Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 87
Date: September 3, 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 –

Southern Chiefs' Organization Inc.

Moving party

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 a series of rulings addressing immediate and mid-term relief and final orders on compensation and retained jurisdiction to ensure that it could 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 and a joint motion from the Chippewas of Georgina Island and Taykwa Tagamou Nation in Ontario.

[20] The Tribunal decided the motions in two separate rulings: 2025 CHRT 85 and 2025 CHRT 86.

[21] The Tribunal has decided to address two additional motions separately. This ruling concerns one of them, focusing solely on the Southern Chiefs' Organization Inc. (SCO)'s request for interested party status in the OFA joint motion proceedings.

[22] 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.

[23] This new development plays a major role in determining the motions in this ruling for moving parties outside Ontario or for those who have failed to indicate their connection to Ontario in their motion and submissions in chief. This will be discussed further below.

[24] 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.

The Tribunal's findings on procedural aspects of the SCO's motion

[25] On July 9, 2025, nearly three months after the Tribunal had established the deadline for seeking interested-party status in the OFA joint motion proceedings, the Southern Chiefs' Organization Inc. brought a motion before the Tribunal seeking leave to participate as an

interested party, both in the proceedings generally and in the OFA joint motion proceedings alternatively.

[26] The Tribunal recognized the name of the law firm from the April 15, 2025, motions seeking interested party status and verified to confirm that this was in fact the case. When the Tribunal confirmed that it was indeed the case, the Tribunal, on July 16, 2025, wrote to the law firm now representing the SCO to seek clarifications on the nature of their request.

[27] On July 16, 2025, the SCO responded to the Tribunal that the Southern Chiefs' Organization Inc. ("SCO") wishes to bring a motion for interested party status generally within the proceedings. As an alternative, the motion will seek interested party status in relation to the joint approval motion of the Ontario Final Agreement, in the event SCO were not granted interested party status generally in the proceedings. At this stage, SCO would not seek to file evidence in relation to the joint approval motion; however, would reserve its right to file evidence in relation to the proceeding more generally going forward, should interested party status as a whole be granted. SCO would be seeking leave to file written submissions relating to the joint approval motion, and to make oral submissions at the hearing of the motion, and to participate in the proceedings generally.

[28] The SCO described themselves as advocating on behalf of 32 Anishinaabe and Dakota Nations in southern Manitoba, all of whom stand to be impacted not only by the joint approval motion, but the proceedings generally. SCO represents the interests of these rights-holding Nations and can provide the Tribunal with the distinct perspectives of these Nations, which are not otherwise before the Tribunal.

[29] On July 17, 2025, the Tribunal informed the SCO of the following:

> As you are already aware, given that your firm represents another moving party seeking interested party status in these Tribunal proceedings, a deadline of April 15, 2025, was established for parties wishing to participate in the OFA-joint motion. Although that process has since been paused, all submissions were received prior to the pause.
>
> Separately, the Tribunal has now completed a round of submissions from parties interested in joining the proceedings more generally.
>
> Given this context, the Tribunal proposes two options:

> • File a motion to join the proceedings more generally by the deadline of July 24, 2025; or
>
> • Wait for the Tribunal's rulings on the pending motions to join and determine your next steps based on those outcomes.
>
> Should you choose to proceed with a motion at this time, please note:
>
> Your notice of motion and written submissions must be limited to a combined total of 10 pages, due to the Tribunal's management of an unprecedented number of interested party motions. The Tribunal strongly encourages concise and focused submissions to facilitate efficient review.

[30] The Tribunal did not invite the SCO to file a motion and submissions on the OFA joint motion proceedings.

[31] The SCO filed a motion seeking interested-party status in the proceedings generally and, in the alternative, in relation to the OFA joint motion approval. However, the Tribunal is not presently addressing the motions for interested-party status in the proceedings generally. The Tribunal has recently ruled on 11 such motions in 2025 CHRT 85 and 2025 CHRT 86 and has one additional motion outstanding following this decision. This sequencing is intended to enable the Tribunal to establish a hearing schedule for the OFA joint motion at the earliest possible opportunity.

[32] Moreover, the SCO did not reference any connection to the Ontario region in its correspondence, motion, or initial submissions. The first mention of such a connection arose in its reply submissions, where the SCO referred to Animikii Ozoson Child and Family Services ("AOCFS")—an agency operating under its oversight and within the mandate of the Southern First Nations Network of Care (SFNNC)—which serves children and families with connections to Ontario First Nations residing in Winnipeg, Manitoba. Raising this point for the first time in reply effectively denied the other parties a fair opportunity to respond and deprived the Tribunal of the benefit of their submissions on this significant issue.

[33] The SCO ought to have raised this issue in its motion and submissions in chief, rather than for the first time in reply. Allowing a sur-reply from all parties to address this new point would cause significant delay to the OFA joint motion proceedings and prejudice the parties. Moreover, the Tribunal did not invite the SCO to bring a motion to participate in the OFA

joint motion proceedings, as the deadline to do so had already passed. This further supports the conclusion that no sur-reply should be permitted in response to the new information raised in SCO's reply. Accordingly, the Tribunal has considered the current submissions but placed little weight to this portion of the SCO's reply.

II. Summary of the Moving Parties' submissions

The Southern Chiefs' Organization Inc. (SCO)

[34] The SCO submit that their expertise will assist the Tribunal.

[35] SCO argue that it has unique expertise regarding the delivery of child and family services to First Nations in southern Manitoba, particularly through its oversight of the Southern First Nations Network of Care (SFNNC) and the 11 child and family services agencies it manages. These agencies are responsible for approximately 5,300 children in care—more than half of Manitoba's total.

[36] The SCO stress that this expertise is especially relevant to the OFA joint motion proceedings because Canada has indicated that any regional agreements approved by the Tribunal—including the OFA—will inform national reforms to the FNCFS program. SCO maintain that the Tribunal would benefit from its detailed understanding of the operational, cultural, and jurisdictional complexities specific to southern Manitoba. Without their participation, the Tribunal risks making determinations that fail to account for regional differences in service delivery models, funding structures, and community needs.

[37] The SCO submit that their participation will add to the legal positions of the parties.

[38] The SCO contend that their participation will introduce perspectives that are not currently represented by the existing parties in the OFA joint motion proceedings. While the Chiefs of Ontario and Nishnawbe Aski Nation are already involved, SCO represents 32 Anishinaabe and Dakota Nations in Manitoba and oversees agencies whose structures, needs, and challenges differ significantly from those in Ontario.

[39] The SCO emphasize that decisions made about the OFA may set precedents or establish frameworks for national long-term reform, making it essential for the Tribunal to hear from parties beyond Ontario. SCO's submissions highlight potential gaps in representation—for example, funding mechanisms, governance models, and service delivery challenges faced by Manitoba First Nations—which may not otherwise be addressed if the Tribunal only considers Ontario-specific evidence and arguments.

[40] The SCO submit that the OFA joint motion proceedings will impact SCO's interests.

[41] The SCO argues that its member Nations, children, and families will be directly affected by the Tribunal's decision on the OFA joint motion. Canada has confirmed that approval of the OFA will influence the broader reform of the FNCFS program across the country, meaning that outcomes negotiated in Ontario could shape the policy, funding, and service delivery frameworks applicable to SCO's region.

[42] The SCO assert that without their participation, the voices and interests of southern Manitoba First Nations will not be adequately represented, despite the fact that any national standards or reforms resulting from the OFA could materially affect the programs and agencies under SCO's oversight. Therefore, SCO argue that their involvement is critical to protecting the rights and interests of its 32 member Nations and their citizens.

[43] In reply, the SCO submit that their participation as an interested party is necessary given the potential impact of the OFA joint approval motion on their member Nations and the Indigenous children and families they represent in southern Manitoba. They argue that the OFA, if approved, will inform the national framework for the long-term reform of the First Nations Child and Family Services ("FNCFS") program and Jordan's Principle, and therefore has direct implications for their agencies and communities.

[44] The SCO explain that they oversee the Southern First Nations Network of Care (SFNNC), which manages 11 child and family services agencies serving approximately 5,300 children in care, more than half of Manitoba's total. One of these agencies, Animikii Ozoson Child and Family Services ("AOCFS"), works primarily with families connected to Ontario First Nations residing in Winnipeg. SCO argue that this operational overlap creates

a direct link between their region and the OFA, reinforcing the need for their participation in the joint motion proceedings.

[45] The SCO further submit that their participation will provide distinct perspectives not otherwise before the Tribunal. While the Chiefs of Ontario and Nishnawbe Aski Nation represent Ontario-specific interests, SCO represent 32 Anishinaabe and Dakota Nations in southern Manitoba and can highlight operational, jurisdictional, and funding realities that differ significantly from those in Ontario. SCO argue that excluding these perspectives risks leaving the Tribunal without a full understanding of how approval of the OFA could affect First Nations children and families in Manitoba and beyond.

[46] Finally, SCO assure the Tribunal that granting them interested party status will not cause undue delay to the OFA joint motion proceedings. They commit to complying with all established timelines and acknowledge the Tribunal's authority to limit their participation if necessary. The SCO submit that any potential delay resulting from their participation is outweighed by the importance of ensuring that relevant and distinct perspectives are before the Tribunal.

[47] The SCO conclude that their involvement is essential to ensure that the voices of southern Manitoba First Nations are considered in a process with national implications.

The Chiefs of Ontario (COO)

[48] The COO request an order dismissing SCO's motion for interested party status.

[49] The COO argue that the SCO should not be granted interested party status in the OFA joint approval motion. They argue that SCO filed its motion on July 24, 2025, more than three months after the Tribunal's April 15, 2025, deadline for seeking interested party status in relation to the OFA, and that this unexplained delay should be dispositive of the motion.

[50] The COO further submit that SCO has no direct interest in the OFA approval motion, as the agreement applies exclusively to Ontario First Nations and is limited to determining whether the Ontario Final Settlement Agreement remedies systemic discrimination within

Ontario, prevents its recurrence, and reforms the 1965 Memorandum of Agreement Respecting Welfare Programs for Indians. As SCO is based in Manitoba and represents First Nations outside Ontario, the COO argue that SCO's member communities are not affected by the implementation of the OFA and that SCO's claimed interest, based on the precedential value of the Tribunal's decision, is insufficient to establish standing.

[51] The COO's submissions also contend that SCO's regional expertise in southern Manitoba child and family services will not assist the Tribunal in determining Ontario-specific issues under the OFA motion and that the perspectives SCO seeks to bring are already represented by the Assembly of First Nations (AFN) and the Caring Society. The Tribunal has historically relied on these complainants to represent broader First Nations interests at the national level, including the rights and welfare of First Nations children, families, and agencies across Canada.

[52] Finally, the COO argue that granting SCO interested party status would risk delaying the time-sensitive OFA approval motion, which could prejudice ongoing efforts to secure reforms and potentially jeopardize related funding. They submit that any additional participation would be duplicative and unnecessary, given the positions already advanced by existing parties.

The Nishnawbe Aski Nation (NAN)

[53] The NAN request an order dismissing SCO's motion for interested party status.

[54] The NAN submit 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.

[55] The NAN submit that the SCO has not demonstrated a basis for interested party status in relation to the OFA joint approval motion. They note that SCO does not assert any history of participation in the development of Ontario-specific reforms, does not have expertise concerning Ontario's regional context, and does not represent interests that would be directly affected by Ontario-only reforms. NAN further argue that SCO's application for

interested party status was filed three months after the Tribunal's deadline for participation in the OFA approval motion.

[56] The NAN acknowledge that SCO represents important interests relating to the welfare and rights of First Nations children, families, and communities outside Ontario, but maintain that the OFA approval motion has no bearing on those interests. They argue that SCO's expertise, while relevant to Manitoba and southern First Nations, does not add to the positions of the parties already before the Tribunal, particularly because the NAN and the COO are providing Ontario-specific expertise. NAN submit that understanding the OFA requires detailed knowledge of Ontario's context, especially the 1965 Agreement, and that such expertise is already available from existing parties.

[57] The NAN further argue that SCO's reliance on potential future national reforms arising from the OFA is speculative and does not establish a direct interest sufficient to justify interested party status. They caution that allowing SCO's late participation risks causing delay, which could prejudice the OFA approval process and potentially derail funding tied to the agreement.

The Assembly of First Nations (AFN)

[58] The AFN takes no position on the motion.

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

[59] The Caring Society supports SCO's motion for interested party status in relation to the OFA joint approval motion, emphasizing that SCO possesses unique expertise in the delivery of First Nations child and family services in southern Manitoba and oversees the Southern First Nations Network of Care, which manages 11 agencies serving more than half of the children in care in Manitoba.

[60] The Caring Society submits that SCO's knowledge and perspectives are highly relevant because approval of the OFA is expected to set a national precedent for the reform of the First Nations Child and Family Services ("FNCFS") program and Jordan's Principle.

[61] The Caring Society highlights Canada's March 17, 2025, letter to the Tribunal, which confirmed that the outcome of the OFA motion is "likely the path forward in these proceedings," including the broader implementation of a dialogic approach and the completion of the long-term remedial phase in Ontario. Given this, they argue that the national implications of the OFA cannot be ignored. SCO's participation, they submit, would assist the Tribunal in determining whether the Ontario Final Settlement Agreement fully satisfies the Tribunal's orders, prevents further discrimination, and informs what additional measures are necessary to achieve compliance for First Nations outside Ontario.

[62] The Caring Society further submits that SCO will bring distinct regional perspectives not otherwise before the Tribunal. While the Chiefs of Ontario and Nishnawbe Aski Nation provide Ontario-specific expertise, no current party can speak to the impacts on First Nations in southern Manitoba. They argue that SCO's participation would enhance the Tribunal's understanding of how reforms negotiated in Ontario may influence the future delivery of services in other regions.

[63] Finally, the Caring Society acknowledges that there are numerous requests for interested party status in relation to the OFA motion but submits that the value of SCO's participation outweighs any procedural concerns. They note that the Tribunal retains discretion to manage participation by imposing timelines, page limits, or other restrictions to ensure the efficient progress of the OFA proceedings while ensuring that relevant voices, including SCO's, are heard.

The Canadian Human Rights Commission (Commission)

[64] The Commission takes no position on the motion.

The Attorney General of Canada (AGC)

[65] The AGC requests an order dismissing SCO's motion for interested party status in its entirety.

[66] The AGC submits that the onus is on the applicant to demonstrate how its expertise will be of assistance to the Tribunal.

[67] The AGC made detailed submissions addressing the SCO's motion in its entirety rather than providing specific submissions regarding the OFA joint approval motion. This is also logical given that the SCO was not invited to file a motion concerning the OFA joint motion, as the deadline to do so had already passed. As explained above, the Tribunal had previously outlined the available options to the SCO.

III. Applicable Law

[68] 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.

[69] 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.

[70] 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).

[71] 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.

[72] 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 et 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.

[73] 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.

[74] 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).

[75] 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.

[76] 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.

[77] 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.

[78] 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.
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> [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.

[79] 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.

[80] 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

[81] The Tribunal has received multiple motions seeking interested party status to participate in the OFA proceedings for the Ontario region, see 2025 CHRT 85 and 2025 CHRT 86.

[82] 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.

[83] 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.

[84] With the principles enunciated above and upon consideration of the moving party's and the parties' submissions, the Panel finds that while the SCO have experience, expertise and valuable points of view, their intervention at this stage should not be permitted in the OFA joint motion proceedings.

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

[85] The Tribunal finds that the SCO will not assist the Tribunal in determining the matter. The Tribunal is not persuaded that the SCO will adhere to its directions and timelines. On the first opportunity to demonstrate their willingness to comply, the SCO chose instead to disregard the Tribunal's directions and proceed in their own manner. In proceedings of this complexity, such conduct is highly undesirable and risks undermining the Tribunal's ability to determine the matter effectively.

[86] The Tribunal also finds that the SCO introduced important information concerning an agency under their oversight that primarily works with families connected to Ontario First Nations residing in Winnipeg. However, this information was provided for the first time in reply, thereby denying fairness to the parties who have been involved in these proceedings for years. The fact that this information was raised only at the reply stage undermines the weight of the SCO's argument. If this point was central to the SCO's position and relevant to the OFA joint motion, it ought to have been advanced in their initial motion and supporting submissions rather than introduced belatedly in reply as a response to the parties' submissions regarding the SCO's operations in Manitoba rather than Ontario. Raising this argument only at the reply stage, in these circumstances, does not assist the Tribunal in determining the matter.

[87] This said, there is no doubt that the SCO possesses 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 to align with the findings in the Merit Decision (2016 CHRT 2).

[88] 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.

[89] 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.

[90] The SCO have not 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.

[91] 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 not 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.

[92] 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

[93] 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.

[94] The Tribunal finds that the OFA joint motion proceeding will not have an impact on the Southern Chiefs' Organization Inc. As non-Ontario-based First Nations organization, they will not be directly affected by any determination in relation to the OFA and the Trilateral Agreement.

[95] 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.

[96] 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.

[97] 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 cognizant of these orders.

[98] 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.

[99] The Tribunal finds that the SCO 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

[100] The SCO's legal position 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 party. 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

[101] DISMISSES the portion of the Southern Chiefs' Organization Inc.'s motion seeking interested party status in the OFA joint motion proceedings.

Retention of jurisdiction

[102] 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 3, 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 3, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

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Maggie Wente, Jessie Stirling, Ashley Ash and Katelyn Johnstone, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel, counsel for the Nishnawbe Aski Nation, Interested Party

Harold Cochrane, K.C. and Alyssa Cloutier, counsel for Southern Chiefs' Organization Inc.