Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 86
Date: September 2, 2025
File No.: T1340/7008

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

- and -

Nishnawbe Aski Nation

- and -

Amnesty International

Interested parties

- and –

Neqotkuk (Tobique) First Nation of the Wolastoqey Nation and Ugpi'ganjig (Eel River Bar) First Nation and Mi'gmaq Child and Family Services of New Brunswick Inc. and Federation of Sovereign Indigenous Nations (FSIN) and Assembly of Manitoba Chiefs (AMC) and Council of Yukon First Nations (CYFN) and Our Children, Our Way Society (OCOW) and Confederacy of Treaty Six First Nations and Treaty 7 First Nations Chiefs Association and Treaty 8 First Nations of Alberta

Moving parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. Context

[1] In 2016, the Tribunal issued its decision in *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 2 [Merit Decision], concluding that the case centers on children and the ways in which both past and current child welfare practices in First Nations communities on reserves across Canada have affected, and continue to affect, First Nations children, their families, and their communities. The Tribunal determined that Canada engaged in systemic racial discrimination against First Nations children living on reserves and in the Yukon — not only by underfunding the FNCFS Program but also through the way it was designed, managed, and controlled.

[2] One of the most significant harms identified was that the structure of the FNCFS Program created financial incentives to remove First Nations children from their homes, families, and communities. Another major harm was that no cases were approved under Jordan's Principle, due to Canada's narrow interpretation and restrictive eligibility criteria. The Tribunal concluded that beyond simply addressing funding issues, there is a need to realign the program's policies to uphold human rights principles and sound social work practices that prioritize the best interests of children.

[3] As a result, the Tribunal ordered Canada to cease its discriminatory practices, implement measures to remedy the harm, prevent recurrence, and reform both the FNCFS Program and the 1965 Agreement in Ontario to reflect the findings of the Merit Decision. The Tribunal also determined that implementation would occur in phases — immediate, mid-term, and long-term relief — allowing for urgent changes first, followed by adjustments, and ultimately sustainable long-term solutions. These solutions would be guided by data collection, new studies, best practices identified by First Nations experts, the specific needs of First Nations communities and agencies, the National Advisory Committee on child and family services reform, and input from all parties involved.

[4] The Tribunal made final general orders to cease the systemic discrimination found and series of rulings addressing immediate and mid-term relief and final orders on compensation and retained jurisdiction to ensure that it would make long-term sustainable

orders once the data collection and new studies would be completed. This was a request from First Nations that argued that they did not have all the necessary information to request long-term relief and reform.

[5] In 2018 CHRT 4, the Tribunal found that it had now entered the long-term remedy phase.

[6] In 2022 CHRT 8, the Tribunal made important long-term orders on consent of the parties on prevention services and funding.

[7] In 2023 CHRT 44, The Tribunal made final orders approving one of the largest settlement agreements on compensation in Canadian history for harms committed by Canada against First Nations children and families.

[8] On July 11, 2024, the Chiefs of Ontario (COO), the Nishnawbe Aski Nation (NAN), the Assembly of First Nations (AFN), and Canada announced a draft Final Agreement (the "national agreement").

[9] On October 9 and 10, 2024, respectively, the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly ratified the national agreement at their Special Chiefs Assemblies.

[10] On October 17, 2024, at an AFN Special Chiefs Assembly held in Calgary, the national agreement was put to a vote by the First Nations' Chiefs-in-Assembly and was rejected.

[11] In November 2024, at the COO's Annual General Assembly, the Ontario Chiefs-in-Assembly mandated the COO to pursue an Ontario-specific agreement.

[12] On February 10, 2025, after five weeks of negotiations, the COO, the NAN, and Canada reached a provisional Ontario Final Agreement (OFA) and a provisional Trilateral Agreement.

[13] On February 25 and 26, 2025, the provisional OFA and the provisional Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly, respectively.

[14] On February 26, 2025, the Ontario Chiefs-in-Assembly passed Resolution #25/02S affirming that the Chiefs-in-Assembly had expressed their will to move ahead with reforms outlined in the OFA and the Trilateral Agreement. Resolution #25/02S also called on the other parties in the Tribunal proceedings to refrain from interfering with the approval or implementation of the OFA.

[15] On March 7, 2025, the COO and the NAN brought a joint motion for approval of the Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario (the "OFA") and Trilateral Agreement in Respect of Reforming the *1965 Agreement* (the "Trilateral Agreement") (the "OFA joint motion"). According to the COO and the NAN, the OFA and the Trilateral Agreement are the collective expression of the self-governance and self-determination rights of the 133 First Nations in Ontario through the COO and the NAN. If approved, both of these agreements would only apply to First Nations and FNCFS Agencies within Ontario and would impact First Nations children, youth, and their families in Ontario.

[16] The Tribunal was receiving multiple notifications from First Nations and First Nations Organizations who have indicated their interest to seek leave with the Tribunal to file motions seeking interested party status in the OFA joint motion proceedings and requesting this Tribunal to direct the manner and timing to file their motions.

[17] In exercising its authority as master of its own proceedings and to ensure the timely progression of the matter, the Tribunal fixed April 15, 2025, as the deadline for any moving party wishing to obtain interested party status in the OFA joint motion process.

[18] On August 11, 2025, Canada filed an amended joint motion including Canada as a co-moving party.

[19] On April 15, 2025, the Tribunal received motions seeking interested party status in the OFA joint motion proceedings from the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our

Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta.

[20] Moreover, three other motions seeking interested party status in the OFA joint motion proceeding have also been received, those three motions are dealt with separately.

[21] The Tribunal recently ruled in 2025 CHRT 80, that the Tribunal is moving forward without further delay into the long-term phase of remedies both for Ontario and the National FNCFS long-term reform concurrently but separately. Moreover, the Tribunal, at paragraph 98 decided to proceed with the OFA without delaying the National FNCFS long-term reform until the OFA motion has been determined. The Tribunal determined that the OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a National FNCFS long-term reform remedy.

[22] This new development plays a major role in determining the motions in this ruling for moving parties outside Ontario.

[23] At the end stage of these proceedings nearly ten years since the Tribunal's decision on the merits and with the significant delays that have already occurred for multiple reasons, the Tribunal is adopting a stricter approach to motions to limit additional delays that will negatively impact the final resolution of these proceedings and more importantly, the rights of First Nations children and families.

II. Summary of the Moving Parties' submissions

The Neqotkuk (Tobique) First Nation of the Wolastoqey Nation

[24] The Neqotkuk (Tobique) First Nation is one of six Wolastoqey Nations located in New Brunswick. They exercise governance over their own programs and have been engaged in regional discussions on child and family services reform. The Neqotkuk (Tobique) seeks interested party status to ensure the Ontario Final Agreement (OFA) does not undermine its jurisdiction or limit its ability to negotiate agreements tailored to the Wolastoqey context. While it does not oppose the OFA, The Neqotkuk (Tobique) requests a limited right to participate, specifically the ability to monitor proceedings and make

submissions only where Tribunal decisions could establish legal or funding precedents impacting Wolastoqey and Mi'gmaq Nations in New Brunswick.

[25] The Neqotkuk (Tobique) argues that Tribunal rulings on the Ontario Final Agreement (OFA) could create binding national precedents affecting jurisdiction, funding, and service models. It seeks to ensure that New Brunswick's Wolastoqey Nations retain the ability to negotiate their own agreements with Canada without having Ontario's reforms imposed on them. The Neqotkuk (Tobique) emphasizes that its participation is precautionary and limited, focused on monitoring and intervening only when necessary to protect regional self-determination.

The Ugpi'ganjig (Eel River Bar) First Nation

[26] The Ugpi'ganjig (Eel River Bar) First Nation is also part of the Mi'gmaq Nation in New Brunswick and administers its own child and family services in partnership with regional providers. It shares similar concerns with the Neqotkuk about protecting self-determination over service delivery and governance. The Ugpi'ganjig seeks interested party status to ensure Tribunal determinations on the OFA do not unintentionally set binding precedents that affect Mi'gmaq or Wolastoqey Nations. It requests a narrow role, seeking access to materials and the right to make targeted submissions only where necessary to safeguard its jurisdiction and funding rights.

[27] The Ugpi'ganjig's argument mirrors the Neqotkuk's, stressing that Tribunal determinations about Ontario's reforms could unintentionally affect Mi'gmaq and Wolastoqey Nations' governance rights in New Brunswick. It argues that the OFA should not serve as a national template and that each region must have the ability to design its own child and family services frameworks. It seeks limited status to monitor proceedings and make submissions only when rights or funding structures are potentially impacted.

The Mi'gmaq Child and Family Services of New Brunswick Inc.

[28] The Mi'gmaq Child and Family Services of New Brunswick is a service agency providing culturally grounded child and family services to Mi'gmaq First Nations across the

province. The organization seeks interested party status to protect its service delivery models and ensure future program development is not constrained by Tribunal determinations on Ontario's reforms. While neutral on the OFA itself, the organization is concerned that Ontario's agreements could become a national template without adequate regional consultation. It requests a limited participatory role, focused on monitoring the proceedings and intervening only when decisions directly affect Mi'gmaq service frameworks in New Brunswick.

[29] This organization argues that its service delivery models and programs could be compromised if the Tribunal's decisions on Ontario's reforms are later applied nationally. It stresses that Mi'gmaq child and family services require culturally specific approaches, and any imposition of Ontario's model could undermine this. It requests narrow participation, allowing it to intervene only when Tribunal rulings may affect Mi'gmaq service frameworks or funding models.

The Federation of Sovereign Indigenous Nations (FSIN)

[30] The Federation of Sovereign Indigenous Nations represents 74 First Nations in Saskatchewan and serves as a political and advocacy body protecting treaty rights and advancing Indigenous self-determination. FSIN seeks interested party status to ensure that Ontario's Final Agreement does not set precedents that Canada could later apply nationally in ways that interfere with Saskatchewan's distinct negotiations on child and family services reforms. FSIN does not oppose the OFA but seeks a moderate level of participation, including the ability to monitor the process, access materials, and make submissions where Tribunal decisions could affect FSIN's treaty obligations, funding frameworks or could impact Saskatchewan's jurisdiction, funding, or service delivery models.

[31] FSIN, argues that Tribunal rulings on the OFA must not set binding precedents that Canada could apply in Saskatchewan. FSIN insists on the need to protect treaty rights and maintain control over Saskatchewan's distinct child welfare negotiations.

The Assembly of Manitoba Chiefs (AMC)

[32] The Assembly of Manitoba Chiefs represents 62 First Nations in Manitoba, serving as a provincial advocacy organization on governance, treaty implementation, and child welfare reforms. The AMC seeks interested party status to protect Manitoba's ability to negotiate region-specific agreements independently from Ontario's process. AMC is neutral on the OFA but emphasizes that Tribunal rulings on Ontario's reforms should not unintentionally affect Manitoba's funding models or service delivery frameworks. AMC requests a limited right to participate, reserving the ability to make submissions only where Tribunal decisions could impact Manitoba's autonomy or federal negotiations.

[33] The AMC argues that Tribunal decisions regarding Ontario's reforms could directly influence Manitoba's funding arrangements and governance structures if applied nationally. AMC stresses that Manitoba First Nations are developing region-specific solutions and must retain autonomy over their negotiations.

The Council of Yukon First Nations (CYFN)

[34] The Council of Yukon First Nations represents self-governing Yukon First Nations operating under distinct agreements with Canada that provide them with unique jurisdictional powers. CYFN seeks interested party status to ensure Tribunal determinations on Ontario's reforms do not override Yukon's self-government agreements or constrain its ability to negotiate Yukon-specific child and family services frameworks. CYFN requests a restricted role, aiming primarily to monitor the proceedings and intervene selectively only where Tribunal findings could directly affect Yukon's governance structures or funding entitlements.

[35] The CYFN argues that Tribunal decisions on Ontario's reforms must not override Yukon's existing agreements or affect its ability to negotiate future child and family services arrangements. It seeks a restricted participation role, focused on monitoring the proceedings and intervening only when Tribunal findings directly affect Yukon's self-government rights or funding frameworks.

Our Children, Our Way Society (OCOW)

[36] Our Children, Our Way Society is a collective of Alberta-based First Nations child and family service agencies dedicated to developing culturally grounded service delivery models. OCOW seeks interested party status to preserve Alberta's jurisdictional autonomy and prevent Tribunal decisions on Ontario's reforms from influencing Alberta's funding or governance frameworks without consultation. OCOW does not oppose the OFA but seeks a moderate participation role, including the right to review relevant documents, monitor the proceedings, and make submissions where decisions could affect Alberta's distinct approaches to child and family services.

[37] The OCOW, argues that Tribunal decisions on Ontario's reforms could influence Alberta's funding and program models if used by Canada as a national benchmark. It maintains that Alberta's First Nations are developing culturally grounded frameworks that must remain independent from Ontario's process.

The Confederacy of Treaty Six First Nations

[38] The Confederacy of Treaty Six First Nations represents Treaty Six Nations across central Alberta and parts of Saskatchewan, advocating for the protection of Treaty-protected rights and self-determined governance. It seeks interested party status to ensure Tribunal determinations on the OFA do not set legal precedents affecting Treaty rights or restrict its ability to negotiate tailored agreements with Canada. The Confederacy of Treaty Six First Nations requests a limited participatory role, focusing on monitoring the OFA process and making submissions only where Tribunal decisions could interfere with Treaty Six jurisdiction or program authority.

[39] The Confederacy of Treaty Six First Nations argues that Tribunal determinations on the OFA must not infringe Treaty Six Nations' rights or limit their ability to negotiate independent agreements aligned with their treaty obligations. It seeks to ensure that treaty-protected jurisdiction over child and family services remains intact.

The Treaty 7 First Nations Chiefs Association

[40] The Treaty 7 First Nations Chiefs Association represents southern Alberta First Nations under Treaty Seven and advocates for governance autonomy and culturally appropriate child and family services. The Treaty 7 First Nations Chiefs Association seeks interested party status to ensure Tribunal rulings on the OFA do not set unintended precedents that Canada could later apply to Alberta's frameworks. While Treaty Seven Nations do not oppose the OFA, they request a restricted role, aiming to observe the proceedings and make submissions selectively if Tribunal decisions could affect their rights or ongoing negotiations.

[41] The Treaty 7 argues that Tribunal decisions on Ontario's reforms could set national precedents affecting Treaty Seven Nations' autonomy and ongoing negotiations in Alberta.

[42] The Treaty 7 maintains that Ontario's model should not be assumed to apply elsewhere without proper consultation.

The Treaty 8 First Nations of Alberta

[43] The Treaty 8 First Nations represent numerous communities across northern Alberta, safeguarding Treaty-protected governance and jurisdiction. The organization seeks interested party status to ensure Tribunal decisions related to Ontario's reforms do not inadvertently affect Treaty Eight Nations' rights, funding models, or service delivery frameworks. The Treaty Eight First Nations of Alberta does not oppose the OFA but requests a limited, precautionary participation role, focused on monitoring proceedings and intervening only when Tribunal rulings directly impact Treaty Eight's jurisdiction or agreements.

[44] The Treaty 8 First Nations of Alberta argues that Tribunal determinations on Ontario's reforms must not affect Treaty Eight Nations' jurisdiction or treaty-protected rights. It highlights concerns about potential impacts on funding structures and regional program models if Ontario's reforms are used as a national standard.

The Chiefs of Ontario (COO)

[45] The COO argues that the FSIN, the CYFN and the OCOW claim Canada's letter to the Tribunal dated March 17, 2025, is 'evidence' the OFA will be applied outside of Ontario. These arguments demonstrate a misapprehension of Canada's letter.

[46] The COO contends that the FSIN and the CYFN both allege that statements from Canada's affidavit from Duncan Farthing-Nichol affirmed March 7, 2025, are 'evidence' the OFA will be applied outside of Ontario. These arguments demonstrate a misreading of Canada's affidavit, at paragraphs 131(c) and 149(c).

[47] The COO argues that the FSIN and the CYFN both argue paragraph 3 of the OFA is 'evidence' the OFA will be applied outside of Ontario. These arguments misconstrue the OFA.

[48] The COO submits that the OFA is similar to the rejected national agreement: FSIN, CYFN, CT6FN, and the T8FNA suggest that the similarities between the OFA and the rejected national agreement mean the OFA will be applied outside of Ontario. The fact that many of the mechanisms in the OFA were originally developed for the national agreement does not mean the joint motion seeks relief outside of Ontario. As is abundantly clear, there is no national agreement under consideration. The OFA itself and the relief requested in the joint notice of motion entirely define the scope of the OFA approval motion, which is limited to Ontario.

[49] The COO submits that some of the proposed interested parties' advance perspectives that have already been identified by the Tribunal and are foundational to its jurisprudence on this matter, including that the one-size-fits-all solution is not an appropriate approach to remedy discrimination in this case. The addition of an interested party is not necessary to relitigate an issue that has already been decided by the Tribunal.

The Nishnawbe Aski Nation (NAN)

[50] NAN submits that the OFA is an Ontario-specific agreement, carefully designed to address systemic discrimination within the framework of the 1965 Agreement. Determining

whether and how the OFA achieves this purpose requires Ontario-specific expertise, which is already provided by the parties to the OFA approval motion. The prospective interested parties, who represent interests outside Ontario, cannot meaningfully contribute to this analysis. They also do not claim to speak on behalf of Ontario First Nations children and, as such, bring no direct interest to this motion. Allowing their participation would not strengthen or supplement the existing legal positions before the Tribunal; instead, it would introduce irrelevant, unrelated, and potentially disruptive issues, undermining the efficiency and focus of these proceedings.

[51] The NAN submits that the participation of the prospective interested parties should be denied. The Ontario Final Agreement ("OFA") is an Ontario-specific arrangement designed to address systemic discrimination against Ontario First Nations children within the framework of the 1965 Agreement. The prospective interested parties, representing interests outside Ontario, lack the Ontario-specific expertise necessary to assist the Tribunal and do not purport to speak on behalf of Ontario First Nations children. Their submissions would not enhance the positions of existing parties but would instead introduce new and unrelated issues, creating unnecessary complexity.

[52] Moreover, the proceedings will not directly impact their rights or obligations. While the Tribunal's decision may carry precedential value, speculation about possible effects on future reforms outside Ontario is insufficient to establish a direct and substantial interest warranting intervention. Granting participation at this stage would also prejudice Ontario First Nations communities by delaying urgently needed reforms under the OFA and potentially derailing negotiated funding agreements. The interests of efficiency, fairness, and timely resolution strongly favour rejecting the applications for interested party status.

The Assembly of First Nations (AFN)

[53] The AFN takes no position on the motions.

The First Nations Child and Family Caring Society of Canada (Caring Society)

[54] The Caring Society submits that to the extent that the moving parties outside Ontario seek to advance evidence beyond the Ontario context, the Caring Society submits that their participation will assist the Panel in at least three significant ways.

[55] First, consistent with the Tribunal's emphasis on recognizing "distinct community circumstances" when considering substantive equality, the moving parties outside Ontario—comprising First Nations, First Nations regional organizations, and First Nations agencies from six provinces and the Yukon—bring forward unique and material perspectives. Their submissions highlight important issues relevant to the OFA joint motion that would not otherwise have been brought to the Panel's attention or, at minimum, would not have been presented in such depth and detail.

[56] Second, as these moving parties outside Ontario either are, or directly represent, First Nations rights holders, they are uniquely positioned to explain how the OFA joint motion affects Canada's obligations to First Nations rights holders, including obligations arising from the Honour of the Crown.

[57] Third, granting the participation of these parties at this stage promotes efficiency and procedural fairness. It avoids the risk of fragmented or delayed participation, which could otherwise lead to procedural complications, including potential disputes over doctrines such as issue estoppel, abuse of process, or collateral attack. Allowing their involvement now also reduces the likelihood of having to revisit prior findings should new evidence or arguments arise later. This is particularly significant given that Canada has expressly stated that the OFA will inform its conduct beyond Ontario, underscoring the broader relevance of these submissions.

The Canadian Human Rights Commission (Commission)

[58] The Commission takes no position on the motions.

The Attorney General of Canada (AGC-Canada)

[59] The AGC submits that participation of the External Groups will not assist the Tribunal in resolving the matters at issue. While they seek broad involvement, such participation would unnecessarily complicate and risk disrupting the orderly conduct of these proceedings. To the extent their interests and expertise are relevant, they are already adequately represented by the AFN or the Caring Society, rendering their direct intervention unnecessary.

[60] Moreover, the lateness of the motions for interested party status is inherently prejudicial to the expeditious resolution of this matter. Allowing intervention at this stage would introduce additional delays and undermine the Tribunal's mandate to ensure efficient proceedings.

[61] The External Groups have raised issues that are not in dispute and will not advance any position beyond those already articulated by the existing parties. Their participation would therefore add no substantive value to the Tribunal's determination of the issues.

[62] Finally, the AGC submits that the External Groups have failed to establish that the current impact of these proceedings warrants their intervention. Without demonstrating a direct and significant interest affected by the outcome, their request for participation does not meet the threshold required for interested party status.

III. Applicable Law

[63] The *CHRA* contemplates interested parties in s. 50(1) and 48.9(2)(b) and accordingly confirms the Tribunal's authority to grant a request to become an interested party.

[64] The Old Rules of procedure have recently been revised in Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137 (the "New Rules"). Given that this case is ongoing and was initiated under the Old Rules, the Old Rules of procedure (03-05-04) will continue to govern this motion.

[65] The procedure for adding interested parties is set out in Rules 3 and 8(1) of the Tribunal's Old Rules of procedure (03-05-04).

[66] Consequently, the Tribunal has the jurisdiction to allow any interested party to intervene before this Tribunal regarding a complaint. "The onus is on the applicant to demonstrate how its expertise will be of assistance in the determination of the issues" (*Canadian Association of Elizabeth Fry Societies and Renee Acoby v. Correctional Service of Canada*, 2019 CHRT 30 at para. 34). 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.

[67] However, while the criteria listed above and developed in *Walden* are still helpful in similar contexts, in *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 (NAN), the Tribunal held that what is required is a holistic approach on a case-by-case basis. This approach was also applied in *Attaran v. Citizenship and Immigration Canada,* 2018 CHRT 6 (Attaran) and in *Letnes v. RCMP and al*, 2021 CHRT 30 at para. 14. Therefore, the Tribunal case law shows that the analysis must be performed not strictly and automatically, but rather on a case-by-case basis, applying a flexible and holistic approach.

[68] Interested party status will not be granted if it does not add significantly to the legal positions of the parties representing a similar viewpoint. See, for example, *Attaran* at para. 10.

[69] As noted, the Panel addressed the test for granting interested party status in 2016 CHRT 11 when the Panel granted interested party status to the Nishnawbe Aski Nation (NAN). In that ruling, the Tribunal outlined the considerations on granting interested party status, at paragraph 3, as follows:

> An application for interested party status is determined on a case-by-case basis, in light of the specific circumstances of the proceedings and the issues

> being considered. A person or organization may be granted interested party status if they are impacted by the proceedings and can provide assistance to the Tribunal in determining the issues before it. That assistance should add a different perspective to the positions taken by the other parties and further the Tribunal's determination of the matter. Furthermore, pursuant to section 48.9(1) of the *CHRA*, the extent of an interested party's participation must take into account the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (see *Nkwazi v. Correctional Service Canada*, 2000 CanLII 28883 (CHRT) at paras. 22-23; *Schnell v. Machiavelli and Associates Emprize Inc*., 2001 CanLII 25862 (CHRT) at para. 6; *Warman v. Lemire*, 2008 CHRT 17 at paras. 6-8; and *Walden et al. v. Attorney General of Canada* (*representing the Treasury Board of Canada and Human Resources and Skills Development Canada*), 2011 CHRT 19 at paras. 22-23).

[70] Subsequently, in 2020 CHRT 31 the Panel noted:

> [28] The Tribunal in granting interested party status within the context of this specific case, recognized the challenge in determining which potential organisations or First Nations governments should be granted interested party status when the nature of the issues means that a large number of First Nations communities are directly affected by this case: The Panel's role at this stage of the proceedings is to craft an order that addresses the particular circumstances of the case and the findings already made in the [Merit] Decision. The Tribunal's remedial clarification and implementation process is not to be confused with a commission of inquiry or a forum for consultation with any and all interested parties. If that were the case, every First Nation community or organization could seek to intervene in these proceedings to share their unique knowledge, experience, culture and history. Processing those applications, let alone admitting further parties into these proceedings, would significantly hinder the Panel's ability to finalize its order.

[71] In 2022 CHRT 26, the Tribunal reiterated that the proper analysis is a case-by-case holistic approach rather than a strict application of the factors from *Walden*. The interested party has to bring expertise and add a different perspective to the positions including the legal positions taken by the other parties and further the Tribunal's determination of the matter. Further, *Walden and Letnes* are distinguishable for another reason. In both cases, the interested party was a bargaining agent and the complainants were members of the bargaining agent. As noted in *Letnes* at para. 19, "absent exceptional circumstances, a union will automatically be granted intervention status in proceedings dealing with human rights in the workplace when one of its members is the complainant." That is very different from the current context where many organizations represent different First Nations.

[72] Furthermore, in 2022 CHRT 26, the Tribunal rendered significant findings which remain unchallenged. The parties have, in fact, acknowledged that the Tribunal's prior determinations on motions for interested party status are to be accorded greater weight in these proceedings than other Tribunal decisions on the same issue.

[73] The Tribunal discussed these proceedings in detail and stated the following:

> [37] In analyzing the expression "further the Tribunal's determination of the matter" the Tribunal considers the legal and factual questions it must determine, the adequacy of the evidence and perspectives before it, the procedural history of the case, the impact on the proceedings as well as the impact on the parties and who they represent. The Panel also considers the nature of the issue and the timing in which an interested party status seeks to intervene. Moreover, if adding another interested party will positively or negatively impact the Tribunal's role to appropriately determine the matter. Finally, the Tribunal will consider the public interest in the matter.
>
> [38] The Panel stresses the importance of considering the context and specific facts of the case in all proceedings before the Tribunal including interested parties' status. Otherwise, it may lead to legalistic, technical and unjust outcomes. Furthermore, the Parties cannot ignore the previous interested party rulings in this case. The approach taken in those rulings is the most relevant and authoritative to this motion given that this is the same case with the same historical context.
>
> [39] At the time of this motion, the Panel has been on this case for a decade and heard the merits of the case including compensation and has released its substantive decisions. The Panel remains seized of this case to supervise adequate implementation of its previous orders and to issue new orders if necessary to eliminate systemic discrimination and prevent it from reoccurring. Over the years, the Panel added 5 interested parties at various times and for various reasons. Two before the hearing on the merits, one at the beginning of the remedies phase and two others for specific motions and for specific reasons summarized above. The Panel ruled on the issue of compensation and on the compensation process (compensation decisions) on a time frame of over a year considering a large evidentiary record, complex and numerous legal and factual questions assisted by the parties especially First Nations complainants. Moreover, the Federal Court affirmed the compensation decisions. Therefore, the Panel is acutely aware of what may assist or hinder its consideration of the matter. This analysis cannot be overlooked. The Panel has consistently identified the need to take a contextual and holistic approach. This approach refined and developed the approach from *Walden. Attaran and Letnes similarly* added to the jurisprudence. The Tribunal cannot now ignore these subsequent cases. Of note, both *Attaran* and *Letnes* rely on this Panel's earlier ruling. The request

> must be considered in a holistic manner, case-by-case approach taking into consideration if it furthers the Tribunal's determination of the matter. The Panel clarifies that the Tribunal's determination of the matter is informed by the list of criteria mentioned above.
>
> [40] Further, the *Letnes* ruling was made at the early stages of the complaint before the Tribunal yet the Tribunal still limited the interested party's participation.
>
> [41] Moreover, in this wide-ranging case, impacting First Nations communities in Canada, the Tribunal has to consider that every First Nation community or organization could seek to intervene in these proceedings to share their unique knowledge, experience, culture and history. Would they have expertise to offer? Absolutely. However, it is impossible for all of the First Nations to join this case without halting the work of the Tribunal. The Tribunal is informed by three large organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare and other services offered to First Nations children regardless of where they reside (Caring Society) to consult with First Nations by different means and bring their perspectives to these proceedings.
>
> [42] Moreover, the Panel recognizes that the rights holders are First Nations people and First Nations communities and governments. While it is ideal to seek every Nations' perspective again, these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum for consultation. The Panel relies on the evidence, the parties in this case and the work that they do at the different committees such as the National Advisory Committee on Child Welfare (NAC), tables, forums and community consultations to inform its mid and long-term findings.

[74] Finally, the Tribunal continues to rely on all its previous rulings on interested party status including those that impose limitations on the interested party's participation.

[75] The foregoing sets out the factors that the Tribunal considers when determining motions seeking interested party status in these proceedings, particularly at this late stage, nearly ten years after the Tribunal's decision on the merits in 2016 CHRT 2.

IV. Analysis

[76] The Tribunal has received multiple motions seeking interested party status to participate in the OFA proceedings for the Ontario from: the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and

Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta.

[77] The Tribunal recognizes that First Nations children are central to the interests and priorities of every First Nation. However, it is impossible to hear directly from every First Nation without paralyzing the proceedings and negatively impacting the very First Nations children at the heart of these proceedings.

[78] Moreover, making submissions on this motion while disregarding the Tribunal's previous rulings, or selectively referencing them, does not alter what the Tribunal has already determined nor the factors it will consider when deciding such motions.

[79] With the principles enunciated above and upon consideration of the moving parties and the parties' submissions, the Panel finds that while the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta, have experience, expertise and valuable points of view, their intervention at this stage should not be permitted within the OFA joint motion proceedings.

The prospective interested parties' expertise will not be of assistance to the Tribunal

[80] There is no doubt that the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta, all possess significant expertise in the areas of child and family services. However, their expertise will not assist the Tribunal in

determining the matter in Ontario or in answering the question of whether the OFA effectively and sustainably ends the discriminatory practices and reforms the (…) 1965 Agreement so as to align with the findings in the Merit Decision (2016 CHRT 2).

[81] During the hearing on the merits in 2013–2014, the Tribunal received evidence specific to the Ontario region and, from 2016 to the present, has issued Ontario-specific orders. As demonstrated above, the Tribunal deliberately included a distinct and separate reference to Ontario in its general, injunction-like orders aimed at ceasing systemic discrimination and achieving reform. Accordingly, it is both reasonable and appropriate to address the matter of long-term reform in Ontario independently from the consideration of long-term reform at the national level.

[82] The Tribunal will have the assistance of the COO and the NAN's perspectives who are joint moving parties in the OFA joint motion and two newly added Ontario interested parties Taykwa Tagamou First Nation and Chippewas of Georgina Island who oppose the OFA joint motion. The Tribunal finds that their expertise as Ontario First Nations and First Nations organizations will assist the Tribunal in its determination of the matter in Ontario. Furthermore, this Tribunal found systemic racial discrimination including in Ontario and has issued multiple rulings over a span of nearly ten years concerning the Ontario region. The Tribunal is well positioned, with the assistance of all parties, to determine if the systemic racial discrimination that it found has now been eliminated in a sustainable way and if it will recur or not.

[83] None of the moving parties have demonstrated that their participation would assist the Tribunal in determining the matter in Ontario. On the contrary, introducing perspectives from other regions would risk further complicating issues that are already complex.

[84] In a recent decision, 2025 CHRT 80, the Tribunal has confirmed and ordered that the OFA joint motion will focus solely on the Ontario region and <u>not</u> on the National long-term reform outside Ontario:

> [122] The determination of the OFA motion shall not be contingent upon the Tribunal's conclusion of its consideration of the National FNCFS long-term reform plan and requested remedies outside Ontario referred to in paragraph 120.

> [123] The determination of the National FNCFS long-term reform plan and requested remedies outside Ontario shall not be contingent upon the Tribunal's conclusion of its consideration of the OFA motion for Ontario.

[85] The 2025 CHRT 80 ruling and the above extracts are a full answer to the concerns raised by the moving parties that the Ontario reforms could establish national standards that override region-specific governance structures or that the Tribunal's determinations could indirectly influence funding models, governance rights, and service frameworks beyond Ontario's borders. The Tribunal confirms that they will not. This also informs the analysis under the second question below.

The proceeding will not have an impact on the moving parties' interests

[86] In this case, unlike others that do not involve a large, systemic national complaint affecting 634 First Nations and encompassing multiple territorial and regional agreements across Canada, this part of the test—if it is successfully demonstrated that the proceeding will have an impact on the moving parties' interests—cannot, on its own, determine a motion for interested party status. To conclude otherwise could open the door to participation by all 634 First Nations and hundreds of First Nations child and family services agencies, all of whom may be impacted by this case, effectively bringing the Tribunal's determination of the matter to a standstill. Such an outcome would hinder, rather than assist, the Tribunal in fulfilling its mandate. The Tribunal is now in the final stages of this complaint and must be able to resolve the matter in the near future in the best interests of First Nations children and families.

[87] The Tribunal finds that the OFA joint motion proceeding will not have an impact on the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta's interests. As non-Ontario-based First Nations and First

Nations organizations, they will not be directly affected by any determination in relation to the OFA and the Trilateral Agreement.

[88] Of note, paragraph 3 of the OFA stipulates that the OFA is confined to Ontario:

> Unless the context necessitates a different interpretation, all terms of this Final Agreement are to be interpreted as applying only in Ontario and only to First Nations and FNCFS Service Providers in Ontario.

[89] Furthermore, many argue that service delivery frameworks and funding models must continue to be regionally negotiated and culturally specific in order to reflect the unique needs of their Nations.

[90] However, the Tribunal has previously ruled that a one-size-fits-all approach is not appropriate to remedy the systemic racial discrimination at issue in this case. The Tribunal has repeatedly emphasized that long-term reform must be First Nations–centered and must account for the specific needs of First Nations children and families, as well as the distinct circumstances and perspectives of different Nations and regions. The parties involved in this case for more than a decade are cognisant of these orders.

[91] Moreover, some moving parties stress that their treaty-protected authority must remain fully respected and unaffected by the Tribunal's decision on the OFA joint motion. The Tribunal finds that this decision will not impact the moving parties' treaty-protected authority, as the proceeding is limited to long-term reform within the Ontario region, in accordance with the Tribunal's recent ruling in 2025 CHRT 80. The Tribunal's ruling supports this and is aligned with the Tribunal's approach in this case from the beginning. Consequently, the OFA joint motion proceeding will not affect the moving parties' interests.

[92] The Tribunal finds that Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta, will not be of assistance to this

Tribunal in determining the OFA joint motion and the OFA joint motion proceedings will not have an impact on their interests.

The moving parties' involvement will not add to the legal positions of the parties

[93] The Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOW), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, the Treaty 8 First Nations of Alberta's legal positions could potentially add to the legal positions of the parties if they were directly applicable to Ontario. However, this was not successfully demonstrated by the moving parties. Further, this part of the test is not determinative in this specific context of the OFA joint motion proceedings given the reasons and negative answers to the two other questions above.

V. Order

FOR THESE REASONS, THE CANADIAN HUMAN RIGHTS TRIBUNAL

[94] DISMISSES the motions of the Neqotkuk (Tobique) First Nation ("Neqotkuk First Nation"); Ugpi'ganjig (Eel River Bar) First Nation ("Ugpi'ganjig First Nation"); Mi'gmaq Child and Family Services of New Brunswick Inc ("MCFSNB"); Our Children Our Way ("OCOW"); Federation of Sovereign Indigenous Nations ("FSIN"); Council of Yukon First Nations ("CYFN"); Assembly of Manitoba Chiefs ("AMC"); Confederacy of Treaty Six First Nations ("CT6FN"); Treaty 8 First Nations of Alberta ("T8FNA").

Retention of jurisdiction

[95] The Panel retains jurisdiction over all of its previous orders, except its compensation orders. The Panel will revisit its retention of jurisdiction for the Ontario region once the OFA joint motion proceeding has been completed, or as the Panel deems appropriate in light of the future evolution of this case.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
September 2, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: September 2, 2025

Motion dealt with in writing without appearance of parties

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