

Court File No.

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

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.

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.**

December 22, 2020

Issued by: _____

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APPLICATION

This is an application for judicial review in respect of the Canadian Human Rights Tribunal's ("Tribunal") decision in file no. T1340/7008, dated July 17, 2020 and cited 2020 CHRT 20 concerning the criteria for determining who is eligible for consideration under Jordan's Principle, as modified and confirmed by the Tribunal's decision dated November 25, 2020 and cited 2020 CHRT 36.

The Applicant makes application for:

1. An order setting aside the Tribunal's decision only insofar as it requires the eligibility criteria for Jordan's Principle to include:
 - a) children without *Indian Act* status or eligibility for status who are recognized as citizens and/or members of their respective First Nations regardless of where they live, whether on or off-reserve; and
 - b) children who do not have *Indian Act* status and who are not eligible for *Indian Act* status, but have a parent/guardian with, or who is eligible for, *Indian Act* status;and dismissing those aspects of the underlying motion for such relief.
2. In the alternative, an order setting aside the Tribunal's order, as above, and referring the matter to the Tribunal for determination by a differently constituted Panel, in accordance with the directions of this Court;
3. Such further and other relief as this Honourable Court may deem appropriate and just in the circumstances.

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

1. Extending the eligibility criteria for consideration under Jordan's Principle to include children without *Indian Act* status or eligibility for such status who are recognized as citizens and/or members of their respective First Nations regardless of where they live, whether on or off-reserve, in light of the nature of the complaint before the Tribunal and the evidence presented, both of which concerned systemic discrimination with respect to funding of child and family services on-reserve and in the Yukon;
2. Extending the eligibility criteria for consideration under Jordan's Principle to include children who do not have *Indian Act* status and who are not eligible for

- Indian Act* status, but have a parent/guardian with, or who is eligible for, *Indian Act* status, in light of the nature of the complaint before the Tribunal and the evidence presented, both of which concerned systemic discrimination with respect to funding of child and family services on-reserve and in the Yukon;
3. Finding Canada's inclusion of the provisions of the *Indian Act* as criteria for Jordan's Principle eligibility to be discriminatory, in light of the nature of the complaint and the evidence presented, both of which concerned systemic discrimination with respect to funding of child and family services on-reserve and in the Yukon;
 4. Imposing obligations on non-party First Nations to determine who they recognize as citizens or members of their community for the purposes of Jordan's Principle eligibility, and doing so based on criteria that may exceed the eligibility criteria applied by First Nations themselves for citizenship;
 5. The foregoing errors were made without jurisdiction or beyond the Tribunal's jurisdiction, denied procedural fairness to the Applicant, erroneously relied on factual material or were otherwise unreasonable, and thus there are permissible grounds for review under s. 18.1 of the *Federal Courts Act*.
 6. 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 22nd day of December, 2020.



ATTORNEY GENERAL OF CANADA

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