

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

– and –

CANADIAN HUMAN RIGHTS COMMISSION

Commission

– and –

**ATTORNEY GENERAL OF CANADA
(Representing the Minister of Indigenous and Northern Affairs Canada)**

Respondent

– and –

**CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA, and
NISHNAWBE ASKI NATION**

Interested Parties

– and –

**INDIGENOUS CHILD & FAMILY SERVICES DIRECTORS OUR CHILDREN OUR
WAY SOCIETY**

Proposed Interested Party

**FACTUM OF THE PROPOSED INTERESTED PARTY, INDIGENOUS CHILD &
FAMILY SERVICES DIRECTORS OUR CHILDREN OUR WAY SOCIETY**

(Pursuant to Rules 3, and 8(1) and (2) of the *Canadian Human Rights Tribunal Rules of
Procedure* (03-05-04))

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PART I – OVERVIEW AND BACKGROUND FACTS

A. Overview

1. The Indigenous Child & Family Services Directors Our Children Our Way Society (“**Our Children Our Way**”) brings this motion to be added as an interested party in this proceeding before this Tribunal, bearing Tribunal File No.: T1340/7008 (the “**Proceeding**”), including the motion by the Nishnawbe Aski Nation (“**NAN**”) and the Chiefs of Ontario (“**COO**”), to which the Attorney General of Canada (“**Canada**”) consents (the “**Joint Motion**”).¹

2. The Canadian Human Rights Tribunal (the “**Tribunal**”) is at a critical juncture in this Proceeding. The immediate question before it on the Joint Motion is whether the Final Agreement on Long-Term Reform of the First Nations and Family Services Program in Ontario (the “**Ontario Agreement**”) is compliant with this Tribunal’s order that Canada implement long-term reform of the First Nations Child and Family Services Program (“**FNCFS Program**”) to stop systemic discrimination and to prevent it from reoccurring.

3. Canada’s position is that, if approved, the Ontario Agreement should be used as a blueprint for long-term reform outside of Ontario. It is therefore undeniable that this Tribunal’s endorsement of the Ontario Agreement will have far reaching impacts on agencies and First Nation children, families, and communities outside of Ontario. For that reason, Our Children Our Way, whose members comprise 24 Indigenous Child & Family Service Agencies (“**ICFSAs**”) in British Columbia, has a real interest in this stage of the Proceeding.

4. If granted leave to participate as an interested party, Our Children Our Way will not weigh in on the adequacy of the Ontario Agreement as it pertains to First Nations in Ontario; it

¹ Rules 3, and 8(1) and (2) of the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04).

acknowledges that the Ontario Agreement is a collective expression of the self-governance and self-determination rights of the First Nations in Ontario. Instead, Our Children Our Way will lead evidence and make submissions regarding how the Ontario Agreement is not a suitable template for remedying the continued discrimination against First Nation children, families, and communities in British Columbia, and that any remedy crafted by the Tribunal must account for the unique challenges faced by the member ICFSAs that that Our Children Our Way represents.

5. This Tribunal has continually emphasized that a one size-fits-all approach must not be employed, and that long-term reform must take into account the vastly different needs and circumstances of different First Nations children, families and communities. Our Children Our Way is uniquely equipped to assist the Tribunal in understanding how the Ontario Agreement does not address the specific needs and circumstances of those in British Columbia. This perspective is crucial for the Tribunal to consider when assessing potential remedies. Our Children Our Way respectfully requests that this Tribunal should exercise its discretion to allow Our Children Our Way to advance that perspective by tendering evidence and by making useful submissions.

B. Description and Expertise of Our Children Our Way

i) Background

6. Our Children Our Way is a British Columbia society incorporated under the *Societies Act*, S.B.C. 2015, c. 18, that has as its membership 24 ICFSAs in the province, which serve 120 different First Nations. Of those ICFSAs, 19 receive federal funding under the FNCFS Program and other related provincial/territorial agreements.

7. Our Children Our Way's mandate is to ensure that the best interests of First Nations children in British Columbia are met, and that services are culturally rooted and tailored to the specific needs and cultural contexts of each region. Our Children Our Way achieves that mandate

by advocating for systemic changes to policy, practice, and legislation to support high quality and culturally-based child and family services. Our Children Our Way has been involved in many key aspects of First Nation child and family service delivery and reform in British Columbia since the province first delegated authority for those services to the ICFSAs in 1996.

ii) **The Agreement**

8. On July 11, 2024, the Assembly of First Nations (“AFN”), Canada, COO, and NAN released the draft final settlement agreement on long-term reform of the FNCFS Program that they had crafted (the “**National Settlement**”). The Ontario Agreement is based on this settlement.

9. Our Children Our Way reviewed the draft National Settlement after it was released. It hosted expert panels and webinars to better understand and communicate the deficits of the agreement. Ultimately, Our Children Our Way rejected it on the basis that it would be inadequate to achieve long-term reform in British Columbia.

10. In October 2024, the National Settlement was rejected by the First Nations-in-Assembly.

11. Following the rejection of the agreement by the First Nations-in-Assembly, the National Children’s Chiefs Commission (“NCCC”) was established through AFN Resolutions 60/2024 and 61/2024. These resolutions called for renewed negotiations of long-term reform, with oversight and strategic direction provided by the newly formed NCCC, ensuring that all First Nations voices are included in reforming the FNCFS Program and Jordan’s Principle in alignment with the *United Nations Declaration on the Rights of Indigenous Peoples*, as well as the principle of free, prior and informed consent. The NCCC’s work is grounded in transparency and accountability. Representatives from the following regions have been appointed to the Commission:

Newfoundland, Quebec & Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta, Northwest Territories, British Columbia, and Yukon.

12. Our Children Our Way is involved in the negotiations for new long-term agreements, including by providing secretariat support to the NCCC.

PART II – QUESTION IN ISSUE

13. The questions in this motion are: (1) should Our Children Our Way be granted leave as an interested party in the long-term reform stage of these proceedings; and (2) if so, to what extent?

PART III – ARGUMENT

A. Legal Principles

14. The onus is on the applicant seeking interested party status to demonstrate that: (1) the proceeding will impact on the applicant's interests; (2) the applicant's expertise will be of assistance in the determination of the issues; and (3) the applicant's involvement will add to the legal positions of the parties.² These factors do not form a strict legal test.³ Rather, they are applied flexibly, taking into account the specific circumstances of the proceedings and the issues at stake.⁴

15. Here, Our Children Our Way satisfies the requirements to participate as an interested party. This Tribunal should exercise its discretion to allow it to participate in the Proceeding.

B. Long-Term Reform Impacts Our Children Our Way's Interest

16. Our Children Our Way has closely followed the Proceeding since its commencement. This Tribunal's orders have had a tremendous impact on the federally funded ICFSAs who Our

² *Canadian Association of Elizabeth Fry Societies and Renee Acoby v. Correctional Service of Canada*, [2019 CHRT 30](#), at para. 34.

³ *Attaran v. Citizenship and Immigration Canada*, [2018 CHRT 6](#), at paras. 10-12.

⁴ *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)*, [2022 CHRT 26](#), at para. 35.

Children Our Way represents. Any remedy the Tribunal eventually orders, including the order that NAN, COO, and Canada are asking this Tribunal to make in the Joint Motion, are no exception.

17. In particular, the Joint Motion is for unconditional approval of the Ontario Agreement. As noted, Canada has taken the position that the outcome of the Joint Motion will inform Canada's subsequent approach to long-term reform.⁵ Specifically, Canada's position is that, if endorsed, the Ontario Agreement will set the stage for long-term reform outside of Ontario.⁶ Canada has therefore put long-term reform in British Columbia squarely at issue by seeking to impose a remedy that may be appropriate in Ontario, but is not in British Columbia.

18. The ways in which child and family services, prevention services, capacity building, and capital projects are funded in the long-term in British Columbia, and the amount of funding available, directly and significantly impacts federally-funded ICFSAs in British Columbia.

19. Our Children Our Way recognizes the challenge this Tribunal faces in determining which potential organizations or First Nations governments should be granted interested party status, given the issues in the case and the long history of the Proceeding. However, the Tribunal has remained seized of this case to ensure that systemic discrimination is remedied across Canada through meaningful and effective long-term reform. This Tribunal is now being asked to find that the proposed long-term reform in Ontario will achieve that goal, not just in Ontario, but across the country. The reality is that, whether indirectly or directly, this determination will impact Our Children Our Way's members who serve 120 of Canada's 600 First Nations. Respectfully, this determination ought not be made without input from these members and Nations.

⁵ Letter to the Canadian Human Rights Tribunal from the Department of Justice of the Government of Canada, March 17, 2025, [at page 2](#).

⁶ Letter to the Tribunal from the Department of Justice of the Government of Canada, March 17, 2025, [at page 3](#).

C. Our Children Our Way’s Participation will be of Assistance to the Tribunal

20. Our Children Our Way possesses significant expertise relevant to the Proceeding:

- a) Our Children Our Way hosts “Partnership Forums” on a quarterly basis that bring together the members of Our Children Our Way along with their federal partners from Indigenous Services Canada (“ISC”) and their provincial partners from the British Columbia Ministry of Children and Family Development.
- b) Our Children Our Way hosts and participates in numerous working group/steering committee meetings hosted by federal and provincial partners (e.g., Post-Majority Supports working group, Training Advisory Committee, Murdered & Missing Indigenous Women & Girls steering committee, Insurance working group, and the Jurisdiction & Regulations steering committee), demonstrating that when federal and provincial partners want to engage with ICFSAs in British Columbia, they do so through Our Children Our Way.
- c) Our Children Our Way advocates for, and directly contributes to, changes to policy and funding to support high quality, culturally-based services. Some key outcomes of that work are initiatives and programs, such as the Indigenous Child & Youth Mental Wellness Framework, which was developed in response to the mental health crisis facing Indigenous children, families, and communities.
- d) Our Children Our Way works closely with other key partners, including British Columbia’s Representative for Children & Youth, the Public Guardian & Trustee of British Columbia, the First Nations Leadership Council, and the NCCC.
- e) Our Children Our Way has been involved in other key initiatives respecting the delivery of child and family services to First Nations, including the development and ongoing review

of the Aboriginal Social Worker Training curriculum, and “Bringing Justice Home: Recommendations to Honour Our Lost & Missing Loved Ones”, which educates social workers and others involved in child welfare on the recommendations in the Report of the Inquiry into Missing and Murdered Indigenous Women & Girls.

21. In addition to assisting the Tribunal through its expertise, Our Children Our Way will assist the Tribunal by bringing forward a different perspective. Of the organizations and First Nations who are seeking to participate in the Joint Motion and the Proceeding more generally, Our Children Our Way is the only organization with the knowledge and expertise to speak to the unique issues relating to the delivery of First Nations child and family services in British Columbia, and how the remedy for the systemic discrimination faced by First Nation children and families in the province should be adapted to British Columbia’s unique context.

22. While the Caring Society may advance a similar position on the adequacy of the proposed long-term reform for provinces outside of Ontario, unlike Our Children Our Way, it does not have experience in the day-to-day operations of ICFSAs in British Columbia. This makes Our Children Our Way uniquely positioned to make submissions on how any remedy must be tailored to address the discrimination that has plagued the system in British Columbia for generations. It also makes Our Children Our Way uniquely positioned to provide insight on the cultural and geographic diversity of British Columbia First Nations (there are over 200 First Nations in British Columbia of hugely different sizes that speak 34 distinct languages and have distinct cultural identities), and how that effects the delivery of child and family services to those First Nations.

23. Finally, Our Children Our Way’s participation will be useful to the Tribunal. If leave is granted, Our Children Our Way will not take a position on the adequacy of the Ontario Agreement as it pertains to the needs and discrimination of First Nation children, families, and communities

in Ontario. Rather, it will lead evidence and make submissions that are restricted to the experience of ICFSAs and First Nation children, families and communities in British Columbia, including:

- a) How the funding approach in the Ontario Agreement, which is primarily calculated based on population,⁷ is not suitable for British Columbia. For instance, the prevention funding is based on a formula that multiplies \$2,655.62 by the registered First Nations population on-reserve and on Crown land.⁸ This is inadequate in British Columbia where many of the First Nations have small populations but high needs.
- b) How different ICFSAs in British Columbia provide different types of services that are tied to their delegation level, with some ICFSAs providing guardianship services, resource and voluntary services *and* child protection services, while others only provide guardianship services or resource and voluntary services. Any remedy will need to account for the fact that British Columbia's ICFSAs have different funding needs based on the types of services they provide (which, for example, the Ontario Agreement does not do). Similarly, the remedy crafted by the Tribunal must account for the fact that some ICFSAs in British Columbia serve a single First Nation, while others serve up to 17 different First Nations (again, the Ontario Agreement does not address this).
- c) How the remedy ordered by the Tribunal must consider the fact that Canada withheld prevention funding in British Columbia until this Tribunal's 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)*, 2018 CHRT 4—which, again, the

⁷ Affidavit of Duncan Farthing, Witness for the Attorney General of Canada, [at para 91](#).

⁸ Affidavit of Duncan Farthing, Witness for the Attorney General of Canada, [at para 36](#).

Ontario Agreement fails to assess. Put simply, the Tribunal's remedy must account for the fact that British Columbia has been left behind other provinces on prevention funding.

- d) How, after this Tribunal's decision in 2018, ICFSAs started submitting annual business plans and budgets to Canada, detailing their future costs for services, operations and infrastructure based on need, with Canada funding those costs. While imperfect, this approach worked. It allowed British Columbia's ICFSAs to significantly improve and increase their services and tailor them to the unique circumstances of the communities they serve. The approach provided for in the Ontario Agreement would overhaul this entire system and replace it with inflexible operational funding that is not directly tied to community needs, and a *per capita* funding formula for prevention service-related expenses. The operational funding is tied to the expenditures of agencies in the previous year. However, the expenditures of ICFSAs in British Columbia do not reflect the amount of funds needed to provide the necessary services to the communities they serve.
- e) How the remedy ordered by the Tribunal must consider the capacity issues faced by British Columbia's small and remote First Nations, including finding, recruiting, training and paying personnel to deliver services. Funding for the delivery of services and infrastructure to support the delivery services does not mean anything if qualified personnel cannot be hired to do so. The Ontario Agreement again does not address this.
- f) How between 2017 and 2021, the life expectancy of First Nations people in British Columbia dropped by over six years due to COVID-19 and the opioid crisis in the province. This disproportionately impacts the province's First Nation children, families, and communities—for instance, one ICFSA reported 51 caregiver deaths in the last three years,

leaving dozens of children without caregivers in the care of the agency. The Tribunal's remedy must account for this reality.

24. If granted leave, Our Children Our Way will address each of these issues.

D. Our Children Our Way Will Participate in an Efficient and Expeditious Manner

25. If leave is granted, Our Children Our Way proposes to: (1) adduce evidence from no more than three witnesses, including Mary Teegee, the Chair of Our People Our Way, and two directors of member ICFSAs that would be differently impacted by any remedy under consideration; (2) cross-examine witnesses if their evidence relates to the delivery of services in British Columbia; and (3) make oral and written submissions in accordance with this Tribunal's direction.

26. Our Children Our Way does not seek to turn this proceeding into a commission of inquiry, a truth and reconciliation commission, or a forum for consultation. Our Children Our Way understands that justice delayed is justice denied. Accordingly, Our Children Our Way proposes to limit its involvement at this stage to the outstanding remedial issue of long-term reform of FNCFS programs and how the determination of those issues will impact the ICFSAs in British Columbia and the First Nation children, families and communities that they serve.

27. Finally, Our Children Our Way will not re-open matters that have already been decided, or duplicate evidence and cross-examination. It will also abide by this Tribunal's timelines.

PART V - ORDER SOUGHT

28. Our Children Our Way respectfully requests that this motion be granted and that an order be made allowing it to participate in the Proceeding by adducing evidence through its witnesses, cross-examining the witnesses of other parties, and making written and oral submissions in accordance with this Tribunal's direction.

ALL OF WHICH IS RESPECTUFLLY SUBMITTED ON THIS 15TH DAY OF APRIL 2025



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