

**FEDERAL COURT**

BETWEEN:

**ATTORNEY GENERAL OF CANADA**

APPLICANT

-and-

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA,  
ASSEMBLY OF FIRST NATIONS, CANADIAN HUMAN RIGHTS COMMISSION,  
CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL  
and NISHNAWBE ASKI NATION**

RESPONDENTS

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

**TO THE RESPONDENTS:**

**A PROCEEDING HAS BEEN COMMENCED** by the Applicant. The relief claimed by the Applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

November 23, 2022

Issued by: \_\_\_\_\_

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## APPLICATION

This is an application for judicial review of the Canadian Human Rights Tribunal's ("Tribunal") decision in file no. T1340/7008, dated October 24, 2022, concerning whether the Final Settlement Agreement agreed to by Canada and the Assembly of First Nations satisfies in full the Tribunal's compensation orders and in particular 2019 CHRT 39 and related orders or alternatively, whether the Tribunal should amend its compensation orders.

The Applicant makes application for:

1. An order setting aside the Tribunal's determination that it could not amend its previous orders in light of the agreement reached by Canada and the Assembly of First Nations;
2. An order setting aside the Tribunal's decision that the parties to a negotiated settlement cannot negotiate terms of a settlement that do not as a minimum mirror the compensation orders of the Tribunal;
3. An order setting aside the Tribunal's decision that its merits decision (2016 CHRT 2) included in the class of persons who were found to be discriminated against and, therefore, eligible for compensation under 2019 CHRT 39 and its related orders, children who were in out-of-home placements that were not funded by the Federal government; and
4. Such further and other relief as this Honourable Court may deem appropriate and just in the circumstances.

The grounds for the application are that the Tribunal erred in that:

1. The Tribunal removed the principle of compromise that is at the center of settlement negotiations by requiring that any settlement at a minimum respect all aspects of the Tribunal orders. In doing so, it has erroneously held that it is contrary to law to recognize

the collective will of the settling parties to have the Tribunal amend its orders to reflect the agreement reached by the parties.

2. Holding that the decision of the Tribunal means that all decisions of it are final, even where an appeal from the decision remains outstanding, and cannot be amended unless overturned by a Court, which is an approach that will promote continued litigation among parties and effectively remove the ability of parties to agree to settle matters before the Tribunal.
3. Extending, without any supporting evidence in the record before them, the ambit of its compensation orders to include children and caregivers whose family and child services were not funded by the federal Government, despite the fact that the claims before it were limited to discriminatory underfunding of the federal government program which was the basis of their finding of systemic discrimination.
4. Its application of the principle of “free, prior and informed consent”, as set out in the United Nation’s Declaration on the Rights of Indigenous Peoples to the circumstances of approval of a settlement agreement entered into by representatives of the First Nations.
5. The foregoing errors were made without jurisdiction or beyond the Tribunal’s jurisdiction, denied procedural fairness to the Applicant, erroneously relied on factual material, were errors in law or were otherwise unreasonable, and thus there are permissible grounds for review under s. 18.1 of the *Federal Courts Act*.
6. Such further and other grounds as counsel may advise and this Honourable Court permit.

This application will be supported by the following material:

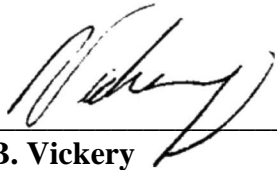
1. The Certified Tribunal Record;

2. Such further and other materials as counsel may advise and this Honourable Court should permit.

The Applicant requests that the Canadian Human Rights Tribunal send a certified copy of the record upon which its decision was based to the Applicant and to the Registry within 20 days.

The Applicant requests this matter be heard in Ottawa, Ontario.

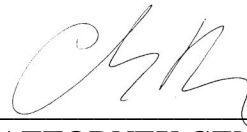
DATED AT OTTAWA, ONTARIO, this 23<sup>rd</sup> day of November, 2022.



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