CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FIRST NATIONS CHILD & FAMILY CARING SOCIETY

– and –

ASSEMBLY OF FIRST NATIONS

Complainants

– and –

CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

ATTORNEY GENERAL OF CANADA
(Representing the Honourable Minister of Indigenous Services)

Respondent

– and –

CHIEFS OF ONTARIO

AMNESTY INTERNATIONAL CANADA

NISHNAWBE ASKI NATION

Interested Parties

– and –

THE FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION

Applicant

– and –

ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR

Co-Applicant

Joint response of the Applicant and the Co-Applicant seeking intervenor status in the motion to approve the Ontario Agreement on First Nations Child and Family Services

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Original

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PART I – STATEMENT OF FACTS

A. Overview

1. On February 26, 2025, the Nishnawbe Aski Nation (NAN) and the Chiefs of Ontario (COO) announced that they had entered into an agreement with Canada on the long-term reform of the First Nations Child and Family Services Program in Ontario (hereinafter the "FNCFS Agreement").

2. On March 7, 2025, the NAN and the COO filed a joint motion to the Canadian Human Rights Tribunal (CHRT) for the unconditional approval of the FNCFS Agreement.

3. The NAN and the COO are seeking orders confirming that the FNCFS Agreement satisfies, annuls, and replaces all CHRT orders regarding the discrimination found by the CHRT with respect to all elements of the complaint in Ontario.[1] They are also calling for an end to the CHRT's jurisdiction over the elements of the complaint and the associated corrective procedures in Ontario, and demanding that an order be issued to confirm that the CHRT's orders concerning the interpretation, application, and implementation of Jordan's Principle will continue applying to First Nations children in Ontario.

4. The CHRT received an unprecedented wave of motions from First Nations across Canada seeking leave to intervene after the joint motion was tabled, including from the Applicant and the Co-Applicant as of April 15, 2025.

5. Canada, the NAN, and the COO have objected to all motions to intervene,[2] except those from two First Nations communities in Ontario.

B. Background

6. On May 7, 2025, the NAN and the COO filed an amendment to their joint motion calling on the CHRT to issue an order granting them additional participatory rights in the event that their interested party status restricts them from filing this motion to partially settle the complaint in Ontario.

7. On May 15, 2025, Canada, the NAN, and the COO filed written submissions objecting to all motions to intervene from interested parties outside Ontario. The Applicant and the Co-Applicant are filing this motion in response.

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[1] The complaint concerned the First Nations child and family services program in Ontario and the 1965 *Memorandum of Agreement Respecting Welfare Programs for Indians* ("the 1965 Agreement").

[2] Canada has not objected to motions to intervene in the FNCFS Agreement filed by the Taykwa Tagamou Nation and the Chippewas of Georgina Island. However, Canada argues that the Taykwa Tagamou Nation and the Chippewas of Georgina Island should have limited participatory rights in the proceedings—namely, that they should not be permitted to contribute to the evidentiary record.

PART II – LEGAL FRAMEWORK

8. The Applicant and the Co-Applicant explained the necessary criteria at length in their written submission dated May 16, 2025. Canada also set out the applicable law in paragraphs 11 to 13 of its written submission dated May 15, 2025. All parties mentioned the *Walden* framework.[3] In more recent case law, *Attaran* balances the *Walden* framework by stating that the approach must be holistic and based on a case-by-case analysis.[4] The CHRT issued its own order to this effect.[5]

9. Canada, the NAN, and the COO all argue that the Applicant and the Co-Applicant do not meet the criteria to intervene in this case.[6]

10. Accordingly, we believe the CHRT will need to answer the following questions:
    a. Do the Applicant and Co-Applicant, by virtue of their expertise, bring a perspective that is distinct from those advanced by Canada, the NAN, and the COO?
    b. Will the joint motion impact the Applicant and the Co-Applicant?

11. In the affirmative, the Applicant and the Co-Applicant maintain that they should be granted intervenor status in the joint motion.

PART III – RESPONSES

i. Do the Applicant and Co-Applicant bring a perspective that is distinct from those advanced by Canada, the NAN, and the COO?

12. The Assembly of First Nations Quebec-Labrador (AFNQL) and the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) offer perspectives that support or complement the legal positions of the parties before the CHRT.

13. Without reiterating the arguments made in the written submission dated May 16, 2025, which are applicable to this case, the Applicant and the Co-Applicant maintain that contrary to what Canada, the NAN, and the COO claim, the AFNQL and the FNQLHSSC offer proven support and expertise in the long-term reform of child and family services. This expertise is explained at length in the evidence submitted to the CHRT.

14. Moreover, some AFNQL member communities border Ontario and are supported by the FNQLHSSC. Residents of these border communities—including

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[3] *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada),* 2011 CHRT 19, para 23.
[4] *Attaran v. Citizenship and Immigration Canada,* 2018 CHRT 6.
[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, para 3.
[6] Note that only Canada's written submission lists the FNQLHSSC and AFNQL as interested parties.

Akwesasne, Timiskaming, and Kebaowek—use child and family care services in Ontario, and vice versa.

ii. Will the joint motion impact the Applicant and the Co-Applicant?

15. Canada, the NAN, and the COO maintain that the interests of the agencies, representative groups, and First Nations seeking intervenor status are broadly represented by the Assembly of First Nations (AFN) and the First Nations Child & Family Caring Society (hereinafter the "Caring Society").

16. With all due respect to the AFN and the Caring Society, only the Applicant and the Co-Applicant are fully aware of the realities of their region. Missteps in the consultations carried out by Canada and the AFN—including lack of awareness of linguistic and regional concerns in Quebec—gave the Applicant and Co-Applicant no choice but to intervene.

17. These same missteps led to the creation of the National Children's Chiefs Commission (NCCC) to offer First Nations from other regions a voice at the negotiation table.

18. The honour of the Crown requires Canada to negotiate honourably with First Nations.[7] Yet Canada is trying to shirk this duty by meeting the NCCC's repeated requests to negotiate with silence.[8] The NCCC is the most appropriate body to address complaints regarding the FNCFS Agreement. The current situation thus arises from Canada's lack of action in this case.

19. Canada also argues that the risks identified by the parties, including the Applicant and Co-Applicant, are "entirely speculative and premature" (para 14 of the written submission dated May 15, 2025).

20. This remark suggests Canada is attempting to renege on its duty to negotiate honourably.[9] A First Nation need not prove an injustice to invoke the honour of the Crown; "a potential for adverse impact suffices."[10] Such potential is significantly heightened on a regional scale if Canada takes the CHRT ruling on the joint motion as precedent and enforces it against First Nations.

21. This is not a matter of mere speculation. CHRT orders establish precedents that any party, including Canada, can invoke.

22. At no point in its written submission dated May 15, 2025, does Canada state that it will not use the FNCFS Agreement in negotiations with other parties to the case.

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[7] *Haida Nation v. British Columbia (Minister of Forests),* 2004 SCC 73, para 32.
[8] **Exhibits CA-18** and **CA-19**.
[9] *Gitxaala Nation v. Canada*, 2016 FCA 187, para 308.
[10] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council,* 2010 SCC 43, para 44.

Rather, Canada first indicates that the Agreement concerns only the long-term reform of the FNCFS program in Ontario (paragraph 14), but then goes on to note that, in theory, the CHRT's decision on the joint motion could provide guidance in negotiations with other First Nations, including regarding a review of the relevant criteria for determining how to remedy the discrimination or the need to obtain consent from each First Nation before implementing a reform (paragraph 16).

23. Based on their previous experience negotiating with governmental bodies, the AFNQL and the FNQLHSSC believe that Canada will invoke the Final Agreement with Ontario and the CHRT decision as precedent unless the CHRT orders otherwise.

24. This is why the AFNQL and the FNQLHSSC, along with several other parties with similar negotiation experiences, have no choice but to seek intervenor status. It is the only lever at their disposal to ensure that the CHRT decision does not set a harmful precedent.

25. First Nations still face a major power imbalance in their negotiations with Canada. Previous research has highlighted Canada's disproportionate share of the power as a major obstacle to justice and effective negotiations.[11]

26. What's more, the issues raised by the FNQLHSSC and the AFNQL regarding the FNCFS Agreement, made available on July 11, 2024, still appear in the FNCFS Agreement (**Exhibit CA-21,** en liasse).

27. As stated in our affidavits and written submissions, the FNQLHSSC will soon commence negotiations with Indigenous Services Canada (ISC) as part of a recent mandate entrusted by the AFNQL Chiefs.[12]

28. Without intervening party status in the present case, the Applicant and the Co-Applicant would find themselves with little negotiating leverage and would be faced with a power imbalance.

29. A simple letter from Canada to the parties assuring them that the FNCFS Agreement will not be used as a precedent or model in negotiations with other First Nations would have sufficed to avoid the issues that are playing out now.

PART IV – ORDERS SOUGHT

30. The Applicant and the Co-Applicant seek to participate in the proceedings as intervening parties in the joint motion in order to:

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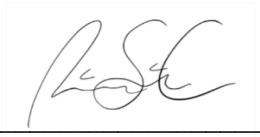
[11] Michael Coyle, "Les négociations sur la gouvernance autochtone au Canada : pouvoir, culture et imagination" (2009) 15:3 *Téléscope*, p. 17 (French only).

[12] **Exhibit CA-17**: Assembly of First Nations Quebec-Labrador, *Negotiation and development of a transition plan for a new health and wellness governance model by and for First Nations in Quebec,* 2025, resolution No. 05/2025.

1. Participate continuously in communications between the parties and the Tribunal;
2. Collaborate orally in the case management process;
3. Submit written observations of no more than 15 pages when necessary and without duplicating the positions of other parties to the proceedings.

Respectfully submitted this 22nd day of May, 2025.



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This motion has been sent

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PART V – LIST OF AUTHORITIES

CASE LAW	
1.	*Attaran v. Citizenship and Immigration Canada,* 2018 CHRT 6.
2.	*Gitxaala Nation v. Canada*, 2016 FCA 187.
3.	*Haida Nation v. British Columbia (Minister of Forests),* 2004 SCC 73.
4.	*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council,* 2010 SCC 43.
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.
6.	*Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada),* 2011 CHRT 19.
LITERATURE	
7.	Michael Coyle, "Les négociations sur la gouvernance autochtone au Canada : pouvoir, culture et imagination" (2009) 15:3 *Téléscope* (French only).

SUPPLEMENTARY EXHIBIT IN SUPPORT OF THE JOINT RESPONSE

CA-21: First Nations of Quebec and Labrador Health and Social Services Commission, *Analysis of the Final Agreement on the Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program*, in French and English (en liasse).