Tribunal File No.: T1340/7008

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-

THE FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION and THE ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR

Prospective Interested Parties

FACTUM OF THE INTERESTED PARTY, NISHNAWBE ASKI NATION

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I. STATEMENT OF FACTS

A. Overview

1. The First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador have made a motion for interested party status, which includes participation on Nishnawbe Aski Nation (NAN) and Chiefs of Ontario's (COO) motion with regard to the Ontario Final Agreement.
2. NAN provided submissions regarding 10 interested parties outside of Ontario on May 16, 2025. The submissions with regard to those 10 interested parties also apply generally regarding the First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador to the extent that they seek to participate in the motion in relation to the Ontario Final Agreement. These submissions are repeated below.
3. NAN and COO, representing the political will of all 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 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.
4. The parties bringing the joint motion, NAN and COO, are the parties who participated in determining the relief sought, whose interests are affected by the relief sought, and they are who will suffer should this motion be delayed.
5. The 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 on Ontario specific reform. Finally, these prospective parties from outside of Ontario do not have interests that will be impacted by Ontario specific reform.

6. 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.
7. This factum addresses the submissions of the co-applicants the First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador.

B. Facts

8. NAN adopts the facts as outlined in COO's factum, with the following additions.
9. On February 25, 2025, NAN held a Special Chiefs Assembly 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 and the Caring Society. Additionally, it laid out the process by which NAN was granted status to intervene and the establishment of the RQ Table.
10. The Resolution also discussed how the Parties reached a national draft Final Settlement Agreement that was approved by NAN and COO, but ultimately was rejected by the Assembly of First Nations' (AFN) Special Chiefs Assembly 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]

11. Shortly thereafter, Resolution 25/08 was also passed by the NAN Special Chiefs Assembly, 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]

II. ISSUES

12. The issues on these motions for interested party status are:

    i) whether any of the prospective interested parties should be admitted into the OFA approval motion as an interested party, and,

    ii) the terms of participation if any prospective interested party is added.

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

III. SUBMISSIONS

A. The Test for Interested Party Status

14. 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]

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

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[1] Affidavit of Grand Chief Fiddler Affidavit, Affirmed March 7, 2025, at paras. 72-73
[2] *Ibid*, at para 74.
[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 ["2024 CHRT 95"].

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.

16. Further, the Tribunal must consider its responsibility under s. 48.9(1) of the *Canadian Human Rights Act* to conduct proceedings expeditiously and informally in determining the extent of an interested party's participation.[4]

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

17. 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.

18. While these 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.[5] AFN, NAN and COO 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 prospective

[4] *First Nations Child & 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.
[5] *Ibid*, at paras 3-4 and 10-11.

interested parties have not demonstrated assistance or expertise on long term reform outside of that provided by NAN, COO, AFN and the Caring Society.

19. Nor have they demonstrated relevant regionally specific expertise. NAN and COO can represent Ontario-specific expertise – or regional expertise on a regional issue.

20. 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.[6]

21. NAN takes no issue with the prospective interested parties, the First Nations of Quebec and Labrador Health and Social Services Commission and the Assembly of First Nations Quebec-Labrador, in seeking participation in the matters before the Tribunal generally, outside of the OFA motion.

22. 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.

23. The prospective interested parties do not purport to speak for Ontario First Nations children.

24. 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.

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[6] 2024 CHRT 95, *supra* note 3.

ii. The proceeding does not impact on the moving parties' interests

25. The proceedings will not impact on the prospective parties' interests. The OFA approval motion regards agreements negotiated to address Ontario-specific concerns, intended to address the systemic discrimination faced by Ontario First Nations children. It has no application outside of Ontario.

26. 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.

27. 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 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.

28. Having precedential value simply means this motion carries weight or significance, shaping interpretations and future rulings at the Tribunal. 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

29. NAN has twice ratified an agreement for the long-term reform of the FNCFS program, first with the draft Final Settlement Agreement 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 FNCFS reform is faced by all First Nations children.

30. Delay on this motion does 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

31. NAN respectfully requests that this tribunal dismiss the motions for interested party status.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June 2025.

Julian N. Falconer
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Counsel for the Interested Party,
Nishnawbe Aski Nation

V. LIST OF AUTHORITIES

STATUTES	
1.	*Canadian Human Rights Act*, RSC 1985, c H-6
2.	*Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 35
CASE LAW	
3.	*First Nations Child & Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indian and Northern Affairs)*, 2016 CHRT 11
4.	*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
5.	*Haida Nation v British Columbia (Minister of Forests),* 2004 SCC 73
6.	*Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916
7.	*Ontario (Attorney General) v Restoule*, 2024 SCC 27
8.	*Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39
OTHER SOURCES	
9.	Thomas Isaac and Anthony Knox, "The Crown's Duty to Consult Aboriginal People" (2003) 41-1 Alta. L. Rev. 49
10.	Affidavit of Grand Chief Alvin Fiddler, affirmed March 7, 2025