

Court File No.

T-1621-19 ID

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

FEDERAL COURT COUR FÉDÉRALE	
FILED	OCT 04 2019
	François Morin
OTTAWA, ON	
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, 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

Issued by:



Address of Local Office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

TO: David Taylor
Conway Baxter Wilson LLP/s.r.l.
Suite 400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613-619-0368
Fax: 613-688-0271
Email: dtaylor@conway.pro

**FRANÇOIS MORIN
REGISTRY OFFICER
AGENT DU GREFFE**

Sarah Clarke
Clarke Child & Family Law
Suite 950 – 36 Toronto Street
Toronto, ON M5C 2C5
Tel: 416-260-3030
Email: sarah@childandfamilylaw.ca

Counsel for First Nations Child and Family Caring Society of Canada

AND TO: David C. Nahwegahbow and Thomas Milne
Nahwegahbow Corbiere
Barristers and Solicitors
5884 Rama Road, Suite 109
Rama, ON L3V 6H6
Tel: 705-325-0520
Fax: 705-325-7402
Email: dndaystar@nncfirm.ca
tmilne@nncfirm.ca

Stuart Wuttke
Assembly of First Nations
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5
Tel: 613-241-6789 ext 228
Email: swuttke@afn.ca

Counsel for Assembly of First Nations

AND TO: Brian Smith and Jessica Walsh
Canadian Human Rights Commission
344 Slater Street
Ottawa, ON K1A 1E1
Tel: 613-943-9205
Fax: 613-993-3089
Email: Brian.Smith@chrc-ccdp.gc.ca
Jessica.Walsh@chrc-ccdp.gc.ca

Counsel for Canadian Human Rights Commission

AND TO: Maggie Wente and Sinéad Dearman
OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
Tel: 416-981-9330
Fax: 416-981-9350
Email: mwente@oktlaw.com
sdearman@oktlaw.com

Counsel for Chiefs of Ontario

AND TO: Justin Safayeni
Stockwoods LLP Barristers
TD North Tower
77 King Street West, Suite 4130
Toronto, ON M5K 1H1
Tel: 416-593-3494
Fax: 416-593-9345
Email: justins@stockwoods.ca

Counsel for Amnesty International

AND TO: Julian Falconer and Molly Churchill
Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
Tel: 416-964-0495 ext. 222
Fax: 416-929-8179
Email: julianf@falconers.ca
mollyc@falconers.ca

Counsel for Nishnawbe Aski Nation

AND TO: Canadian Human Rights Tribunal
Registry Office
240 Sparks Street, 6th Floor
Ottawa, ON K1A 1J4
Tel: 613-995-1707
Fax: 613-995-3484
Email: Registry.Office@chrt-tcdp.gc.ca

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 September 6, 2019 and cited 2019 CHRT 39.

The Applicant makes application for:

1. An order setting aside the Tribunal's decision 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. 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. 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. 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*.
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 4th day of October, 2019.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8
Fax: 613-954-1920

**Per: Rob Frater
Tara DiBenedetto
Max Binnie**

Tel: (613) 670-6289 / (613) 670-6270 /
(613) 670-6283

Email: Rob.Frater@justice.gc.ca
Tara.DiBenedetto@justice.gc.ca
Max.Binnie@Justice.gc.ca

Counsel for the Applicant