Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2022 CHRT 26
Date: September 2, 2022
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 -

Amnesty International

- and -

Nishnawbe Aski Nation

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. BACKGROUND

[1] This is a motion under Rule 8(1), 8(2) and 3 of the Rules of Procedure under the *Canadian Human Rights Act* (the "*CHRA*") (03-05-04) (the "Old Rules") by the Federation of Sovereign Indigenous Nations ("FSIN"), who are First Nations located in Saskatchewan, to be added as interested parties to participate in a motion brought jointly by the Assembly of First Nations (AFN) and Canada in this case (joint motion). The joint motion is made under Rule 3 of the Tribunal's Rules of Procedure (Proceedings Prior to July 11, 2021) and is for orders under paragraph 53(2)(b) of the *CHRA* and under Rule 1(6) and 3(2)(d) and pursuant to the Tribunal's continuing jurisdiction in this matter. The joint motion is for a confirmation that the Compensation Final Settlement Agreement on compensation (Compensation Agreement) satisfies the compensation orders and framework for compensation made by this Tribunal.

[2] The Old Rules 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 will govern this motion.

[3] This request arises in the context of a complaint brought by the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (the AFN) against Canada on behalf of First Nations children and families. 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 now Indigenous Services Canada),* 2016 CHRT 2 (the *Merit Decision*), the Tribunal found that the complaint was substantiated and that Canada engaged in racial and systemic discriminatory practices contrary to the *Canadian Human Rights Act*, RSC 1985, c H-6 (the *CHRA* or the *Act*) in its provision of services to First Nations children and families.

[4] The complaint is now in the remedial phase. This includes financial compensation for affected First Nations children and caregivers (2019 CHRT 39, 2020 CHRT 7, 2020 CHRT 15, 2020 CHRT 20, 2021 CHRT 6, 2021 CHRT 7). On June 14-18, 2021, the Federal Court heard Canada's application for judicial review of the Compensation Entitlement Decision (2019 CHRT 39), the Framework for the Payment of the Compensation (2021 CHRT 7) and

the Tribunal's orders regarding eligibility under Jordan's Principle (2020 CHRT 20 and 2020 CHRT 36). On September 29, 2021, the Federal Court (2021 FC 969) dismissed Canada's applications in their entirety.

[5] The Tribunal has issued extensive orders to eliminate systemic discrimination, prevent it from recurring and to reform the First Nations Child and Family Services Program and services including remediating the discriminatory funding framework for First Nations child and family services and shifting towards a prevention and First Nations communities led approach to services in order to cease the mass removal of children from their homes, families, communities and Nations (in particular 2016 CHRT 10, 2016 CHRT 16, 2017 CHRT 14, 2017 CHRT 35, 2018 CHRT 4, 2020 CHRT 20, 2021 CHRT 12, 2021 CHRT 41 and 2022 CHRT 8). The Tribunal has retained jurisdiction to address the remaining remedial matters pertaining to reform implementation and long-term remedies. These reforms are First Nations led and are sustainable for generations to come. They aim to eliminate discrimination and prevent it from reoccurring.

II. Previous Interested Party Requests

[6] A number of organizations, including representatives of First Nations governments, have identified this case as having significant interest and importance to them or their members and have sought to intervene as interested parties.

[7] On September 14, 2009, the Tribunal granted interested party status to the Chiefs of Ontario (COO) and Amnesty International. The COO was given broad participatory rights including calling evidence and cross-examining opposing witnesses. Its participation was subject to the limit that its submissions and evidence not duplicate or overlap those of the parties including the Commission. Amnesty International was given an opportunity to participate in a more limited way. Its participation was limited to legal submissions, including on international sources of law.

[8] The Nishnawbe Aski Nation (NAN) requested interested party status at the beginning of the remedial stage in 2016. The Tribunal granted that request in 2016 CHRT 11. The extent of NAN's participation was limited to "the specific considerations of delivering child

and family services to remote and Northern Ontario communities and the factors required to successfully provide those services in those communities." (para. 5). The Tribunal found it clear that NAN had an interest in the proceedings and that it could provide assistance to the Panel in determining outstanding remedial issues. NAN was directed to limit its submissions to outstanding remedial issues and not seek to re-open matters that had already been decided. NAN was to ensure its contributions were not duplicative of those of other parties.

[9] The Congress of Aboriginal Peoples (CAP) requested interested party status in 2019 to participate in the determination of the scope of Jordan's Principle for children without *Indian Act*, RSC 1985 c I-5, status living off-reserve. The Tribunal, in 2019 CHRT 11, granted CAP limited interested party status. CAP was allowed to make submissions on the applicable motion but was required to take the evidentiary record as it was and to conform to the existing timeframe for the hearing.

[10] On October 8, 2020, on consent of the parties, the Panel added the Innu Nation as an interested party status with a limited interested party status to a Caring Society motion for a determination that First Nations children and families living on-reserve and in the Yukon who are served by a provincial or territorial agency or service provider are within the scope of the Tribunal's current remedial orders (the Caring Society's Motion). These are First Nations that are not served by First Nations Child and Family Services Agencies (FNCFS Agencies). The Caring Society's motion also sought corresponding orders that Canada be directed to remedy this deficiency (2020 CHRT 31).

[11] The Panel reiterated that granting interested party status is a question governed by a case-by-case approach in applying the relevant legal principles to the particular facts of the case before the Tribunal. In this specific case, the Tribunal's reform orders impact First Nations on-reserves and in the Yukon across Canada.

[12] The Panel found the Innu Nation was impacted by these proceedings both as a First Nation government seeking to provide prevention services through an agency and as a complainant in a human rights matter seeking similar relief. The Innu Nation submitted it had experience establishing an agency that provides prevention services to First Nations

children, the Labrador Innu Round Table Secretariat Inc. (IRT Secretariat). The Innu Nation also alleged it was informed by Canada that the IRT Secretariat is not eligible for funding because the agency did not fit within Canada's eligibility policies. While it appeared that the Innu Nation could potentially be covered by the Tribunal's orders, differing views between the Innu Nation and Canada may have resulted in excluding the Innu Nation from the purview of the Tribunal's orders. The Innu Nation submitted it had specific evidence to support its position, evidence that was not necessarily before the Tribunal to allow it to determine the issues in the Caring Society motion. This evidence would potentially bring expertise and a different legal position than the legal positions advanced by the other parties.

[13] Moreover, in June 2020, the Innu Nation had filed a complaint with the Commission on a matter that was a live issue before this Panel and involving similar questions of fact and law concerning the impacts of this Panel's previous rulings and orders on the Innu Nation and their Agency, the IRT Secretariat. The Panel believed that given the procedural history in this case and, given that children are central in this matter, there was also a public interest for efficiency and expeditiousness to resolve this issue. Therefore, allowing the Innu Nation to participate in this motion would effectively account for this public interest. Again, the subject matter raised in the Caring Society's motion also addresses implementation and compliance to the Panel's previous orders especially the Panel's 2018 CHRT 4 ruling and orders and the interpretation of its related orders.

[14] The Panel in the past, has allowed the COO and the NAN, who are both interested parties in this case, to file new evidence and cross-examine affiants. Therefore, the Panel disagreed with Canada that the Tribunal should not allow interested parties to file evidence or to cross-examine affiants. As masters of its own house and, in keeping with the search for truth in an inquiry format as per the terms of the Act, the Tribunal has the ability to allow interested parties to bring evidence and cross-examine affiants as long as the Tribunal honours two legal principles pursuant to section 48.9(1) of the *CHRA*: the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

[15] The Panel determined that the Innu Nation's participation, including presenting evidence, was also permitted by the Tribunal's Rules of Procedure.

[16] Finally on this point, the Innu Nation's participation in the Caring Society's motion could not duplicate the parties' submissions. It had to make best efforts to avoid duplicating questions during cross-examinations and focus its submissions at the hearing. The Innu Nation's assistance had 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.

[17] The Panel directed a timeline for adjudicating the FSIN's motion.

III. Summary of the Parties' Positions

A. FSIN

[18] The FSIN is a political organization representing the 74 First Nations in Saskatchewan and pursuing the interests of First Nations people in Saskatchewan.

[19] The FSIN and its member First Nations are constituted of a diverse group of cultural and linguistic groups including the Dakota, Dene, Nahkawe (Saulteaux), Nakota, Swampy Cree, Lakota, Plains Cree and Woodland Cree Nations in Saskatchewan.

[20] The FSIN and its member First Nations also represent a significant population of First Nations rightsholders with diverse socio-economic, geographic, and demographic circumstances.

[21] The FSIN is committed to honouring the spirit and intent of the Treaties, as well as the promotion, protection and implementation of the inherent rights to which its diverse member First Nations are entitled.

[22] The FSIN derives its mandate and directives from the Chiefs-in-Assembly which is a duly called and properly constituted meeting of the elected Chiefs of 74 Saskatchewan First Nations. Through consensus the Chiefs-in Assembly of the FSIN has been given broad and expanding mandate to address issues faced by First Nations people and communities in the context of First Nations child health and welfare including prevention, removal and Jordan's

Principle. The FSIN also receives this mandate through its Health and Social Development Commission.

[23] FSIN seeks leave to intervene in this matter for the limited purpose of participating in the AFN and Canada's joint motion. As it will be discussed in the analysis section below, the FSIN submits its participation will be useful to the Tribunal because it will bring that unique and informed perspective on the very significant implications that the Final Settlement Agreement will have on First Nations people in Saskatchewan.

[24] In particular, FSIN states it has a keen interest in ensuring that the right to compensation for victims of discrimination and Rights-holders as provided by the Tribunal's Compensation Orders is upheld.

[25] Moreover, the FSIN argues the Compensation Agreement will have a profound and significant impact on its families, children and communities.

[26] The FSIN also submits it will add to the legal positions of the parties and bring a different perspective then the other parties.

B. Other parties

[27] The Caring Society supports the FSIN's motion. No party opposed the motion. However, the AFN and Canada submit that FSIN should be limited to filing written submissions and make oral arguments at the hearing on the Final Settlement Agreement only.

IV. Law

[28] 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. The procedure for adding interested parties is set out in Rule 8 of the Tribunal's Rules. Consequently, the Tribunal has the jurisdiction to allow any interested party to intervene before this Tribunal in regard to a complaint.

[29] "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).

[30] 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.

[31] However, while the criteria listed above and developed in *Walden* are still helpful in similar contexts, "in *Attaran v. Citizenship and Immigration Canada*, 2018 CHRT 6 (*Attaran*), the Tribunal held that what is required is a holistic approach on a case-by-case basis. It cited with approval *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*)." *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.

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

[32] 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).

[33] 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.
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> (2016 CHRT 11, at para. 14)

[29] As indicated earlier, in applying the test, the Panel granted the NAN interested party status. The Tribunal concluded that the Tribunal's decisions would have a direct impact on the remote First Nation communities represented by the NAN and that the NAN had specific expertise in the challenges providing child and family services to remote, northern communities that, for example, lack year-round road access.

[30] In granting the NAN's interested party request, the Tribunal recognized the challenge of maintaining an efficient and effective hearing process. Accordingly, the Tribunal directed the NAN to limit its written submissions to the context of remote and northern communities that was within its particular expertise distinct from the expertise of the other parties. The Tribunal also directed the NAN to limit its submissions to the outstanding remedial issues and avoid re-opening any matters that had already been determined. The

> Tribunal further directed a timeline for the NAN's submissions that would avoid unduly delaying the proceedings.
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> [31] As mentioned above, the Tribunal granted the CAP limited interested party status in 2019 CHRT 11 on the specific issue of determining who constituted a First Nations child living off-reserve for the purpose of Jordan's Principle. In reaching that decision, the Panel relied on its earlier analysis in 2016 CHRT 11. While emphasising the obligation of organizations seeking interested party status to avoid delaying the matter, the Tribunal found that the CAP had relevant expertise and could bring a different perspective than the existing participants in the case.
>
> [32] Accordingly, the Tribunal granted the CAP scope to participate as an interested party solely for the particular motion in which it had a particular interest and expertise, and on specific terms. Those terms excluded the CAP from case management, did not allow it to file evidence, and imposed submission deadlines that would avoid delaying the matter. The CAP's participation was limited to making legal submissions.

[34] As mentioned above, the Innu Nation's assistance had 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. The Innu Nation's participation in the Caring Society's motion could not duplicate the parties' submissions. It had to make best efforts to avoid duplicating questions during cross-examinations and focus its submissions at the hearing.

V. Analysis

[35] The Panel reiterates 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.

[36] 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.

[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.

[43] With the principles enunciated above and upon consideration of the parties' submissions, the Panel finds that while the FSIN's undoubtably has experience, expertise and valuable points of view, their intervention at this stage should only be permitted in a limited manner as part of these proceedings.

[44] There is no doubt that the FSIN possesses significant expertise in the areas of child welfare, health and Jordan's Principle. Notably, it supports two regional experts as representatives at the NAC, to advocate for and provide information and expertise with

respect to regional priorities, needs and perspectives of First Nations child health and welfare in Saskatchewan. The NAC's recommendations inform the parties' work and the Tribunal.

[45] The FSIN also supports its representative at the Jordan's Principle Action Table created under the NAC to provide on the ground subject matter expertise required to develop policy options for the long-term implementation of Jordan's Principle.

[46] Additionally, the FSIN supports its representative at the Jordan's Principle Operation Committee created under the NAC for the purposes of information sharing and operational monitoring at the national, regional and community level. The FSIN also sits on the Saskatchewan First Nations Child and Family Services Regional Tripartite Table ("Regional Tripartite Table"). Saskatchewan First Nations Family and Community Institute Inc hosts the Regional Tripartite Table, which meets quarterly and includes representatives from Saskatchewan First Nations Child and Family Service Agency (FNCFSA) Executive Directors, Indigenous Services Canada, FSIN and the Saskatchewan Ministry of Social Services.

[47] The Panel agrees that the Compensation Agreement will have a significant impact on First Nations families, children and communities in Saskatchewan. This is also true for the other First Nations in the other provinces, the Yukon territory and most if not all First Nations in Canada. Therefore, FSIN's argument on bringing a regional perspective is not the most compelling argument given the risk the Tribunal may face if every First Nations' desire to participate in this case to bring their expertise and specific view on the Compensation Agreement. This would not only be impossible to manage for this Tribunal but it would also have the detrimental effect of halting the proceedings for months or possibly years. This would not be in the best interest of First Nations children and families.

[48] Furthermore, the Tribunal already has the COO and the NAN bringing regional perspectives including the important question of remoteness. While the Tribunal understands that First Nations in Saskatchewan and in Ontario may have different perspectives, the Tribunal has relied on the AFN for a broader First Nations perspective across Canada given its mandate and structure representing the views of over 600 First

Nations in Canada. For example, the Panel relied on the AFN's resolutions in 2020 CHRT 20.

[49] The FSIN's motion states that the Compensation Agreement should be brought before the Chiefs-in-Assembly for full review for their free, prior and informed consent. This position may be advanced by the Caring Society given the nature of their cross-examination questions. The AFN's affiant also responded to those questions. The right of free, prior and informed consent was also raised by the Caring Society and also answered by the AFN affiant. The FSIN should ensure it does not duplicate the Caring Society's arguments on this point and may adopt the Caring Society's position.

[50] The FSIN argues its distinct knowledge and experience spanning decades and comprising important projects, initiatives and partnerships intended to examine and address class actions will be of use to this Tribunal in evaluating a number of features of the Final Settlement Agreement. This includes eligibility requirements, administrative burdens, safeguards for procedural fairness, and evidentiary requirements which have similarities and differences with prior settlement agreements. The FSIN has experience and expertise in the impact large class actions settlement agreements have had on First Nations communities, families and survivors. The AFN and other parties to these proceedings also have extensive experience and involvement in class actions involving First Nations and are apprised of the errors that were made in the past. This was raised by the AFN at the compensation hearing before the Tribunal that led to the compensation decisions of 2019 and 2020. Therefore, the FSIN should add and not duplicate the parties' submissions on this point.

[51] The part of the joint motion as to whether the Settlement agreement satisfies this Tribunal's compensation decisions and process is within the expertise of this Tribunal. The question: Can the Tribunal modify its earlier decision that has been affirmed by the Federal Court without the consent of all the parties to the order? While this is a novel legal question, it is within the expertise of the Tribunal, who benefits from the informed views of the parties and the Commission who has significant expertise in the human rights regime under the *CHRA*. There is a second question: Is the motion premature given the outstanding details to be determined in the Settlement Agreement? This question is also within the expertise of the Tribunal, who will benefit from the parties' informed submissions.

[52] As part of the Federal Court proceedings, opposing views can be shared through an established process. It may be more appropriate for the FSIN to provide its views at the Federal Court given the Federal Court is the one who will approve or reject the Compensation Agreement.

[53] The Panel agrees this Tribunal is tasked with evaluating a settlement agreement which impacts on a collective that experienced historical patterns of discrimination contributing to vulnerability and marginalization. This was also the case at the time of the compensation hearing, decision and the compensation process in the last years. However, the specific context of the joint motion is distinct from that of the negotiations that led to the Compensation Agreement or the Federal Court proceedings given that it arises after extensive Tribunal proceedings, findings and orders and negotiations between the parties as part of a Tribunal ordered process that led to the subsequent compensation process decisions to which FSIN did not request to be part of until now. FSIN's expertise may have been added then. At this time in the proceedings, the FSIN does not have all the context and information that led to the compensation process and this may create more confusion for the Panel, especially as it is now faced with First Nations complainants' who were part of the compensation process order who now disagree with each other. The Panel always values the views of distinct Nations. However, unlike the previous interested parties' requests, the timing of the FSIN's motion does not work in their favor given the unique and specific context of numerous compensation rulings already rendered and the specific approach to the compensation process already completed and affirmed by the Federal Court.

[54] Moreover, as part of the compensation process the Tribunal heard different viewpoints from First Nations and had to choose between expert First Nations' viewpoints which was a difficult task for the Panel given the Panel's respect of First Nations inherent rights and distinct needs. The established schedule is very tight leading to the Federal Court hearing commencing on September 19, 2022 and the number of parties already involved is adding to the complexity of these proceedings. For the reasons explained above, adding another interested party at this time without limitations may jeopardize the process. The Panel also notes that the FSIN seeks to participate in case management, mediation,

negotiation or other dispute resolution or administrative processes further to this case or after the hearing. The Panel finds this would add complexity to the already complex proceedings as explained above. For those reasons, the FSIN will only be allowed to file written submissions and make oral submissions at the hearing within the parameters outlined in the order below.

[55] The Panel agrees that the Indigenous community in Canada is not a monolith and that its diversity produces a complex and nuanced body of experience, knowledge, and expertise. What might be good at the national level might not capture and accommodate regional variations, processes and expectations such as those in Saskatchewan. This is why the Panel has continually ruled that a one size-fits-all approach should not apply to eliminating the discrimination identified by the Tribunal and that meaningful reform ought to take into account the specific needs of First Nations children, families and communities. As mentioned above, these distinct perspectives are considered in many ways including via the different committees, tables, forums and First Nations-led programs informing the parties and the Tribunal.

[56] For the compensation issue, the Tribunal has already ruled on this issue and worked with the parties over a year to establish a compensation process which was affirmed by the Federal Court. The broader negotiations for the Compensation Agreement were conducted outside the Tribunal process. While meaningful consultations ought to be conducted to reach an agreement impacting rights holders, the FSIN's motion highlights the complexities in reaching consensus in a Tribunal process in order to provide meaningful and timely compensation to First Nations children and families. This being said, the Panel will allow FSIN to participate in a limited manner by way of oral and written arguments on the Compensation Agreement given that FSIN committed to provide a different perspective informed by their expertise and will add to the legal positions of the other parties. This could potentially assist the Tribunal in determining some aspects of the joint motion. Finally, the FSIN like most First Nations in Canada will be impacted by the joint motion.

[57] Again, it may be more appropriate for the FSIN to provide its views on the broader Compensation Agreement and negotiations at the Federal Court as part of the Federal Court proceedings, where opposing views and concerns can be shared through an established

process. The AFN's affiant provided a link as part of her cross-examination: www.fnchildcompensation.ca., the established process is outlined there and is as follows:

> It is important to understand the difference between objecting to the Settlement and opting out. People have the right to object to the agreement in whole or in part during the Federal Court approval hearing and still receive compensation if the settlement is approved in court. To object or comment on the settlement, you have two options:
>
> > Option 1: Object or provide comments in writing – Send comments to the Administrator by mail to PO Box 7030, Toronto ON M5C 2K7, email to fnchildclaims@deloitte.ca or fax to 416-815-2723, and your comments will be sent to the Federal Court before the hearing.
> >
> > Option 2: Object in person – Ask to speak in court about the proposed settlement commencing on September 19, 2022, either in person at the Federal Court in Ottawa or by video conference. To request to speak at the hearing, please contact the Administrator at 1-833-852-0755.
>
> If you want to object, you must send your written comments or request to speak at the hearing by September 12, 2022.

VI. Order

[61] Order:

A) THE TRIBUNAL GRANTS the motion of the Federation of Sovereign Indigenous Nations (FSIN) in part;

B) The Tribunal grants the FSIN a limited interested party status with the following conditions:

C) The FSIN will only participate in the AFN and Canada's Notice of Motion for Approval of the Final Settlement Agreement dated July 22, 2022 (joint motion) until the hearing of the motion is completed; The FSIN will not participate in mediation, negotiation or other dispute resolution or administrative processes further to this case or after the hearing;

D) The FSIN will not participate in case management unless specifically directed by this Tribunal;

E) The FSIN may not request postponements or changes to the pre-established schedule and hearing dates established by the Tribunal and accepted by the other parties;

F) The FSIN will not be authorized to file evidence and must take the evidentiary record as it is;

G) The FSIN may not cross-examine the affiants;

H) The FSIN is allowed to provide written submissions of not more than 20 pages and focused on the Final Settlement Agreement on compensation (Compensation Agreement) and must not repeat the positions of the other parties. If another aspect of a party's position is shared by the FSIN, the FSIN may indicate clearly that it adopts the same position on this aspect. The FSIN will bring a different perspective than the other parties. The FSIN will add to the legal positions of the parties. The FSIN will not participate in other issues that are in front of the Tribunal in this case.

I) The FSIN will not delay the proceedings and must file its submissions no later than September 9, 2022. Given the short timeframe before the hearing of this issue, any delay will be deemed a renunciation by FSIN to participate in the proceedings;

J) The FSIN is allowed to make oral submissions if any, only on the dates already set by this Tribunal of September 15-16, 2022 and no longer than 45 minutes. This right to oral arguments can be reduced, limited or denied by this Panel if the written submissions are deemed repetitive of the other parties' submissions and/or not adding to the legal positions of the parties and not bringing a different perspective than that of the other parties. In that case, the Panel will consider the FSIN's written submissions as part of its deliberations alongside the submissions and oral arguments of the other parties.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
September 2, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008T1340/7008

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) 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, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Sarah Clarke, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Stuart Wuttke and Adam Williamson, counsel for Assembly of First Nations, the Complainant

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Christopher Rupar, Paul Vickery, Jonathan Tarlton, Meg Jones, Sarah-Dawn Norris, counsel for the Respondent

Maggie Wente, Jessie Stirling and Darian Baskatawang for the Chiefs of Ontario, Interested Party

Julian Falconer, Christopher Rapson, and Natalie Posala, counsel for the Nishnawbe Aski Nation, Interested Party

Michael Seed, Counsel for the Federation of Sovereign Indigenous Nations