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Via Email

Our File Number: LEX-500219273

August 13, 2026

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Dear Member Marchildon,

Re: First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada – CHRT File No. T1340/7008

Thank you for the opportunity to provide submissions on the process for addressing outstanding issues under 2025 CHRT 6.

Canada has carefully considered the Assembly of First Nations, the First Nations Child and Family Caring Society, the Chiefs of Ontario, and Nishnawbe Aski Nation's (the **Parties**) joint proposed procedure set out in Sarah Clarke's letter dated July 30, 2026. Canada thanks the Parties for this joint submission.

While the Parties made collaborative efforts to develop their proposal with corresponding timelines for steps in this process, Canada does not agree or consent to core elements of the proposal.

Canada's view is that adjudicating outstanding issues under 2025 CHRT 6 should follow the established Tribunal motion procedure as closely as possible, with reference to the findings and process already contemplated in 2025 CHRT 6. Such an approach ensures the Tribunal has the best evidence before it while also seeking to ensure procedural fairness and natural justice.

In the following, Canada explains its overall position on the parties' proposal, discusses applicable natural justice and procedural fairness issues, and provides its view of the proper procedure to follow to address outstanding 2025 CHRT 6 issues.

Canada's position on the Parties' proposal

The Parties proposal suffers from two fundamental flaws.

Canada

The parties' proposal is not suitable to adjudication

The front-end of the Parties' proposal contemplates a process that would be more appropriate for mediation as opposed to adjudication. The approach raises significant natural justice and procedural fairness concerns, which Canada discusses below, and the parties already spent weeks in mediation without any meaningful resolutions to outstanding 2025 CHRT 6 issues.

The parties' proposal seeks to introduce new matters outside of 2025 CHRT 6

The Parties' proposal appears to contemplate matters that were not included or that post-date the Tribunal's ruling and orders in 2025 CHRT 6. Absent a new motion, such matters cannot be subsumed into the present adjudicative process, which is not a freestanding process. Instead, it is a continuation of the Tribunal's orders and directions contained in 2025 CHRT 6. The Tribunal was clear in 2025 CHRT 6 that in the absence of agreement on consent orders respecting interim Jordan's Principle matters at issue in 2025 CHRT 6, then each party would return to the Tribunal with its respective options for orders supported by evidence.¹

Natural justice and procedural fairness considerations

The parties' proposal raises two significant natural justice and procedural fairness issues.

The parties' process improperly contemplates further disclosure

Canada does not agree with a process that requires it to disclose further documents and information. Such materials would fall outside the Tribunal's ruling and orders in 2025 CHRT 6: in short, the process raises significant procedural fairness concerns given the materials go beyond what the orders contemplated in 2025 CHRT 6.

In returning to a remedial adjudicative process where Canada may be subject to further Tribunal orders affecting Indigenous Services Canada's operations (ISC), Canada must be afforded an equal footing to all other parties in this proceeding.

If the Parties seek further orders from this Tribunal directing Canada to, among other things, modify Jordan's Principle operations or adopt certain processes and operational definitions, they ought to make this argument based on evidence at their disposal. Canada may then respond in the manner it deems necessary, with reference to evidence in support of its position. But Canada objects to providing any evidence or information that may be used to adjudicate any outstanding issues except for evidence or information that it may elect to include in its own affidavit materials and by way of cross-examination. This position is consistent with principles of natural justice and procedural fairness, and it ensures this Tribunal has the best and most accurate information before it.

¹ 2025 CHRT 6 at para 552.

Finally, Canada notes that it has already provided submissions with respect to substantive equality in its letter to the Tribunal dated June 18, 2026.

The present adjudicative process improperly seeks to expand the issues in 2025 CHRT 6

The parameters of any further remedial adjudication or orders is confined to matters that the Panel specifically identified in its ruling and orders in 2025 CHRT 6. As such, the parties' evidence and submissions should be anchored to certain paragraphs in that decision, namely paragraphs 552 to 585 of 2025 CHRT 6, where the Tribunal sets out its orders. A process that is not tied to those paragraphs does not comply with natural justice and procedural fairness.²

Accordingly, Canada views the Parties' proposed question-and-answer proposal as procedurally unclear, and in any event, an unnecessary step: the orders and directions set out in 2025 CHRT 6 already articulated the scope of matters at issue.

Canada generally agrees that the items listed at Step 2 of the Parties' proposal represents the matters at issue in 2025 CHRT 6. Canada nonetheless proposes that the Parties identify the corresponding paragraphs (namely paragraphs 552 to 585) in 2025 CHRT 6 that underlie their positions on outstanding issues.

Canada's proposed procedure for addressing outstanding 2025 CHRT 6 issues

Adjudicating outstanding issues stemming from 2025 CHRT 6 should follow the established Tribunal motion procedure as closely as possible. Such an approach ensures the Tribunal has the best evidence before it while also seeking to ensure the goals of procedural fairness and natural justice, including ensuring that each party knows the matters at issue and case to be met.

Canada's primary objective is ensuring that the Tribunal has the most accurate information before making any further rulings and orders in the context of 2025 CHRT 6, including to avoid any unintended consequences. An informal process will not achieve that goal or the basic goals of natural justice and procedural fairness. The informal process also increases the risk of rulings and orders that may have an adverse impact on both current Jordan's Principal operations and ISC's ability to eliminate the existing backlog.

Canada proposes the following steps for an adjudicative process:

1. Any further adjudication of interim Jordan's Principle related matters should be consistent with the directions and orders issued by the Tribunal in 2025 CHRT 6;

² *Tan v Canada (Minister of Citizenship and Immigration)*, 2016 FC 876 at para 32; *R v Barton*, 2019 SCC 33 at paras 50–51.

2. The Parties should file a list setting out the outstanding matters at issue per the Tribunal's orders in 2025 CHRT 6, with specific corresponding reference to paragraphs 552 to 585. Parties must demonstrate how the matter is within scope of 2025 CHRT 6 to eliminate the need, as much as possible, for objections as to scope;
3. Should Canada view any of the issues beyond scope, it will raise such concerns within a reasonable amount of time after receiving the Parties' list(s), and a process will be adopted to consider such concerns or objections;
4. The Parties will then file their affidavits on the outstanding issues within a time frame that is agreeable to the Parties and Tribunal;
5. Canada will then file responding affidavit(s) and would ask for no less than 60 days to file same from receipt of the Parties' affidavits;
6. After cross-examinations, the Tribunal should also schedule additional time to allow each party to prepare and file written representations and/or to schedule any oral submissions; and
7. The timing of any filings should consider other ongoing matters to ensure management of overlapping deadlines for all parties and the Tribunal. This approach will ensure that each party will have time to prepare their materials to support the overarching goal of ensuring that the Tribunal will have the best evidence before it in these proceedings.

Canada's concerns regarding unintended consequences remain

As Canada has noted in prior correspondence, it remains concerned that further orders may create unintended consequences for the administration of Jordan's Principle and, most importantly, for First Nations children and their families. Despite the best of intentions, further operational orders may not achieve the desired outcomes or assist in addressing the current non-urgent backlog.

Canada remains concerned that some Parties appear to take the position that the Tribunal is capable of remedying the existing backlog through additional orders. Respectfully, this assertion is not supported by the operational realities of Jordan's Principle nor is the Tribunal tasked with administering the initiative.

Canada further submits that no additional orders will assist ISC in resolving the existing backlog. To the contrary, ISC's position is that further orders may adversely affect efforts currently underway to address outstanding requests. The implementation of additional, untested changes to established Jordan's Principle processes and operations may create operational disruptions and unintended consequences, which could impair ISC's ability to deliver products, services, and supports to First Nations children and their families in an effective and timely manner.

ISC also wishes to remind the Tribunal that the urgent backlog has largely been addressed. While a significant number of non-urgent requests remain under review, First Nations children and their families continue to receive products, services, and supports pursuant to Jordan's Principle. Canada remains focused on processing outstanding requests and ensuring the continued delivery of necessary supports in accordance with the objectives of Jordan's Principle.

Previously filed materials

Canada would ask that any materials filed with the Tribunal by the Parties arising out of the Tribunal's previous directions dated June 23, 2026 and July 13, 2026, in relation to this process be removed from the record. This includes the questions and answers posed by the First Nations Child and Family Caring Society to the Panel. This will ensure it is clear to all Parties exactly what materials are being considered by the Tribunal with respect to Jordan's Principle.

Conclusion

Since the issuance of 2025 CHRT 6, Canada reiterates that ISC has made significant progress in addressing the Tribunal's findings. This includes substantial reductions in the backlog of urgent requests to Jordan's Principle, improvements to intake and triage processes, strengthened operational oversight, and continued approval of funding for First Nations children across Canada.

Sincerely,



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