Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2019 CHRT 11
Date: March 4, 2019
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 and Edward P. Lustig

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I. Context

[1] The Complainants, the First Nations Child and Family Caring Society of Canada (the Caring Society) and the Assembly of First Nations (the AFN), brought a human rights complaint under section 5 of the *Canadian Human Rights Act* (the *CHRA*) alleging that AANDC discriminates in providing child and family services to First Nations on reserve and in the Yukon, on the basis of race and/or national or ethnic origin, by providing inequitable and insufficient funding for those services.

[2] In a decision dated March 14, 2011 (2011 CHRT 4), the Tribunal granted a motion brought by AANDC for the dismissal of the Complaint on the ground that the issues raised were beyond the Tribunal's jurisdiction (the jurisdictional motion). That decision was subsequently the subject of an application for judicial review before the Federal Court of Canada.

[3] On April 18, 2012, the Federal Court rendered its decision, *Canada (Human Rights Commission) v. Canada (Attorney General),* 2012 FC 445 (Caring Society FC), setting aside the Tribunal's decision on the jurisdictional motion. The Federal Court remitted the matter to a differently constituted Panel of the Tribunal for redetermination in accordance with its reasons. The Respondent's appeal of that decision was dismissed by the Federal Court of Appeal in *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75 (Caring Society FCA).

[4] In July 2012, a new Panel, composed of Sophie Marchildon, as Panel Chairperson, and members Réjean Bélanger and Edward Lustig, was appointed to re-determine this matter (see 2012 CHRT 16). It dismissed the Respondent's motion to have the jurisdictional motion re-heard, and ruled the Complaint would be dealt with on its merits (see 2012 CHRT 17).

[5] The Complaint was subsequently amended to add allegations of retaliation (see 2012 CHRT 24). In early June 2015, the Panel found the allegations of retaliation to be substantiated in part (see 2015 CHRT 14).

[6] 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)*, 2016 CHRT 2 (the *Decision*), this Panel found the Complainants had substantiated their complaint that First Nations children and families living on reserve and in the Yukon are denied equal child and family services, and/or differentiated adversely in the provision of child and family services, pursuant to section 5 of the *CHRA*.

[7] In the *Decision*, this Panel found Canada's definition and implementation of Jordan's Principle to be narrow and inadequate, resulting in service gaps, delays and denials for First Nations children. Delays were inherently built into the process for dealing with potential Jordan's Principle cases. Furthermore, Canada's approach to Jordan's Principle cases was aimed solely at inter-governmental disputes between the federal and provincial government in situations where a child had multiple disabilities, as opposed to all jurisdictional disputes (including between federal government departments) involving all First Nations children (not just those with multiple disabilities). As a result, INAC was ordered to immediately implement the full meaning and scope of Jordan's Principle (see the *Decision* at paras. 379-382, 458 and 481). The *Decision* and related orders were not challenged by way of judicial review.

[8] The Tribunal's 2017 CHRT 14 required Canada to base its definition and application of Jordan's Principle on key principles, one of which was that Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve.

[9] Canada challenged some aspects of the 2017 CHRT 14 ruling by way of a judicial review which was subsequently discontinued following a consent order from this Tribunal. The changes were essentially amending some aspects of the orders on consent of the parties and pertaining to timelines and clinical case conferencing. No part of this judicial review questioned or challenged the Tribunal's order that Canada's definition and application of Jordan's Principle must apply equally to all First Nations children, whether resident on or off-reserve.

[10] In 2017 CHRT 35, the Tribunal amended its orders to reflect the changes suggested by the parties. The Jordan's Principle definition ordered by the Panel and accepted by the parties is reproduced below:

> i. Jordan's Principle is a child-first principle that applies equally to all First Nations children, whether resident on or off reserve. It is not limited to First Nations children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.
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> ii. Jordan's Principle addresses the needs of First Nations children by ensuring there are no gaps in government services to them. It can address, for example, but is not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment and physiotherapy.
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> iii. When a government service, including a service assessment, is available to all other children, the government department of first contact will pay for the service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Canada may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nations child's case, Canada will consult those professionals and will only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government;
>
> iv. When a government service, including a service assessment, is not necessarily available to all other children or is beyond the normative standard of care, the government department of first contact will still evaluate the individual needs of the child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child. Where such services are to be provided, the government department of first contact will pay for the

> provision of the services to the First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. Clinical case conferencing may be undertaken only for the purpose described in paragraph 135(1)(B)(iii). Canada may also consult with the family, First Nation community or service providers to fund services within the timeframes specified in paragraphs 135(2)(A)(ii) and 135(2)(A)(ii.1) where the service is available, and will make every reasonable effort to ensure funding is provided as close to those timeframes where the service is not available. After the recommended service is provided, the government department of first contact can seek reimbursement from another department/government.
>
> v. While Jordan's Principle can apply to jurisdictional disputes between governments (i.e.), between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the application of Jordan's Principle. C. Canada shall not use or distribute a definition of Jordan's Principle that in any way restricts or narrows the principles enunciated in order 1(b).

[11] The parties who have been discussing the issue outside the Tribunal process have not yet reached a consensus on this issue. Therefore, the adjudication of the compliance with this Tribunal's orders of Canada's definition of "First Nations child" for the purposes of implementing Jordan's Principle is now being requested by the Caring Society.

[12] In a recent ruling, 2019 CHRT 7, the Panel determined the issue of a "First Nations child" definition is best addressed by way of a full hearing. The Panel Chair has requested the parties to make arguments on international law including the *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP*), the recent UN Human Rights Committee's ("UNHRC") *McIvor* Decision findings that sex discrimination continues in the *Indian Act*, Aboriginal law, human rights and substantive equality, constitutional law and other aspects, in order to allow the panel to make an informed decision on the issue of the "First Nation child" definition following the upcoming hearing. Furthermore, the Panel mentioned:

> Doing this analysis through a multi-faceted lens is paramount given the probable incompatibilities between the *UNDRIP* and the *Indian Act*. Additionally, if the current version of the *Indian Act* discriminates and excludes segments of women and children, it is possible that but for the sex

> discrimination, the children excluded would be considered eligible to be registered under the *Indian Act*. In those circumstances the child would be considered by Canada under Canada's Jordan's Principle eligibility for registration criteria for First Nations children who are not ordinarily resident on-reserve and, who do not have *Indian Act* status. While this should not be read as a final determination on Canada's current policy under Jordan's Principle, the Panel also wants to ensure to craft effective remedies that eliminate discrimination and prevent it from reoccurring. Needless to say, it cannot condone a different form of discrimination while it makes its orders for remedies. Hence, the need for a full and complete hearing on this issue where the above will be addressed by all parties. (see 2019 CHRT 7, at para.22).

[13] Also, as part of this ruling, important Indigenous rights were recognized:

> During the January 9, 2019 motion hearing, Panel Chair Marchildon, expressed the Panel's desire to respect Indigenous Peoples' inherent rights of self-determination and self-governance including their right to determine citizenship in crafting all its remedies. Another important point is that the panel not only recognizes these rights as inherent to Indigenous Peoples, they are also human rights of paramount importance. The Panel in its *Decision* and subsequent rulings, has recognized the racist, oppressive and colonial practices exerted by Canada over Indigenous Peoples and entrenched in Canada's programs and systems (see for example 2016 CHRT 2 at para.402). Therefore, it is mindful that any remedy ordered by the Panel must take this into account. In fact, in 2018 CHRT 4, the Panel crafted a creative and innovative order to ensure it provided effective immediate relief remedies to First Nations children while respecting the principles in the *UNDRIP*, the Nation-to Nation relationship, the Indigenous rights of self-governance and the rights of Indigenous rights holders. It requested comments from the parties and no suggestions or comments were made by the parties on those specific orders. The Panel has always stressed the need to ensure the best interests of children is respected in its remedies and the need to eliminate discrimination and prevent it from reoccurring. (see 2019 CHRT 7, at para.23).

[14] Additionally, the Panel decided that in light of its findings and reasons, its approach to remedies and its previous orders in this case, above mentioned and, pursuant section 53 (2) a and b of the *CHRA*, orders that, pending the adjudication of the compliance with this Tribunal's orders and of Canada's definition of "First Nations child" for the purposes of implementing Jordan's Principle, and in order to ensure that the Tribunal's orders are effective, Canada shall provide First Nations children living off-reserve who have urgent and/or life threatening needs, but do not have (and are not eligible for) *Indian Act* status,

with the services required to meet those urgent and/or life-threatening service needs, pursuant to Jordan's Principle. The Panel also added the order will be informed by a number of principles (see 2019 CHRT 7, at paras.87-92).

[15] On January 30, 2019, the Congress of Aboriginal Peoples (CAP), wrote the Tribunal requesting an opportunity to participate in this matter on the issue of the scope of eligibility of the Jordan's Principle related to non-status Indian children living off-reserve.

Request to obtain interested party status

[16] The proper way to bring such a request before the Tribunal is by way of a notice of motion and a motion (Rule 3 and rule 8 of the Tribunal's Rules of Procedure Rule 3) or in making a request to the Tribunal to be dispensed of these requirements in light of specific and justifiable circumstances (see rule 1(4) of the Tribunal's Rules of Procedure). None of these options were taken by the CAP. Instead, CAP provided a general letter expressing its interest to join the proceedings to provide its views on the issue. The letter itself was not very detailed an was missing information that is usually provided in these types of requests in order for parties to adequately respond and, for the Tribunal to make an informed determination. Nevertheless, the Tribunal waived the formalities and requested the parties' views on the CAP's request for a number of considerations: the hearing dates on the issue of the "First Nation child" definition while not entirely confirmed at the time, were upcoming in the near future; the Panel needed to rule on the Caring Society's motion for relief in urgent/life threatening situations for Non-status off-reserve First Nations children; the Panel needed to rule on the CAP's request prior to the upcoming hearing and before providing further direction to the parties for the exchange of materials on this issue and finally, the Panel needed to ensure that if it granted the CAP's request, everyone would have sufficient time to respond to the CAP's written submissions prior to the hearing without creating delays in these proceedings given the Panel's jurisdiction had been retained until March 31, 2019. Consequently, the Panel opted for an imperfect, expeditious way to address the matter in these circumstances. Moreover, it ensured the parties concerns were carefully factored in its decision.

[17] In considering the parties' comments and objections, the Panel hoped the CAP would respond to those in its reply. It did so in part.

[18] The AFN objects to the CAP's participation for a number of rational reasons which will be outlined here. The AFN submits that no clear position is advanced with respect to the scope of eligibility of the Jordan's Principle related to non-status Indian children living off-reserve. In the letter, CAP does not provide the relevance of any submission it wishes to advance with respect to this matter, nor how their participation will be useful to the Tribunal. This makes it difficult to provide a view on their request to participate. However, the request appears to significantly align with positions already advanced by the parties in the proceeding, which ought to raise questions about the value of CAP's participation toward resolving the matter. Moreover, the AFN argues it is very clear that CAP's interest in the Tribunal's proceedings overlaps with the Caring Society's position. Typically, a party applying to intervene or participate in a proceeding brings a fresh or different perspective on the matter to assist the trier of fact and law. This would not appear to be the case based on CAP's January 30th letter. The AFN submits it would create an undue burden on the parties if they were forced to respond to repetitive arguments raised by an intervenor. The role of an intervenor is not to simply align their argument to support a particular party. Furthermore, the AFN remains concerned the proposed intervenors will make submissions beyond the facts and issues raised by the parties. It would distract from the issues raised by the co-complainants and would not assist this Panel.

[19] Furthermore, the AFN contends that CAP has not advanced a position indicating it would be prejudiced should its request to participate be denied, which raises questions about standing. As pointed out by the Chiefs of Ontario, CAP is not a rights-holder, an Indigenous government, or political body with authority on behalf of First Nations. The AFN shares this view, and like COO, the AFN also represents the interests of rights-holders in this matter however on a national scale. Rather, CAP is a membership-based organization that does not include the rights-holders in this case, and in addition, the constituency CAP represents lay outside the four corners of the complaint. The AFN is concerned that should CAP's request be granted that its participation will cause delay in the proceeding advancing in an efficient and expeditious manner, thereby prejudicing First Nations people

from further reform and mid- and long-term remedies. Also, the present proceeding already poses significant and exceptional case management challenges for the parties and the Tribunal. CAP's involvement as intervenor would only increase these challenges. The AFN submits any alleged benefit is outweighed by the potential for further delay in the upcoming hearings. Based on the above, the AFN requests that the Panel dismiss the request to participate.

[20] The Chiefs of Ontario (COO) also object to the CAP's request for similar reasons and some of those reasons are already mentioned above in the AFN's submissions.

[21] The COO submits that it works with the Social Services Coordination Unit, the Chiefs' Committee on Social Services, and the Ontario Child Welfare and Family Well-Being Technical Table on all matters of importance related to these proceedings. COO's positions are directly informed by rights-holders: the leadership of Ontario First Nations.

[22] The COO further argues that First Nations represent and act in the best interests of their citizens whether they are located on or off-reserve. COO already advocates for equity in the treatment of off-reserve First Nations, as evidenced in its work at the Consultation Committee on Child Welfare respecting the extension of funding for Band Representative Services to off-reserve First Nations citizens. COO will continue to provide the Tribunal with the views of Ontario First Nations on the treatment of off-reserve First Nations citizens.

[23] COO adds that the other parties in this proceeding including COO, have been actively involved in First Nations child and family well-being initiatives for decades. In contrast, CAP has provided no evidence of its background or expertise in matters of child and family well-being, substantive equality, or any domain related to Jordan's Principle. CAP has provided few details about the proposed nature or content of its submissions; however, it has been three years since the original decision and any further delay in proceedings is not acceptable to COO.

[24] The Commission provided comprehensive legal arguments on the issue of allowing a non-party to participate in a proceeding relying on the Tribunal's rules of procedure and case law. The Commission also notes that CAP's letter does not address some of the key

principles, that the Tribunal typically considers when deciding requests for interested party status.

[25] For example, the Commission advances that while CAP wants to argue that non-status First Nations children resident off-reserve should be eligible under Jordan's Principle, it does not set out the legal submissions it plans to make in support of that position, or explain how those submissions may be different from those of the other parties.

[26] In addition, CAP has not specified the exact participatory rights that it seeks. For example, does CAP simply wish to make an argument based on the existing record or does it instead seek to have rights to file evidence of its own, or to cross-examine on any affidavits already delivered by the parties to the proceeding.

[27] In the circumstances, it is difficult for the Commission to take a firm position on CAP's request. At this stage, the Commission submitted that it is not opposed to CAP's request in principle.

[28] However, the Commission does submit that any grant of interested party status should respect the following notions: 1. Any rights to participate should be limited specifically to the question before the Tribunal namely, whether Canada's current approach to determining eligibility for services funded through Jordan's Principle properly addresses the discriminatory practices identified by the Tribunal in its previous rulings. 2. Given the late stage of the proceedings, and the urgency of dealing with matters before the end of the current period of the Tribunal's retained jurisdiction (ending March 31, 2019), CAP's participation should not be permitted to delay the proceeding in any way. In that regard, we understand the issue of eligibility under Jordan's Principle is to be argued on March 27/28. This means that if CAP is to participate, it would have to provide any materials before those dates, and be prepared to speak to the merits on those dates.

[29] The NAN takes no position on CAP's request.

[30] The Caring Society does not take a position on the CAP's request however, it submits that should the request be granted, it should be limited to a number of

considerations and should not be permitted to file new evidence with the Tribunal. Also, the Caring Society would request to file additional submissions should the CAP be added to the proceedings.

[31] The AGC acknowledges that the Congress has an interest in this issue, and does not object to their participation for the limited purpose specified. However, the AGC also asks that the Tribunal make an order specifying the terms of participation, and directing that their legal argument be filed in a timely way so that it affords Canada an opportunity to file a written response to it. In addition, the AGC asks that the Congress not be allowed to file evidence in support of their argument; as they are effectively an intervener, they should be required to take the record as constituted by the parties.

[32] Finally, the AGC requests that in order to set filing dates, it will be necessary for the Tribunal to fix a date for argument of the issue and given that the Tribunal is already seized of a motion for interim relief on the issue, the argument should be scheduled for the Tribunal's next available hearing date, which is at the end of March.

II. Law

[33] Granting interested party status falls within the Tribunal's discretion pursuant to section 50(1) of the *Canadian Human Rights Act* (the *CHRA*) and Rules 3 and 8(1) of the Tribunal's Rules of Procedure (03-05-04). As such, and subject to the rules of natural justice, the Tribunal is the master of its own procedure (see *Prassad v. Canada (Minister of Employment and Immigration),* [1989] 1 SCR 560 at pp. 568-569; and *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada),* 2013 CHRT 16 at para. 50 and 2016 CHRT 11, at para.2).

[34] The Panel in this case ruled on another request for interested party status at the remedies stage and elaborated a case-by-case holistic approach including the adoption of some conditions surrounding the extension of participation:

> 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) (see 2016 CHRT 11, at para.3).
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> [Emphasis added]

[35] This holistic approach was also relied upon by the Tribunal Chair, Mr. David Thomas in *Attaran v. Citizenship and Immigration Canada*, (see 2018 CHRT 6, at paras.12 and 21-22). Also, in *Attaran*, a number of specific conditions formed part of the order granting interested party status (see 2018 CHRT 6, at para.24) The Panel adopts a similar course of action in this case and will elaborate below.

Interest in proceedings and assistance to be provided

[36] According to CAP's submissions, CAP is one of the five National Indigenous Organizations (NIOs) recognized by the Government of Canada. The Congress has ten provincial/territorial affiliate organizations that work collectively to improve the socio-economic conditions of off-reserve First Nations peoples (status and non-status), Metis peoples, and Inuit of Southern Labrador, who reside in urban or rural communities across Canada. CAP works to promote and advance the common interests and equal opportunity of its constituents through collective action, education, research, and policy analysis and reform. The CAP advocates that all Indigenous children should have access to programs and services and especially in the case of urgent health needs.

[37] The CAP submits that non-status constituency of CAP will be affected by the Tribunal's decision on this matter. The CAP further adds that the direct interest in the case is whether non-status children will have access to services under the Jordan's Principle.

[38] Moreover, the CAP who has championed the case leading to the Supreme Court decision in Daniels (*Daniels v. Canada* (*Indian Affairs and Northern Development*), 2016 SCC 12, [2016] 1 S.C.R. 99), argues it clearly spells out the federal government's responsibility for non-status children. Additionally, it submits that the SCC's unanimous decision gives clarity that Metis and non-status Indians fall under the federal government's jurisdiction and fiduciary duty.

[39] In reply, the CAP mentioned that the Tribunal ruled in 2017 CHRT 14 that the definition of a "First Nation child" was not to be unduly restricted or narrowed. Notwithstanding the order, CAP argues that Canada did in fact restrict the definition of a "First Nation child" to children with status under the *Indian Act* thereby excluding a considerable number of First Nations children. The CAP argues that Canada disregards the current state of the law.

[40] Also, the CAP agrees the parties have thoroughly canvassed the applicable law however, it contends the remedy sought in its engagement of impacted organizations to fashion a definition of "First Nations children" is defective and, practically inconsistent with the inclusivity required of the broadness of the definition itself, necessitating CAP to be consulted.

[41] Finally, The CAP submits it wants to make submissions on remedies, the honor of the Crown and substantive equality.

[42] The Panel has received conflicting information from the parties in regards to the nature of CAP's organization and whom they represent. However, Canada admits that CAP has an interest in the Jordan's Principle applicability issue.

[43] From the CAP's submissions it appears the CAP advocates for a number of Indigenous rights including the individual rights of non-status First Nations living off-reserve and their access to federal programs.

[44] In a previous ruling on the issue of interested party status the Panel wrote:

> The hearing of the merits of the complaint is completed and any further evidence on those issues is now closed. 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 *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. (see 2016 CHRT 11, at para.14).

[45] In light of this, an organization joining the proceedings at this late stage must add to what is already before the Tribunal and assist the decision-makers in crafting effective remedies without delaying the proceedings. Canada's obligations applicable to Metis and non-status First Nations as per the *Daniels Decision* is much broader than this Tribunal's process. However, given the nature of the issue and the criteria used by Canada to determine who is eligible to receive Jordan's Principle services, the Panel understands the CAP's interest to make submissions on remedies.

[46] This being said, the Caring Society relies on the *Daniels* SCC *Decision* in its motion and has requested for Jordan's Principle to apply to non-status First Nations children living off-reserve. The CAP championed the case in *Daniels*, consequently, the Panel is satisfied that the CAP would bring additional expertise that could add to the deliberations of the Tribunal. The Panel also believes that CAP's position outlined in its submissions supports the Caring Society's position and remedy sought. However, the Panel also believes the CAP can bring a different perspective in terms of the remedy impacting them.

[47] Furthermore, the Panel addressed the honor of the Crown and the Crown's fiduciary relationship with Aboriginal peoples in its *Decision* (see 2016 CHRT 2, at paras.87-110). The Panel also made findings and wrote elaborated reasons on the principles of substantive equality in its *Decision* and rulings.

[48] The only other possible issue remaining is that the CAP submits the remedy is deficient if not consulted. On this specific issue, the Panel is interested in considering the CAP's position. The Panel has considered the parties' concerns in crafting the order and believes the order below to be responsive to those concerns. The Panel grants the CAP a <u>limited interested party status</u> with conditions:

- The CAP will not participate in Case management;

- The CAP will not be authorized to file evidence and must take the evidentiary record as it is.

- The CAP is allowed to provide written submissions of not more than 30 pages and focused on the scope of the eligibility and/or effectiveness of remedies under Jordan's Principle for non-status First Nations children living off-reserve. The CAP will not participate in other issues that are in front of the Tribunal in this case. CAP will not delay the proceedings and must file its submissions no later than **March 13, 2019**. Given the short time frame before the hearing of this issue, any delay will be deemed a renunciation by CAP to participate in the proceedings. The Panel also requests the CAP to elaborate further on its organization and work and who they represent given the AFN and the COO's arguments.

- The CAP is allowed to make oral submissions if any, only on the dates now set by this Tribunal and no longer than 45 min. This right to oral arguments can be denied by this Panel, if the written submissions are deemed repetitive of the other parties' submissions and/or not bringing a different perspective than that of the other parties and/or relying on evidence outside the Tribunal's record. In which case, it will consider the CAP's written submissions as part of its deliberations alongside the submissions and oral arguments of the other parties.

III. Conclusion

[49] There is also a significant difference between determining who is a "First Nation child" as a citizen of a First Nation than who is a "First Nation child" entitled to receive services under Jordan's Principle and what is the appropriate eligibility criteria to use in the latter.

[50] The Panel already mentioned it recognizes the First Nations' human rights and inherent rights to self-determination and self-governance and the importance of upholding those rights. (see 2019 CHRT 7, at paras.23, 89, 91).

IV. Order

[51] The Panel grants the CAP's request in part.

[52] The Panel grants the CAP a limited interested party status with the following conditions:

- The CAP will not participate in Case management.

- The CAP will not be authorized to file evidence and must take the evidentiary record as it is.

- The CAP is allowed to provide written submissions of not more than 30 pages and focused on the scope of the eligibility and/or effectiveness of remedies under Jordan's Principle for non-status First Nations children living off-reserve. The CAP will not participate in other issues that are in front of the Tribunal in this case. CAP will not delay the proceedings and must file its submissions no later than **March 13, 2019**. Given the short time frame before the hearing of this issue, any delay will be deemed a renunciation by CAP to participate in the proceedings. The Panel also requests the CAP to elaborate further on its organization and work and who they represent given the AFN and the COO's arguments.

- The CAP is allowed to make oral submissions if any, only on the dates already set by this Tribunal of **March 27-28, 2019** and no longer than 45 min. This right to oral arguments can be denied by this Panel, if the written submissions are deemed repetitive of the other parties' submissions and/or not bringing a different perspective than that of the other parties and/or relying on evidence outside the Tribunal's record. In which case, it will consider the CAP's written submissions as part of its deliberations alongside the submissions and oral arguments of the other parties.

The parties/interested parties who wish to do so, will respond to the CAP's written submissions by **March 20, 2019**.

The CAP will provide a written reply if any, by **March 25, 2019**.

Signed by

Sophie Marchildon
Panel chairperson

Edward P. Lustig
Tribunal member

Ottawa, Ontario
March 4, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

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)

Ruling of the Tribunal Dated: March 4, 2019

Motion dealt with in writing without appearance of parties

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