

CANADIAN HUMAN RIGHTS TRIBUNAL

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 CANADA AND NISHNAWBE ASKI NATION**

Interested Parties

NOTICE OF MOTION OF THE INTERESTED PARTY CHIEFS OF ONTARIO

Maggie Wente and Judith Rae

Olthuis Kler Townshend LLP
250 University Avenue 8th Floor
Toronto, ON
M5H 3E5
416-981-9330
416-981-9350
mwente@oktlaw.com
jrae@oktlaw.com

Counsel for the Interested Party Chiefs of Ontario

The Interested Party Chiefs of Ontario will be make a motion to the Canadian Human Rights Tribunal at 160 Elgin Street, 11th floor, Ottawa, Ontario, on Wednesday March 22, 2016 at 9:30 a.m. or as soon thereafter as it may be heard.

The motion is made under Rule 3 of the *Canadian Human Rights Tribunal Rules of Procedure*, and is for orders under Rules 1(6), 3(1), and 3(2)(d) and pursuant to the Canadian Human Rights Tribunal's continuing jurisdiction in this matter.

The proposed motion will be heard in writing.

THE MOTION IS FOR:

1. An order that the Respondent INAC has failed to comply with the Tribunal's order at 2016 CHRT 2, in that the Respondent has not funded mental health services under the *Child and Family Services Act* R.S.O. 1990 c, c-11.
2. An order that the Respondent INAC immediately fund mental health services in Ontario pursuant to the *Child and Family Services Act*, R.S.O. 1990 c. c-11 and any act which amends or replaces that Act.
3. An order that the Respondent has failed to comply with the Tribunal's order at 2016 CHRT 2, in that INAC has refused to fund the Band Representative program.
4. An order that INAC immediately fund Band Representative services for Ontario First Nations, at the level of actual costs incurred by First Nations.
5. An order that INAC be required to fund a study (the "Ontario Special Study") to determine the adequacy of the *1965 Agreement* in achieving comparability of services to First Nations children; culturally appropriate services that account for historical disadvantage, and ensuring the best interests of the child are paramount, to be undertaken in collaboration with the Complainants and Interested Parties.

6. Such further and other relief as counsel may advise and the Tribunal may direct.

THE GROUNDS FOR THIS MOTION are as follows:

7. In its order at 2016 CHRT 2, at paras 246, 458, the Tribunal found that the Respondent INAC was discriminating by not funding the full range of provincial services that are provided for under the *Child and Family Services Act* R.S.O. 1990 c-11. The Tribunal reiterated this finding at 2016 CHRT 10 at para 26 and at 2016 CHRT 16 at para. 67.
8. The Tribunal ordered Canada to cease the discriminatory practice at 2016 CHRT 2 at para. 458.
9. In its order at 2016 CHRT 16, at paras 68 and 74, the Tribunal requested INAC to provide information as to how the Tribunal's findings in its previous orders were being addressed.
10. In its order at 2016 CHRT 2, at paras 348, 392, 425 and 426, the Tribunal found that INAC was discriminating in failing to fund First Nations to provide Band Representative services in Ontario. The Panel reiterated this finding at 2016 CHRT 10 at para. 26, and again at 2016 CHRT 16 at para. 68.
11. The Tribunal ordered Canada to cease the discriminatory practice at 2016 CHRT 2 at para. 458.
12. In its order at 2016 CHRT 16, at para 68, the Tribunal requested INAC to provide information as to how the Tribunal's findings in its previous orders were being addressed.
13. INAC provided the following information in its report to the Tribunal on October 31, 2016:

INAC is working with the province of Ontario and First Nations leadership and other partners to review INAC support for child and

family services through the 1965 Agreement. Related issues with respect to First Nations children's mental health and funding for Band Representatives are being examined as part of this review process and also as part of the longer-term engagement and reform process involving national and regional discussions. A working group has been initiated in Ontario to begin engagement toward mid- and long-term reform.

14. By its own admission, INAC has by its own admission is not funding mental health services akin to those funded under the *Child and Family Services Act* in Ontario in its "immediate relief investments" and has not demonstrated that it has any plans to do so in the immediate future.
15. By its own admission, INAC has not funded the Band Representative program within its current "immediate relief investments" and has not demonstrated that it has any plans to do so in the immediate future.
16. In its decision at 2016 CHRT 2 at paras 223-227 and at 2016 CHRT 16, at para 103, the Tribunal agreed with Chiefs of Ontario that a study specific to Ontario to determine "determining the adequacy of the *1965 Agreement* in achieving comparability of services; culturally appropriate services that account for historical disadvantage; and, ensuring the best interest of the child are paramount" would be of benefit to informing decisions about immediate relief and medium-long term relief. The Tribunal further stated at 2016 CHRT 16 at para 104 that it would reserve making an order with respect to the Ontario Special Study pending a specific response from INAC on the issue, and ordered INAC to make a detailed response.
17. INAC's report to the Tribunal on October 31, 2016 (at page 30) agreed that a determination of adequacy of the *1965 Agreement* was required. However, INAC did not state that this would come in the form of an Ontario-specific study, nor did INAC commit to funding the Ontario special study.
18. Chiefs of Ontario therefore asks the Tribunal to order INAC to fund an Ontario Special Study, to be undertaken in collaboration with the Complainants and Interested Parties.

19. Section 53(2) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6
20. Rules 1(6), 3(1), and Rule 3(2) of this Tribunal's Rules of Procedure.
21. Such further and other grounds as counsel may advise and this Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

22. The affidavit of Deputy Grand Chief Denise Stonefish.
23. The Respondent's report to the Tribunal dated October 31, 2016.
24. Such further and other materials as counsel may advise and the Tribunal may permit.

DATE: November 22, 2016

Maggie E. Wente and Judith Rae
Olthuis Kleer Townshend LLP
Counsel for Chiefs of Ontario

TO:

CANADIAN HUMAN RIGHTS TRIBUNAL

Attn: Dragisa Adzic, Registry Officer

160 Elgin Street, 11th Floor

Ottawa, ON K1A 1J4

Jonathan Tarlton, Melissa Chan

Atlantic Regional Office

JUSTICE CANADA

Duke Tower, 5251 Duke Street, Suite 1400

Halifax, NS B3J 1P3

Phone: (902) 426-5959

Fax: (902) 426-8796

Counsel for the Respondent, the Attorney General of Canada

Anne Levesque, David P. Taylor, Sébastien Grammond & Sarah Clarke

JURISTES POWER | POWER LAW

130 Albert Street, Suite 1103

Ottawa, ON K1P 5G4
Phone: (613) 702-5568
Fax: 1 (888) 404-2227
Counsel for the Complainant,
First Nations Child and Family Caring Society of Canada

David C. Nahwegahbow
NAHWEGAHBOW, CORBIERE
Genoodmagejig/Barristers & Solicitors
5884 Rama Road, Suite 109
Rama, ON L3V 6H6

-and-

Stuart Wuttke
ASSEMBLY OF FIRST NATIONS
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5
Phone: (613) 241-6789
Fax: (613) 241-5808
Co-Counsel for the Complainant, Assembly of First Nations

Daniel Poulin & Samar Musallam
Litigation Services Division
Canadian Human Rights Commission
344 Slater Street, 9th Floor
Ottawa, ON K1A 1E1
Phone: (613) 947-6399
Fax: (613) 943-3089
Counsel for the Canadian Human Rights Commission

Julian Falconer and Akosua May Matthews
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9
T: 416-964-0495 ext. 250 | F: 416-929-8179
Counsel for the Interested Party, Nishnawbe Aski Nation