

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 CANADA, and
NISHNAWBE ASKI NATION**

Interested Parties

-and-

**NEQOTKUK (TOBIQUE) FIRST NATION OF THE WOLASTOQEY NATION and
UGPI'GANIJG (EEL RIVER BAR) FIRST NATION and MI'GMAQ CHILD AND
FAMILY SERVICES OF NEW BRUNSWICK INC. and FEDERATION OF SOVEREIGN
INDIGENOUS NATIONS and ASSEMBLY OF MANITOBA CHIEFS and COUNCIL OF
YUKON FIRST NATIONS and OUR CHILDREN OUR WAY SOCIETY and
CONFEDERACY OF TREATY SIX FIRST NATIONS and TREATY 7 FIRST NATIONS
CHIEFS' ASSOCIATION and TREATY 8 FIRST NATIONS OF ALBERTA**

Prospective Interested Parties

**CONSOLIDATED RESPONDING FACTUM OF THE INTERESTED PARTY,
NISHNAWBE ASKI NATION**

Falconers LLP

10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9
Tel: (416) 964-0495
Fax: (416) 929-8179

Julian N. Falconer (LSO No. 29465R)

Email: julianf@falconers.ca
Tel: (416) 964-0495 Ext. 222

Meaghan Daniel (LSO No. 57068V)

Email: meaghand@falconers.ca

Counsel for the Interested Party,
Nishnawbe Aski Nation

I. STATEMENT OF FACTS

A. Overview

1. Nishnawbe Aski Nation (“**NAN**”), and Chiefs of Ontario (“**COO**”), representing the political will of all one hundred and thirty three (133) First Nations in Ontario have successfully come to an agreement with Canada on the long-term reform of the First Nations Child and Family Services Program (the “**FNCFS Program**”) in Ontario. The Ontario Final Agreement (“**OFA**”) represents the political will of the First Nations leadership in Ontario following intensive negotiations to create an agreement specifically tuned to the Ontario region. In addition, the Trilateral Agreement in Respect of Reforming the 1965 Agreement will only apply to First Nations and FNCFS Agencies in the Ontario region.
2. The Parties bringing the joint motion, NAN and COO, are the parties who participated in determining the relief sought, they are the parties whose interests are affected by the relief sought, and they are the parties who will suffer should this motion be delayed.
3. The ten (10) prospective interested parties do not assert a history of participation in the creation of Ontario-specific reform. As they are based outside of Ontario, they do not assert or have expertise in Ontario-specific reform. Finally, these prospective parties from outside of Ontario do not have interests that will be impacted by Ontario-specific reform.
4. To be clear, like COO, NAN recognizes that these applicants represent critical interests, those being the welfare, rights, and determination of First Nations children, families, and communities outside of Ontario. Further, NAN supports that these interests should be addressed. It is NAN’s submission, however, that the outcome of the OFA approval motion has no bearing on those interests.

B. Facts

5. NAN adopts the facts as outlined in COO's factum, with the following additions.
6. On February 25, 2025, NAN held a Special Chiefs Assembly ("**SCA**") to vote on the approval of the Ontario Final Agreement. Resolution 25/07 (the "**Resolution**") detailed the timeline of the initial complaint brought forward by the Assembly of First Nations ("**AFN**") and the First Nations Child and Family Caring Society of Canada (the "**Caring Society**"). Additionally, it laid out the process by which NAN was granted status to intervene and the establishment of the Remoteness Quotient Table. The Resolution also discussed how the Parties reached a national draft Final Settlement Agreement ("**draft FSA**") that was approved by NAN and COO, but ultimately was rejected by the First Nations in Assembly at the AFN SCA on October 19, 2024. Finally, the Resolution explained what has happened since the rejection, how the Ontario Chiefs-in-Assembly passed a resolution directing that a regional Final Agreement be pursued for Ontario, confirming that Canada received a mandate for a regional agreement, and concluding that NAN, COO, and Canada reached a draft Ontario Final Agreement, as well as a draft Trilateral Agreement in respect of reforming the 1965 Indian Welfare Agreement.¹
7. Shortly thereafter, Resolution 25/08 was also passed at the NAN SCA, concerning the ratification of the OFA. Within this resolution the NAN Chiefs-in-Assembly called upon all Parties outside of the OFA to refrain from any interference in the ratification and implementation of the OFA, and/or to refrain from taking any steps that could delay the effective date of the OFA.²
8. This factum addresses the submissions of the ten (10) prospective interested parties: Neqotkuk (Tobique) First Nation; Ugpi'ganjig (Eel River Bar) First Nation; Mi'gmaq Child and Family

¹ Affidavit of Grand Chief Alvin Fiddler, affirmed March 7, 2025, at paras 72-73.

² *Ibid.* at para 74.

Services of New Brunswick Inc.; Federation of Sovereign Indigenous Nations; Assembly of Manitoba Chiefs; Council of Yukon First Nations; Our Children Our Way Society; Confederacy of Treaty Six First Nations; Treaty Seven First Nations Chiefs' Association; and Treaty Eight First Nations of Alberta.

II. ISSUES

9. The issues on these motions are:

- a) whether any of the prospective interested parties should be admitted into the OFA approval motion as an interested party; and,
- b) the terms of participation if any prospective interested party is added.

10. NAN adopts the submissions of COO with the following additions.

III. SUBMISSIONS

A. The Test for Interested Party Status

11. In all cases before the Tribunal, the context and specific facts of the case are key considerations.

For this reason, the most relevant and authoritative rulings on this motion are the previous interested party rulings in this case.³

12. In determining the request for interested party status, the Tribunal may consider, amongst other factors, if:

- a) the prospective interested party's expertise will be of assistance to the Tribunal;
- b) its involvement will add to the legal positions of the parties; and
- c) the proceeding will have an impact on the moving party's interests.

³ *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2024 CHRT 95](#) at [para 28](#).

13. Further, the Tribunal must consider its responsibility under s. 48.9(1) of the CHRA⁴ to conduct proceedings expeditiously and informally in determining the extent of an interested party's participation.⁵

i. The prospective interested parties cannot provide assistance or add to the legal positions of the Parties before the Tribunal

14. The onus is on the applicant to demonstrate how its expertise will be of assistance in the determination of the issues. Interested party status will not be granted if it does not add significantly to the legal positions of the Parties representing a similar viewpoint. This onus has not been met by any of the prospective interested parties.

15. While these prospective interested parties may have expertise relating to the First Nations or First Nations Child and Family Services they represent, this expertise does not add to the positions of the Parties before the Tribunal. Interested parties must provide a perspective or expertise that is not already available in a significant or demonstrable way.⁶ AFN, NAN, and COO's represent the viewpoint of First Nations leadership, experienced in the issue of discrimination faced by First Nations children in the child welfare system, and with longstanding involvement in the reform work related to the FNCFS Program. The Caring Society has been relied on to represent the interests of First Nations children, youth, and families, and the agencies that serve them. The ten (10) prospective interested parties have not demonstrated assistance or expertise on long-term reform outside of that provided by NAN, COO, AFN, and the Caring Society.

⁴ Canadian Human Rights Act, [RSC, 1985, c H-6](#), s 48.9(1).

⁵ *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 11](#) at [para 3](#) ["2016 CHRT 11"].

⁶ *Ibid.* at paras 3-4 and 10-11.

16. Nor have they demonstrated relevant regional specific expertise. Only NAN and COO could represent Ontario-specific expertise – or regional expertise on a regional issue.
17. This can be contrasted with the recent application for interested party status by the BC First Nations Leadership Council (“FNLC”), wherein the FNLC asserted extensive experience and expertise on the implementation of Jordan’s Principle specific to British Columbia. This expertise added regional expertise to the national issue of implementation of Jordan’s Principle through implementation orders.⁷
18. As the OFA is specifically designed to work in Ontario, Ontario-specific expertise is required to understand whether and how these agreements will work to address discrimination in the context of the 1965 Agreement. This expertise is already provided by the Parties to the OFA approval motion and cannot be provided by those who represent interests outside of Ontario.
19. The prospective interested parties do not purport to speak for Ontario First Nations children. On the contrary, most seek to speak to the long-term reform outside of Ontario.
20. This is not adding to the legal positions of the parties on the issues before the Tribunal but rather raising entirely new issues before the Tribunal.

ii. The proceeding does not impact the moving parties’ interests

21. The proceedings will not have an impact on the prospective parties’ interests. The OFA approval motion considers agreements negotiated to address Ontario-specific concerns,

⁷ *Supra* note 3.

intended to address the systemic discrimination faced by Ontario First Nations children. It has no application outside of Ontario.

22. The prospective interested parties argue that their interests will be affected by the outcome of the OFA approval motion. To be clear, this suggests that to the extent that the Tribunal determines that the OFA meets past orders from the Tribunal, the OFA will become a ceiling for future negotiations in their region.
23. While it is true that the Tribunal's analysis of whether the OFA meets the Tribunal's orders will have precedential value (regardless of whether the Tribunal approves or does not approve the OFA), it is does not follow that if the OFA is approved, its terms will be imposed upon or create limitations for reform in other regions. As COO submits, the OFA model and funding could not be applied in a context outside of the 1965 Agreement.
24. Having precedential value means this motion carries weight or significance, shaping interpretations and future rulings. Arguing about the relative weight, or value of this decision cannot be substituted for establishing a direct interest in the motion sufficient to ground interested party status. Speculation about whether future reform outside of Ontario, could be impacted or informed by current reforms contained in an Ontario-only agreement, is just speculation. Speculative assertions cannot establish direct interest.

iii. The prejudice of delay

25. NAN has twice ratified an agreement for the long-term reform of the FNCFS Program, with the draft FSA which later failed, and now the OFA. With COO, NAN has spent extensive time

in negotiations and any further delay on long-term reform only harms NAN communities. Indeed, the urgency of reforming the FNCFS Program is faced by all First Nations children.

26. Delays on this motion do not simply delay progress (a prejudicial effect) but derail funding as is outlined at paragraph 50 of COO's factum. NAN further adopts COO's submissions regarding the prejudice caused by and the efficiency undermined by these potential interested parties.

IV. ORDER SOUGHT

27. NAN respectfully requests that this Tribunal dismiss the motions for interested party status.

28. In the alternative, NAN requests that this Tribunal places conditions on the participation of the interested parties and adopts COO's submission at paragraph 190.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of May, 2025.



Julian N. Falconer
Falconers LLP

Counsel for the Interested Party,
Nishnawbe Aski Nation

V. LIST OF AUTHORITIES

STATUTES	
1.	<i>Canadian Human Rights Act</i> , RSC 1985, c H-6
CASE LAW	
2.	<i>First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2024 CHRT 95
3.	<i>First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2016 CHRT 11
OTHER SOURCES	
4.	Affidavit of Grand Chief Alvin Fiddler, affirmed March 7, 2025