

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

Respondent

-and-

**CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA and
NISHNAWBE ASKI NATION**

Interested Parties

**WRITTEN SUBMISSIONS OF THE INTERESTED PARTY NISHNAWBE ASKI
NATION ("NAN") REGARDING COMPENSATION AND MAJOR CAPITAL**

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PART I: OVERVIEW

1. The follow are written submissions submitted on behalf of Nishnawbe Aski Nation (“NAN”) regarding two issues: (1) compensation for victims of the discrimination found by the Tribunal in January 2016; and (2) major capital, specifically the funding of capital and infrastructure in order to support First Nations in Ontario in the provision of prevention and Band Representative services.
2. These topics, in addition to the issue of small First Nations Agency downward scaling, will be heard by the Tribunal on April 23-26, 2019. For clarity, NAN is not making submissions on the topic of small First Nations Agency downward scaling.

PART II: COMPENSATION

3. The issue of compensation was first addressed by the Parties in the main hearing, prior to NAN’s intervention in the spring of 2016. As such, this is the first opportunity that NAN has had to address this topic before the panel.
4. NAN has had an opportunity to review the submissions made by the parties in the main hearing in addition to an advance draft copy of the First Nations Child and Family Caring Society of Canada (“the Caring Society”) April 2019 submissions regarding compensation.
5. NAN is in support of the remedies sought by the Caring Society, the specifics of which are identified below:
 - a. an order under subsection 53(3) that the Respondent pay an amount of \$20,000 as damages, plus interests pursuant to s. 53(4) of the *CHRA* and Rule 19(2) of the

Canadian Human Rights Tribunal Rules of Procedure, for every First Nations child affected by Canada's FNCFS Program who has been taken into out-of-home care since 2006 until long-term reform is in place and for every First Nations child who did not receive an eligible service or product pursuant to Canada's discriminatory approach to Jordan's Principle since December 12, 2007 to November 2017;

- b. an order that the special compensation described immediately above be paid into a trust for the benefit of those First Nations children described immediately above. The Caring Society proposes that the Trust be called the Spirit Bear Trust;
- c. The purpose of the Spirit Bear Trust will be to provide access to services such as culture and language programs, family reunification programs, counselling, health and wellness programs, and education programs. The development and delivery of these programs would be determined by the Trustees; and,
- d. an order under section 53(2)(a) of the *CHRA* for the Caring Society, the AFN, the Commission, Chiefs of Ontario, Nishnawbe Aski Nation and the Respondent Attorney General of Canada to consult on the appointment of seven Trustees. If the parties cannot agree on who the trustees should be, the seven trustees of the Spirit Bear Trust would be appointed by order of the Panel.

PART III: MAJOR CAPITAL

- 6. NAN supports the February 9, 2019, submissions of the Caring Society regarding capital funding for First Nations Child and Family Service Agencies.

7. Similar to COO, NAN is additionally seeking orders from the Tribunal to ensure that the capital and infrastructure needs of First Nations in Ontario who are delivering band representative and prevention services are met. NAN seeks similar orders as articulated in COO's submissions, reproduced below:
 - a. Canada shall fund the major and minor capital costs of First Nations in Ontario for the provision of prevention and Band Representative services, including, but not limited to, those related to program administration and governance, prevention, intake, and legal services;
 - b. In consultation with COO and NAN, Canada shall provide funding for Ontario First Nations to conduct major capital/infrastructure needs and feasibility studies related to prevention and Band Representative services;
 - c. Where such feasibility studies identify a need for major capital, Canada shall fund the design, land purchase, infrastructure, and other administrative requirements to facilitate construction;
 - d. Where projects are ready to proceed, Canada shall fund the major capital needs of Ontario First Nations at actual cost.
8. As indicated in the affidavit of Bobby Narcisse (affirmed April 3, 2019), NAN First Nations are providing prevention and Band Representative services without the necessary funding for capital and infrastructure, and against an existing chronic deficit of in-community capital and infrastructure. Physical assets are required to deliver prevention and Band

Representative services, and the demand for these physical assets is only expected to increase.

9. As such, NAN is seeking similar orders to COO to ensure that Ontario First Nations delivering prevention and Band Representative services are provided with the necessary capital and infrastructure resources required to engage in this service delivery.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF APRIL, 2019



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