

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

-and-

**CHIEFS OF ONTARIO and
NISHNAWBE ASKI NATION**

Interested Parties

**AMENDED NOTICE OF MOTION FOR IMMEDIATE RELIEF
OF THE INTERESTED PARTY NISHNAWBE ASKI NATION (“NAN”)**

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Amended Notice of Motion

Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

-and-

**ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

-and-

**CHIEFS OF ONTARIO and
NISHNAWBE ASKI NATION**

Interested Parties

**AMENDED NOTICE OF MOTION
(Motion for Immediate Relief)**

TAKE NOTICE that the Interested Party, Nishnawbe Aski Nation (“NAN”), will make a motion to the Canadian Human Rights Tribunal at 160 Elgin Street, 11th floor, Ottawa, Ontario, on Wednesday March 22, 2016 at 9:30 a.m. or as soon thereafter as it may be heard.

The motion is made under Rule 3 of the *Canadian Human Rights Tribunal Rules of Procedure*, and is for orders under Rules 1(6), 3(1), and 3(2)(d) and pursuant to the Canadian Human Rights Tribunal's continuing jurisdiction in this matter. The proposed motion will be heard orally.

THE MOTION IS FOR immediate relief for Indigenous children in need in remote northern communities, as follows:

Remoteness Quotient

1. The Tribunal's September 14, 2016 decision¹ on immediate relief ("September Decision on Immediate Relief") ruled in support of NAN's position that a "remoteness quotient needs to be developed as part of medium to long term relief and that data needs to be appropriately collected."² While NAN acknowledges the Tribunal's direction that the development of a remoteness quotient is medium to long-term relief, it is essential that the initial steps, such as the appointment of experts and the gathering of data be done in the immediate term. Further, the remoteness data in the *Barnes Report* can be applied as an interim remoteness quotient.
2. The Tribunal's September Decision on Immediate Relief ordered "INAC to provide detailed information in its compliance reports to clearly demonstrate how it is determining funding for remote FNCFS Agencies that allows [remote agencies] to meet the actual needs of the communities they serve".³ In the same decision, the Tribunal re-stated the Respondent's agreement to "engage on undertaking and providing support for research"

¹ 2016 CHRT 16

² Para 80, 2016 CHRT 16

³ Para 81, 2016 CHRT 16

on a remoteness quotient.⁴ Additionally, the Tribunal directed that a remoteness quotient would be discussed at the November case management conference.

3. In the Respondent's October 31, 2016 compliance report, INAC conceded that they do not account for remoteness in funding the needs of Indigenous children in remote northern communities in Ontario. INAC further conceded that they do not have or currently collect sufficient data/information to create a remoteness quotient.⁵
4. The Respondent has not committed to funding jointly-appointed experts to obtain remoteness data and to develop a remoteness quotient.
5. The November Case Management Conference did not result in any immediate relief for northern and remote communities.
6. Without robust remoteness data, funding to remote and northern agencies will continue to be fundamentally inadequate in addressing the real costs of service delivery in the north.
7. In upholding the Tribunal's September Decision on Immediate Relief and in recognition of the fact that northern communities will continue to receive resources that do not meet actual needs, NAN seeks an order for the following immediate relief:

- a. **that the Respondent apply the remoteness quotients identified in the *Barnes Report*, to all funding for Payukotayno James and Hudson Bay Family Services, Tikinagan Child and Family Services and Kunowanimano Child and Family Services ("NAN-mandated child welfare agencies"); and,**
- b. **that the Respondent fund jointly-appointed experts to: (1) obtain remoteness**

⁴ Para 80, 2016 CHRT 16

⁵ Page 9, Section G, INAC October 31, 2016 Compliance Report

data; and (2) develop a remoteness quotient;

- c. that the Respondent disclose any and all data collected by INAC with respect to the geography, demographics, and socioeconomic characteristics of First Nation communities that is relevant to an analysis of remoteness, community needs, and/or child welfare infrastructure;
- d. that the Respondent disclose any and all data held by Health Canada with respect to remoteness expenses in the context of providing health services to First Nations;
- e. that the Respondent disclose any and all data held by Public Safety Canada with respect to remoteness expenses in the context of providing policing services to First Nations;
- f. that the Respondent fund an immediate update of the Barnes Report, using data from the 2006 census, 2011 national household survey, and from INAC, as set out in the Affidavit of Thomas A. Wilson and David Barnes;
- g. that the Respondent fund a second update of the Barnes Report, using data from the 2016 census and from INAC, when the 2016 data becomes available, as set out in the Affidavit of Thomas A. Wilson and David Barnes;
- h. that the Respondent fund the design and implementation of a direct survey of First Nations in northern Ontario with respect to community child welfare needs and infrastructure, as set out in the Affidavit of Thomas A. Wilson and David Barnes; and
- i. that the Respondent fund the collection of all data set out in paragraph 21 of the Affidavit of Thomas A. Wilson and David Barnes, for analysis and use in the development of a more robust remoteness coefficient in the medium-to-long term.

- 8. NAN's written immediate relief submissions, summarized in our November 2016 Case

Management Submissions, outlined the Tribunal’s broad remedial powers under the *Canadian Human Rights Act*.⁶ In particular, the Tribunal has the jurisdiction to order a “special program, plan or arrangement” and to order the collection of information in support of a special program, plan or arrangement. The Tribunal has the jurisdiction to issue the requested orders under subsections 16(1), 16(3) and 53(2) of the *Canadian Human Rights Act*.

Agency Debt Relief

9. In the Tribunal’s January 26, 2016⁷ ruling (“the January Liability Decision”), the Tribunal found that “In the provision of child and family services, the Panel finds the situation in Ontario falls short of the objective of the *1965 Agreement* “...to make available to the Indians in the Province the full range of provincial welfare programs””.⁸
10. In the Tribunal’s September Decision on Immediate Relief, the Tribunal agreed with NAN “that while a robust, empirically-based remoteness quotient is being developed, adjustments reflecting northern remoteness realities can be undertaken in the immediate term.”⁹
11. NAN proposed that alleviating the funding shortfalls of NAN-mandated child welfare agencies would be an effective immediate relief adjustment.
12. The Tribunal directed that this topic would be discussed at the November case management

⁶ See NAN’s November 2016 Case Management Submissions

⁷ 2016 CHRT 2

⁸ Para 246, 2016 CHRT 2

⁹ Para 81, 2016 CHRT 16

conference.

13. INAC has not specifically addressed NAN's proposal regarding funding the debts and deficits of NAN-mandated child welfare agencies.
14. The November Case Management Conference did not result in any immediate relief for northern and remote communities.
15. In upholding the Tribunal's January Liability Decision and the September Decision on Immediate Relief, and in recognition of the fact that northern and remote Agencies remain chronically underfunded, NAN seeks an order for the following immediate relief:
 - a. **that the Respondent fund the current debts and deficits of all NAN-mandated child welfare agencies.**
16. NAN's written immediate relief submissions, summarized in our November 2016 Case Management Submissions, outlined the Tribunal's broad remedial powers under the *Canadian Human Rights Act*.¹⁰ The Tribunal has the jurisdiction to issue the requested orders under subsections 16(1), 16(3) and 53(2) of the *Canadian Human Rights Act*.

Capital Infrastructure

17. In the Tribunal's September Decision on Immediate Relief, the Tribunal ruled that "until the broader issue of infrastructure needs under the *1965 Agreement* can be fully reviewed, INAC should develop an interim strategy to deal with the infrastructure needs of FNCFS Agencies."¹¹ The Tribunal further directed that this topic would be discussed at the

¹⁰ See NAN's November 2016 Case Management Submissions

¹¹ Para 97, 2016 CHRT 16

- November case management conference.
18. In the Respondent's October 31, 2016, compliance report, the Respondent did not commit to an immediate first step in assessing capital infrastructure needs, aside from waiting for a response from Agencies to an October 28, 2016 letter of engagement by a June 30, 2017 deadline.¹²
 19. The Respondent's October 28, 2016 letter of engagement to collect Agency-specific information, is not a replacement for a comprehensive assessment of capital infrastructure needs. Additionally, a June 30, 2017 timeframe is not *immediate* relief.
 20. The November Case Management Conference did not result in any immediate relief for northern and remote communities.
 21. In upholding the Tribunal's September Decision on Immediate Relief for an interim strategy to deal with infrastructure needs, NAN seeks an order for the following immediate relief:
 - a. **that the Respondent fund a Capital Needs Assessment Study for all NAN-mandated child welfare agencies.**
 22. NAN's written immediate relief submissions, summarized in our November 2016 Case Management Submissions, outlined the Tribunal's broad remedial powers under the *Canadian Human Rights Act*.¹³ The Tribunal has the jurisdiction to issue the requested order under subsections 16(1), 16(3) and 53(2) of the *Canadian Human Rights Act*.

¹² Page 30, Section C, INAC October 31, 2016 Compliance Report

¹³ See NAN's November 2016 Case Management Submissions

Mental Health Services in Ontario

23. The Interested Party, the Chiefs of Ontario (“COO”), filed a Notice of Motion on November 22, 2016, seeking the following orders regarding mental health services in Ontario:
- a. **An order that the Respondent INAC has failed to comply with the Tribunal’s order at 2016 CHRT 2, in that the Respondent has not funded mental health services under the *Child and Family Services Act* R.S.O. 1990 c, c-11.**
 - b. **An order that the Respondent INAC immediately fund mental health services in Ontario pursuant to the *Child and Family Services Act*, R.S.O. 1990 c. c-11 and any act which amends or replaces that Act.**
24. NAN also seeks the above noted relief.
25. Subsequent to COO’s November 22, 2016, Notice of Motion, in early January 2017, two 12-year old girls died by suicide in Wapekeka First Nation (“Wapekeka”), located within NAN territory. Jolynn Winter died on January 8, 2017, and Chantel Fox died on January 10, 2017. In July 2016, Wapekeka alerted the Federal Government to concerns about a suicide pact amongst a group of young females and submitted a request to the Federal Government for funding for a mental health team in the community. This funding request was refused.
26. The herein notice of motion is amended to specifically address the issue of mental health services in Ontario and the current crises in NAN communities, as tragically demonstrated in Wapekeka. In support of the herein amended notice of motion, NAN is filing an affidavit

sworn by Doctor Michael Kirlew (“Dr. Kirlew”). Dr. Kirlew is a community and family physician for Wapekeka First Nation, a Staff Physician at the Sioux Lookout Meno Ya Win Health Center, and an Investigating Coroner for Ontario’s northwest region.

27. Such further and other relief as this Tribunal may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion:

28. The Factum of the Interested Party, Nishnawbe Aski Nation;
29. An Affidavit of NAN Deputy Grand Chief Anna Betty Achneepineskum, to be sworn on or before December 20, 2016;
30. An Affidavit of Bobby Narcisse, NAN Director of Social Services, to be sworn on or before December 20, 2016;
31. An Affidavit by the Executive Directors (or their representatives) of the NAN-mandated child welfare agencies, to be sworn on or before December 20, 2016;
32. The Affidavit of Thomas A. Wilson and David Barnes, sworn January 27, 2017;
33. The Affidavit of Doctor Michael Kirlew, sworn January 27, 2017;
34. The Respondent’s Compliance reports dated September 30, 2016 and October 31, 2016; and,
35. Such further and other material as Counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

36. The Tribunal’s January Liability Decision found that “In the provision of child and family

services, the Panel finds the situation in Ontario falls short of the objective of the *1965 Agreement* ‘...to make available to the Indians in the Province the full range of provincial welfare programs’”;

37. The Tribunal reiterated this finding in its September Decision on Immediate Relief;
38. The Tribunal ordered that remedies would be addressed in three stages: immediate, medium and long-term. This motion only addresses immediate relief;
39. The Parties have filed fulsome immediate relief submissions;
40. Specific immediate relief for remote and northern communities has not been implemented;
41. The Tribunal has sought further information from the Respondent to the Tribunal’s September Decision on Immediate Relief;
42. The Respondent filed two compliance reports, the first on September 30, 2016 and the second on October 31, 2016;
43. The Respondent’s compliance reports did not produce specific immediate relief for northern and remote communities;
44. The Respondent’s October 28, 2016 letter of engagement to collect Agency-specific information is not a substitute for appointing experts to develop a remoteness quotient or capital needs assessment studies;
45. The November case management conference did not produce specific immediate relief for northern and remote communities;

46. The Tribunal has the jurisdiction to issue the requested orders under subsections 16(1), 16(3) and 53(2) of the *Canadian Human Rights Act*;
47. NAN relies on Rules 1(1), 1(2), and 1(4) in support of the amendments to this notice of motion. These amendments pose no prejudice to any party to these herein proceedings. These amendments particularize relief already sought in this immediate relief motion and identify information that was not known at the time of the original November 22, 2016 notice of motion;
48. Rules 1(6), 3(1), and 3(2)(d) of the *Canadian Human Rights Tribunal Rules of Procedure*; and,
49. Such further and other grounds as counsel may advise and may be permitted.

Dated: November 22, 2016
Amended: January 27, 2017

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