

**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 MOTION FOR STAY OF ORDER  
(Rule 398 of the *Federal Courts Rules*, SOR/98-106)**

**TAKE NOTICE THAT** the Attorney General of Canada (“AGC”) makes a motion for a stay of enforcement and execution of the ruling and orders of the Canadian Human Rights Tribunal (“Tribunal”) in 2019 CHRT 39 pursuant to the *Federal Courts Rules*, SOR/98-106 (“*Rules*”). This motion shall be heard on October 23, 2019, or on such other date as scheduled by this Court.

**THE MOTION IS FOR:**

1. An Order for a stay of enforcement and execution of the Orders contained in the Tribunal’s ruling 2019 CHRT 39, for the duration of the proceedings before this Court, as permitted under Rule 398;
2. The Attorney General does not seek his costs for this motion and asks that none be awarded against him.

**THE GROUNDS FOR THE MOTION ARE:**

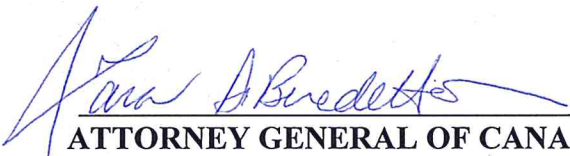
3. The Attorney General of Canada seeks judicial review from this Honourable Court of the Orders contained of the Tribunal in the matter of *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (Minister of Indian and Northern Affairs Canada*, 2019 CHRT 39 dated September 6, 2019 (the “Compensation Ruling” containing the “Orders”);
4. The Compensation Ruling raises several serious issues about the Tribunal’s interpretation of the relevant legislation and the reasonableness of their conclusions. The Notice of Judicial Review (“Notice”) alleges the Tribunal erred in:
  - a. 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;
  - b. 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;
  - c. Determining that discrimination is ongoing with respect to Canada’s funding for child and family services on reserve and in the Yukon; and
  - d. 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 Notice further alleges that these 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. Canada is legally obligated to comply with the Orders. Canada and the public interest will suffer irreparable harm if the Orders are not stayed by this Court. There are three main demonstrable categories of irreparable harm that will occur if the stay is not granted: (1) the potential for conflicting decisions as a result of the Tribunal's retained jurisdiction over the Compensation Ruling and the Federal Court's review of this ruling; (2) the allocation of resources at this time to setting up and implementing a compensation process that may be set aside; and (3) the unrecoverable loss of compensation paid out to certain individuals during the course of the judicial review. These harms, on their own and cumulatively, are demonstrably "irreparable" as they are not compensable by money, and Canada cannot be made whole if successful on judicial review.
7. In addition, compliance with the Orders while they are subject to judicial review places Canada and the First Nations claimants in a situation of uncertainty, requiring them to begin negotiations on the expectation that compensation would be awarded, only to have that expectation frustrated should Canada succeed on its judicial review. Canada should not begin a compensation process it seeks to set aside, and engaging in negotiations given the lack of stability will harm Canada's relationship with the First Nations.
8. The balance of convenience favours granting the stay, as the irreparable harm to Canada and the public interest if the stay is not granted exceeds the harm to the Respondents if the stay is granted;
9. Section 53 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6; section 18.1 of the *Federal Courts Act*, Rules, 3 and 398 of the *Federal Courts Rules*; subsection 89(1) of the *Indian Act*, R.S.C., 1985, c. I-5.

**THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:**

1. Affidavit of Sony Perron dated October 3, 2019 with exhibits;
2. Affidavit of Deborah Mayo dated October 1, 2019 with exhibits;
3. Such other evidence as the applicant may require and this Honourable Court permit.

DATED AT OTTAWA, ONTARIO, the 4th day of October, 2019.

  
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