

Federal Court



Cour fédérale

Date: 20250210

Docket: T-3603-24

Vancouver, British Columbia, February 10, 2025

**PRESENT:** Madam Associate Judge Kathleen Ring

**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 CANADA,  
NISHNAWBE ASKI NATION AND  
FIRST NATIONS LEADERSHIP COUNCIL**

**Respondents**

**ORDER**

**UPON MOTION** in writing dated December 20, 2024, on behalf of the Applicant, the Attorney General of Canada [Canada], pursuant to subsection 50(1) of the *Federal Courts Act*, RSC 1985, c F-7, and Rules 3 and 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] for:

- (a) An Order placing Canada’s Notice of Application for Judicial Review [the “Application”], filed December 20, 2024, into abeyance; and



- (b) An Order that the abeyance remain in place until 30 days after the Canadian Human Rights Tribunal [Tribunal] issues the written reasons for their Summary Ruling, dated November 21, 2024 [the “Summary Ruling”];

**AND UPON** reading the motion record on behalf of the Canada, including the Affidavit of Theresa Wong affirmed on December 20, 2024;

**AND UPON** reading the motion record filed on January 17, 2025 on behalf of the Respondent, the First Nations Child and Family Caring Society of Canada [Caring Society], stating that Canada’s motion should be granted in part, with the matter placed in abeyance and referred to the Chief Justice for the assignment of a Case Management Judge now (as opposed to at the expiry of the abeyance period). The Caring Society submits that upon the appointment of a Case Management Judge, the parties should be directed to provide an update to the Court and their availability for a case management conference within 15 days of the release of the Tribunal’s written reasons, to address whether the abeyance should continue pending the completion of the remedial proceedings flowing from the Summary Ruling;

**AND UPON** reading the motion record filed on January 17, 2025 on behalf of the Respondent, the First Nations Leadership Council, supporting the position taken by the Caring Society;

**AND UPON** reading the informal written representations submitted by correspondence dated January 17, 2025 on behalf of the Respondent, the Assembly of First Nations [AFN]), stating that the AFN agrees that this matter should be placed in abeyance until after the Tribunal releases its full written reasons, and taking no position regarding case management or the specific timing of the abeyance;

**AND UPON** reading the informal written representations submitted by correspondence dated January 17, 2025 on behalf of the Respondent, Canadian Human Rights Commission [CHRC], stating that the CHRC takes no position on the Order sought by Canada;

**AND UPON** reading the written representations of the Chiefs of Ontario [COO] filed on January 20, 2025, agreeing that Canada's judicial review application should be placed in abeyance, and stating that the application "must be specially case managed";

**AND UPON** noting that although the Respondent, Amnesty International Canada, filed a Notice of Appearance, they did not file a response to Canada's motion;

**AND UPON** noting that the Respondent, Nishnawbe Aski Nation, did not file a Notice of Appearance, and therefore is not an active participant in this proceeding (see Rule 145);

**AND UPON** reading the written representations in reply filed on January 23, 2025 on behalf of Canada, maintaining their request for an abeyance until 30 days after the Tribunal issues the written reasons for their Summary Ruling. Canada agrees that the proceeding may benefit from case management, but they take the position that a case management conference should follow the expiry of the abeyance period;

**AND UPON** reading correspondence dated January 30, 2025 from counsel for Canada, informing the Court that on January 29, 2025, the Tribunal released the 168-page written reasons for their Summary Ruling;

**AND UPON** Canada's motion being referred by the Registry to the Court for disposition on February 7, 2025;

Should the Proceeding be Placed into Abeyance?

On November 21, 2024, and in response to motions by the Caring Society and by Canada, the Tribunal issued a Summary Ruling with orders relating to Canada's administration of Jordan's Principle. The Summary Ruling indicates there are "reasons to follow".

On December 20, 2024, Canada filed their Application seeking judicial review of "the Canadian Human Rights Tribunal's (Tribunal) ruling, released in summary form on November 21, 2024 with full reasons to follow". Page 2 of the Application states that: "As the Tribunal has not yet released written reasons for its Summary Ruling, the Attorney General of Canada files this judicial review application to preserve its right of judicial review and reserves its right to amend this Notice of Application, with leave of the Court".

None of the Respondents oppose Canada's motion for an Order placing the Application into abeyance. The only apparent disagreement relates to the second Order sought by Canada regarding the length of the abeyance.

Having regard to all the circumstances, I agree that the interests of justice strongly favour the first Order sought by Canada – *i.e.*, an Order placing the Application into abeyance. The reason that Canada seeks the abeyance is that it will provide the parties the necessary time to receive and review the Tribunal's written reasons for the Summary Ruling, and make informed decisions on next steps in the judicial review. Without question, the parties cannot properly prepare their respective cases, particularly regarding the reasonableness of the Tribunal's decision, without reviewing the Tribunal's written reasons for the Summary Ruling.

I will address the length of the abeyance at the end of this Order.

Should the Application be Specially Managed?

In their responding motion record, the Caring Society proposes that this proceeding be placed into abeyance, and referred to the Chief Justice for the appointment of a Case Management Judge. None of the parties oppose the appointment of a Case Management Judge.

Rule 384 of the *Rules* authorizes the Court, at any time, to order that a proceeding continue as a specially managed proceeding. Practically speaking, if the Court makes an Order that the matter is to proceed as a specially managed proceeding, it will, as a matter of course, also make an Order that the matter be referred to the Chief Justice for the appointment of a Case Management Judge. The two orders go hand-in-hand.

In *Penney v. Canada (Public Safety and Emergency Preparedness)*, 2016 FC 877 [*Penney*], the Court provided guidance in assessing whether case management should be granted. Prothonotary Lafrenière (as he then was) observed that special management may be requested “when it is anticipated that the timelines set out in the *Rules* cannot reasonably be met by the parties, or when the Court’s intervention will be required to issue directions, resolve procedural issues or deal with interlocutory motions. The goal is to ensure that the proceeding is determined in the most just, expeditious and least expensive manner, as set out in Rule 3” (para 5).

In this case, given the nature of the Tribunal’s decision, the number of parties involved, and the differing positions of the parties on the duration of the abeyance (as reflected in their respective submissions), it is reasonable to anticipate that the Court’s intervention will be required to issue directions, resolve procedural issues or deal with interlocutory motions on this case going forward.

Accordingly, I am satisfied that the parties would benefit from having this proceeding specially managed.

As regards the timing of a case management conference, the Caring Society seeks an Order that, “upon the appointment of a Case Management Judge, the parties should be directed to provide an update to the Court and availability for a case management conference within 15 days of the release of the Tribunal’s written reasons, notably to address whether the abeyance should continue pending the completion of the remedial proceedings flowing from the letter decision, which are currently underway”.

In the circumstances, it is not feasible for a Case Management Judge to be appointed, and for a case management conference to be convened by February 13, 2025 (as requested by the Caring Society), considering that the Tribunal’s written reasons were released on January 29, 2025, Canada’s motion was only referred to the Court for disposition on Friday, February 7, 2025, and this Order is being issued on Monday, February 10, 2025.

Instead, I have determined that the deadline for the parties to provide their dates of mutual availability for a case management conference shall be tied to the date of the appointment of a Case Management Judge.

#### Length of the Abeyance

Canada is seeking an Order that the Application be placed in abeyance for a period of 30 days following the release of the Tribunal’s written reasons. Several of the Respondents submit that the Application should be placed in abeyance without a specified end date.

Given that this Application will proceed as a specially managed proceeding, that a Case Management Judge will be appointed, and that a case management conference will be convened to determine next steps, I conclude that the Application shall be held in abeyance pending a further order or direction of the Case Management Judge.

The Case Management Judge will be best placed to determine whether the abeyance should continue for a fixed period of time, or whether a scheduling Order should be put in place for the completion of the next steps in the proceeding, upon hearing from the parties at a case management conference.

**THIS COURT ORDERS that:**

1. The application shall continue as a specially managed proceeding.
2. The Court Registry is instructed to immediately refer this matter to the Office of the Chief Justice for the assignment of a Case Management Judge.
3. Subject to any further order or direction of the Case Management Judge, the Applicant shall, within ten (10) days of the appointment of a Case Management Judge, consult with the Respondents and submit an update as to the status of the proceeding, the dates and times of mutual availability of the parties' counsel for a case management conference, and an agreed upon agenda for the conference, including identifying the parties' respective positions on any procedural issues in dispute to be discussed at the conference.

4. This proceeding shall be held in abeyance pending further order or direction of the Case Management Judge.

\_\_\_\_\_  
"Kathleen Ring"  
Associate Judge

