

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Ottawa, Canada K1A 1J4

August 21, 2026

By Email

(See Distribution List)

Re: First Nations Child and Family Caring Society et al. v. Attorney General of Canada
Tribunal File: T1340/7008

Sent on behalf of Member Sophie Marchildon

Dear parties,

The Tribunal has recently adopted a new Practice Direction that applies to all proceedings, including those proceedings that are already underway, unless a Tribunal Member orders otherwise. See link at: <https://chrt-tcdp.gc.ca/en/human-rights/human-rights-laws-rules-and-guidance/practice-direction-motions-scopeparticulars-page-limits-and-filing-deadlines>.

As master of its own procedure, the Tribunal intends to follow this Practice Direction, with minor adaptations to reflect the unique nature of these proceedings and to recognize that the current proceeding is being conducted under the former Rules, while also taking into account the Tribunal's dialogic approach and its approach to remedies in these proceedings. For greater clarity, this proceeding will still continue under the Tribunal's RULES OF PROCEDURE (03-05-04), unless all the parties' consent to the new rules (Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137, Rule 2).

Jordan's Principle interim issues

The Caring Society, the AFN, the COO and the NAN moved collaboratively and creatively to craft a way forward for Jordan's Principle interim issues. The Tribunal was pleased. However, Canada has signaled some concerns and also potential objections requiring rulings. This will inevitably delay the proceedings even further, and the Tribunal desires to hear this as soon as possible.

Canada also included significant delays in its proposed schedule, asking for no less than 60 days to prepare responding affidavits, which runs contrary to moving expeditiously and is unreasonable.

The Tribunal has considered the Caring Society, the AFN, the COO and the NAN's (First Nations parties) joint submissions on their proposed process to address Jordan's Principle interim issues, as well as the AGC's submissions and proposed process. This round of submissions was particularly helpful in shedding some light on potential issues among the parties. The matters proposed by the First Nations parties in their joint submissions may assist the Tribunal in determining the effectiveness of its previous orders. The evidence over the years has established that interim processes can last for long periods of time while awaiting long-term change. The Tribunal must ensure that its previous orders are effective pending long-term reform. The AGC's proposed process is unnecessarily narrow and limits the First Nations parties' access to arguably relevant information that may assist them and the Tribunal in understanding how Jordan's Principle currently functions, especially given that the evidence in this case, and more recently in 2025 CHRT 6, has established that the First Nations parties in this case are often involved in assisting their members with their Jordan's Principle requests.

The Tribunal greatly appreciates the parties' efforts to propose a process for the Tribunal's consideration. Upon consideration of those proposals, the Tribunal directs the following process and schedule to move the matter forward as clearly, fairly and expeditiously as possible, and to assist it in determining the effectiveness of its previous orders, consistent with its approach to remedies over the last decade.

The Tribunal originally intended to deal only with the orders made in 2025 CHRT 6. However, given the time that has elapsed since that decision, this may not be effective if the Tribunal does not understand what Canada has implemented since then, how it has been implemented, and the reasons for doing so.

The Tribunal needs to ensure that its orders are effective, and updates on developments since the ruling, supported by evidence, may be necessary to make that determination. However, at this time in the proceeding, the Tribunal does not wish to embark on a full-scale long-term reform and reminds the parties to remain focused. This should be reflected in the scope of the motion(s) and response(s). The Parties' objections should be articulated in their response and replies to avoid delays.

In keeping with the principles of fairness and expeditiousness, if there is any objection to the motion or response, or any concern that further orders may not be helpful, this is best addressed in the response and replies, at the hearing with supporting evidence, and subsequently in the written arguments. There is no need for a lengthy hearing.

Backlog

To Canada's point about the backlog, there is no guarantee that any order will be made concerning backlog management.

The Tribunal is open to hearing any evidence and argument in support of this submission. A simple statement that the Tribunal should not intervene is not acceptable, given 2025 CHRT 6 and the Tribunal's ongoing approach to remedies and ensuring their effectiveness.

Motions and written submissions

The First Nations parties will file a motion on consent, if applicable.

If the motion is on consent, the motion may be up to 40 pages.

If the motion is not on consent, the First Nations parties will limit their motions to 10 pages each, as provided in the Practice Direction.

The motion(s) shall be filed by **September 9, 2026**.

Canada after receipt of the motion(s) will file a response and is allowed 40 pages by **September 22, 2026**.

The reply will be 20 pages if the motion is on consent. If the motion is not on consent, the reply will be limited to 5 pages per party and will be filed after Canada's response by **September 29, 2026**.

This will ensure that Canada knows the case it has to meet, that all parties know exactly what the proceedings consist of, and will promote clarity, efficiency and fairness.

Hearing and witness evidence

The parties will ensure that they are available this fall for a hearing. The number of hearing days will be determined in consultation with the parties but should not exceed five days.

There is no unfairness in proceeding without affidavits. The parties will file will-says of no more than 3 pages per witness who will appear before the Tribunal, with the parties other than Canada filing theirs by **September 29, 2026**, and Canada filing its will-says by **October 6, 2026**.

The hearing will follow a process of examination-in-chief, cross-examination and re-examination and will include time for the Tribunal's questions. The hearing will take place in October 2026. The hearing dates will be determined with the parties shortly. The hearing will be held virtually, with access for the media and the public. This will promote efficiency and facilitate the scheduling of hearing dates.

Written arguments following the hearing

The joint moving parties, or any separate moving parties, will have twelve calendar days following the hearing to file their written arguments. Following the filing of the moving parties' written arguments, Canada will have twelve calendar days to file its written arguments in response, and any replies will be filed within seven calendar days of Canada's response. In the interest of time, there will be no oral hearing following the filing of the written arguments.

Court reporter, transcripts and recordings

The parties are permitted to arrange for a court reporter to attend the virtual hearing.

If they do not, the parties will not impose lengthy delays on the Tribunal to wait for transcripts. The parties will be provided with the recordings at the end of each day and can prepare their written arguments with those recordings. There is also the possibility of using Zoom transcripts. This option can be explored with the parties at a later date.

Disclosure

The Tribunal reminds the parties of their ongoing disclosure obligations. This obligation applies to all parties. If a document is arguably relevant to the motion and interim proceedings in this case, it must be disclosed. While the Tribunal appreciates that the exact parameters of the motion are not established at this time, there is a sufficient understanding of its general outlines, given the First Nations parties' joint submissions, proposed process and requests for information. The Tribunal therefore expects all parties to commence meaningful steps to ensure that they can promptly disclose the arguably relevant documents by **August 31, 2026**, and on an ongoing basis thereafter. This would allow for any adjustments that may be required following receipt of the motion and any response. However, this is not a fishing expedition. Disclosure must be guided by the issues raised in the motion proceedings, including Canada's response, and will end once those proceedings have been completed.

The Tribunal chose the filing dates to allow the parties to consider disclosure before drafting their motion(s) and response(s). Given the ongoing disclosure obligation, further disclosure may occur after those filings. Should post-filing disclosure affect any of the orders requested, the Tribunal may allow any necessary amendments to the filings without causing delay to the established schedule.

Privileged documents and Cabinet confidence

The parties should avoid requesting Cabinet confidence and privileged documents and, therefore, avoid further delays to these interim proceedings.

Requests for delay and the best interests of the child

Any delay will have to be justified considering the best interests of the child, the principle of proportionality, section 48.9 (1) and rule 1 of the Tribunal's RULES OF PROCEDURE (03-05-04) of procedure.

The best interest of the child forms part of the specific nature of these proceedings, and this principle has been reiterated multiple times by this Tribunal.

Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples

Additionally, moving forward Canada may be required to demonstrate how its interventions respect: The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples. <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html>

The Directive states that it applies to the Attorney General's role in civil litigation regarding section 35 of the Constitution Act, 1982 and other Crown obligations towards Indigenous peoples. However, Footnote 2 expressly clarifies the broader application of the Directive. While the Directive primarily applies to section 35 litigation, its general themes have broader application to all civil litigation and other forms of conflict resolution relating to the distinct legal obligations of the Crown arising from the historic and ongoing relationship between the Crown and Indigenous peoples. Footnote 2 further specifies that much of the Directive's content reflects best practices applicable to the conduct of all litigation, (emphasis added).

The 20 Litigation Guidelines instruct counsel as to how the Principles must be applied in civil litigation involving Indigenous peoples. The work of operationalizing these Guidelines is already taking place and will be ongoing.

Should you have any questions, please do not hesitate to contact the Registry Office by email at registry.office@chrt-tcdp.gc.ca by telephone at (343) 542-8948 or by fax at 613-995-3484.

Yours truly,

Heather Nagy,
Registry Officer