

**FEDERAL COURT OF APPEAL**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

Appellant

- and -

**PICTOU LANDING BAND COUNCIL and MAURINA BEADLE**

Respondents

**REPLY WRITTEN SUBMISSIONS OF THE PROPOSED INTERVENER,  
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY**

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**REPLY WRITTEN SUBMISSIONS OF THE PROPOSED INTERVENER,  
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY**

1. Contrary to the submissions of the Attorney General of Canada, the arguments raised by the First Nations Child and Family Caring Society (the "Caring Society") offer this Honourable Court a unique and important perspective on the issues raised in this appeal and do not repeat those put forward by the Respondents. Moreover, the Caring Society has demonstrated a genuine interest in this appeal. The Caring Society respectfully requests that leave to intervene be allowed, as interests of justice would be better served by permitting its intervention.

2. First, the submissions which the Caring Society seeks to make do not overlap with the arguments raised by the Respondents and without the intervention of the Caring Society these issues will not be raised. No party to this appeal has raised the interpretation and application of a "child-first" principle in the context of Jordan's Principle or the impact of narrowly construing Jordan's Principle on Canada's obligations under the United Nations Convention on the Rights of the Child (the "CRC"). If leave to intervene is granted, the Caring Society will not be submitting evidence on either of these issues, but will be relying on jurisprudence and relevant secondary sources.

3. While the Respondents make some limited comments regarding the vulnerability of First Nations children, the Caring Society proposes to make submissions on a broader scale regarding the negative impact of narrowly construing Jordan's Principle on First Nations peoples. It is axiomatic that First Nations people face unique social, political, economic and historical realities. In addition, First Nations peoples are engaged in a *sui generis* relationship governed by the federal Crown's obligation to act in a fiduciary capacity towards First Nations peoples, including those living on reserve. The Caring Society will submit that narrowly construing Jordan's Principle will negatively impact First Nations communities across Canada and potentially exacerbate the disadvantages facing First Nations peoples. The value of this perspective has been underlined by the Honourable Madam Justice Bertha Wilson:

[the] major value of interveners from the point of view of the Court is that they broaden the scope of the dispute and show the Court how any decision

it makes might impact in undesirable ways on other groups or on other areas of the law.<sup>1</sup>

4. The Caring Society is not seeking to introduce any evidence on this issue (or on any issue it requests to make submissions on) but will be relying on the jurisprudence surrounding Aboriginal rights and substantive equality.

5. Second, while Pictou Landing is represented in this appeal, the Caring Society, as a national organization, works in the interests of First Nations children, youth, families and child welfare agencies across Canada. It is unfair to assume that one First Nation alone can or ought to represent the interests of First Nations people in Canada. Moreover, the Caring Society has more than a ten-year history of engagement and research on issues of discrimination affecting First Nations peoples, on and off reserve, involving both federal and provincial governments and agencies providing a variety of services. As an organization expert in First Nations child welfare, the Caring Society can offer a different and broader perspective regarding the interpretation and application of Jordan's Principle and the potential impact of narrowly construing same.

6. Third, the outcome of this appeal will directly affect the Caring Society's human rights complaint currently before the Canadian Human Rights Tribunal (the "Tribunal"). One of the issues raised by the human rights complaint will turn squarely on the interpretation and application of Jordan's Principle. A pronouncement on this issue from this Honourable Court will directly impact the Caring Society and the First Nations children and families in whose interest it works.

7. In addition, the Caring Society, as a national organization supporting First Nations children, youth, families and child welfare agencies across the country, has a broader interest in ensuring that Jordan's Principle is implemented as it was intended: to ensure that primarily on-reserve First Nations children have access to public services on the same terms as all other Canadian children. Evidence of this intention is found not only in the Hansard reports already

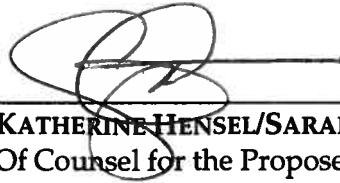
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<sup>1</sup> Bertha Wilson, "Constitutional Advocacy" (1992) 24 Ottawa L. Rev. 265 at 272.

in the record, but in the values of substantive equality protected and promoted by the *Charter of Rights and Freedoms* and by the fiduciary obligations of the Crown to First Nations peoples.

8. Finally, the Caring Society submits that it is advancing an important and justiciable issue of public interest and that costs should not be awarded against it. The Caring Society is a non-profit organization and does not receive any funding from the federal government. It is completely supported by a diversified funding plan and by the support of First Nations child and family services agencies, its members and donors.<sup>2</sup> Its primary objective is to support and provide assistance to First Nations agencies that serve the well-being of First Nations children, youth and families. In seeking leave to intervene, the Caring Society's only objective is to protect, promote and advance the rights of First Nations peoples. As such, it is respectfully submitted that this is not a proper matter for costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of January, 2014.



**KATHERINE HENSEL/SARAH CLARKE**  
Of Counsel for the Proposed Intervener,  
First Nations Child and Family Caring Society

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<sup>2</sup> Affidavit of Cindy Blackstock, sworn November 22, 2013 at para. 6, Motion Record of the Proposed Intervener, the First Nations Child and Family Caring Society, Tab 2, p. 9.