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Canadian Human Rights Tribunal
c/o Amanda Wilkes, Senior Registry Officer
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Dear Ms. Wilkes:

Re: *FNCF CSC et al. v. AGC* (CHRT File T1340/7008) – Joint submissions of COO and NAN regarding completion and issuance of detailed reasons for the March 30, 2026 OFA Letter Decision

I write on behalf of Chiefs of Ontario (“COO”) and Nishnawbe Aski Nation (“NAN”) in response to Chairperson Marchildon’s July 23, 2026 request for submissions regarding whether she may complete and issue the detailed reasons for the Panel’s March 30, 2026 Letter Decision approving the Ontario Final Agreement (the “OFA”) (the “Letter Decision”).

COO and NAN support Chairperson Marchildon's proposed approach and submit that she should be permitted to complete and issue the detailed reasons for the Letter Decision. Member Lustig's resignation should not frustrate the completion of reasons for a decision that was fully adjudicated, jointly rendered, and expressly contemplated the later issuance of detailed reasons. Both administrative law principles and the human rights context of these proceedings favour preserving and completing the Panel's work, rather than abandoning the detailed reasons and the guidance they were intended to provide.

In the alternative, if it is determined that Chairperson Marchildon cannot issue the detailed reasons in her current capacity, COO and NAN submit that consideration should be given to any lawful means of permitting their completion and issuance. As explained below, this unusual circumstance warrants consideration of a practical solution that preserves both the Panel's completed adjudicative work and a complete explanation of the Tribunal's reasoning on issues of significant importance to First Nations children, families, and Nations across Ontario.

A. The OFA Approval Decision Was Made by a Properly Constituted Panel and the Letter Decision Already Reflects the Panel's Shared Reasons

The starting point is that the OFA approval motion has already been decided. The Letter Decision was jointly issued by Chairperson Marchildon and Member Lustig following a full adjudication of the OFA approval motion. The Panel was properly constituted and had quorum when it rendered its decision.

Just as importantly, the Letter Decision was not merely a statement of outcome. Although the Panel indicated that fuller reasons would follow, the Letter Decision itself spans fifteen pages and contains substantial findings, analysis, and explanations supporting the Panel's conclusion that the OFA should be approved. The Panel addressed issues including the purposes of the OFA, the relationship between self-determination and children's rights, the continuing force of the Tribunal's cease-and-desist order, substantive equality, accountability mechanisms, the interpretation of the OFA, objections raised by non-moving parties, and the implications of approval for specific First Nations. It also issued detailed accompanying orders. In doing so, the Letter Decision itself demonstrates a shared rationale for the outcome and reflects reasoning developed jointly by the Panel while it was properly constituted.

The Letter Decision expressly states that it is "only a summary" and should not be considered a complete final decision absent the fuller reasons to follow. At the same time, the Panel made clear that the fuller reasons would elaborate upon, rather than replace, the analysis already set out in the Letter Decision. The contemplated reasons therefore form part of a continuum of adjudicative work that began while the Panel was properly constituted and reflects the shared views of both Panel members.

This conclusion is reinforced by Chairperson Marchildon's July 23 direction, which confirms that:

- the OFA was "fully adjudicated" by both Panel members;
- it was "entirely and carefully deliberated upon" by both Panel members;
- a "meeting of the minds" was reached;
- that agreement was expressed in the Letter Decision; and
- the detailed reasons are intended to elaborate on the decision already made.

Accordingly, this is not a case where a remaining decision-maker is being asked to determine the merits alone. Nor is it a case where the Tribunal lacks evidence of the Panel's shared reasoning. Both the Letter Decision and Chairperson Marchildon's July 23 direction confirm that the Panel reached and expressed a common rationale for the OFA approval decision. The detailed reasons are proposed as a further explanation of that rationale, not the creation of a new one.

B. The Statutory Framework Supports Completion and Issuance of the Reasons

Chairperson Marchildon's July 23 direction requested that the parties consider this issue through an administrative law lens. In our submission, the statutory framework seeks to avoid

unnecessary prejudice and favours preserving completed adjudicative work rather than discarding it because of an unforeseen change in tribunal composition.

The Tribunal's own jurisprudence points in the same direction. In *Mississaugas of the Credit First Nation v Attorney General of Canada*,¹ the Tribunal permitted the continuation of adjudicative work in circumstances involving a member whose appointment had expired, emphasizing the practical consequences of delay and the prejudice that could result from abandoning work already completed.² The Tribunal's approach reflects a preference for continuity and completion where doing so serves the interests of justice.

Administrative law has long recognized the importance of practical solutions that preserve adjudicative work already completed. In *Chin v Law Society of Upper Canada*,³ the Divisional Court rejected a formalistic approach that would effectively require proceedings to begin again whenever a panel member becomes unavailable, recognizing that such an outcome would be inconsistent with the timely and efficient administration of justice.⁴ The decision reflects a broader concern that parties should not be deprived of the benefit of adjudicative work already undertaken merely because of an unforeseen change in tribunal composition. While arising in a different statutory context, the Manitoba Court of Appeal's decision in *Jhanji v Law Society of Manitoba*⁵ reflects a broader principle that unexpected vacancies should not automatically frustrate adjudicative work completed while a tribunal was properly constituted.

That principle is also reflected in legislative choices made across Canada. Legislatures across Canada have frequently adopted mechanisms permitting proceedings to continue despite resignations, vacancies, expired appointments, deaths, or other interruptions affecting tribunal composition,⁶ reflecting a broader legislative recognition that unforeseen changes in membership should not automatically nullify extensive adjudicative efforts.

The *Canadian Human Rights Act* (the “CHRA”) contains no provision directly addressing the circumstances before the Tribunal. Nor does it impose a general quorum requirement. To the contrary, section 49(2) demonstrates that Parliament adopted a flexible approach to the Tribunal's composition by expressly authorizing inquiries to be conducted by a single member or a multi-member panel.⁷ Read harmoniously with the scheme and remedial purposes of the CHRA,

¹ [2025 CHRT 60](#).

² *Ibid* at [para 27](#).

³ [2018 ONSC 2072](#).

⁴ *Ibid* at [para 71](#).

⁵ [2022 MBCA 78](#).

⁶ See e.g. *Statutory Powers Procedure Act*, RSO 1990, c S.22, ss. [4.3](#), [4.4\(1\)](#), and [4.4\(2\)](#); *Immigration and Refugee Protection Act*, SC 2001, c 27, [s. 155](#); *Administrative Tribunals Act*, SBC 2004, c 45, ss. [5](#), [26\(7\)](#), and [26\(8\)](#); *Workers Compensation Act*, RSBC 2019, c 1, [s. 285\(11\)](#); *Civil Resolution Tribunal Act*, SBC 2012, c 25, [s. 72](#); *Social Work and Social Service Work Act, 1998*, SO 1998, c 31, [s. 16.1](#); and *Act respecting administrative justice*, CQLR c J-3, [s. 55](#). While the legislative mechanisms differ, these statutes reflect a common concern with ensuring that ongoing or substantially completed adjudicative work is not frustrated by the resignation, death, incapacity, or departure of tribunal members.

⁷ *Canadian Human Rights Act*, RSC 1985, c H-6, [s. 49\(2\)](#).

including those set out in section 2,⁸ the *CHRA* does not support the conclusion that a member's resignation after a decision has been rendered precludes the completion of reasons explaining that decision. The *CHRA* also permits members whose appointments have expired to conclude inquiries already underway,⁹ further reflecting a concern for continuity and completion rather than abandonment of ongoing adjudicative work.

Similarly, while section 22 of the Federal *Interpretation Act*¹⁰ establishes default rules respecting quorum and decision-making by multi-member bodies, those provisions do not directly address the unusual situation before the Tribunal. More importantly, section 22 also reflects a legislative intention that vacancies should not automatically invalidate the acts of a decision-making body where its authority has otherwise been properly exercised. Read together with the remedial purposes of the *CHRA* and the direction in section 10 of the *Interpretation Act* that federal legislation receive a fair, large and liberal construction that best ensures attainment of its objects,¹¹ this supports an interpretation favouring completion of adjudicative work already lawfully undertaken rather than its abandonment following an unforeseen change in tribunal composition.

The authorities that may be said to point in the opposite direction are materially distinguishable. Cases such as *Parlee v College of Psychologists of New Brunswick*¹² involved statutory schemes that expressly prescribed panel composition and quorum requirements and where the tribunal lacked the composition required to render the decision itself. Here, by contrast, the OFA approval decision was rendered before Member Lustig's resignation. Chairperson Marchildon is not proposing to revisit the merits, hear additional evidence, or alter the disposition already reached by the Panel. She proposes only to complete reasons explaining a decision that was jointly rendered while the Panel was properly constituted.

In our submission, the *CHRA*, the *Interpretation Act*, and the authorities discussed above support an interpretation that permits completion and issuance of the detailed reasons rather than the only realistic alternative: abandoning them altogether. Such an outcome would be inconsistent with the broader statutory and administrative law preference for preserving completed adjudicative work wherever possible.

C. The Human Rights Context Strongly Favours Issuing Full Reasons

Chairperson Marchildon's July 23 direction specifically requested that the parties consider the context of this case, the impacts on First Nations children, families, and Nations in Ontario, and the issue through a human rights lens. That context strongly favours completion of the reasons.

This is not an ordinary procedural matter. The OFA approval decision addresses foundational questions regarding First Nations self-determination, long-term reform of child and

⁸ *Ibid.*, [s. 2](#).

⁹ *Ibid.*, [s. 48.2\(2\)](#).

¹⁰ RSC 1985, c I-21, [s. 22](#).

¹¹ *Ibid.*, [s. 10](#).

¹² [2004 NBCA 42](#).

family services, substantive equality, accountability, implementation of the OFA, and the continuing effect of the Tribunal's remedial orders.

Unlike many adjudicative decisions, the OFA approval decision will not simply resolve a completed dispute. They have a continuing function and will serve as:

- an interpretive guide for implementation of the OFA;
- an important reference point in any future disputes regarding the OFA;
- guidance regarding the Tribunal's treatment of majority-supported mandates and the authority of representative organizations to advance positions on behalf of First Nations that are not unanimously aligned;
- guidance regarding the substantive equality principles that must inform long-term reform; and
- an important precedent for future regional and national reform initiatives.

The parties and affected First Nations have expected detailed reasons since March 30, 2026. The Letter Decision itself expressly contemplated the issuance of fuller reasons and indicated that it should not be considered a complete final decision without them. Refusing to issue those reasons now would leave important aspects of the Panel's analysis unexplained and diminish the practical value of a decision with significant implications for First Nations children, families, and Nations across Ontario.

This Tribunal has repeatedly emphasized the importance of accountability, meaningful implementation of remedies, and the protection of First Nations children and families.¹³ Those objectives are best served by a complete articulation of the reasoning underlying a significant decision concerning self-determination, substantive equality, and long-term reform. The reasons will serve not only as practical guidance, but as the Tribunal's authoritative articulation of the legal principles that will govern implementation of the OFA, one of the most significant systemic human rights reform initiatives in Canadian history.

D. Concerns About Issuing Reasons Following Member Lustig's Resignation Do Not Justify Abandoning the Reasons Entirely

COO and NAN recognize that concerns may arise because Member Lustig is no longer available to review the final version of the detailed reasons. However, those concerns must be assessed in light of the circumstances actually before the Tribunal.

¹³ See pp 7-10 of the Letter Decision (holding Canada accountable to its "positive covenant" to eliminate discrimination, confirming Canada's ongoing obligations under the Tribunal's orders, and emphasizing protection of First Nations children, families, and Nations for generations to come); and *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada*, 2025 CHRT 80 at [paras 66-67](#) (emphasizing implementation of remedial orders, enduring protection of victims, and ensuring discrimination is fully and effectively addressed).

The concern does not arise at the level of the decision itself. The decision has already been rendered jointly.

Nor does the concern arise because there is uncertainty about whether the Panel reached a common rationale. The Letter Decision itself demonstrates otherwise. As outlined above, it spans fifteen pages and contains substantial findings, analysis, explanations, and orders reflecting the Panel's shared reasoning on the OFA approval motion. That reasoning was not created after Member Lustig's resignation. It was developed while the Panel was properly constituted, reflected in the jointly issued Letter Decision, and, according to Chairperson Marchildon's July 23 direction, was the product of a "meeting of the minds" reached after full adjudication and careful deliberation. The detailed reasons would therefore elaborate upon an existing shared rationale, not create a new one.

Further, Chairperson Marchildon has expressly stated that she does not consider herself free to depart from what the Panel jointly decided and that the reasons will remain consistent with, and explanatory of, that decision.

Put differently, Chairperson Marchildon is not proposing to generate a new rationale for the OFA approval decision after Member Lustig's resignation. Rather, she proposes to explain and elaborate upon a rationale that, according to both the Letter Decision and her July 23 direction, was already developed jointly by the Panel before Member Lustig's resignation. The concern that the detailed reasons may not have been reviewed in their final form by Member Lustig does not negate the fact that the underlying reasoning process was undertaken collectively while the Panel was properly constituted.

To the extent there remains concern that the completed reasons will not have been reviewed by both original Panel members, that concern should not result in the abandonment of the detailed reasons. Such an outcome would place disproportionate weight on a narrow procedural consequence of Member Lustig's resignation, while giving insufficient weight to the broader administrative law preference for preserving completed adjudicative work and the significant human rights interests at stake.

E. Alternative Relief

If it is determined that Chairperson Marchildon cannot issue the detailed reasons in her current capacity, COO and NAN submit that consideration should be given to any lawful means of permitting their completion and issuance. This situation is highly unusual. The resignation of a Panel member after a decision has been rendered, but before the issuance of contemplated detailed reasons, is an exceptional circumstance that warrants consideration of an exceptional solution.

For example, consideration could be given to the Chairperson of the Tribunal exercising her exclusive authority under section 49(2) of the *CHRA*¹⁴ to reconstitute the Panel and appoint Chairperson Marchildon as a one-member Panel for the limited purpose of completing and issuing

¹⁴ *Canadian Human Rights Act*, RSC 1985, c H-6, [s. 49\(2\)](#).

reasons explaining the Letter Decision.¹⁵ COO and NAN do not suggest that this is the only available approach. Rather, consideration should be given to any lawful means of permitting completion and issuance of the reasons. As discussed above, the Tribunal's approach in *Mississaugas* demonstrates a willingness to adopt practical procedural solutions where issues relating to a member's status might otherwise disrupt an ongoing proceeding and prejudice affected First Nations.¹⁶

The sole purpose of such a reappointment would be to facilitate completion of the detailed reasons that were contemplated from the outset, thereby ensuring that affected First Nations receive the guidance and explanation necessary to implement the OFA, understand the Tribunal's treatment of key issues arising from the OFA approval motion, and apply those principles in future disputes and reform initiatives. In the unique circumstances of this case, an exceptional procedural solution is preferable to abandoning the reasons altogether.

Conclusion

For these reasons, COO and NAN submit that Chairperson Marchildon should be permitted to complete and issue the detailed reasons for the March 30, 2026 Letter Decision.

In the alternative, if it is determined that Chairperson Marchildon cannot issue the detailed reasons in her current capacity, COO and NAN submit that consideration should be given to any lawful mechanism that would permit their completion and issuance, including reconstituting the Panel by appointing Chairperson Marchildon as a one-member Panel for that limited purpose.

COO and NAN thank the Tribunal for its consideration of these submissions. Given the importance of the issues raised and the possibility that parties may advance differing positions on the questions posed in Chairperson Marchildon's July 23 direction, COO and NAN respectfully request the opportunity to file a brief reply to any submissions opposing the proposed approach.

Yours very truly,
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¹⁵ See *Brink's Canada Ltd. v Canada (Human Rights Commission)*, [1996] 2 FC 113 (TD). The Court's recognition of the Chairperson's authority to constitute a new panel where an existing panel cannot proceed supports a corresponding power to reconstitute a panel whose composition has materially changed.

¹⁶ *Mississaugas of the Credit First Nation v Attorney General of Canada*, 2025 CHRT 60 at [para 27](#).

c.

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