

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 Services Canada)**

Respondent

- and -

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

Interested Parties

**SUPPLEMENTARY AFFIDAVIT OF GRAND CHIEF JOEL ABRAM
ONTARIO FINAL AGREEMENT APPROVAL MOTION**

I, Joel Abram, of the Oneida Nation Settlement in Ontario, DO SOLEMNLY AFFIRM:

1. I am Grand Chief of the Association of Iroquois and Allied Indians (“AIAI”), and the Social Services portfolio holder appointed by the Leadership Council of Chiefs of Ontario (“COO”), and therefore I have knowledge of the contents of this affidavit. Where I do not have direct knowledge, I have identified the source of the information in the affidavit and believe it to be true.
2. I am affirming this affidavit in order to support a motion by COO, jointly with Nishnawbe Aski Nation (“NAN”), to seek orders from the Canadian Human Rights Tribunal (the “CHRT” or the “Tribunal”) relating to the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the “OFA”) and the Trilateral Agreement in Respect of Reforming the 1965 Agreement (the “Trilateral Agreement”). It is a supplement to the affidavit submitted on March 7, 2025, in order to provide additional information to the Tribunal.
3. I sit on the COO Leadership Council by virtue of my role as Grand Chief of AIAI. I have been the Social Services Sector portfolio holder for COO since 2017. Prior to that, the then-Deputy Grand Chief of AIAI, who is now a former Chief of Delaware Nation of the Thames, Denise Stonefish, held the Social Services portfolio.
4. I was also Chief of Oneida Nation of the Thames, from 2008-2014, and a councillor at Oneida Nation of the Thames from 2004-2008 and 2014-2016. During the time I was Chief, I also at times fulfilled the role of Band Representative.
5. As the Social Services Sector portfolio holder, I am apprised of matters relating to this case, as well as implementation of the decisions of the Tribunal. I actively participate in discussions relating to the implementation of the Tribunal’s orders with COO’s Social Services Coordination Unit (“SSCU”) and the Chiefs Committee on Social Services.
6. In my role as Social Services Sector portfolio holder, I provide technical support and information to the Ontario Chiefs-in-Assembly, COO Leadership Council, and the Chiefs Committee on Social Services on matters related to social services, including child welfare. I was also selected by the COO Leadership Council to be the political advisor for COO on the negotiation of the Agreement-in-Principle on Long-Term Reform of the FNCFS

Program and Jordan's Principle (the "AIP") at the time it was being negotiated. At that time, Abram Benedict, now the Ontario Regional Chief and then the Grand Chief of Mohawks of Akwesasne, was selected to be my alternate.

7. I often attended negotiations on the AIP, which concluded on December 31, 2021, as well as the negotiations toward the draft national Final Agreement on Long-Term Reform of the FNCFS Program (the "draft national Final Agreement"). I attended most days of the negotiation of the OFA and Trilateral Agreement in January and February of 2025. If I could not attend, I was briefed by COO's lawyers and/or COO's Social Services Sector staff.
8. Where terms in this affidavit are capitalized, they are intended to have the same meaning as the terms in the OFA.

COO AND NAN JOINT MOTION

9. COO is a moving party of the Joint Motion for OFA Approval because of the direction of the Chiefs-in-Assembly and because bringing the motion is a demonstration of the will and self-determination of the Chiefs-in-Assembly.
10. A criticism that I and others within COO Leadership have heard others from outside our region since last July, and since the conclusion of the OFA, is that COO was forced by Canada to enter into the OFA, or that COO is unaware of the implications of entering into the OFA. The suggestions that the Chiefs-in-Assembly undertook the long negotiating process and the countless information sessions only to be uninformed or forced to enter in the OFA has been disheartening, insulting, and it is false. It was the COO Chiefs-in-Assembly who directed COO to seek an Ontario-only agreement after the failure of the national draft Final Settlement Agreement and bring it to conclusion. COO desires for the Tribunal and other parties to understand that, through bringing the motion, COO is willingly exercising its rights. Canada as the moving party with COO having a background role in the approval of the OFA could leave the very impression that COO has been trying to counter. COO has been and remains the party taking action to bring the proceedings to this point for First Nations in Ontario, because it is the Chiefs-in-Assembly who have the right and the expertise to determine long-term reform for First Nations children in Ontario.

FUNDING AND PROGRAM REFORM SINCE THE MERIT DECISION

2016-2022

11. In the years following the Merit Decision, Canada began to introduce additional prevention and jurisdictional initiatives funding to First Nation Child and Family Services (“FNCFS”) agencies and to First Nations as an attempt to eliminate the discrimination. This resulted in funding commencing in 2017 called Community-Based Prevention funding, “Ramp-up” funding and Community Well-Being and Jurisdictional Initiatives funding, and referred to in this affidavit as “immediate relief funding”.
12. COO took the position at the time and in later motions before the Tribunal that the funding increases were insufficient to eliminate the discrimination against First Nations in Ontario. Nonetheless, it was at this time that the First Nations in Ontario began providing services under the umbrella of the FNCFS Program. In the case of Community Well-Being and Jurisdiction Initiatives, the funding could also be used for projects leading to exercise of jurisdiction over First Nations.
13. I have reviewed the affidavit of Deputy Grand Chief Denise Stonefish filed in this proceeding and affirmed on December 16, 2016, and I believe the contents to be true and adopt them. In that affidavit, Deputy Grand Chief Stonefish describes that COO advocated for all “immediate relief” funding provided by Canada to go to First Nations so that First Nations could begin delivering prevention services. Canada agreed with COO’s direction. The immediate relief funding in Ontario was distributed among First Nations on direction of the Chiefs. I have also reviewed COO’s past records and have personal knowledge that a similar decision to direct all funding to First Nations was made each year of this funding, although the allocation of the funding may have changed throughout the years.
14. COO’s advocacy to reform the program by providing for the delivery of prevention services to First Nations was guided by Chiefs’ resolutions which I referred to in my affidavit sworn March 6, 2025 in support of the OFA approval motion. First Nations always have remained free to direct that funding to their affiliated FNCFS Agency, if any, or use the funding to contract for services.

15. COO's child welfare and social services technicians and First Nations leadership have long held the position that prevention delivered by First Nations is essential to provide fast responses to children and families by the community that knows them, ensuring that a child or family does not have to be a client or at the attention of an FNCFS Agency in order to receive services.
16. Funding for First Nations Representative Services in Ontario has been available since the order of the Tribunal at 2018 CHRT 4, retroactive to the Merit Decision. Funding was provided on the actual cost submitted by a First Nation through an application process that was set out by Indigenous Services Canada ("ISC").
17. First Nations also have been able to access capital funding for First Nations Representative Services and prevention services since the Tribunal's order at 2021 CHRT 41.
18. All of the above funding is in addition to funding ordered under 2019 CHRT 4, including actuals for prevention services accessible to FNCFS Agencies in Ontario.

2022-Present

19. I am informed by looking at Canada's website (linked [here](#)) and believe that the Community Well-being Jurisdictional Initiatives Program funding concluded March 31, 2023.
20. After the conclusion of the Agreement-in-Principle, and the orders made on consent by the Tribunal at 2022 CHRT 8, some aspects of funding changed.
21. Since April 1, 2022, all First Nations in Ontario have been receiving funding for First Nations Representative Services regardless of whether they applied under the "actuals" process. First Nations are still able to access the "actuals" process over and above the funding provided by ISC.
22. COO advocated for funding to go to First Nations even without application under the "actuals" process because there had been many reports that First Nations often experienced barriers in accessing the First Nations Representative Services funding through the "actuals" process. Because of that, COO determined on advice of its advisors and through its own analysis that the "actuals" process appeared to exacerbate inequalities as some First Nations were receiving little or no funding. For that reason, a model where all First Nations

received some funding was preferable to a situation where some received none or very little.

23. In addition, prevention funding was ordered on consent pursuant to the Tribunal's order of 2022 CHRT 8, including prevention funding at a rate of \$2500 per resident on reserve. Since the AIP was concluded, COO worked with its leadership and advisors to determine the allocation of that prevention funding as between agencies and First Nations.
24. Post-majority support services funding became available at "actuals" until March 31, 2023. In fact, post-majority support services funding has been available since that time despite the fact that there is no longer an applicable order.

1965 AGREEMENT REFORM

25. The Trilateral Agreement provides for an agreed set of principles upon which Canada will embark on attempts to reform the 1965 Indian Welfare Agreement (the "1965 Agreement"), with COO and NAN as partners in that work.
26. Internally, COO has had many internal discussions and performed internal research. COO held a leadership summit on the 1965 Agreement in 2021 to gather input and perspectives on reform of the 1965 Agreement. COO has established an advisory group with regional representation and terms of reference, and held preliminary meetings to plan for 1965 Agreement reform and also has plans for discussions with regional representatives.
27. COO has a relationship with the Government of Ontario on matters related to social services including child and family services. Since the Merit Decision and before, COO has raised the matter of 1965 Agreement reform with the Government of Ontario. As of yet, the Government of Ontario does not yet have a mandate to reform the 1965 Agreement.
28. In recognition of the fact that Canada does not have unilateral ability to reform the 1965 Agreement without Ontario's consent, the Trilateral Agreement provides for COO, NAN and Ontario to work together to approach the Government of Ontario on reform of the 1965 Agreement, and provides for the parties to consider future steps if Canada is unable to reach a reformed 1965 Agreement with Ontario.

29. The work under the Trilateral Agreement is not dependent on the OFA being approved by the Tribunal. COO has already started the work of reform of the 1965 Agreement according to the terms and timelines established in the Trilateral Agreement.

PREVENTION OF RECURRENCE OF DISCRIMINATION

30. The OFA contains measures devoted to the prevention of the recurrence of discrimination, in order to address the Tribunal's orders and the need for systemic change.
31. The Ontario Reform Implementation Committee ("ORIC"), and the committees who are established and operated by it, the Program Assessment Organization, and the Alternative Dispute Resolution ("ADR") provisions are together intended to perform the function of the prevention of recurrence of discrimination and ensuring systemic change occurs.

Governance of the Reformed FNCFS Program in Ontario: The Ontario Reform Implementation Committee

32. The ORIC is the measure chosen by COO to continue monitoring the implementation of the reformed Ontario FNCFS Program, with significant First Nations oversight. As far as I am aware, this is the first time that First Nations have been given such an expansive role in the implementation of a program delivered by ISC or its predecessors.
33. The ORIC is novel in the context of a government program, from my knowledge. This is the first time First Nations have been invited and permitted to have a seat at the table and a consistent and meaningful input into the implementation of a government program serving First Nations.
34. The ORIC membership will be established by seeking applications for "at-large membership" from candidates within Ontario and the Chiefs-in-Assembly will vote on its members, on recommendation of the Leadership Council of Chiefs of Ontario. The ORIC will also have a member appointed by each of Canada, COO and NAN. The ORIC will oversee the implementation of the program from its inception through to the end. The ORIC plays a number of key functions that are detailed in the text of the OFA and its Terms of Reference.
35. Implementation committees are reasonably common in agreements that First Nations enter into. For instance, impact and benefits agreements entered into with resource development

companies, which are agreements designed to mitigate the impacts of natural resource development projects on First Nations, often provide for a joint committee to oversee implementation and ensure these agreements are operating as intended.

36. Implementation committees are also commonly found in a modern treaty context. For instance, other implementation committees that exist in modern treaties do similar work as the ORIC, that is, providing advice and ensuring that the treaty is implemented in the way that it was intended.
37. The ORIC will have five entities that report to it. It is intended to be the centralized body within the implementation of the program where all information goes for consideration. In addition, it is a recommending body, with the ability to make recommendations to Canada about program implementation, changes to the program and other important functions.
38. The ORIC will be responsible for the selection and supervision of the Program Assessment Organization, the joint development with ISC of cultural humility training for ISC employees, and working with the committees and entities to receive information, consider it and make recommendations about program implementation.
39. A further systemic remedy contained in the OFS reporting to the ORIC is the Systemic Review Committee.
40. This Systemic Review Committee will review certain aspects of the program in order to look for indicia of discrimination by reviewing service provider funding adjustment requests and disputes submitted for dispute resolution. The Systemic Review Committee will then advise the ORIC of trends or concerns and make recommendations.
41. Finally, there is a Technical Advisory Committee as a subcommittee of the Reform Implementation Committee. This committee will provide ongoing technical advice on the implementation of the reformed FNCFS Program.

Program Assessments

42. The Program Assessments are a mechanism the parties decided on as part of the measures to prevent the recurrence of discrimination.

43. The Program Assessments provide two opportunities through the course of the OFA's term for an independent body to conduct a review and research of the FNCFS Program to determine if the Reformed FNCFS Program in Ontario is meeting the goals of substantive equality, prevention and elimination of discrimination, adequate funding and the best interests of children. In addition, the Program Assessment Organization will make recommendations at both times, in order to comment on the sufficiency of funding and the ways in which the program might be changed in order to promote substantive equality.
44. The Program Assessment Organization will be overseen by COO. COO will work with the ORIC to provide guidance on the method and design of the Program Assessments and relevant research reports, experts, etc., for the Program Assessment Organization to use. That said, the Program Assessment Organization is intended to function independently of the ORIC and COO. The Program Assessment Organization will be mandated by the terms of the OFA to take into account the variety of bodies' views and perspectives. The OFA also sets out some considerations the Program Assessment Organization may take into account in coming to its recommendations.
45. The reforms that COO, NAN and Canada contemplate in the OFA are informed by the best information we had available to us at the time that we began negotiating it. However, COO was not willing to wait for perfect information, if such a thing even exists. The purpose of the initial Program Assessment is to determine if there are corrections that need to be made along the way. This will also be, in my view, a way by which COO and the other parties can gather information, consider and make determinations about certain aspects of the FNCFS Program and program funding for the latter half of the term of the OFA.
46. The initial Program Assessment Report will be delivered to the ORIC. The ORIC will look at the report and determine whether or not it accepts all or some of the recommendations of the Program Assessment Organization. After that, the ORIC will make recommendations at the first Program Assessment about modifications to the program which in its view are needed to meet the goals of implementing the OFA.
47. The second Program Assessment is intended to conduct the same exercise with a view to evaluating the needs for years of the program beyond the term of the OFA.

Alternative Dispute Resolution

48. The third feature of the OFA which serves the purpose of preventing the recurrence of discrimination is the ADR structure.
49. An ADR system was agreed to in the OFA to settle certain kinds of disputes, including disputes about the implementation of ORIC recommendations arising from the Program Assessment.
50. COO expects that the adjudicators under the ADR system will develop expertise in the implementation of the program, to add to the expertise in First Nations government administration, First Nations social services delivery, and child welfare that they will need to be appointed as adjudicators.
51. The ADR system is intended to provide an easy to use dispute resolution form for parties and for First Nations and FNCFS Service Providers to have disputes resolved by First Nations persons with expertise in First Nations government and program and service delivery. It is intended to be fast, easy to use, and will be funded by Canada. It contains allowances to have culturally appropriate features a part of dispute resolution.
52. In addition, the OFA provides that there can be duty counsel and other assistance for claimants as they move through the process, and the opportunity for claimant counsel to be fully funded by ISC.

COORDINATION AND ACCOUNTABILITY

53. The OFA also has provisions to increase accountability of FNCFS Agencies to First Nations and to ensure a coordinated response that is attentive to the needs and aspirations of First Nations.
54. Through our advisors, and my experience as portfolio holder, Chief and as a leader in First Nations communities in Ontario, I have become aware that a very frequently voiced aspiration of First Nations in Ontario is that the agencies that they have formed are accountable to them and to increase the coordination and cooperation between FNCFS Agencies in Ontario and the First Nations they serve.

55. For that reason, the OFA contains a number of mechanisms that are required for First Nations and for FNCFS Agencies in order to increase service coordination, planning, and accountability.
56. For instance, FNCFS Agencies and First Nations will be required to engage in planning processes to ensure that the initiatives that FNCFS Agencies undertake are in line with what the First Nation wants for services in its community.

AFFIRMED remotely via video
teleconference by Joel Abram at the Oneida
Nation Settlement, in the province of
Ontario, before me at the City of Toronto, in
the province of Ontario on this 15th day of
May, 2025 in accordance with O. Reg.
431/20, Administering Oath or Declaration
Remotely.

A Commissioner, etc.

MAGGIE WENTE
LSO #47970T

Joel Abram