

**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, AMNESTY INTERNATIONAL, and NISHNAWBE ASKI  
NATION**

**Interested Parties**

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**NOTICE OF MOTION OF THE INTERESTED PARTY  
NISHNAWBE ASKI NATION (“NAN”) re INTERIM RELIEF re NATIONAL  
REMOTENESS QUOTIENT TABLE**

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**TAKE NOTICE** that the Interested Party, Nishnawbe Aski Nation (“NAN”), will make a motion in the *First Nations Child and Family Caring Society v. Canada* proceedings, seeking interim relief pending adjudication regarding the Remoteness Quotient (“RQ”) table work raised in its motion dated October 4, 2019 and not the subject of the currently scheduled adjudication on April 21 and 22, 2020.

NAN will make a motion to the Canadian Human Rights Tribunal at a time, date and location to be determined by the Tribunal. 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 regarding remoteness remedies in this matter. The proposed motion will be heard orally.

**THE MOTION IS FOR:**

1. An order for interim funding to support a pilot project that will involve applying the Remoteness Quotient ("RQ") work developed at the RQ Table to Manitoba Keewatinowi Okimakanak territory, as described further below; and
2. 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:

1. This herein Notice of Motion of the Interested Party, Nishnawbe Aski Nation;
2. The Notice of Motion of the Interested Party, Nishnawbe Aski Nation, dated October 4, 2019;
3. The Factum of the Interested Party, Nishnawbe Aski Nation;
4. The Phase I Remoteness Quotient report, filed with the Tribunal on September 8, 2017;
5. The Phase II Remoteness Quotient Interim Report, filed with the Tribunal on August 22, 2018;
6. The Phase II Remoteness Quotient Final Report, filed with the Tribunal on March 29, 2019;
7. The joint affidavit of Dr. Thomas Wilson and David Barnes, affirmed December 2, 2019;

8. The affidavit of Dr. Martin Cooke, affirmed November 28, 2019;
9. The affidavits of Bobby Narcisse, affirmed December 3, 2019 and February 21, 2020, respectively;
10. A further affidavit by a NAN representative, yet to be affirmed; and
11. 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:

**Motion for Direction Regarding National Dimension of the RQ Work**

1. On October 4, 2019, NAN filed a Notice of Motion (“the October 4<sup>th</sup> Motion”) seeking various forms of relief from this honourable Tribunal in relation to the Remoteness Quotient (“RQ”) work conducted through the RQ Table. The RQ Table, comprised of representatives from NAN and representatives from Indigenous Services Canada (“ISC”), was endorsed by this Tribunal in its decision in these proceedings dated March 29, 2017. The RQ work quantifies the extra costs due to remoteness of providing child and family services in remote First Nations, and represents a key element in the calculation of equitable funding for such services;
2. NAN repeats and relies on the grounds set out in the October 4<sup>th</sup> Motion under the sub-heading “Overview: RQ” (i.e. paragraphs 13-29). NAN also repeats and relies on the grounds regarding expansion of the RQ work set out at paragraphs 44-49 of the October 4<sup>th</sup> Motion;
3. The October 4<sup>th</sup> Motion states that part of the RQ-related relief sought by NAN is direction from the Tribunal regarding next steps in developing an expanded dimension of the RQ work: including covering travel and accommodation costs for meetings and fees to hire

experts for a pilot project that involves NAN partnering with MKO leadership in support of a pilot in MKO territory.

**Unsuccessful Attempts to Seek Expedited Hearing of Relief Relating to the National Dimension of the RQ Work**

4. NAN has been effectively stymied in its efforts to obtain a reasonable hearing schedule for Tribunal relief in relation to the expanded dimension of the RQ work;
5. Specifically, on December 12, 2019, counsel for NAN requested a case management conference to determine a reasonable schedule for adjudication of the October 4<sup>th</sup> Motion and raised the potential of seeking interim relief;
6. On December 19, 2019, a case management conference was held before Member Lustig. At this case management conference, it was determined that all aspects of the RQ-related relief sought in the October 4<sup>th</sup> Motion *except* the relief relating to the expansion of the RQ work, would be expedited to be heard in April of 2020. Hearing dates have now been scheduled for April 21-22, 2020;
7. At the case management conference, the First Nations Child and Family Caring Society (the “Caring Society”), through its lawyer David Taylor, expressly opposed having the relief relating to the expansion of the RQ work being heard on an expedited basis. He argued that this aspect of NAN’s motion should not proceed expeditiously and that NAN needs to stay “in its lane” and ought not to be permitted to proceed with work beyond NAN territory. When Mr. Taylor argued that it would be more appropriate for the Assembly of First Nations (“AFN”) to seek this relief, Counsel for the AFN disagreed and confirmed that AFN and NAN have been meeting and consulting in respect of the NAN/MKO initiative;

8. During submissions to the Tribunal in the concluding portions of the case management conference, counsel for NAN repeated the likelihood of NAN bringing a motion for interim relief relating to the aforementioned expansion of the RQ work;

#### **Developments Since December 2019: The NAN-MKO Pilot Project**

9. Since the December case management conference, there has been much momentum;
10. In late January of 2020, a delegation from NAN was invited into MKO territory to present the RQ work to MKO chiefs and further discuss the RQ work and its potential application in MKO territory. This was done in the context of a 2016 political accord between NAN and MKO. There was great interest in the RQ work and development of a NAN-MKO pilot project. Further meetings were arranged;
11. NAN and MKO are moving forward with a pilot project that will involve application of the RQ work to MKO territory (“the NAN-MKO Pilot Project”);
12. The AFN continues to provide ongoing support and consultation regarding the NAN-MKO Pilot Project;

#### **Benefits of the NAN-MKO Pilot Project**

13. To the extent that the NAN-MKO Pilot Project is successful, it will assist other (non-NAN) remote First Nations struggling with insufficient remoteness funding;
14. To the extent that the NAN-MKO Pilot Project is successful, it will further establish the validity of the RQ work, in terms of how robust the economic model is;

#### **Costs of Launching the NAN-MKO Pilot Project**

15. NAN’s and MKO’s resources to commit to the NAN-MKO Pilot Project, however, are limited. The costs required for the NAN-MKO Pilot Project – including the costs of travel to meetings between remote regions and of technical support – are not insignificant;



16. The Terms of Engagement for Phase II of the RQ work undertaken for the RQ Table were co-developed by NAN and ISC. The Terms of Engagement specified that one of the expectations of the retained experts was that they would explain whether the RQ work they conducted could be applied nationally, and what would be required for such application;
17. It is appropriate for Canada to fund the work of applying the RQ work outside NAN territory. Such application was contemplated by the RQ Table;
18. MKO has partnered with NAN for this very purpose of applying the RQ work outside NAN territory, through the NAN-MKO Pilot Project;
19. The absence of funding for the NAN-MKO Pilot Project is a barrier to moving the work forward;
20. It is appropriate for Canada to fund the initial work of testing the RQ work outside of Ontario, by funding the NAN-MKO Pilot Project, until such time as the main motion is adjudicated;
21. The Tribunal reserved jurisdiction over the RQ work;
22. 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*;
23. Rules 1(6), 3(1), and 3(2)(d) of the *Canadian Human Rights Tribunal Rules of Procedure*;  
and
24. Such further and other grounds as counsel may advise and may be permitted.

**Dated:** March 2, 2020

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