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Canadian Human Rights Tribunal
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Dear Chairperson Khurana:

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

1. I write on behalf of Chiefs of Ontario (“COO”) and Nishnawbe Aski Nation (“NAN”) in response to Chairperson Khurana’s July 29, 2026, request for submissions regarding the respondent’s request to establish a three-member panel in this proceeding.
2. The respondent has not shown that Chairperson Khurana’s re-appointment of Member Marchildon as the sole panel member has caused or would cause any violation of natural justice or procedural unfairness. On the contrary, removing Member Marchildon from the panel or adding new panel members risks delay and disruption of orderly and efficient adjudication and the continuity of the Tribunal’s reasons at a crucial late stage in the proceedings. The respondent’s request should be dismissed.

3. COO and NAN submit that Member Marchildon should continue as the sole panel member presiding over these proceedings. In the alternative, COO and NAN submit that Chairperson Khurana has jurisdiction to re-assign Member Marchildon as a one-member Panel presiding over these proceedings. These dispositions are supported by sections 48.9(1), 49(2), and 49(3) of the *Canadian Human Rights Act* (the “CHRA”)¹ and by broader administrative law principles.
4. The focus of this procedural inquiry must remain on effective and timely redress for violation of the human rights of First Nations children, families, and Nations.
5. COO and NAN have reviewed the submissions in draft of the Assembly of First Nations and the First Nations Child and Family Caring Society and endorse and adopt their submissions. COO and NAN respectfully request that the interests of the majority of the parties to these proceedings be taken into account when assessing the respondent’s request.²

A. Reconstituting the Panel Cures any Defect in Member Marchildon’s Appointment

6. To the extent that there is any issue with the status quo, which COO and NAN do not accept, reappointing Member Marchildon as a one-member panel cures any defect in the composition of the current panel. COO and NAN respectfully ask Chairperson Khurana to exercise her exclusive authority under section 49(2) of the

¹ *Canadian Human Rights Act*, RSC 1985, c H-6, ss. s. [48.9\(1\)](#), [49\(2\)](#), and [49\(3\)](#) [“CHRA”].

² *Canada (Attorney General) v Montreuil*, [2009 FC 22](#) at para [23](#).

CHRA³ to reconstitute the panel and appoint Member Marchildon as a one-member panel.⁴

7. This Tribunal has a record of adopting practical procedural solutions to prevent disruption and delay. In *Mississaugas of the Credit First Nation v Attorney General of Canada*,⁵ 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.⁶ The Tribunal's approach reflects a preference for continuity and completion where doing so serves the interests of justice. This is just such a case.

B. The CHRA Mandates an Expedious and Meaningful Resolution to the Discrimination Found

8. COO and NAN submit that adding new panel members at this late stage would inevitably cause delay, as any newly appointed members would be required to familiarize themselves with the enormous record that spans almost twenty years of evidence and argument. Separately, removing Member Marchildon from the panel would risk the loss of her institutional knowledge of the record and the

³ CHRA, [s. 49\(2\)](#).

⁴ See *Brink's Canada Ltd. v Canada (Human Rights Commission)*, [\[1996\] 2 FC 113 \(TD\)](#) [*Brink's*]. 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.

⁵ *Mississaugas of the Credit First Nation v Attorney General of Canada*, [2025 CHRT 60](#) [*Mississaugas of the Credit First Nation*].

⁶ *Mississaugas of the Credit First Nation* at [para 27](#).

proceedings, creating a further potential for delay and disruption to the adjudication of this matter.

a. Delay cannot be justified where the respondents have not shown procedural unfairness

9. The importance of a timely resolution is built into the CHRA: the Tribunal has a general obligation to act informally and expeditiously⁷ and must seek the “timely resolution of discrimination complaints”,⁸ even in cases of significant complexity.⁹ To eliminate and prevent discrimination, the Tribunal’s remedial orders must be meaningful and effective.¹⁰ An effective remedial order should minimize delay and difficulty.¹¹ To this end, the Tribunal must be free to develop its own processes to best achieve the aims of the CHRA. This includes valuing efficiency and expediency in resolving procedural questions.¹²
10. This approach is in the best interests of the victims, as affirmed by the Tribunal: “It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time”.¹³

⁷ [CHRA](#) at s. [48.9\(1\)](#).

⁸ *Malec et al v Conseil des Montagnais de Natashquan*, [2012 CHRT 8](#) at para [33](#).

⁹ *Liu (on behalf of IPCO) v Public Safety Canada*, [2025 CHRT 90](#) at para [21](#): “complaints alleging a systemic discriminatory practice, like other complaints, must be dealt with in a proportional manner” and there must be “reasonable and proportional limits on the time frame”.

¹⁰ *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003 SCC 62](#) at para [25](#) [*Doucet-Boudreau*], while the comments of the Supreme Court were in relation to the *Charter*, the same reasoning has been applied to human rights legislation; see *Ball v Ontario (Community and Social Services)*, [2010 HRTO 360](#) at paras [164-170](#).

¹¹ *Doucet-Boudreau* at para [55](#).

¹² *Brink’s* at paras [32-34](#). See also: *Murray v Immigration and Refugee Board*, [2013 CHRT 2](#) at para [37](#).

¹³ Letter from Canadian Human Rights Tribunal to Parties re Long-Term Reform, dated 10 February 2025 at para 2.

11. In addition to being contrary to the best interests of the victims in this case, delay is contrary to the purpose of administrative law broadly, as set out by the Supreme Court of Canada in *Law Society of Saskatchewan v. Abrametz*:

[32] Legislatures delegate authority to administrative decision makers because of their proximity and responsiveness to stakeholders, their ability to render decisions promptly, flexibly and efficiently, and their ability to provide simplified and streamlined proceedings that can promote access to justice: *Vavilov*, at para. 29.¹⁴

[46] Inordinate delay in administrative proceedings, as in other legal proceedings, is contrary to the interests of society. Decisions by administrative decision makers need to be rendered promptly and efficiently. Administrative delay undermines a key purpose for which such decision-making authority was delegated — expeditious and efficient decision-making.¹⁵

12. The central question is whether constituting a new panel, and thereby sacrificing continuity, institutional knowledge, and timeliness, can be reconciled with the Tribunal's obligation to deliver timely and effective remedies under the CHRA. This question should animate the determination of panel composition 10 years into the remedial phase of these proceedings.

b. Effective remedies require institutional knowledge of these proceedings

13. A meaningful remedial order is “relevant to the experience of the claimant” and “address[es] the circumstances in which the right was infringed or denied”.¹⁶ A

¹⁴ *Law Society of Saskatchewan v. Abrametz*, [2022 SCC 29](#) at para [32](#) [*Abrametz*].

¹⁵ *Abrametz* at para [46](#).

¹⁶ *Doucet-Boudreau* at para [55](#).

meaningful remedy must also yield concrete action that verifiably ameliorates the discrimination identified. Achieving that objective requires a decision-maker who understands not only the findings of discrimination, but also the factual, historical, and procedural context in which those findings arose.

14. The remaining matters to be adjudicated in these proceedings cannot be separated from the adjudication that has already occurred. These issues are bound together and require continuity of the panel. This Tribunal has stated as much in *Hughes v Canada Border Service Agency*:

[22] As a general principle of law, the person who heard the evidence should be the person to render the decision. Substituting a decision-maker who did not hear the evidence would be unfair to the parties and perhaps constitute a breach of natural justice.¹⁷

15. These principles of effective and meaningful remedies are particularly important in this proceeding. The record spans nearly twenty years and includes extensive evidence, submissions, interim decisions, iterative remedial orders, and compliance-related issues. Most aspects of this matter are at or approaching the stage of long-term reform and final orders.
16. Member Marchildon is uniquely positioned to assess the appropriateness and effectiveness of any future remedies because of her familiarity with the record and the Tribunal's prior decisions in this proceeding. Replacing her or requiring new panel members to become acquainted with the record risks delay and may

¹⁷ *Hughes v Canada Border Service Agency*, [2021 CHRT 17](#) at para [22](#).

undermine the Tribunal's ability to craft remedies that are responsive to the particular circumstances of this case. Maintaining the continuity of Member Marchildon as the sole panel member preserves the integrity of the proceedings.

C. Conclusion

17. This Tribunal has previously adopted practical procedural solutions where issues relating to a member's status might otherwise disrupt an ongoing proceeding and prejudice affected First Nations.¹⁸ Any concerns about the composition of the current panel can be cured by Chairperson Khurana reappointing Member Marchildon as the sole Tribunal member presiding over these proceedings using her exclusive jurisdiction under the CHRA.¹⁹ This resolution is appropriate given the importance of continuity in achieving effective remedial orders and the importance of avoiding delay over procedural issues in a case that was initiated almost 20 years ago.

Regards,



SINÉAD DEARMAN
ASSOCIATE

c.

Julian Falconer, Meaghan Daniel, and Erin McMurray – Counsel for Nishnawbe Aski Nation

Peter N. Mantas, Gabrielle Cyr, Tina Sun, and Clive Ngan – Counsel for the Assembly of First Nations

¹⁸ *Mississaugas of the Credit First Nation* at [para 27](#).

¹⁹ CHRA at [s. 49\(2\)](#).

David Taylor, Sarah Clarke, Henna Mohan, and Robin McLeod – Counsel for the First Nations Child and Family Caring Society of Canada

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

Anshumala Juyal and Khizer Pervez – Counsel for the Canadian Human Rights Commission

Justin Safayeni, Stephen Aylward, and Genevieve Citron – Counsel for Amnesty International