Court declined to stay the Tribunal proceedings.<sup>4</sup>

The Court also dismissed the Caring Society Motion, finding it could be beneficial for this Application and the Tribunal compensation proceedings to go forward at the same time.<sup>5</sup>

### Position with Respect to Costs

In its Written Submissions, and at the hearing of the Motions, the Commission indicated it would not seek its costs of opposing the AGC Motion.<sup>6</sup> The Commission thus confirms that it does not seek any costs in respect of its successful opposition of the AGC Motion.

As the Court noted in its Decision, the Commission took no official position on the Caring Society Motion. Further, the only party that did oppose the Caring Society Motion – namely, the Attorney General of Canada – has already said that it would not seek its costs in that regard.<sup>7</sup> In the circumstances, there is no basis for any party to seek an award of costs against the Commission in respect of the Caring Society Motion.

In sum, the Commission respectfully submits that the Court should not award costs for or against it, on either Motion.

Yours truly,



Brian Smith  
Senior Counsel

cc. Robert Frater, Q.C. / Max Binnie / Meg Jones (AGC, by e-mail)  
Barbara McIsaac, Q.C./ Sarah Clarke / David Taylor / Anne Levesque (Caring Society, by e-mail)  
David Nahwegahbow / Thomas Milne / Stuart Wuttke / Julie McGregor (AFN, by e-mail)  
Maggie Wente / Sinéad Dearman (COO, by e-mail)  
Julian Falconer / Molly Churchill / Aliah El-Houni (NAN, by e-mail)  
Ben Kates / Justin Safayeni (Amnesty International, by e-mail)

<sup>3</sup> Decision, *supra* at para. 30.

<sup>4</sup> Decision, *supra* at paras. 21-24.

<sup>5</sup> Decision, *supra* at paras. 31-33.

<sup>6</sup> CHRC Written Representations, *supra* at para. 34.

<sup>7</sup> Reply in the Attorney General's Stay Motion and Response to the Caring Society's Motion to Hold this Application in Abeyance dated November 22, 2019, at para. 56.