Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2026 CHRT 50
Date: May 25, 2026
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 -

Nishnawbe Aski Nation

- and -

Amnesty International

- and -

Assembly of Manitoba Chiefs

- and -

Southern Chiefs' Organization Inc.

- and -

Our Children, Our Way Society

- and -

First Nations of Quebec and Labrador Health and Social Services Commission

- and -

Assembly of First Nations Quebec Labrador

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. Context

[1] In 2016, the Tribunal issued its decision 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 [Merit Decision], concluding that the case centers on children and the ways in which both past and current child welfare practices in First Nations communities on reserves across Canada have adversely impacted, and continue to impact, First Nations children, their families, and their communities. The Tribunal determined that Canada engaged in systemic racial discrimination against First Nations children living on reserves and in the Yukon, not only by underfunding the First Nations Child and Family Services Program (FNCFS Program) but also in the way that Canada designed, managed, and controlled the FNCFS Program.

[2] One of the most significant harms identified was that the structure of the FNCFS Program created financial incentives to remove First Nations children from their homes, families, and communities. Another major harm was that no cases were approved under Jordan's Principle, due to Canada's narrow interpretation and restrictive eligibility criteria.

[3] The Tribunal concluded that beyond simply addressing funding issues, there is a need to realign the program's policies to uphold human rights principles and sound social work practices that prioritize the best interests of children. The Tribunal has since clarified that the best interests of children must be viewed through an Indigenous lens.

[4] As a result, the Tribunal ordered Canada to cease its discriminatory practices, implement measures to remedy the harm, prevent recurrence, and reform both the FNCFS Program and the *1965 Agreement* in Ontario to reflect the findings of the *Merit Decision*.

[5] The Tribunal also determined that implementation would occur in phases: immediate, mid-term, and long-term relief, allowing for urgent changes first, followed by adjustments, and ultimately sustainable long-term solutions. These solutions would be guided by data collection, new studies, best practices identified by First Nations experts, the specific needs of First Nations communities and agencies, the National Advisory Committee on child and family services reform, and input from all parties involved.

[6] In the *Merit Decision*, the Tribunal issued final, injunction-like general orders to cease the systemic racial discrimination it found and to prevent its recurrence. These important orders could not subsequently be abrogated, modified, or replaced. The Tribunal also issued a series of rulings providing immediate and mid-term relief, as well as final orders concerning compensation. It retained jurisdiction to ensure it could make long-term, sustainable orders once data collection and new studies were completed. This approach was requested by First Nations, who argued that updated information was necessary to inform long-term relief requests in accordance with best practices benefiting First Nations children at the time of the *Merit Decision*.

[7] 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),* 2018 CHRT 4 [2018 CHRT 4], the Tribunal found that it had now entered the long-term remedy phase.

[8] 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),* 2022 CHRT 8, the Tribunal, on consent of the parties, issued significant long-term orders respecting prevention services and funding, effectively aimed at reversing the mass removal of First Nations children from their homes, families, and communities.

[9] As part of their consent order requests, the parties advised the Tribunal that the outstanding requests for final orders would be presented in March 2023.

[10] 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),* 2023 CHRT 44, the Tribunal issued final orders approving one of the largest compensation settlement agreements in Canadian history, as characterized by the parties, addressing harms committed by Canada against First Nations children and families.

[11] On July 11, 2024, the Chiefs of Ontario (COO), the Nishnawbe Aski Nation (NAN), the Assembly of First Nations (AFN), and Canada announced a draft Final Agreement (the National Agreement).

[12] On October 9 and 10, 2024, respectively, the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly ratified the National Agreement at their Special Chiefs Assemblies.

[13] On October 17, 2024, at an AFN Special Chiefs Assembly held in Calgary, the National Agreement was put to a vote by the First Nations' Chiefs-in-Assembly and was rejected.

[14] In November 2024, at the COO's Annual General Assembly, the Ontario Chiefs-in Assembly mandated the COO to pursue an Ontario-specific agreement.

[15] On February 10, 2025, after five weeks of negotiations, the COO, the NAN, and Canada reached a provisional Ontario Final Agreement (OFA) and a provisional Trilateral Agreement.

[16] On February 25 and 26, 2025, the provisional OFA and the provisional Trilateral Agreement were ratified by the NAN Chiefs-in-Assembly and the Ontario Chiefs-in-Assembly, respectively.

[17] On February 26, 2025, the Ontario Chiefs-in-Assembly passed Resolution #25/02S affirming that the Chiefs-in-Assembly had expressed their will to move ahead with reforms outlined in the OFA and the Trilateral Agreement. Resolution #25/02S also called on the other parties in the Tribunal proceedings to refrain from interfering with the approval or implementation of the OFA.

[18] On March 7, 2025, the COO and the NAN brought a joint motion for approval of the OFA and Trilateral Agreement (the "OFA joint motion"). According to the COO and the NAN, the OFA and the Trilateral Agreement are the collective expression of the self governance and self-determination rights of the 133 First Nations in Ontario through the COO and the NAN. If approved, both of these agreements would only apply to First Nations and FNCFS agencies within Ontario and would impact First Nations children, youth, and their families in Ontario.

[19] The Tribunal received multiple notifications from First Nations and First Nations organizations indicating an intention: (a) to seek leave to file motions for interested party

status in the OFA joint motion proceedings; (b) to seek interested party status both in the OFA joint motion proceedings and in the proceedings more generally; or (c) to seek participation in the proceedings more generally. In each instance, the notifying parties requested direction from the Tribunal on the manner and timing for filing such motions.

[20] In exercising its authority as master of its own proceedings and to ensure the timely progression of the matter, the Tribunal fixed April 15, 2025 as the deadline for any moving party wishing to obtain interested party status in the OFA joint motion process.

[21] On August 11, 2025, Canada filed an amended OFA joint motion including Canada as a co-moving party.

[22] On April 15, 2025, the Tribunal received motions seeking interested party status in the OFA joint motion proceedings from the Neqotkuk (Tobique) First Nation of the Wolastoqey Nation, Ugpi'ganjig (Eel River Bar) First Nation, the Mi'gmaq Child and Family Services of New Brunswick Inc., the Federation of Sovereign Indigenous Nations (FSIN), the Assembly of Manitoba Chiefs (AMC), the Council of Yukon First Nations (CYFN), Our Children, Our Way Society (OCOWS), the Confederacy of Treaty Six First Nations, the Treaty 7 First Nations Chiefs Association, and the Treaty 8 First Nations of Alberta.

[23] The Tribunal denied some motions in full and some in part 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)*, 2025 CHRT 86.

[24] Moreover, three other motions seeking interested party status in the OFA joint motion proceeding were also been received and those three motions were dealt with separately (see *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)*, 2025 CHRT 85 and *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)*, 2025 CHRT 87).

[25] The Tribunal recently ruled 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)*, 2025 CHRT 80 [2025 CHRT 80] that the Tribunal is moving forward without further

delay into the long-term phase of remedies both for Ontario and the national FNCFS long-term reform concurrently but separately. Moreover, the Tribunal, at paragraph 98 decided to proceed with the OFA joint motion without delaying the national FNCFS long-term reform until the motion had been determined. The Tribunal determined that the OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a national FNCFS long-term reform remedy.

[26] Furthermore, the Tribunal has consistently stated that long-term reform must reflect the specific and unique needs of diverse and distinct First Nations and must avoid a one-size-fits-all approach. Further, the Ontario region is distinct from other regions, as it operates under the *1965 Agreement*, which is easily distinguishable from how the FNCFS Program operates in other regions.

[27] The Tribunal's approach was, in part, adopted to address concerns raised by multiple moving parties outside Ontario seeking participation in the OFA joint motion proceedings, including apprehensions that Canada might rely on the OFA to implement national reforms to the Program.

[28] Subsequently, Canada sought judicial review of 2025 CHRT 80, and currently, the process is at its early stages at the Federal Court.

[29] The Tribunal recently sought additional submissions from the parties and the moving parties seeking participation in the proceedings more generally on recent Tribunal rulings, including 2025 CHRT 80 and a decision addressing the principle of proportionality (*Liu (on behalf of IPCO) v. Public Safety Canada,* 2025 CHRT 90 [*Liu*]).

[30] The Tribunal received the submissions of the parties and the moving parties and 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)*, 2026 CHRT 14 determined the majority of the various motions, as well as the outstanding portions of certain motions, that seek broader participation in the proceedings.

[31] The Tribunal had received motions from AMC, OCOWS, the Southern Chiefs Organization Inc.(SCO), a joint motion from the First Nations of Quebec and Labrador

Health and Social Services Commission (FNQLHSSC) and Assembly of First Nations Quebec-Labrador (AFNQL), and, more recently, in November 2025, the National Children's Chiefs Commission (NCCC). To avoid any further delay in determining the motions above, the NCCC motion was dealt with separately.

[32] Furthermore, the Tribunal as master of its own procedure, determined that it would address the FNQLHSSC-AFNQL's joint motion separately, given the additional legal questions it raised concerning linguistic issues.

[33] The Tribunal allowed the AMC, the SCO, the OCOWS and the NCCC's motions in part subject to certain conditions and limitations. The Tribunal granted the NCCC and the FNQLHSSC-AFNQL limited interested party status with reasons to follow.

[34] This ruling determines the FNQLHSSC-AFNQL's joint motion and provides full reasons for all aspects of their joint motion.

[35] Moreover, as part of these conditions and limitations, the OFA joint motion was not affected by the addition of any new interested parties participating in these Tribunal proceedings.

[36] The OFA joint motion cross-examinations hearing took place on December 10-12, 2025, and December 15-16, 2025.

[37] Furthermore, the Tribunal heard final arguments on the OFA joint motion on February 26 and 27, 2026.

II. Moving parties' summarized submissions

A. First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) and Assembly of First Nations Quebec-Labrador (AFNQL)

[38] The Applicant, the FNQLHSSC, and the Co-Applicant, the AFNQL have filed a joint motion seeking interested party status. Their intervention is based on challenges participating in discussions on long-term reform and more generally in questions of child and family services in French and ensuring the specific interests of First Nations in Quebec

working in French are heard in these proceedings. In addition, they raise concerns about long-term reform being appropriate to their governance structures.

[39] In support of their application, the moving parties rely on *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)*, 2022 CHRT 41 for the proposition that particular First Nations could participate in discreet questions before the Tribunal. Granting interested party status falls within the Tribunal's discretion. They rely on *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 [2016 CHRT 11], *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)*, 2011 CHRT 19 and *Attaran v. Citizenship and Immigration Canada,* 2018 CHRT 6 [*Attaran*], among other case law, for the proposition that interested party applications must be determined wholistically on a case-by-case basis. It can consider whether the prospective interested party's expertise will be of assistance to the Tribunal, whether the prospective interested party's involvement will add to the legal positions of the parties, and whether the proceeding may have an impact on the moving party's interests.

[40] They argue that their intervention offers a distinct and valuable perspective that contributes to the Tribunal's decision-making process. They emphasize that all First Nations communities in Quebec have implemented front-line prevention services, with most taking on youth protection responsibilities through FNCFS agencies. Moreover, the FNQLHSSC has been coordinating health and wellness governance among First Nations in Quebec since 2014, providing them with considerable expertise in addressing systemic issues in child and family services.

[41] The Applicants assert that their unique understanding of the challenges facing First Nations communities, including those related to child and family services and Jordan's Principle, is vital for ensuring the fair adjudication of the matter. They note that the Tribunal's decisions directly impact the children and families within the First Nation communities in Quebec represented by AFNQL. Furthermore, they express concerns that the negotiation

process has negatively affected their communities, necessitating their involvement to protect the rights and interests of the people they represent effectively.

[42] The FNQLHSSC and AFNQL raise concerns about the Honour of the Crown in the context of Canada failing to consult in French. They contend that the late provision of a French version of the National Agreement for consultation on long-term unjustifiably undermines the quality of consultation with First Nations working in French. They also allege that Canada proceeding with the OFA while not consulting with other First Nations through the NCCC demonstrates a lack of respect for the self-determination of First Nations in Quebec.

[43] Invoking the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the proposed interested parties assert that Canada violates Articles 18 & 19 by declining to negotiate with the NCCC. The challenges communities in Quebec face in participating due to translation issues is similarly a violation of UNDRIP Article 19. Relatedly, they contend that the AFN rejection of the National Agreement occurred partly because it failed to respect their governance structures.

[44] In terms of Jordan's Principle, they note that they have relied on coordinators whose funding is uncertain. Their experience participating in the efficient processing of Jordan's Principle ensures they are in a position to provide their unique experience to the Panel as it considers Jordan's Principle.

[45] They contend that the National Agreement requirement to submit reports based on specific performance indicators does not recognise the indicators that they have developed for their specific communities. It further denies First Nations the ability to determine which performance measures are most relevant to their communities. The need for this specific context is recognized in other work the AFNQL, Government of Quebec and the Government of Canada are doing to develop a governance model that grants greater autonomy to First Nations.

[46] If interested party status is granted, the proposed interested parties propose to make written submissions on the National Agreement and Jordan's Principle as necessary and without duplicating the positions of other parties. In addition, they anticipate making

submissions on the challenges associated with the French translation of documents required for the proper consultation with First Nations in Quebec.

[47] In reply submissions, the FNQLHSSC and AFNQL assert that they did not seek to intervene earlier because the linguistic issues arose with the translation of the National Agreement into French and Canada's recent refusal to negotiate with the NCCC, which means that they are unable to engage through the AFN as Canada refuses to negotiate with the NCCC. Similarly, Canada's requirement that the Caring Society withdraw from negotiations means that the Caring Society cannot represent their interests. UNDRIP requires Canada to respect the First Nations decision in how they wish to negotiate.

[48] In arguing that their expertise is unique, the FNQLHSSC and AFNQL repeat their argument that the FNQLHSSC has been particularly involved in coordinating Jordan's Principle and has achieved the lowest rate of delays.

[49] The proposed intervenors dispute that they raise new issues. New authorities do not constitute new issues, and the linguistic issues flow directly from the issues in dispute.

[50] The FNQLHSSC and AFNQL dispute that the Office of the Commissioner of Official Languages (OCOL) has clear jurisdiction over their complaint, as it arises in the context of litigation, which is otherwise excluded. In any event, an official languages complaint will take too long to produce results.

[51] In response to the Panel's request for further submissions on proportionality, the FNQLHSSC and AFNQL argue that the potential benefits far outweigh the anticipated negative impacts of their participation in the proceeding. In highlighting the benefits, the proposed interested parties reiterate the reasons for its intervention, in particular the importance of ensuring the language rights of First Nations in Quebec working in French are respected. The FNQLHSSC and AFNQL note that the Tribunal needs to consider language rights under the *Doré* framework. In terms of potential deleterious effects, the FNQLHSSC and AFNQL recognize the risk of delay to the proceedings. However, they maintain that limits can be set so that their intervention facilitates quick and efficient proceedings. Further, this is one of the most important initiatives in Canadian history given its decades-long work

combating discrimination. Given this importance, it is reasonable that new issues arise and that the Tribunal address them in a balanced and proportionate manner.

[52] Further, the FNQLHSSC and AFNQL highlight that the Tribunal is in charge of its own proceedings and can call a party making disproportionate interventions to order. It is also the parties' responsibility to approach the case in a balanced and proportionate manner, which Amnesty International has done by not systematically making submissions. The FNQLHSSC and AFNQL are committed to taking a similarly proportionate approach.

B. First Nations Child and Family Caring Society of Canada (Caring Society's) submissions

[53] The Caring Society consents to the requests of the FNQLHSSC and AFNQL. On December 3-5, 2024, Resolution 90/24 titled "Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations" was passed at the AFN Special Chiefs Assembly in Ottawa. This resolution supported both the participation of the First Nations Leadership Council (FNLC) in the consultation ordered by the Tribunal in their November 21, 2024, letter decision on Canada's non-compliance on Jordan's Principle and fully supported "any request, from any other regions, to seek interested party status in this Canadian Human Rights Tribunal case". This motion demonstrates the full and public support of the First Nations-in-Assembly for requests arising from any region in Canada seeking interested party status in the broader Tribunal proceedings.

[54] The Caring Society believes the high value of the moving parties' participation in this historic complaint eclipses any procedural concerns, which the Caring Society submits can be overcome. Indeed, any concerns about delay and duplication could be resolved through collaborative work between counsel. In addition, the Caring Society submits that the Tribunal can exercise its authority to shape the nature of the moving parties' participation, just as it has done when granting interested party status in previous instances in this case, including for COO, NAN, Amnesty International, the Congress of Aboriginal Peoples, the Innu Nation, the FSIN and, most recently, the FNLC.

[55] Further, the Caring Society argues that the Panel has significant discretion to impose limitations on time for argument and page limits on written submissions in order to ensure that the participation of interested parties does not come at the cost of the efficient progress of the matters before the Tribunal.

[56] The Caring Society is generally supportive of the interested parties' submissions, and notes in particular that the proportionality principle finds its expression within the context of the participatory rights of interested parties, whether those seeking to join a proceeding or who have had such status granted. This principle has already been repeatedly applied in the context of this proceeding.

[57] The Caring Society submits that the proportionality principle must be applied on a case-by-case basis, particularly in the context of the present complaint, which is at the stage of seeking long-term remedies for tens of thousands of First Nations children and families, now and for generations to come.

[58] The Caring Society submits that the Supreme Court of Canada, in its seminal decision in *Hryniak v Mauldin*, 2014 SCC 7 [*Hryniak*], held that "proportionality is inevitably comparative" (at para 33). A proper proportionality analysis involves consideration of the relative efficiencies of the alternatives in question, and a comparison of the evidence that would be available, and the opportunity to evaluate it, under either alternative (*Hryniak* at paras 58-59).

C. The Assembly of First Nations (AFN)

[59] The AFN takes no position on the motion.

D. The Canadian Human Rights Commission (Commission)

[60] The Commission takes no position on the motion.

E. Amnesty International

[61] Amnesty International did not participate in the motion.

F. The Chiefs of Ontario (COO)

[62] The COO has no position on the addition of FNQLHSSC and AFNQL to the proceedings concerning national long-term reform of the FNCFS Program outside Ontario.

[63] The COO submits that the FNQLHSSC and AFNQL should not be granted interested party status in these proceedings insofar as they relate to Jordan's Principle. The addition of any interested parties at this late stage of the proceedings risks further delaying Jordan's Principle reform, contrary to the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. This is not in the best interests of First Nations children, and would leave First Nations children, families, and communities without the benefit of critical Jordan's Principle reform.

[64] The COO submits that granting interested party status to the FNQLHSSC and AFNQL would cause significant delay to the proceedings that outweigh the benefit of its unique regional perspective.

[65] The COO argues that the Tribunal held that adding interested parties at the remedial stage of proceedings is "not only rare, but also adds to the challenge of effectively managing this case" (see 2016 CHRT 11 at para 13). The remedial stage is now significantly more advanced.

[66] The COO submits that the Tribunal stated in its February 10, 2025 letter that it is better for children to complete the long-term remedial phase promptly rather than face further delays. Reform of Jordan's Principle is already significantly behind schedule, with more than two years having passed since the Agreement in Principle committed the parties to reforms by March 2023. The Tribunal has also advised that mediation resources will expire and any flexibility depends on meaningful progress. Adding a new interested party that is unfamiliar with the extensive evidence, interim reforms, and Canada's implementation to date would likely cause further delay.

[67] The COO further submits that in considering the FNQLHSSC and AFNQL's motion, the Tribunal should also weigh the risk that other prospective interested parties may seek to join the proceedings. Many First Nation communities, organizations, and Agencies could

argue that they are affected by Jordan's Principle reform and possess unique regional expertise. Granting the FNQLHSSC and AFNQL interested party status could therefore create a precedent leading to numerous additional participation requests.

[68] The COO argues that in determining whether to admit FSIN as an interested party to the approval motion for the Final Settlement Agreement on Compensation for First Nations Children and Families, the Tribunal noted that having every First Nation bring its expertise and specific view forward 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" (*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),* 2022 CHRT 26 [2022 CHRT 26] at para 47). Even though every First Nation community or organization may have expertise to offer, "these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum for consultation" (2022 CHRT 26 at para 42). This Tribunal is informed by the AFN, COO, NAN, and the Caring Society (see 2022 CHRT 26 at para 41). As a result, the Tribunal found that an argument based on "bringing a regional perspective is not the most compelling argument" given the risk the Tribunal would face if every First Nation sought to participate in order to share its expertise and perspective (see 2022 CHRT 26 at para 47).

[69] The COO submits that adding the FNQLHSSC and AFNQL at this stage of the proceedings would overburden the Tribunal, which must manage its limited resources while ensuring a fair and expeditious process. Further delay risks bringing the administration of justice into disrepute and would cause significant prejudice to the victims of discrimination.

[70] The COO argues that a flexible and holistic approach to the FNQLHSSC and AFNQL's motion requires a careful cost benefit analysis that weighs the likelihood of numerous additional prospective interested parties seeking participation against the risk of further delay for First Nations children and families. That analysis leads to a clear conclusion: the costs of adding the FNQLHSSC and AFNQL substantially outweighs any potential benefits.

[71] At this stage, unique regional perspectives may be sought and advanced by the current parties using their internal mechanisms for seeking and representing those perspectives, as they have been doing for the entirety of this proceeding. The COO submits that this is the only practical way forward.

[72] The COO submits that proportionality should be the guiding principle when the Tribunal decides whether to grant interested-party status in the Jordan's Principle proceedings. The COO submits that the Tribunal must weigh whether a proposed participant's expertise will genuinely assist the decision-making process against the risk of added delay, cost, and procedural complexity.

[73] While acknowledging that many First Nations organizations may have valuable perspectives, COO submits that admitting too many parties could make the proceedings unmanageable and undermine timely reform, especially given the broad scope of Jordan's Principle across health, education, and social services.

[74] The COO further argues that the case is now in a late remedial phase, where the focus is implementing effective remedies rather than expanding participation.

[75] The COO submits that adding new interested parties at this stage is rare and likely to slow urgently needed changes for First Nations children and families. Overall, the COO submits that the Tribunal already has sufficient representation and should limit new participants to preserve efficiency and advance meaningful reform without further delay.

Nishnawbe Aski Nation (NAN)

[76] While NAN's submissions focus on the FNQLHSSC and AFNQL's request to participate in the OFA joint motion, it more broadly requests that the "tribunal dismiss the motions for interested party status." However, elsewhere in its submissions, it indicates that it has no objection to the FNQLHSSC and AFNQL participating in matters before the Tribunal generally, outside of the OFA joint motion.

Attorney General of Canada representing Indigenous Services Canada (Canada)

[77] Canada opposes the FNQLHSSC and AFNQL motion.

[78] Canada submits that this Panel has previously addressed why it is simply not practical to add as interested parties all parties who may have a regional perspective, in particular given the role of the AFN within the proceedings (see 2022 CHRT 26 at paras 47–48).

[79] Canada submits that participation of the FNQLHSSC and AFNQL will not assist the Tribunal in resolving the matters at issue. While they seek broad involvement, such participation would unnecessarily complicate and risk disrupting the orderly conduct of these proceedings. Canada submits that FNQLHSSC and AFNQL seek broad participatory rights based on their regional interests and translation concerns, which would allow them to seek orders, adduce evidence and conduct cross-examinations.

[80] To the extent their interests and expertise are relevant, they are already adequately represented by the AFN or the Caring Society, rendering their direct intervention unnecessary. For example, the AFNQL actively participates in the AFN on these issues.

[81] Moreover, Canada argues the lateness of the motions for interested party status is inherently prejudicial to the expeditious resolution of this matter. Allowing intervention at this stage would introduce additional delays and undermine the Tribunal's mandate to ensure efficient proceedings. Canada notes that adding a party at this late stage is rare and complicates case management, which is particularly pertinent in light of the Tribunal's concern with the delay in long-term reform and desire to complete the remedial stage.

[82] Canada submits the FNQLHSSC and AFNQL have raised new issues and will not advance any position beyond those already articulated by the existing parties. These include the submission on the *Declaration of the Rights of First Nations Children*, the 2019 tripartite memorandum of understanding on health and social services program delivery for First Nations in Quebec, and the submissions on language issues, Canada's fiduciary duty, the Honour of the Crown and UNDRIP during the consultation process. Their participation would therefore add no substantive value to the Tribunal's determination of the issues.

[83] Considering these new issues at the remedial phase would be inappropriate as remedies must flow from the complaint. Indeed, the Panel has refused to consider issues untethered to the complaint, including First Nations children off-reserve who have lost connection to their First Nations communities for reasons other than the discrimination in the complaint.

[84] Canada notes that previous orders from the Tribunal have had regional impact and that the proposed intervenors have not explained why they did not seek to intervene at that stage.

[85] In the event that FNQLHSSC and AFNQL are granted interested party status, Canada maintains that their participation should be limited to making oral submissions and representations of no more than 10 pages on remedies based on their expertise in Jordan's Principle or child and family services in their region, without repeating the positions of any other parties, re-opening matters or raising new issues. They should not be permitted to adduce any evidence.

[86] Canada submits that the Tribunal should dismiss the motions for interested party status brought by FNQLHSSC and AFNQL on the basis of the principle of proportionality. Canada argues that proportionality requires the Tribunal to impose reasonable limits on litigation in order to ensure fairness, efficiency, and timely resolution, particularly given the Tribunal's limited public resources and its statutory mandate to proceed informally and expeditiously. In Canada's view, the proceeding has already become overly complex and burdensome, and further participation by additional groups would divert attention away from resolving the substantive issues before the Tribunal.

[87] Canada emphasizes that proportionality is intended to restrict, not expand, access to participation where doing so would cause delay or duplication. Canada submits that the proposed participation of the FNQLHSSC and AFNQL would increase costs, complexity, and inefficiency, even if their rights were limited, because the Tribunal and parties would still be required to review and respond to additional submissions.

[88] Canada maintains that the organizations' arguments are largely repetitive of positions already advanced by existing parties and that their claim to provide unique regional

perspectives is unsupported. According to Canada, those perspectives can be conveyed through the AFN or the Caring Society without granting formal interested party status, thereby preserving efficiency while still allowing regional views to be considered.

[89] In *Liu*, the Tribunal declined to admit additional expert witnesses where their testimony would duplicate existing evidence and strain resources. The FNQLHSSC and AFNQL's intervention should be declined for the same reason (see *Liu*, at paras 74-76, 81).

[90] Canada further submits that the FNQLHSSC and AFNQL's claim that only they can provide their unique regional perspectives is unsupported. The AFN or Caring Society can incorporate their specific views through affidavits or submissions without their intervention. This Tribunal has already recognized that these organizations can consult and incorporate relevant local and regional perspectives in national long-term reform plans, and that inviting every First Nation into the proceedings would paralyze the proceedings and harm the children at the heart of this matter, 2025 CHRT 80 at paras. 108 and 110. Allowing the FNQLHSSC and AFNQL's intervention would undermine the proportionality of this proceeding since their views can be provided through less intrusive and more efficient means.

[91] Canada argues that this is an exceptionally complex systemic proceeding that already requires careful management, and that granting additional participatory rights to the FNQLHSSC and AFNQL would undermine the Tribunal's ability to control its process.

[92] Canada relies on recent Tribunal jurisprudence applying proportionality to limit duplicative evidence and participation, arguing that similar reasoning should apply here. Canada submits that the Tribunal has previously found comparable submissions from these organizations to be duplicative and warns that allowing further interventions would encourage additional motions, prolonging litigation nearly a decade after the *Merit Decision*.

[93] Canada argues that the participation of the FNQLHSSC and AFNQL is unnecessary, disproportionate, and contrary to the Tribunal's mandate to resolve proceedings efficiently, and that their motions for interested party status should therefore be denied. Unless the Tribunal applies the proportionality principle to restrict these motions, more intervention

motions will follow, delaying resolution and frustrating the Tribunal's mandate. Ten years after the Tribunal's *Merit Decision*, such motions continue to arise.

III. Applicable Law

[94] The *Canadian Human Rights* Act, RSC 1985 c H-6 [*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.

[95] The Old Rules (03-05-04) of procedure 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 of procedure (03-05-04) will continue to govern this motion.

[96] The procedure for adding interested parties is set out in Rules 3 and 8(1) of the Tribunal's Old Rules of procedure (03-05-04).

[97] Consequently, the Tribunal has the jurisdiction to allow any interested party to intervene before this Tribunal regarding a complaint. "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). 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.

[98] However, while the criteria listed above and developed in *Walden* are still helpful in similar contexts, in 2016 CHRT 11, the Tribunal held that what is required is a holistic approach on a case-by-case basis.

[99] This approach was also applied in *Attaran* and in *Letnes v. RCMP and al.,* 2021 CHRT 30 [*Letnes*] 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. See, for example, *Attaran* at para. 10.

[100] As noted, the Panel addressed the test for granting interested party status in 2016 CHRT 11 when the Panel granted interested party status to NAN. In that ruling, the Tribunal outlined the considerations on granting interested party status, at paragraph 3, as follows:

[101] 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). Subsequently, in 2020 CHRT 31, at paragraph 28, 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.

(2016 CHRT 11, at para. 14).

[102] In 2022 CHRT 26, the Tribunal reiterated 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. 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.

[103] Furthermore, in 2022 CHRT 26, the Tribunal determined that its approach to rulings on interested party status in these proceedings is the most relevant and authoritative to motions seeking interested party status, given that they arise from the same case and historical context. These findings remain unchallenged. The parties have, in fact, agreed with the Tribunal on this point.

[104] The Tribunal discussed these proceedings in detail and stated the following:

> [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 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.

[105] Finally, the Tribunal continues to rely on all its previous rulings on interested party status including those that impose limitations on the interested party's participation.

[106] The foregoing sets out the factors that the Tribunal considers when determining motions seeking interested party status in these proceedings, particularly at this late stage, just over ten years after the Tribunal's *Merit Decision*.

IV. Analysis

A. Proportionality principle and the history, nature and impact of these proceedings

[107] In *Liu*, the Tribunal emphasized that its work must be guided by proportionality, given its limited public resources and its mandate to provide expeditious, informal, fair, and efficient adjudication rather than conduct broad public inquiries. It cannot abdicate its responsibility to manage proceedings and must set reasonable limits to ensure matters remain focused and workable. Even in complex systemic discrimination cases, the Tribunal must impose reasonable limits on scope, time frame, and evidence to ensure fair and efficient proceedings. While the *CHRA* offers an important avenue to address systemic discrimination, the Tribunal remains an administrative decision-maker expected to resolve matters promptly and accessibly, and parties share responsibility for advancing their cases in a balanced and proportionate manner.

[108] While the Tribunal's comments in *Liu* were not provided in the context of a motion seeking interested party status, the Tribunal agrees with the COO, the NAN and Canada that the principle of proportionality may inform the Tribunal's analysis in determining motions seeking interested party status at this very late stage in the proceedings.

[109] This Tribunal generally agrees with the proportionality principles explained in *Liu* bearing in mind that the Tribunal conducts a case-by-case analysis and must work with the factual and procedural matrix in each given case.

[110] The Tribunal is faced with an exceptional procedural posture: the present motions for interested party status were filed nearly a decade after the Tribunal rendered its *Merit Decision*, and more than twelve years after this complaint was remitted to the Tribunal and scheduled to proceed on its merits. This case has long been a matter of significant public record. It has been the subject of two National Film Board documentaries, was raised during the Missing and Murdered Indigenous Women and Girls (MMIWG) National Inquiry and before the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress (Viens Commission) and has been reflected in recommendations issued by United Nations committees to Canada, as well as in numerous public forums over the past decade. In light of this extensive and sustained public exposure, First Nations organizations cannot credibly assert that they were unaware of these proceedings or that they lacked an earlier opportunity to seek interested party status.

[111] A brief reminder of the origins of the complaint and the history of the proceedings assists the reader in understanding the Tribunal's approach and how it aligns with access to justice, reconciliation, and ensuring that human rights protections have full meaning. A finding of systemic racial discrimination is meaningless if it does not lead to the cessation of that discrimination. This principle is widely recognized and has been extensively discussed in the Tribunal's numerous rulings.

[112] This single Tribunal case significantly advanced access to justice for tens of thousands of First Nations children and families. The parties' assistance and expertise informed the Tribunal's work and contributed to major outcomes, including substantial compensation for harms, a reduction in the mass removal of children from their communities, and a shift toward community-based prevention services, among many other important reforms.

[113] The complaint was filed in 2007 with the Commission. The Commission chose not to investigate and instead referred the matter directly to the Tribunal.

[114] The complaint spans ten provinces and the Yukon Territory, effectively affecting 634 First Nations; it is a national complaint. While the Tribunal Panel agreed to add Dr. Cindy Blackstock's retaliation allegations to the complaint, it did not choose the scope of the complaint referred to it. The Tribunal subsequently rendered its 2015 decision on the issue of retaliation, substantiating certain of those allegations.

[115] The systemic racial discrimination found is of critical importance because it relates to the **massive removal** of First Nations children from their families, extended families, communities, and Nations, an issue that previous Ministers have described as a national crisis. This has been ongoing for decades and successive governments who were proven resistant to change. This forms part of the Tribunal's evidentiary record and findings.

[116] The Tribunal faced that resistance during these proceedings with over 90,000 relevant documents that were undisclosed by Canada and Canada's narrow interpretation of some of the Tribunal's orders.

[117] The best interests of the child is a principle recognized by the Supreme Court of Canada and in international law. Given the importance of the issue, the magnitude of the task, and the diversity of the 634 First Nations and 11 regions, long-term reform orders needed to be informed by First Nations themselves, through their own institutions and rigorous studies, to guide reform and identify best long-term practices in the best interests of First Nations children.

[118] The Tribunal made findings in previous rulings concerning the MMIWG reports. The MMIWG found that First Nations children involved in the child welfare system face heightened risks of entering prostitution, human trafficking, mental health issues, incarceration, as well as homelessness and a wide range of other social problems. The Truth and Reconciliation Commission's first five Calls to Action focus on child welfare. The MMIWG interim and final reports called on Canada to fully implement this Tribunal's *Merit Decision* and its Jordan's Principle decisions (*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), 2017 CHRT 14 and *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)*, 2017 CHRT 35). Further, the United Nations Economic and Social Council recommended that Canada fully comply with this Tribunal's *Merit Decision*. "The United Nations Economic and Social Council recommends that the State party (Canada) fully comply with the decision of the Canadian Human Rights Tribunal of January 2016" (see E/C.12/CAN/CO/6 at para. 36).

[119] The United Nations' Committee on the Elimination of Racial Discrimination (CERD) recommended the full implementation of all the Canadian Human Rights Tribunal rulings and orders in the First Nations child welfare case (see Discrimination against Indigenous children, CERD/C/CAN/CO/21-23 at paragraphs 27 and 28).

[120] Further, the self-determination of First Nations is a complex issue. This complexity is amplified here, given that the case involves the entire country rather than a single region or a limited number of First Nations.

[121] The Tribunal had the AFN representing the First Nations, the Caring Society representing First Nations agencies and First Nations children and the Commission who had carriage of the file at the AFN's request since their funding had been cut by the government following the filing of the complaint. The COO participated not solely to represent the Ontario region but precisely because the Ontario region operates under the *1965 Agreement* while other regions in Canada do not.

[122] Notably, no other region requested interested party status to advance their interests by joining the proceedings generally before 2016 and, over the years, a few sought to participate for specific motions only.

[123] The Tribunal received an unprecedented number of motions for interested party status in 2025, following the rejection by the First Nations Chiefs-in-Assembly at the AFN of National Agreement with Canada concerning this complaint.

[124] Canada indicated that it only wanted to move forward with negotiations with the Ontario First Nations organizations, which ultimately resulted in the OFA, and that the

Tribunal's decision may inform reform on a national scale, which worried some First Nations organizations.

[125] Given that this lasted for months without any movement, that the parties had committed to submit a final long-term reform agreement to the Tribunal by March 2023, and that we were now in 2025, the Tribunal requested submissions from the parties on the best way to achieve final long-term reform expeditiously in the best interests of First Nations children and, following receipt of those submissions, adopted an approach to move the proceedings forward toward finality for long-term reform and avoid procedural burdens associated with allowing multiple interested parties in the proceedings.

[126] Furthermore, it was always understood by the parties and the Tribunal that the 634 true rights-holder First Nations could not appear individually before the Tribunal without fundamentally transforming it into a commission of inquiry, an outcome that would be unproductive given that this is not the Tribunal's mandate and could paralyze the proceedings. In its rulings, the Tribunal found that resolutions from the Chiefs-in-Assembly would assist in understanding their expressed views on the issues before it. The Tribunal also repeatedly emphasized the need for the parties to incorporate the specific needs of children, First Nations communities, and Nations in their final agreement and/or requested long-term reform orders. It is not reasonable to conclude that the Tribunal anticipated that all First Nations and First Nations organizations would need to join the proceedings in order for their perspectives to be considered. With this in mind, the Tribunal denied multiple motions seeking interested party status in the OFA joint motion and ordered the co-complainants to consult them to bring their distinct perspectives into their national long-term reform plan outside Ontario (2025 CHRT 80).

[127] Over the last decade, the Tribunal consistently emphasized the need to move away from a one-size-fits-all solution and to consider the specific needs of every First Nations child, community, and Nation. This necessarily required the parties to bring their diverse and distinct perspectives to the Tribunal.

[128] Following the release of 2025 CHRT 80, Canada immediately wrote to the Tribunal asking it to clarify why it was ordering the complainants to consult non-parties, with or without

Canada, while opposing the addition of other First Nations organizations to these proceedings and despite having indicated that it no longer wished to negotiate with the complainants and was only willing to negotiate with Ontario First Nations organizations. Canada later disagreed with the Tribunal's approach in 2025 CHRT 80 and sought judicial review of that ruling. It was only on December 22, 2025, when Canada filed its national long-term reform plan as ordered by this Tribunal in 2025 CHRT 80, that Canada provided its long-term approach outside Ontario, indicating that it will be seeking regional agreements on long-term reform.

[129] As mentioned above, the Tribunal recently allowed the parties and moving parties to make submissions on the Tribunal's 2025 CHRT 80 ruling.

[130] Canada has indicated to the Tribunal that its relationship with the Caring Society had deteriorated and, over the course of 2025, this has become evident. Moreover, since the rejection of the National Agreement by the Chiefs-in-Assembly, as expressed in their 2024 resolutions, Canada and the AFN appear to have a different relationship.

[131] The dialogic approach between the parties in this case is no longer yielding the positive results it once produced. For example, the parties were unable to resolve issues relating to interim Jordan's Principle consultation orders through Tribunal-assisted mediation. The proceedings have become inherently adversarial, with little collaboration, creating delays as parties adopt more contentious positions and procedural issues multiply. This is not what the Tribunal had in mind, and matters must now shift toward a final resolution. While the dialogic approach among the parties led to significant, real, and measurable changes in the lives of tens of thousands of First Nations children, families, and communities, there is now a need to complete the work.

[132] The context described above impacts these proceedings and the final resolution of such a large and complex complaint.

[133] Canada reiterated in its recent submissions on proportionality and 2025 CHRT 80, that the Tribunal should rely on the AFN and the Caring Society who can incorporate the moving parties' specific views through affidavits or submissions without their intervention. Canada also submits that in 2025 CHRT 80, the Tribunal has already recognized that the

complainants can consult and incorporate relevant local and regional perspectives in national long-term reform.

[134] Canada now desires to proceed with long-term reform consultations region by region and hopefully come to some regional agreements and proposes to do so by April 2027. Canada has also proposed a hearing schedule ending in January 2027. The co-complainants, who have filed a National long-term reform plan including regional perspectives, desire to complete long-term reform as soon as possible and have proposed a schedule ending with a hearing in November 2026. The moving parties desire that their unique regional perspectives be considered and disagree with having the co-complainants bring them forward.

[135] As noted above, and consistent with its prior rulings, the Tribunal considers additional factors beyond the *Walden* approach. The factors that follow arise from the Tribunal's analysis in 2022 CHRT 26:

> [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**,

(emphasis added).

[136] Long-term reform negotiations regarding Jordan's Principle have been bifurcated from the long-term reform of the FNCFS Program by the parties. The Tribunal issued interim orders, and the parties participated in 16 mediation sessions with an experienced Tribunal member; however, the issues remained unresolved. The Tribunal Chair ultimately ended the mediation, as it was not yielding any progress. This remains an outstanding matter. The relationship dynamics must undergo transformation. As Ontario-based interested parties, the COO and NAN are confined to their regional context and to their role as interested parties before the Tribunal. They cannot advance national long-term reform agreements or

final long-term order requests, nor pursue regional agreements or long-term orders outside Ontario. This leaves the co-complainants and Canada to assist the Tribunal in determining the long-term reforms within the unfortunate context discussed above.

[137] This was not what the Tribunal had anticipated. However, insisting on maintaining the same original approach, at the risk of further delay, will not assist the parties or the Tribunal.

[138] In this case, which involves a large, systemic national complaint affecting 634 First Nations and spanning multiple territorial and regional agreements across Canada, the portion of the test that analyzes the impacts on the moving party's interests cannot, on its own, determine a motion for interested party status, even where it is shown that the proceedings may affect the moving parties' interests. Concluding otherwise could invite participation from all 634 First Nations and hundreds of First Nations child and family services agencies that may be affected by this case, potentially bringing the Tribunal's determination to a standstill. Such a result would hinder, rather than assist, the Tribunal in carrying out its mandate. The Tribunal is now in the final stages of these proceedings and must be able to resolve the matter in the near future, in the best interests of First Nations children and families.

[139] In 2016 CHRT 11, the Tribunal, in granting interested party status to the NAN, stated that it was rare to grant interested party status at the remedial stage. We are now in 2026, a decade later. This context is unprecedented; accordingly, a mechanical application of general principles and tests for interested party status would not result in an appropriate outcome.

[140] The Tribunal, as master of its own procedure, has the discretion to establish mechanisms to manage its process, including appropriate limitations to ensure the orderly progression of the proceedings.

[141] The Tribunal was fully aware that the AFN's structure, which includes regional chiefs from every region and rights-holder Chiefs entitled to vote at Chiefs-in-Assembly meetings, enabled it to obtain regional perspectives to inform long-term reform.

[142] Moreover, long-term reform needs to allow individual First Nations, as rights holders, to have a voice and to have their self-governance and self-determination respected. However, the process in these proceedings is not designed for First Nations to appear before the Tribunal one by one to present their views. This is not due to a lack of interest or respect for their positions, but because there is no viable way for all 634 to be included individually or in small groups in these proceedings.

[143] As early as 2016, and even more clearly in 2018, the Tribunal emphasized that long-term reform must be informed by First Nations and should not adopt a one-size-fits-all approach

[144] In 2018 CHRT 4, the Tribunal foresaw that First Nations rights holders could negotiate a self-government agreement or a Nation-to-Nation agreement with Canada and included this in its findings and orders. The Tribunal is in a very difficult position now that the parties are having difficulty working together. The AFN, as co-complainant and the organization recognized by this Tribunal as representing First Nations by way of Chiefs-in-Assembly, takes no position on interested party status motions. The Caring Society has welcomed them all. The reason advanced is that this demonstrates the importance of these issues for First Nations. That point has never been in dispute. However, waiting more than a decade to seek participation in these proceedings inevitably raises the question of what prompted these interventions at this time.

[145] What developments took place beyond the breakdown in relationships? Canada recently signaled a preference to engage with regional organizations rather than the complainants. This appears to have followed the rejection, by a majority of AFN Chiefs-in-Assembly, of the National Agreement. At the request of the COO and the NAN, Canada subsequently focused its negotiations with Ontario First Nations, where the OFA received majority support from Chiefs-in-Assembly for the COO and NAN.

[146] All those years, the Tribunal expected an outside process of broad consultation with First Nations rights holders, regional organizations, and national organizations to avoid a top-down, one-size-fits-all approach to reform. Everyone involved in these proceedings, including this Tribunal panel, agrees that First Nations ought to be able to decide for

themselves and are best placed to decide how to care for their children. Truly empowering this will embody reconciliation. Long-term reform was always envisioned by this Tribunal as respecting these principles and as involving consultations outside the Tribunal. The Tribunal also never envisioned that long-term reform would be determined by a small group of leaders and subsequently presented to others for acceptance as final. This is the type of top-down approach the Tribunal has not favoured. This is not to say that it has occurred in this case; however, the dramatic change in dynamics is raising questions.

[147] In 2025 CHRT 80, the Tribunal opted for an expeditious way to move forward and receive multiple perspectives.

[148] This provides some context and some reasons why the Tribunal originally did not want to include more actors at this late stage. Another major reason is the need to protect these proceedings from an overflow of requests that would paralyze the process and not help the children. The Tribunal agrees with Canada and the COO that there is a real risk of opening the floodgates that the Tribunal must consider and evaluate every time a motion seeking interested party status is brought to the Tribunal. The Tribunal must also be able to close the door when its proceedings are at risk and will do so if necessary. There is a limit to the moving parties' argument that effective case management and limitations will prevent any negative impact on the proceedings.

[149] Adding other regional First Nations organizations as interested parties in a limited manner will transform the relationship dynamics and assist the Tribunal in determining the matters toward finality, while ensuring that the proceedings are not paralyzed or that the parties are unduly burdened. The orders are carefully crafted to reflect this.

[150] The specific context and reasons set out above inform the Tribunal's analysis and guide its determination of the joint motion.

[151] The Tribunal emphasizes that the complaint was filed by the Caring Society and the AFN at the request of the First Nations Chiefs-in-Assembly. Without their involvement, we would not be where we are today: many thousands of children's lives have been transformed, over ten million services and products have been approved under Jordan's Principle, and the parties have worked tirelessly to stop the mass removal of First Nations

children from their communities and Nations, and to ensure that the lives of First Nations children are free from racial and systemic discrimination. This is transformative justice. In accepting new organizations, the Tribunal is in no way diminishing, discounting, or ceasing to rely on their expertise and assistance.

[152] The Tribunal also recognizes the other parties' invaluable expertise and significant efforts to bring transformative change to First Nations communities in Ontario and across Canada. Similarly, the Tribunal will continue to rely on their expertise and assistance.

[153] More work remains to be done, and these proceedings must move forward toward finality in the foreseeable future.

B. The prospective interested parties' expertise will be of assistance to the Tribunal in determining long-term reforms

[154] The Tribunal finds the FNQLHSSC and AFNQL have demonstrated that their respective expertise will assist the Tribunal in determining long-term reforms. The orders set out below achieve this objective while permitting the proceedings to advance without undue delay.

[155] The FNQLHSSC is responsible for health, social services, social development, early childhood and other similar subjects. For these purposes, it works with communities to ensure that services are cohesive in respect to their autonomy.

[156] The FNQLHSSC thus supports FNCFS agencies and Jordan's Principle coordinators, as its personnel has expertise in these matters and is regularly consulted by the AFNQL regarding the same.

[157] The AFNQL is a collective of First Nations governments in Quebec created in 1985.

[158] The Chiefs and Grand Chiefs of the governments of the 43 First Nations located in Quebec and on the Labrador border form the Quebec-Labrador Chiefs Assembly, and are thus brought together under the auspices of the AFNQL. Together, they represent a total of 10 First Nations: Abenaki (W8banaki), Algonquin (Anishinaabeg), Atikamekw,

Nehirowisiwok, Cree (Eeyou), Wendat, Malecite (Wolastoquiyik), Mi'gmaq, Mohawk (Kanien'kehá:ka), Innu and Naskapi.

[159] In accordance with the decision-making authority of First Nations governments, which are represented by Chiefs and Grand Chiefs, the AFNQL plays a key role as the main intermediary between the First Nations in Quebec and the governments of Quebec and Canada.

[160] In 2019, Indigenous Services Canada (ISC) signed a tripartite memorandum of understanding with the AFNQL and the Government of Quebec to consolidate their partnership and develop a health and social services governance model for the First Nations in Quebec.

[161] There are 16 FNCFS agencies in Quebec serving 23 First Nations communities. These agencies provide first-line and youth protection services, while three provincial institutions deliver youth protection services to four additional communities. Among the agencies are three tribal councils: the Mamit Innuat Tribal Council serving Pakua Shipu, Ekuatnishit and Unamen Shipu; the W8banaki Tribal Council serving Odanak and Wolinak; and the Atikamekw Nation Council serving Manawan and Wemotaci.

[162] Prevention services were introduced in 2006 following a socio-economic forum, with federal and provincial funding to support culturally appropriate services. In 2011, the ENHANCED PREVENTION FOCUSED APPROACH Framework was established to guide prevention-focused approaches, and most agencies implemented action plans between 2011 and 2017 based on community needs.

[163] In 2017, a report was submitted to the federal government advocating for greater self-determination in FNCFS. In 2018, the funding model was revised, making most First Nations communities in Quebec responsible for delivering first-line prevention services through FNCFS agencies, with support from the FNQLHSSC.

[164] A majority of First Nations communities in Quebec have assumed youth protection responsibilities, excluding the Indigenous Nations of Eeyou Istchee and the Inuit, which

manage their services in accordance with the James Bay and Northern Quebec Agreement and the James Bay and Northeastern Quebec Agreement.

[165] Per resolution 01/2025, passed on January 16, 2025, the AFNQL represents all Quebec Labrador Chiefs in these proceedings, in collaboration with the FNQLHSSC.

[166] Unlike communities elsewhere in Canada, those in Quebec have secured funding to introduce local Jordan's Principle coordinators. The primary role of these coordinators is to inform the public and stakeholders about available services and to assist individuals who wish to apply. The FNQLHSSC supports the efforts of these community resources and organizations, particularly by organizing regional network meetings.

[167] The FNQLHSSC and AFNQL submit that in the fall season of 2016, the Health and Social Services Directors Network of non-agreement communities in Quebec recommended that regionally available coordination funding, intended for the delivery of child and family services whose needs were not fully met by existing programming under the principle of substantive equality, be used to ensure that every community would have access to Jordan's Principle coordinators.

[168] In 2017, communities who are not part of a self-government agreement in Quebec received funding from ISC to hire a resource person tasked with supporting their population and informing them about services available under Jordan's Principle.

[169] The FNQLHSSC and AFNQL submit that all communities who do not have self-government agreement now have Jordan's Principle coordinators. Some First Nations organizations, including Indigenous Friendship Centres, have also implemented Jordan's Principle coordinators.

[170] The FNQLHSSC and AFNQL further submit that the presence of local coordinators for Jordan's Principle greatly enhances the application of the principle. The flexibility of this model strengthens the implementation of a holistic approach that is adapted to the unique needs of each First Nation. In addition, local coordination helps foster the development of a cohesive and comprehensive view of available services, complementing those already in place.

[171] The FNQLHSSC and AFNQL argue that the support of local coordinators greatly promotes the application of Jordan's Principle. The flexibility of this structure strengthens the implementation of a holistic approach that takes into account the specific needs of First Nations. Moreover, local coordination supports the development of a comprehensive and integrated vision of the services offered, in complementarity with existing services.

[172] Furthermore, the introduction of Jordan's Principle coordination greatly facilitates the identification of children whose development and specific needs require services.

[173] The work of FNCFS Agencies and the funding of Jordan's Principle in Quebec use processes that are unique to them, which can lead to inconsistencies in the execution of the Tribunal's orders, or even result in no real benefit for the First Nations in Quebec.

[174] The Tribunal finds that the different and expert perspective described above is particularly valuable to assist in the determination of long-term issues related to the FNCFS Program and Jordan's Principle.

C. The long-term reforms proceedings will have an impact on the moving parties' interests

[175] While the criterion of impact on the interests of a moving party seeking interested party status is important, relying on this factor alone in these specific proceedings, without considering how the party may assist the Tribunal, may be problematic in this case. The Tribunal has previously found that the interests of all 634 First Nations in Canada may potentially be affected by these proceedings.

[176] The Tribunal finds that the long-term reform proceedings in the FNCFS Program and Jordan's Principle will impact the interests of the FNQLHSSC and AFNQL.

[177] The FNCFS Program is national in nature, and even if some regional agreements are reached, one or another will involve First Nations in Quebec and Labrador. Moreover, Jordan's Principle is also available in Quebec and Labrador, and even if it differs from other regions, this also impacts the interests of First Nations and their children and families in Quebec and Labrador.

D. The moving parties' involvement will add to the legal positions of the parties

[178] The Tribunal finds that the moving parties' legal position will add to the legal positions of the parties.

[179] The legal position, including the different context, structure, and functioning in which First Nations in Quebec operate, will not duplicate the legal positions of other parties in these proceedings. While the NCCC includes the Quebec region and could have advanced the FNQLHSSC and AFNQL's position, it only sought interested party status on November 21, 2026, months after the FNQLHSSC and AFNQL filed their motion.

[180] Furthermore, their submissions will not be duplicative of those of the AFN and the Caring Society, given Canada's stated unwillingness to continue negotiations with the AFN and the Caring Society, and the level of detail they can provide regarding how the Quebec-Labrador region currently functions, which has not recently been advanced by the AFN.

V. Official Languages Act (OLA) Rights

A. Context

[181] FNQLHSSC and AFNQL also seek interested party status in order to address the language issue arising from what FNQLHSSC and AFNQL describe as the delayed and deficient French translation of the National Agreement, to ensure meaningful participation of First Nations in Quebec working in French, and to enable motions requiring the translation of key documents in the proceedings.

[182] The joint moving parties seek to participate in the proceedings as intervening parties in order to act in relation to the Consultation Protocol (2018 CHRT 4), to request the translation of documents necessary for adequate consultations, and to seek orders to that effect. The language issue is limited to matters related to negotiations and consultations, where the real challenges arise in the translation of the relevant documents into French.

B. Party Submissions

(i) FNQLHSSC and AFNQL

[183] FNQLHSSC and AFNQL submit that, contrary to the affidavit of Marc Boivin, Director of the Child and Family Services Reform Sector at ISC, the French version of the National Agreement was not promptly published following discussions with the AFN. FNQLHSSC and AFNQL argue that the evidence demonstrates that the French version was made available more than one month after the English version and contained anomalies, despite assertions that it had been reviewed and contained no significant issues.

[184] FNQLHSSC and AFNQL submit that the French version of the National Agreement was only published on August 12, 2024, with a revised version on August 19, 2024, which still contained linguistic inconsistencies. FNQLHSSC and AFNQL argue that, as a result, First Nations in Quebec did not have access to the French version at the time of the English publication, thereby affecting consultations.

[185] FNQLHSSC and AFNQL submit that the Government of Canada has a fiduciary duty toward Indigenous Peoples requiring honorable conduct and meaningful consultation. FNQLHSSC and AFNQL argue that consultation must take place in a working language understood by all participants, including French. The failure to provide a simultaneous French version created inequity between English and French speaking First Nations and undermined the consultation process, preventing Quebec communities from participating equally in decision making processes affecting their rights, contrary to Article 19 of UNDRIP.

[186] FNQLHSSC and AFNQL submit that, while respecting the autonomy of First Nations in Ontario, the position of the COO is unclear based on the record and will therefore be disregarded.

[187] AFNQL submits that its intervention is limited to the procedural language issue, which is directly connected to the remedies phase of this case and does not challenge the merits. AFNQL argues that addressing language issues will not interfere with the principle that “the remedy must flow from the claim,” but will instead allow affected First Nations to understand and debate proposed remedies and provide free, prior, and informed consent.

[188] FNQLHSSC and AFNQL submit that the OCOL is not an effective forum in this context. While the OCOL may investigate complaints and will gain order making powers in 2025 to 2026 under Parts IV and V of the *Official Languages Act*, RSC 1985, c 31 (4th Supp) [*OLA*], FNQLHSSC and AFNQL argue that it is unclear whether key documents such as the National Agreement and the Jordan's Principle report (Exhibit CA-646) fall within its jurisdiction, as Parts II and III of the OLA are excluded. FNQLHSSC and AFNQL further argue that the delays inherent in the OCOL process, including potential recourse to the Federal Court, Federal Court of Appeal, or Supreme Court of Canada, do not provide timely protection.

[189] FNQLHSSC and AFNQL submit that no decision has yet been rendered by the OCOL regarding the complaint filed concerning the French version of the National Agreement. FNQLHSSC and AFNQL argue that, absent political pressure, the French version may not have been made available prior to the vote, demonstrating that the OCOL is not a satisfactory remedy under time constraints.

[190] FNQLHSSC and AFNQL submit that the Tribunal has jurisdiction over its own procedures and may order the translation of documents where failure to do so produces discriminatory effects, contrary to rights protected under the *CHRA*. FNQLHSSC and AFNQL argue that translation issues persist, including the January 17, 2025, Jordan's Principle report, which remains available only in English, and that granting AFNQL the ability to bring motions for translation is the most efficient solution.

[191] FNQLHSSC and AFNQL assert that section 16 of the *OLA* applies to the Tribunal. Seeing no way to reconcile the obligation that a judge or officer hearing the case is able to understand both languages without the assistance of an interpreter with the interests of First Nations child and families in having the case proceed expeditiously, the FNQLHSSC and AFNQL proposes to waive their rights under section 16 of the *OLA* for the Tribunal Member already appointed to the case. This waiver is made in light of the exceptional nature of the case, including its duration, complexity and the number of vulnerable persons involved.

[192] The FNQLHSSC and AFNQL also highlight the importance of high-quality interpretation, while noting it can never equal the elegance and precision of the original

advocacy. Consecutive interpretation would be preferable and, in the event of issues with the quality of interpretation, the hearing would need to be interrupted immediately.

[193] The FNQLHSSC and AFNQL rely on *Doré v. Barreau du Québec*, 2012 SCC 12 [*Doré*] and *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment*), 2023 SCC 31 [*Commission scolaire*] as establishing the governing framework for administrative decision-making involving *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 [*Charter*] rights and values, including language rights.

[194] The FNQLHSSC and AFNQL submit that, as an administrative tribunal, the CHRT is required to consider the values of the *Charter* in its decision-making. The FNQLHSSC and AFNQL further submit that the Supreme Court of Canada has recently reaffirmed that "the *Doré* framework applies not only where an administrative decision directly infringes *Charter* rights but also where it engages a value underlying one or more *Charter* rights, even without limiting those rights." The FNQLHSSC and AFNQL argue that, in this proceeding, the relevant values include "the preservation and development of minority language communities," which encompass French-speaking First Nations.

[195] Moreover, the FNQLHSSC and AFNQL rely on *Doré* and *Commission scolaire* as establishing the governing framework for administrative decision-making involving *Charter* rights and values, including language rights.

(ii) Caring Society

[196] Noting the FNQLHSSC and AFNQL's waiver of any rights under s. 16(1) of the *OLA* to have adjudicators who understand the language chosen by the parties, the Caring Society submits that this is not a live issue. The Caring Society supports the Tribunal's intention to make best efforts to ensure interpretation services in French and English and to facilitate the translation of important documents.

[197] In response to the COO's submissions, the Caring Society notes that interpretation has previously been provided in this case and that interpretation is a substantive right.

[198] COO also submits that Indigenous Services Canada should take positive measures to support linguistic minority communities by making French versions of its affidavits available on request.

(iii) AFN

[199] The AFN supports the rights of First Nations to express themselves in the official language of their choice. The AFN supports the FNQLHSSC and AFNQL in being able to fully participate in the language of their choice while ensuring the case continues to proceed expeditiously.

(iv) Commission

[200] The Commission did not provide any submissions on this issue.

(v) Amnesty International

[201] Amnesty International did not provide any submissions on this issue.

(vi) COO

[202] The COO recognises the FNQLHSSC and AFNQL's language rights.

[203] The COO argues that the linguistic issues are not a valid basis for intervention. The COO notes that the proposed intervenors made a complaint to the OCOL and maintain that, regardless of the merit of the complaint about translations, that is the appropriate forum to address it. COO submits that the need to interrupt the proceedings should be limited to situations where there may be prejudice to the FNQLHSSC and AFNQL such as when one of their witnesses is speaking. As the FNQLHSSC and AFNQL do not have a right to cross-examine witnesses, there would not be a comparable prejudice if an issue arose in the interpretation during the cross-examination of another witness by a different party. COO is concerned that interruptions in these proceedings have historically resulted in significant delay.

[204] The COO submits that the FNQLHSSC and AFNQL's French-language concerns should be addressed in another forum, specifically the OCOL, rather than by granting them interested party status in the OFA joint motion or the proceedings concerning Jordan's Principle. While the COO supports the timely translation of all critical documents related to long-term reform of the FNCFS Program and Jordan's Principle into French, it maintains that such translation can be achieved through an order of the Tribunal without granting interested party status.

[205] The COO notes that the FNQLHSSC and AFNQL have raised concerns about how the National Agreement was distributed and translated and have filed a complaint with the OCOL alleging prejudice to First Nations communities with French as their preferred official language. The COO takes no position on the substance of that complaint but reiterates that the OCOL is the appropriate forum to address any potential infringements of language rights.

[206] The COO further submits that the extensive participation rights sought by the FNQLHSSC and AFNQL, including participating in communications with the Tribunal, seeking orders, submitting evidence, conducting cross-examinations, and attending hearings, are unnecessary to address their translation concerns and risk delaying the proceedings, which would not be in the best interests of First Nations children and their families. Instead, the COO submits that the appropriate remedy is for the Tribunal to order or otherwise ensure that all critical documents are translated into French.

[207] COO submits that, considering the importance of this matter continuing expeditiously, any interruption to the proceedings because of issues with interpretation should be limited to circumstances where there is clear and serious prejudice to the FNQLHSSC and AFNQL, such as when one of their witnesses is speaking. Both the Tribunal and the AFNQL parties have recognized "the interest of First Nations children and families in having the case proceed expeditiously". It was observed that interruptions to these proceedings have historically resulted in significant delay, often due to the difficulty of rescheduling multi-day hearings and co-ordinating the availability of the Tribunal and counsel for all parties. It is important that any potential interruptions are limited to exceptional circumstances, so this matter is not delayed any further.

(vii) NAN

[208] NAN takes no specific position on this issue.

(viii) Attorney General of Canada

[209] Canada submits that the AFNQL, relying on their regional interests and translation concerns during consultation with First Nations in Quebec, seeks the ability to seek orders, adduce evidence, conduct cross-examinations, participate in communications between the parties and Tribunal, and attend hearings. Canada will work to facilitate reasonable concerns regarding translation.

[210] Moreover, Canada submits that the AFNQL, and the Quebec First Nations they represent, are actively engaging with AFN's internal processes by submitting recommendations to the AFN, working with the AFN, actively voting on and supporting the negotiation mandate set out by the AFN Chiefs-in-Assembly, and participating in discussions within the AFN and the NCCC. Any future translation concerns can be addressed within a multi-party negotiation process.

[211] Canada agrees that the Tribunal is a federal court within the meaning of the *OLA*. However, Canada maintains that the FNQLHSSC and AFNQL, as an interested party in this Tribunal proceeding, is not a party under s. 16 of the *OLA*. While the *OLA* does not define who is a party, the *Old Rules* that govern this proceeding define a party as only the Commission, complainants and respondent, which does not include interested parties. As such, English is the language chosen by the parties and it is sufficient that the Panel understands English without the assistance of an interpreter. Furthermore, while the FNQLHSSC and AFNQL have a right to participate in the proceeding in the language of their choice and file documents in the language of their choice, the constitutional and quasi-constitutional rights that protect that participation do not guarantee the right to be understood without interpretation.

C. Unique context in which this joint motion is to be viewed in these proceedings

[212] These proceedings have been ongoing before the CHRT since 2009. The AFN is one of the two complainants in this matter and proceeded pursuant to a resolution of the Chiefs-in-Assembly. The complaint referral and the Tribunal proceedings themselves are not in dispute, and the FNQLHSSC and AFNQL did not seek interested party status prior to 2025. In their joint submissions, the FNQLHSSC and AFNQL submit that they did not need to do so until Canada failed to provide adequate and timely translations of the National Agreement. The FNQLHSSC and AFNQL now use the avenue of an interested party motion to seek respect for their language rights in the context of negotiations and consultations on long-term reforms of the FNCFS Program and Jordan's Principle and all Tribunal matters in these proceedings.

[213] The FNQLHSSC and AFNQL rely on the 2018 consultation protocol ordered by this Tribunal, which concerns the parties in this case and was signed by their representatives. This document was not intended to permit the addition of new parties absent the consent of all signatories. Moreover, the consultation protocol was never intended to govern all of Canada's negotiations with Indigenous Peoples. Rather, it was intended to govern consultations with the parties to these proceedings and those they represent. The AFN represents First Nations in Canada, including in Quebec. While the Tribunal ordered and accepted the consultation protocol, it did not draft it. Nor did the parties raise any issue relating to the French language while participating in Tribunal-ordered consultations on behalf of certain First Nations. The Tribunal supports consultations being conducted in French and access to French versions of national agreements. However, this issue was never previously brought before it, not even informally, until this joint motion.

[214] While the Tribunal encouraged the parties to reach settlement agreements and bring them before the Tribunal, those processes occurred outside the Tribunal's proceedings, as did the National Agreement. The *OLA* applies to Canada. Therefore, submitting a draft National Agreement to First Nations across Canada, including those in Quebec, for review and approval in English and only later in French does not ensure the equality of status and equal rights and privileges of English and French, as provided in section 2, or the

advancement of the equality of status and use of English and French, as contemplated by section 41. The Tribunal may direct Canada to translate certain important documents related to these proceedings if it finds such measures appropriate and justified following due consideration of the submissions of the parties and the FNQLHSSC-AFNQL.

[215] However, these proceedings were conducted in English, as chosen by the the parties. Since 2009, the Tribunal has ensured that Panel members could speak and write in English, and communications with the parties have accordingly taken place in English. Some parties participating in these proceedings are not subject to obligations under the *OLA* requiring submissions in both official languages, and it would now be both unfair and unlawful to require them to prepare submissions in French as well. Although the *OLA* applies to the Tribunal, the Commission and to Canada, it does not require the systematic translation of all submissions in proceedings conducted in the official language chosen by the parties.

[216] By the time the joint motion was filed, the Tribunal had accumulated an extensive evidentiary record and issued numerous rulings in both official languages. One of the two Panel members does not speak French and was not required to do so given the language of the proceedings chosen by the parties. This joint motion was not brought at the outset of the proceedings. Rather, it was brought at a very advanced stage in proceedings that are already exceptionally complex and time-consuming, and at a time when several First Nations organizations were simultaneously seeking interested party status.

[217] The Tribunal recognizes the rights of French-speaking First Nations communities and agrees that their language rights must be respected. However, the issue before the Tribunal is not as straightforward as the FNQLHSSC and AFNQL suggest. Apart from stating that they do not seek to delay the proceedings, little consideration has been given to the rights of First Nations children and families outside Quebec and Labrador who may be affected by significant delays resulting from converting proceedings conducted in English into entirely bilingual French and English proceedings.

[218] Little consideration has also been given to the fact that most parties are anglophone and frequently submit letters, emails, submissions, and other materials solely in English, and to the significant delays that could arise if such documents were now required to be

translated. This would effectively halt the proceedings, which is not in the best interests of First Nations children, families, and communities across Canada. The Tribunal does not understand this to be the request of the FNQLHSSC and AFNQL. However, out of an abundance of caution and for future reference, this must be clearly stated.

[219] The Tribunal understands that the FNQLHSSC and AFNQL seek the translation of certain important documents and the opportunity to use the official language of their choice in communications with the Tribunal. While they have translated their motion and submissions into English, this does not address the broader issues arising from 14 years of proceedings involving anglophone parties, some of whom are not required under the *OLA* to translate documents. Nor does it address the fact that the Tribunal itself is not obligated under the *OLA* to translate all documents filed by the parties. In other words, there is a significant distinction between converting the proceedings into entirely bilingual proceedings and the more limited process proposed by the FNQLHSSC and AFNQL.

[220] The Panel requested additional submissions from the parties in March 2026 to address the issue arising from the *OLA* requirement that adjudicators understand a party in their official language of choice without interpretation, given that one Panel member, who has sat on this matter for more than 13 years, does not understand French. Only in those subsequent submissions did the FNQLHSSC and AFNQL suggest waiving their rights under section 16 (1) of the *OLA*. They made no submissions as to whether such a waiver is legally tenable. However, in an effort to harmonize the *OLA* with the *CHRA* in this unique context, the Tribunal has adopted a creative approach.

[221] Moreover, the consideration of this joint motion has itself caused delays in these proceedings, given that the most complex and conflicting questions arising from this joint motion in these advanced English proceedings were left largely unaddressed in the joint moving parties' submissions. The Tribunal members were required to balance the implications of this request for interested party status and its impacts on the proceedings and all those involved, especially all First Nations children in Canada. There is no precedent

for such a decision at this advanced stage of the proceedings, and the Tribunal is once again navigating uncharted territory.

[222] A strict application of the *OLA*, without regard to the highly specific and complex context of this case, could result in injustices for thousands of First Nations children and families and several hundred First Nations outside Quebec, should significant delays occur. At the same time, it would also be unjust to disregard the rights of First Nations children, families, and Nations in Quebec. It is within this specific context that the Tribunal determines this joint motion.

[223] Currently, no conflict between the *OLA* and the *CHRA* has clearly arisen in the application of both quasi-constitutional statutes to the specific factual matrix of this case, except potentially with respect to the application of section 16 (1) of the *OLA*, as explained below. Should such a conflict arise at a later stage, the Tribunal will further consider the application of subsection 82(2) of the *OLA*, among other considerations, in the context of these advanced and complex proceedings that impact First Nations children across Canada.

D. Applicable Law and Analysis

[224] Parliament expressly granted the OCOL jurisdiction to receive and investigate complaints under the *OLA*. Pursuant to sections 56 and 58 of the *OLA*, the Commissioner is mandated to take all appropriate measures within his or her authority to ensure recognition of the status of both official languages and compliance with the *OLA*, including by investigating complaints concerning alleged breaches of the *OLA* by federal institutions.

[225] However, the statutory scheme expressly contemplates the involvement of courts and other decision-makers in the interpretation and application of the *OLA*.

[226] The *OLA* has been recognized by the Supreme Court of Canada as quasi-constitutional legislation (*Lavigne v Canada*, 2002 SCC 53) and must be interpreted purposively in light of its role in protecting linguistic equality.

[227] As affirmed by the Supreme Court of Canada in *R v Beaulac*, 1999 SCC 25 [*Beaulac*], language rights must be given a large, liberal, and purposive interpretation, consistent with their status as substantive rights, and are not to be restricted by considerations of administrative convenience.

[228] Furthermore, " (…) the protection of language rights constitutes a fundamental constitutional objective and requires particular vigilance on the part of the courts, and the courts must generously construe the texts that confer these rights, but it is also necessary that these be rights to protect and not policies to define (…)" (*Canadian Food Inspection Agency v Forum des Maires de la Péninsule Acadienne*, 2004 FCA 263 at para 39).

[229] The Federal Court of Appeal also stated:

> [40] However, it is not because a statute is characterized as quasi-constitutional that the courts must make it say what it does not say, especially when the statute, as in this case, has been careful not to say it. As Mr. Justice Gonthier notes, in paragraph 25 of his reasons in *Lavigne*, supra:
>
> The *Official Languages Act* and the *Privacy Act* are closely linked to the values and rights set out in the *Constitution*, and this explains the quasi-constitutional status that this Court has recognized them as having. However, that status does not operate to alter the traditional approach to the interpretation of legislation, defined by E. A. Driedger in Construction of Statutes (2nd ed. 1983), at p. 87:
>
> Today there is only one principle or approach, namely, the words of an *Act* are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament.
>
> The quasi—constitutional status of the *Official Languages Act* and the *Privacy Act* is one indicator to be considered in interpreting them, but it is not conclusive in itself. The only effect of this Court's use of the expression "quasi— constitutional" to describe these two *Acts* is to recognize their special purpose.

[230] The important purpose of the *OLA* is stated at paragraph 2:

> 2 The purpose of this *Act* is to
>
> > (a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in

> particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
>
> (b) support the development of English and French linguistic minority communities in order to protect them while taking into account the fact that they have different needs;
>
> (b.1) advance the equality of status and use of the English and French languages within Canadian society, taking into account the fact that French is in a minority situation in Canada and North America due to the predominant use of English and that there is a diversity of provincial and territorial language regimes that contribute to the advancement, including Quebec's *Charter of the French language*, which provides that French is the official language of Quebec;
>
> (b.2) advance the existence of a majority-French society in a Quebec where the future of French is assured; and
>
> (c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

[231] The *OLA* includes a helpful interpretation provision found at section 3.1:

> 3.1 For the purposes of this *Act*,
>
> (a) language rights are to be given a large, liberal and purposive interpretation;
>
> (b) language rights are to be interpreted in light of their remedial character;
>
> (c) the norm for the interpretation of language rights is substantive equality; and
>
> (d) language rights are to be interpreted by taking into account that French is in a minority situation in Canada and North America due to the predominant use of English and that the English linguistic minority community in Quebec and the French linguistic minority communities in the other provinces and territories have different needs.

[232] The *OLA* applies to the Canadian Human Rights Tribunal as it is a federal court for the purposes of section 3(2) of the *OLA*:

> Definition of federal court
>
> 3 (2) In this section and in Parts II and III, ***federal court*** means any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament.
>
> Duty to ensure understanding without interpreter
>
> 16 (1) Every federal court has the duty to ensure that
>
> > (a) if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter;
> >
> > (b) if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter; and
> >
> > (c) if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both languages without the assistance of an interpreter.

[233] In *Doré*, the Supreme Court of Canada addressed how administrative decision-makers must consider *Charter* values when exercising discretionary authority. The case arose after the Barreau du Québec reprimanded Mr. Doré for sending a letter criticizing a judge before whom he had appeared. Mr. Doré argued that the disciplinary decision failed to adequately account for his freedom of expression rights under the *Charter*.

[234] The Court rejected the strict application of the *Oakes* framework, which applies where a court determines whether a law infringing the *Charter* can nonetheless be justified. Instead, the Court held that administrative decision-makers are generally best positioned to assess how *Charter* values apply within the specific statutory and factual context before them. The proper approach is therefore a proportionate balancing exercise between the relevant *Charter* values and the statutory objectives underlying the discretionary authority. The decision-maker must first identify the statutory objectives at issue (para. 55) and then determine how the *Charter* value can best be protected in light of those objectives (para.

56). This balancing exercise may permit more than one constitutionally reasonable outcome.

[235] In *Commission scolaire*, the Supreme Court of Canada applied and clarified the *Doré* framework in the context of administrative decision-making affecting minority language education rights under s. 23 of the *Charter*. The case concerned requests by individuals who were not rights-holders under s. 23 to nonetheless access French first-language education programs.

[236] In *Commission scolaire*, the Court reaffirmed that the first step under the *Doré* framework is determining whether the administrative decision engages *Charter* rights or the values underlying them by limiting *Charter* protections (para. 61). The Court emphasized that it is sufficient for a decision to engage a value underlying a *Charter* right, even where the right itself is not directly infringed (para. 64). Administrative decision-makers exercising discretionary powers must therefore consider relevant *Charter* values, including language rights and protections, when making decisions (paras. 65–66).

[237] Where a decision limits *Charter* rights or the values underlying them, the second stage of the *Doré* analysis requires a proportionate balancing between the *Charter* protections at issue and the statutory objectives conferring the discretionary authority (para. 68). The *Charter* protections must be meaningfully addressed, and the resulting decision must not impose a disproportionate impact on the *Charter* right or value engaged (para. 69). The Court further held that decision-makers must consider whether there are reasonably available alternatives that would reduce the impact on protected rights or values, including language-related protections (para. 72).

[238] In terms of the relationship between the *OLA* and the *CHRA*, the terms of the *OLA* make clear that the *OLA* does not prevail over the *CHRA*:

> Primacy of Parts I to V
>
> 82 (1) In the event of any inconsistency between the following Parts and any other Act of Parliament or regulation thereunder, the following Parts prevail to the extent of the inconsistency:
>
> (a) Part I (Proceedings of Parliament);

> (b) Part II (Legislative and other Instruments);
>
> (c) Part III (Administration of Justice);
>
> (d) Part IV (Communications with and Services to the Public); and
>
> (e) Part V (Language of Work).
>
> *Canadian Human Rights Act* excepted
>
> (2) Subsection (1) does not apply to the *Canadian Human Rights Act* or any regulation made thereunder.

[239] The Tribunal finds that this demonstrates that Parliament intentionally limited the *OLA*'s primacy. While section 82(1) provides that the *OLA* prevails over inconsistent federal legislation and regulations, Parliament expressly excluded the *CHRA* from that primacy framework through section 82(2).

[240] Section 19 of the *Charter* and Part III of the *OLA* protect the right to use English or French in pleadings and proceedings before federal courts. The *OLA* also requires that, in many circumstances, judges understand the chosen official language without the assistance of interpretation, and that decisions of precedential value or public importance be issued in both official languages. However, nothing in the *OLA* requires courts or tribunals to systematically translate every document filed in a proceeding. While the *OLA* guarantees the right to use either official language, it does not create a corresponding obligation to translate all pleadings, evidence, or submissions. Translation obligations applicable to filed materials are instead generally governed by specific court rules, tribunal rules, or judicial discretion.

[241] In *Thibodeau v. Air Canada,* 2014 SCC 67, the Supreme Court of Canada highlighted the importance of official language rights. The *OLA* seeks to support the development of English and French-speaking linguistic minority communities and establishes language rights in various contexts, including the administration of justice. While the SCC did not provide specific examples of how language rights arise in the administration of justice, such examples include the right to use, without prejudice, either English or French in federal proceedings (*OLA*, s. 14); the right of any witness to be heard in the official language of their

choice without being placed at a disadvantage (s. 15(1)); provisions for simultaneous interpretation when requested by any party or where proceedings are of general public interest or importance (s. 15(2) and (3)); requirements that adjudicators be able to understand the language chosen by a party without interpretation, thereby underscoring the importance of adjudicators being capable of doing so (ss. 16 and 16.1 to 16.3); and obligations to ensure the translation of decisions, including upon release for decisions of precedential value (s. 20). Collectively, these provisions affirm the right of individuals to participate fully in judicial proceedings, even where their preferred official language is not shared by other participants in the case. They also underscore the importance of ensuring that legal information is equally accessible in both official languages.

[242] In sum, the Supreme Court of Canada confirmed that the *OLA* is designed to reflect and give effect to the equal status of English and French as the official languages of Canada. This broad purpose does not, however, override the other principles of statutory interpretation.

[243] Moreover, the Federal Court in *Thibodeau v. Canada (Transport),* 2025 FC 1625 further confirms that “any unduly restrictive interpretation of language obligations that a federal institution might put forward is outdated and cannot be accepted” at para. 43, citing *St. John's International Airport Authority v. Thibodeau*, 2024 FCA 197, at para. 1.

[244] In *Moreau v. Canada (Attorney General),* 2025 FC 1271, the Federal Court highlights that the purpose of the *OLA* is to foster the equality of both official languages. This requires substantive equality, not merely formal equality devoid of practical utility. The exercise of language rights is not a request for accommodation. While the Federal Court did not provide specific examples, this means, for instance, that the undue hardship analysis drawn from human rights law cannot readily be applied in this context. Similarly, there is no requirement for an individual to demonstrate disadvantage before the obligation to uphold language rights is triggered.

[245] In *Thibodeau v. St. John’s International Airport Authority,* 2022 FC 563 (St. Johns), the Federal Court notes that the remedial provision in the *OLA* was intended to ensure the effectiveness of the *OLA*. The court notes that, as quasi-constitutional legislation, the *OLA*

must be given a liberal and purposive interpretation, although interpretation must still follow the normal rules of statutory interpretation. However, if other methods of interpretation fail to resolve the dispute, the interpretation that maximises the scope of language rights should be preferred. The damage awards contained within the *OLA* emphasise the importance of the language obligations in the *OLA*.

[246] Further, in *St. Johns* at paragraph 5, the Federal Court situates the establishment of English and French as the official languages of Canada in the constitutional framework. While section 16 of the *Charter* establishes the official languages as a fundamental characteristic of Canada, sections 17 to 23 set out an array of specific official language rights. Notably, section 20 provides:

> 20 (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
>
> 20 (1) Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions là où, selon le cas :
>
> > (a) there is a significant demand for communications with and services from that office in such language; or
> >
> > a) l'emploi du français ou de l'anglais fait l'objet d'une demande importante;
> >
> > (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
> >
> > b) l'emploi du français et de l'anglais se justifie par la vocation du bureau.

[247] *St. Johns*, Paragraph 6 states that the *OLA* implements the rights guaranteed in sections 17 to 20 of the *Charter*, including as reflected in those sections relating to communications with and services to the public. For example, section 22 reads as follows:

> 22 Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either official language, and has the same duty with respect to any of its other offices or facilities
>
> (a) within the National Capital Region; or
>
> (b) in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that language.
>
> 22 Il incombe aux institutions fédérales de veiller à ce que le public puisse communiquer avec leur siège ou leur administration centrale, et en recevoir les services, dans l'une ou l'autre des langues officielles. Cette obligation vaut également pour leurs bureaux auxquels sont assimilés, pour l'application de la présente partie, tous autres lieux où ces institutions offrent des services situés soit dans la région de la capitale nationale, soit là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante.

[248] At paragraph 23, the Federal Court addresses the approach to statutory interpretation when considering the *OLA*. The court notes that it is often said that the *OLA* must be given a "liberal and purposive" interpretation because of its quasi-constitutional status, citing *DesRochers v Canada (Industry),* 2009 SCC 8 at paragraph 31, citing *Beaulac* at paragraph 25. However, the Federal Court notes that *Thibodeau v Air Canada*, 2014 SCC 67 confirms at paragraph 112, that interpretation must still follow the usual approach, which requires consideration of the text, the entire context, the scheme of the act, and Parliament's purpose. However, it is important to highlight that purpose of the *OLA* is to foster the development of official language communities and that this purpose must be given the weight that it deserves. In statutory interpretation, the principle of a liberal and purposive interpretation of the *OLA* has a residual presumption: if the application of the usual methods does not allow one to decide between two possible interpretations of the *OLA*, the interpretation that maximizes the scope of language rights must be chosen. Since the *OLA* is intended to give effect to certain *Charter* rights, it is logical that the same presumption applies to the *OLA* as the *Charter.*

[249] In *Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50, the Supreme Court of Canada highlighted, at para. 51, that there is a communal and systemic aspect to linguistic rights. An individual's linguistic rights exist in favour of a

community. This means that a violation that seems minor at a personal level nonetheless has significance because it limits the full and equal participation of members of official language communities in the country's institutions and it undermines the equality of official languages.

[250] In light of the above, the Tribunal finds that the first step under the *Doré* framework, namely determining whether the administrative decision engages *Charter* rights or the values underlying them by limiting *Charter* protections, applies in the present circumstances, particularly given the Court's emphasis that it is sufficient for a decision to engage a value underlying a *Charter* right, even where the right itself is not directly infringed.

[251] The Tribunal finds that the Final Agreement was not provided in both official languages at the same time. Therefore, the absence of simultaneous access to French translations of important documents, such as the Final Agreement, affects the rights of French-speaking First Nations communities and limits *Charter* rights or the values underlying them. Given that the second stage of the *Doré* analysis requires a proportionate balancing between the *Charter* protections at issue and the statutory objectives conferring the discretionary authority, the Tribunal must balance the language-related protections engaged with the rights and interests of all affected First Nations children, families, and communities across Canada.

[252] The Tribunal has considered whether there are reasonably available alternatives that would reduce the impact on protected rights or values, including language-related protections. The Tribunal is balancing the *Charter* protections at issue for French-speaking First Nations communities with the rights and interests of the other parties, as well as all other First Nations children, families, and communities they represent, in a manner that meaningfully addresses those protections and does not impose a disproportionate impact on the *Charter* rights or values engaged for French-speaking First Nations communities or on the rights and interests of First Nations communities across Canada.

[253] The Tribunal finds that the *CHRA* and the *OLA* are both quasi-constitutional legislation and should be interpreted and applied harmoniously. Each protects fundamental rights of central importance, reflecting values also enshrined in the *Charter*, and must

therefore be given a large, liberal, and purposive interpretation consistent with their shared quasi-constitutional significance.

[254] The Tribunal finds that the *OLA* uses the terms “party” and “parties” without providing a definition of who constitutes a party. The Tribunal’s Rules of Procedure, however, do make such a distinction. While the Tribunal’s New Rules have the force of regulations, these proceedings continue under the Old Rules, which do not. The Old Rules governing these proceedings, however, are consistent with the *CHRA* and define a “party” as limited to the Commission, the complainants, and the respondent, thereby excluding interested parties. Accordingly, English remained the language of proceedings chosen by the parties throughout these proceedings and up to the filing of the present joint motion. It is only in the context of this joint motion that certain parties have expressed agreement with the position advanced by the interested parties. Nevertheless, given that these proceedings are governed by the Old Rules, the Tribunal adopts a broad and liberal interpretation so as to avoid unduly restricting quasi-constitutional legislation intended to advance Charter-protected rights. This interpretation must nevertheless be reconciled with Parliament’s clear intent under subsection 82(2) of the *OLA*: the *OLA* does not supersede the *CHRA* or its regulations.

[255] The Tribunal is not persuaded that it can simply accept the FNQLHSSC and AFNQL’s renunciation of their rights under section 16(1) of the *OLA*, if such renunciation is required. Rather, the Tribunal considers that the preferable approach in the circumstances is to undertake a balancing of the rights at issue in a manner that harmonizes the *OLA* with the rights protected under the *CHRA*. Moreover, it is not evident that section 16(1) of the *OLA* contemplates a context such as this one, where the language of proceedings has been chosen by the parties as English for over 14 years and a change may be triggered by interested parties. Furthermore, the facts of this case and proceedings are unique. These proceedings have been ongoing for 14 years, during which the current Panel members, in the exercise of their adjudicative functions under the *CHRA*, have gained in-depth knowledge of the case through hearing evidence and submissions from the parties. Similarly, the current Panel members have a unique understanding of their rulings and

reasons, including the spirit in which those rulings were made. This accumulated expertise benefits First Nations children, families, and the parties.

[256] The FNQLHSSC and AFNQL have indicated their willingness, on a time-limited basis, not to insist upon the full application of their rights under section 16(1) of the *OLA* for so long as Member Lustig remains on the Panel, while maintaining the expectation that the full application of those rights would resume should Member Lustig cease to sit on the Panel.

[257] In these unique circumstances, and in balancing all of the fundamental rights at issue, as well as the *OLA* and the *CHRA* as applied in the specific context of these proceedings, the Tribunal adopts the following approach: Member Lustig shall remain on the Panel rather than be requested to withdraw, as such a course of action could give rise to an unjust outcome.

[258] This issue has been one of the Tribunal's principal preoccupations in addressing this joint motion, given its obligation to respect fundamental rights, including those protected under the *OLA*, as well as the rights of First Nations children across Canada, including those in Quebec. As noted above, the Tribunal is applying the required liberal and purposive approach to the interpretation of the *OLA* and will ensure the FNQLHSSC-AFNQL can participate meaningfully in these proceedings and have timely access to important documents in French, which appears to be the primary objective of the FNQLHSSC-AFNQL, while also considering the broader context in which this request arises.

[259] Furthermore, these proceedings are not at an early stage where the application of section 16(1) of the *OLA* would be straightforward. As already noted, much has transpired over the course of these proceedings, and implementing such a shift at this late stage raises significant practical and procedural complexities.

[260] The Tribunal is well acquainted with broad and liberal approaches to statutory interpretation and is reluctant to adopt an interpretation that would unduly constrain the exercise of rights.

[261] However, as noted above, subsection 82(2) specifically provides that the *OLA* does not have primacy over the *CHRA*. Accordingly, the Tribunal finds that, in interpreting both

statutes within the specific and complex context of these well-advanced proceedings, the section 16(1) of the *OLA* does not require a unilingual member of the Panel to cease hearing this case at this time. At this late stage of the proceedings, this approach to the application of section 16(1) of the *OLA* results in one, rather than two, French-speaking Panel members and aligns with subsection 82(2) of the *OLA* as applied in these proceedings. Moreover, this interpretation aligns with the spirit of the Tribunal's New Rules, which have the force of regulations, even though the Old Rules applicable to this case do not. Nonetheless, as noted above, the Tribunal's Old Rules remain consistent with the *CHRA*.

[262] Over the course of these lengthy proceedings, the two members developed a stable, harmonious, and respectful working relationship characterized by cooperation and unity, which has benefited both the parties and the children they represent.

[263] Should Member Lustig cease to act as an adjudicator in this matter, the Panel Chair could continue on her own, which would be preferable given her in-depth knowledge acquired over 14 years and the complexities involved in adding a new panel member who would have 14 years or more of procedural and evidentiary history to master, with the attendant risk of unnecessary delay. Alternatively, the Tribunal Chair could replace Member Lustig with a bilingual member. This is not a decision for the Panel to make; under section 49(2) of the *CHRA*, it is the Tribunal Chair who assigns files to members.

[264] The Panel Chair, Sophie Marchildon, is bilingual; therefore, this situation does not apply to her. However, should she cease to act as an adjudicator in this matter, the same decision above can be made by the Tribunal Chair.

[265] The Tribunal's dialogic approach is intended to assist the parties and the Tribunal in completing long-term reforms, including ongoing improvements to services for First Nations children and families, with the goal to eliminate systemic discrimination permanently. This approach is not intended to introduce further complexity into these already complex proceedings.

[266] Moreover, the Tribunal finds that the benefits of the approach adopted in this ruling outweigh any potential prejudice arising from an interpretation of the term "parties" in section 16(1) of the *OLA* that harmonizes with the *CHRA* and the Tribunal's Rules, even if such an

interpretation may not be the broadest available in the circumstances, rather than from a strict application of section 16(1) of the *OLA* to these proceedings.This is particularly so given that the joint moving parties were aware of these proceedings but chose to intervene only after 13 years of proceedings conducted in English, the language chosen by the parties, and only at the time of their joint motion due to the translation challenges experienced with Canada.

[267] Allowing an interested party to intervene at this stage, after 14 years of proceedings, and to effectively alter both the proceedings and the composition of the Panel impacts not only the rights of the parties, but also those of the First Nations children and families affected by these proceedings. This would also give rise to the unjust situation of granting greater influence to two newly added interested parties in proceedings involving multiple parties who have actively participated throughout the entirety of these proceedings over many years.

[268] Moreover, while it is imperative that their language rights be respected, this cannot, in and of itself, justify infringing upon the rights of other First Nations children across Canada who live outside the colonial boundaries of the Quebec-Labrador region, particularly where doing so would result in significant delays in proceedings concerning their fundamental rights.

[269] Requiring the translation of every future submission and piece of evidence filed by English-speaking parties, the translation of an enormous evidentiary record, or other similar measures would significantly slow down proceedings involving the fundamental rights of First Nations children, resulting in additional delays affecting the rights and interests of First Nations children and families outside Quebec and Labrador.

[270] The Panel did not adopt the alternative of rejecting the FNQLHSSC and AFNQL as interested parties, despite the potential for their intervention to slow the proceedings, given the significance of the issues raised and their impact on French-speaking First Nations communities in Quebec and Labrador. Rather, the Tribunal seeks to balance all fundamental rights engaged in this longstanding and complex matter, together with its quasi-constitutional obligation to adjudicate the case fairly and expeditiously.

[271] The Tribunal will communicate with the parties in both official languages and will ensure that hearings are conducted in English and French, with high-quality simultaneous interpretation. The Panel Chair is pleased to preside over hearings in both French and English. The FNQLHSSC and the AFNQL have the protected right to communicate with the Tribunal in the official language of their choice. The Tribunal also agrees to facilitate the translation of important documents to ensure that French-speaking First Nations have timely access to them in French. The Tribunal will determine which important documents must be translated following efficient and non-burdensome consultation with the parties including the FNQLHSSC-AFNQL.

VI. Order

[272] FOR THESE REASONS, THE CANADIAN HUMAN RIGHTS TRIBUNAL:

A. Grants the FNQLHSSC and the AFNQL's motion in part;

[273] The FNQLHSSC and the AFNQL (new interested parties) are granted limited interested party status with the following conditions:

A. The new interested parties shall not participate in or bring interim motions. The new interested parties shall not bring any motions, whether procedural or substantive, before the Tribunal.
B. The new interested parties shall abide by all Tribunal directions.
C. The new interested parties may participate in the national long-term reform plan hearing process and the long-term reform of Jordan's Principle but shall not participate in interim motions.
D. The new interested parties shall not be permitted to participate in case management, motions, mediation, or other dispute resolution or administrative processes unless specifically directed by the Tribunal.
E. The new interested parties shall accept the proceedings and the official record as they find them and shall not seek to reopen matters, add or raise new issues, expand the scope of the complaint, revisit the evidence, or challenge previous

orders or decisions. They shall assist the Tribunal, through their expertise, in determining the future final long-term reform applicable to their respective region.

F. The new interested parties shall not duplicate the submissions of other parties and may adopt the submissions of parties with whom they are aligned.

G. The FNQLHSSC and the AFNQL both from Quebec and Labrador shall coordinate their submissions to avoid duplication.

H. The new interested parties shall provide submissions limited to their expertise in child and family services and Jordan's Principle within the region of Quebec and Labrador and shall not make submissions concerning other regions.

I. The new interested parties shall not seek adjournments, postponements, or other modifications to Tribunal deadlines and shall comply with all Tribunal timelines. Missed deadlines will be considered a renunciation of participation in the motion, round of submissions, or other procedural or substantive matter for which they are late.

J. The new interested parties shall make themselves available in accordance with the Tribunal's schedule.

K. The new interested parties shall seek permission from the Tribunal before filing affidavits or exhibits and shall comply with any page limits imposed where such filings are permitted. Should the Tribunal permit the new parties to present evidence related to potential future long-term orders, that evidence shall assist the Tribunal, avoid duplicating that of the other parties or generating unnecessary procedural issues, and be relevant, useful, and focused.

L. The new interested parties shall not cross-examine witnesses.

M. The Tribunal reserves the right to determine the time allocated to the new interested parties for oral submissions. The Tribunal will establish time limits, and the new interested parties shall comply with those limits.

N. All parties shall be provided with a meaningful opportunity to respond to any written and oral submissions from new interested parties, where such submissions are permitted by the Tribunal.

O. The new interested parties shall familiarize themselves with the procedures of administrative tribunals and govern themselves accordingly. The Tribunal reserves

the right to add to or modify the above conditions, depending on the evolution of the case and as required by the circumstances, particularly if the proceedings risk being slowed or halted.

P. The Tribunal will not delay motions, hearings, or established schedules to accommodate new groups seeking to join these proceedings at this late stage, except in extraordinary circumstances or where a long-term reform agreement is reached with Canada and Canada seeks the Tribunal's approval of that agreement. This is not an invitation to bring forward regional long-term agreements one at a time, year after year, as occurred with the OFA; rather, it reflects Canada's proposed approach as set out in its national long-term reform plan. The Tribunal is not deciding the merits of Canada's national long-term reform plan here. This is for procedural planning purposes only.

Q. The Tribunal will determine which documents are to be translated into French, the timeframe for their translation, responsibility for the translations, and the process to be followed. The Tribunal will consult the FNQLHSSC, the AFNQL, and the other parties to these proceedings regarding the key documents to be translated. This process will be streamlined and expeditious, prioritizing substance over form.

R. The hearings in which the FNQLHSSC and the AFNQL are permitted to participate will be conducted simultaneously in both official languages.

[274] The Tribunal remains focused on final long-term reform orders relating to the FNCFS Program and Jordan's Principle and, aside from Jordan's Principle interim orders, will not prioritize adjudicating other matters before addressing these important long-term issues. At any given time, the Tribunal may pause or limit the number of interventions and/or matters before it to ensure that the proceedings are not halted and continue to move forward effectively toward a final resolution.

VII. Conclusion

[275] While keeping in mind the importance of fairness and natural justice in these proceedings, the Tribunal reminds the parties and their counsel that this is an administrative human rights tribunal, not a court, and that its mandate is to adjudicate matters involving

fundamental rights. The Tribunal is concerned by the recent and unnecessary level of contention over minor matters. All participants are encouraged to reflect on how their conduct may contribute to delays and on the impact such delays may have on the children. The Tribunal is undertaking the same reflection. Moving forward, parties and interested parties should prioritize finality by advancing final order requests and/or reaching agreements as promptly as possible, without allowing the process to extend unnecessarily over multiple years. The Tribunal will establish an appropriate timeframe after consulting with the parties.

VIII. Retention of jurisdiction

[276] The Panel retains jurisdiction over all of its prior orders, with the exception of its compensation orders, the OFA ruling and associated orders, and the separate orders concerning the two Ontario First Nations, Taykwa Tagamou Nation and Georgina Island First Nation. For clarity, in Ontario, the Tribunal has retained jurisdiction only over Jordan's Principle. The Panel will revisit the issue of retained jurisdiction once the national long-term reform plan proceedings have concluded, or as it considers appropriate in light of the future evolution of this matter.

Signed by

Sophie Marchildon
Panel Chair

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
May 25, 2026

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: May 25, 2026

Motion dealt with in writing without appearance of parties

Written representations by:

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Paul Vickery, Sarah-Dawn Norris, Meg Jones, Dayna Anderson, Kevin Staska, Sarah Bird, Jon Khan, Alicia Dueck-Read and Aman Owais, counsel for the Attorney General of Canada, the Respondent

Maggie Wente, Jessie Stirling, Ashley Ash and Katelyn Johnstone, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel, counsel for the Nishnawbe Aski Nation, Interested Party

Carly Fox and Jasen Erbeznik, counsel for Assembly of Manitoba Chiefs

Harold Cochrane and Alyssa Cloutier, counsel for Southern Chiefs' Organization Inc.

Alexandra Heine and Dan Goudge, counsel for Our Children Our Way