

August 11, 2026

VIA EMAIL Registry.Office@chrt-tcdp.gc.ca

Amanda Wilkes
Registry Operations
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, ON K1A 1J4

Dear Ms. Wilkes:

RE: FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA ET AL V ATTORNEY GENERAL OF CANADA – T#1340/7008
OUR MATTER ID: 5204-002

Pursuant to the Tribunal's August 4, 2026, direction regarding reply submissions, I write in reply to Canada's August 4, 2026 correspondence setting out its position that Member Marchildon cannot take further steps to finalize the reasons related to the March 30, 2026 letter decision approving the Ontario Final Agreement as reasons of the Tribunal. Please bring this correspondence to Member Marchildon's attention.

The crux of Canada's refusal to consent to Member Marchildon completing the detailed reasons is its assertion that the Panel lacks quorum following Member Lustig's resignation on July 7, 2026. As the Caring Society has already detailed in its August 7, 2026 submission to the Tribunal Chairperson (annexed), any quorum issue that may have arisen was addressed by the Tribunal Chairperson confirming, on July 8, 2026, that Member Marchildon would continue to preside over this complaint on her own.

The Caring Society also does not agree with Canada's submission that, even if the quorum issue were addressed, "any further detailed reasons now issued could not be said to reflect the reasons of the Tribunal Panel as constituted at the time of the Decision."¹ The history of this very complaint shows that a Tribunal decision need not be signed by every member who participated in the hearing. Indeed, as the Merits Decision recognizes in its opening paragraphs, Member Bélanger passed away while the Merits Decision was under reserve such that, "[d]espite his valued contributions to the hearing and consideration of this matter, he

¹ Canada's August 4, 2026 submission regarding the Ontario Final Agreement detailed reasons at p 2.

was not able to see the final result of his work.”² Nonetheless, the remaining members signed the decision that resulted from the hearing and Canada took no issue with that approach. Likewise, Member Lustig’s resignation does not impede Member Marchildon from providing the “reasons to follow” the March 30, 2026 letter decision approving the Ontario Final Agreement. The still-pending reasons, which the letter decision itself notes are to be read together with the March 30, 2026 order, are central to the overall interpretation and implementation of the Ontario Final Agreement.

The Caring Society endorses the Chiefs of Ontario and Nishnawbe Aski Nation’s argument in their August 4, 2026 submission that “[a]dministrative law has long recognized the importance of practical solutions that preserve adjudicative work already completed”³ and that “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.”⁴

Completion of the detailed reasons is essential to the reasonableness of the March 30, 2026 letter decision, which was never intended to stand alone. The Tribunal’s approval of the Ontario Final Agreement was expressly premised on its own interpretation of the agreement, to be set out in the reasons to follow: “[t]he moving parties’ joint OFA motion is granted, **as interpreted by this Tribunal, which incorporates, in its interpretation, the fundamental safeguards intended to permanently end the systemic racial discrimination found, prevent it from reoccurring, and protect First Nations children in Ontario for generations to come**, as reflected in the summary and orders below and in the reasons to follow [underlining in original, bolding added].”⁵ However, despite this assurance, the parties still do not know the Tribunal’s interpretation of the specific Ontario Final Agreement provisions that were contested at the hearing, which is critical to the agreement’s approval.

Indeed, as the letter decision states on its face, “[t]his letter-decision is only a summary and should not be considered a complete final decision without its full interpretation of the OFA and the Tribunal’s orders and reasons [emphasis added].”⁶ The letter decision was clear that it provided “guidance” to the parties, so that they could begin implementing the Ontario Final Agreement, in light of Canada’s choice to make the first year of funding under the Ontario Final Agreement contingent on Tribunal approval.

The approval of the Ontario Final Agreement contained a clear condition subsequent, namely, the release of the full reasons for the decision: “[t]he joint motion for approval of the OFA is granted, with the understanding and interpretation, and the guidance set out in the Tribunal’s

² 2016 CHRT 2 at para 11.

³ Chiefs of Ontario and Nishnawbe Aski Nation August 4, 2026 Joint Submission at p 3.

⁴ Chiefs of Ontario and Nishnawbe Aski Nation August 4, 2026 Joint Submission at p 4.

⁵ March 30, 2026 Letter Decision at p. 5-6

⁶ March 30, 2026 Letter Decision at p 1.

findings, orders, and reasons to follow in its decision on this joint motion [emphasis added].”⁷ These reasons to follow were specifically stated to include the “fundamental safeguards intended to permanently end the systemic racial discrimination found, prevent it from reoccurring, and protect First Nations children in Ontario for generations to come [emphasis in original]”,⁸ as noted above.

This approach came at the behest of Canada, the Chiefs of Ontario and the Nishnawbe Aski Nation. Indeed, in the letter decision, the Tribunal noted that “[t]he moving parties’ proposal that the Tribunal incorporate their interpretation and explanation of the OFA into its findings and in the final decision with reasons is an effective means of ensuring that the OFA is interpreted in a manner that satisfies the Tribunal’s orders.”⁹ Canada now reneges from its position that the concerns advanced with respect to the Ontario Final Agreement could be satisfied by such explanatory reasons, and suggests that Member Marchildon issue such explanations in “a written statement in her personal capacity setting out her views and analysis of the matter.”¹⁰ This is an entirely unsatisfactory approach as, unlike reasons for an order of the Tribunal, Member Marchildon’s “views and analysis of the matter” in her “personal capacity” would not be binding and would not hold jurisprudential weight. Rather than allowing this matter to proceed expeditiously and proportionally as the *CHRA* requires, Canada’s position would throw the entire basis of the Ontario Final Agreement’s approval into doubt.

The prejudice of Canada’s position is not merely procedural. The parties, First Nations in Ontario, and the children and families affected by the Ontario Final Agreement have proceeded on the basis that the Tribunal’s approval would be accompanied by binding reasons explaining the safeguards, interpretation and orders that made approval possible. Accepting Canada’s August 4, 2026 submission would effectively allow it – the respondent responsible for wilful and reckless discrimination – to prevent those reasons from issuing, which would undermine the Tribunal’s remedial process.

Canada’s conduct has therefore created unnecessary uncertainty around the very safeguards the Tribunal identified as necessary to protect First Nations children and prevent the recurrence of discrimination. For the children, families and First Nations who will rely on timely and binding implementation of the Ontario Final Agreement in the years to come, that uncertainty risks delaying clarity, accountability and the practical protections intended to flow from the Tribunal’s approval of that agreement. Moreover, Canada’s conduct signals that it continues to seek procedural advantages to the detriment of legal safeguards that will protect the rights of First Nations children and their families.

⁷ March 30, 2026 Letter Decision at p 5.

⁸ March 30, 2026 Letter Decision at pp 5-6.

⁹ March 30, 2026 Letter Decision at p 6.

¹⁰ Canada’s August 4, 2026 submissions at p 3.

While Canada notes that it is the only party challenging the March 30, 2026 letter decision in Federal Court, the terms of the letter decision itself demonstrate that it is contingent in nature. The Caring Society reserves its rights, both under the *Federal Courts Act* and before the Tribunal, in the event that Member Marchildon accepts Canada's arguments, such that the Tribunal's full reasons for approving the Ontario Final Agreement are not completed.

The reasons approving the Ontario Final Agreement must be completed in order for the Tribunal's approval of that agreement to be a justified, transparent, and intelligible exercise of its authority under the *CHRA*, as is required of all administrative decisions.¹¹ The approval of the Ontario Final Agreement clearly hinged on "certain safeguards to protect children for generations to come" and Canada, the Chiefs of Ontario and the Nishnawbe Aski Nation all agreed at the oral hearing that the Tribunal could "include those commitments and explanations regarding how the OFA should be interpreted and how it works as a whole, as well as greater precisions regarding its cease-and-desist systemic discrimination order in its ruling" without disrupting the Ontario Final Agreement's start date.¹² By now seeking to frustrate the articulation of these important safeguards, Canada is reneging from the representations it made to the Tribunal when advocating for the Ontario Final Agreement to be approved, raising serious questions about the very basis for the approval of the agreement.

In light of the above, the Caring Society submits that Member Marchildon can and must complete the Ontario Final Agreement reasons following Member Lustig's resignation. The Caring Society respectfully asks that Canada's position be rejected and that the full reasons contemplated by the March 30, 2026 letter decision be completed by Member Marchildon and issued as the complete and final reasons of the Tribunal. To the extent that the Tribunal Chairperson grants Canada's July 28, 2026 request to reconstitute the present single-Member Panel into a three-Member Panel, the Caring Society respectfully requests a further opportunity to address the impact of that decision on the issuance of the Tribunal's full reasons for approving the Ontario Final Agreement.

Yours truly and respectfully submitted,



David P. Taylor

DPT/jk

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¹¹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

¹² March 30, 2026 Letter Decision at p 7.

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