

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and
ASSEMBLY OF FIRST NATIONS**

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

-and-

**CHIEFS OF ONTARIO, AMNESTY INTERNATIONAL CANADA,
NISHNAWBE ASKI NATION, ASSEMBLY OF MANITOBA CHIEFS, SOUTHERN
CHIEFS' ORGANIZATION INC., OUR CHILDREN OUR WAY SOCIETY,
FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES
COMMISSION AND ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR and
NATIONAL CHILDREN'S CHIEFS COMMISSION**

Interested Parties

**WRITTEN SUBMISSIONS OF THE
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
(Panel Composition)**

August 7, 2026

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I. Overview

1. The Caring Society opposes Canada's request that a three-Member Panel be appointed to preside over the remaining proceedings in this complaint and fully supports Member Marchildon concluding the remedial process as a single-Member Panel. Given that Chairperson Khurana has already determined that Member Marchildon will continue to preside over this matter as a single-Member Panel of the Tribunal, there are no quorum-related issues arising. Member Marchildon continuing as a single adjudicator is the sole course of action that will ensure that this matter continues to proceed expeditiously in the best interests of children and in a manner that is fair to all parties. Canada's request should be dismissed and the propriety of Member Marchildon presiding over this complaint as a single-Member Panel should be confirmed.

2. Three points are dispositive. First, the Panel has quorum because the *Canadian Human Rights Act* ("CHRA") permits the Chairperson to assign a single Member to inquire into a complaint and the Chairperson has already confirmed that Member Marchildon may continue as a single-Member Panel. Second, appointing two new Members would not advance fairness or efficiency. Instead, it would introduce delay and require new Members to absorb a uniquely extensive evidentiary and remedial record, with serious and reasonably foreseeable real-world harms for First Nations children. Third, the context of Canada's request matters: Canada seeks this reconstitution while also challenging Panel decisions and seeking relief in Federal Court that would remit the complaint to a differently constituted panel.

II. The Panel is not inquorate

3. With respect to Canada's argument concerning quorum, the Panel is not inquorate. As communicated to the parties during the July 21, 2026 case management call, the Chairperson has already confirmed that Member Marchildon would continue overseeing the proceedings as a

single adjudicator. This decision restored the Panel to its composition when it was initially referred to the Tribunal by the Canadian Human Rights Commission. As such, this complaint is currently being adjudicated by Member Marchildon as a single-Member Panel, just as it was prior to Acting Chairperson Gupta's July 10, 2012 decision to appoint a three-Member Panel to preside over the 72-day hearing. Indeed, there were no objections from Canada when the complaint proceeded before Member Sinclair from 2008 to 2009, before Chairperson Chotalia from 2009 to 2010, and before Member Marchildon when the complaint was first assigned to her alone. Nor were there objections when Member Marchildon and Member Lustig presided over the matter after Member Bélanger's passing. This confirms the parties' settled prior understanding that s. 49(2) of the *CHRA* permits the complaint to proceed before the Member or Members assigned to inquire into it.

4. There was no requirement for a formal order related to the Chairperson's exercise of her discretion under s. 49(2) of the *CHRA* following Member Lustig's resignation.¹ If there is any ambiguity over quorum, the Chairperson can more formally exercise her discretion to confirm that the matter will continue before Member Marchildon as a single adjudicator.

5. The power to appoint a Panel is vested in the Chairperson, and that authority is not subject to the principle of *functus officio*. Accordingly, the Chairperson has the discretion to change the composition of an appointed Panel more than once in relation to the same complaint.² As the Chairperson has recently recognized, this discretion is constrained, however, by respect for the presiding Member's adjudicative independence.³

¹ *Canadian Human Rights Act*, RSC 1985, c H-6, s 49(2).

² *Brink's Canada Ltd. v. Canada (Human Rights Commission) (T.D.)*, [1996 CanLII 4023 \(FCTTD\)](#); *FNCFCS v. AGC*, [2012 CHRT 16](#) at para. 23.

³ *Mississaugas of the Credit First Nation v Canada*, [2025 CHRT 60](#) at para 28.

6. However, rather than framing their request as one that seeks to change the composition of a validly-appointed Panel, Canada submits that the Chairperson must appoint a three-Member panel in order to remedy a quorum issue, pointing to s. 22(2)(c) of the *Interpretation Act*.⁴

7. At the outset, s. 22(2)(c) does not apply. This provision is suppletive in nature and only applies where “an enactment establishes a board, court, commission or other body consisting of three or more members”.⁵ Here, the Tribunal’s composition is structured by the options in s. 49(2) of the *CHRA*, but it is ultimately the Chairperson who “institute[s] an inquiry” and “assign[s]” the Panel’s membership.⁶ Moreover, the inquiry can be heard by a single-Member Panel or a Panel of three Members. Consequently, a Panel assigned to inquire into a complaint (whether composed of one or three Members) cannot be said to be a “body” consisting of three or more members, a prerequisite for the application of s. 22(2) of the *Interpretation Act*. In the absence of a statutory provision that applies to deal with quorum, tribunals have implicit discretion over the process by which they discharge their statutory responsibilities.⁷

8. In any case, the applicability of s. 22(2)(c) of the *Interpretation Act* is a red herring. At best, Canada’s argument is that the Chairperson must act to fix a quorum issue. However, the Chairperson possesses discretion on *how* to do so. The Chairperson has already addressed any quorum issue by meeting with Member Marchildon and confirming that she will continue overseeing the proceedings as a single adjudicator,⁸ which is sufficient to resolve any quorum-related issue (whether arising under the *Interpretation Act*, or at common law).

⁴ [RSC 1985, c I-21](#).

⁵ *Interpretation Act*, s. [22\(2\)\(c\)](#) [emphasis added].

⁶ *CHRA*, s. [49\(2\)](#).

⁷ *Faghihi v. Canada (Minister of Citizenship and Immigration) (T.D.)*, [1999 CanLII 9370 \(FCTTD\)](#) at para. [24](#).

⁸ Member Marchildon’s July 31, 2026 observations, p. 2.

9. If the Chairperson wishes to confirm the composition more formally in response to Canada's request, the *options* available to the Chairperson are to either transform the Panel by adding two new Members, or to formalize the *status quo* by authorizing the proceedings to continue in a single-Member format. Just as the proceedings moved from a single-Member format to a three-Member format in 2012, the Chairperson can exercise her discretion to have the remaining remedial issues heard before Member Marchildon as a single Member.

10. Allowing the proceedings to continue before Member Marchildon alone is the only appropriate outcome. The Chairperson's exercise of discretion with respect to panel composition is subject to key legal constraints: namely, it cannot "breach the principle of fairness" and "cause prejudice to a party".⁹ Formalizing a single-Member Panel preserves fairness and is equitable to all parties, whereas Canada's request to transform the Panel offends these bedrock principles.

III. Reconstituting a three-Member Panel would deliver minimal benefits and would impose significant prejudice on the parties and tax the Tribunal's resources

11. The Caring Society has had the opportunity to review the Assembly of First Nations' submission in draft and endorses and adopts those submissions.¹⁰

12. Canada's submission is legally and procedurally untenable. It says that unfamiliarity with the record is not a procedural barrier to "reconstituting" the Panel with three Members because the remedial phase will be driven by new evidence, yet to be filed. Contrary to Canada's assertion, the remedial phase is an advanced, ongoing process rooted in an extensive record spanning nearly two decades. The evidence in question concerns the remedies required to

⁹ *Brink's Canada Ltd. v. Canada (Human Rights Commission) (T.D.)*, [1996 CanLII 4023 \(FCTTD\)](#); *FNCFCS v. AGC*, [2012 CHRT 16](#) at para. 23.

¹⁰ The Caring Society has also reviewed a draft of the Chiefs of Ontario and Nishnawbe Aski Nation's joint submission and endorses the interested parties' position as well.

eliminate discrimination in First Nations child and family services. Long-term remedies cannot be considered in isolation from the findings that gave rise to them, such that the Tribunal's current work is inseparable from its earlier findings regarding Canada's systemic discrimination against First Nations children and families. Familiarity with the record is not incidental – it is fundamental to the remedial process. Similarly, the evidence and considerations that informed the Tribunal's immediate relief measures offer important insights into the viability and practical effects of any orders for long-term relief.¹¹

13. Member Marchildon has presided over every element of this complaint since it was assigned to her more than fourteen years ago. She indicated in her July 8, 2026 communication to the parties following Member Lustig's resignation that, as Chair of the Panel, she has borne primary responsibility for this case, which she reiterated both in her remarks to the parties at the July 21, 2026 Case Management Conference and in her July 31, 2026 observations in response to Canada's request that a three-Member Panel be reconstituted. As such, she is immediately ready to continue to adjudicate this matter. Proceeding before Member Marchildon alone would avoid any delay and ensure that the decision-maker regarding outstanding remedies is fully informed.

14. It would take many, many months for two newly-appointed Panel Members to process not only the more than 1,500 pages of rulings that have been issued in this matter,¹² but also the vast evidentiary record, comprising thousands of pages, that was filed leading to the Merits

¹¹ This submission is made in consultation with the National Children's Chiefs Commission.

¹² [2016 CHRT 2](#) (182 pages); [2016 CHRT 10](#) (15 pages); [2016 CHRT 16](#) (52 pages); [2017 CHRT 14](#) (52 pages); [2017 CHRT 35](#) (18 pages); [2018 CHRT 4](#) (106 pages); [2019 CHRT 1](#) (14 pages); [2019 CHRT 7](#) (37 pages); [2019 CHRT 39](#) (94 pages); [2020 CHRT 7](#) (47 pages); [2020 CHRT 15](#) (54 pages); [2020 CHRT 20](#) (107 pages); [2020 CHRT 36](#) (24 pages); [2021 CHRT 6](#) (51 pages); [2021 CHRT 7](#) (15 pages); [2021 CHRT 12](#) (21 pages); [2021 CHRT 41](#) (177 pages); [2022 CHRT 8](#) (67 pages); [2022 CHRT 41](#) (168 pages); [2023 CHRT 44](#) (65 Pages); [2025 CHRT 6](#) (172 pages); [2025 CHRT 80](#) (36 pages).

Decision (2016 CHRT 2) and the numerous remedial orders that have followed.¹³ The gargantuan nature of such a task would delay the remedial phase of this complaint, while taxing the Tribunal of resources. Indeed, it would deprive the Tribunal of two Members' availability not only for the time required to hear additional proceedings in this complaint, but also for the months of review required to prepare these Members to adjudicate the remedial phase.

15. The alternative to such preparation—that two newly-appointed Members hear the remaining proceedings with reference only to the specific evidence and filings made—would be procedurally unfair and prejudicial to the parties. This course would deprive all parties of the opportunity to lead their case before a decision-maker who is intimately familiar with the proceedings. Instead, long-term relief would be decided by a Panel comprised of a majority of Members who lack essential evidentiary and legal context. While such a result might be unavoidable where none of the Members of an originally-appointed three-Member Panel are available, it is entirely avoidable where the Member with primary responsibility for the complaint until this point remains available and willing to see the complaint to its conclusion.

16. Finally, and importantly, the prejudice caused by such delay would not be confined to the parties or to the Tribunal's institutional resources. Reconstituting the Panel in a manner that requires two newly-appointed Members to absorb the vast history of this long-running complaint risks postponing relief for children in a proceeding where delay itself has substantive consequences. Even if Canada were able to identify some prejudice arising from the proceedings continuing before Member Marchildon alone—which the Caring Society does not concede—any

¹³ The Tribunal's response to Canada's request pursuant to Rule 317 of the *Federal Courts' Rules* in Canada's judicial review of the Panel's March 30, 2026 Letter Decision approving the Ontario Final Agreement consisted of a 57-page "Official Record Document List: October 14, 2008 to January 27, 2022" and a 758-item Excel Spreadsheet containing entries from January 28, 2022 to April 28, 2026. More filings have followed.

such prejudice would have to be balanced against the serious and reasonably foreseeable harms to First Nations children that would flow from further delay in the remedial phase of this complaint. That balancing is consistent with the Supreme Court of Canada’s direction that decision-makers must give serious weight to the interests of affected children,¹⁴ that procedural choices must promote timely and proportionate justice,¹⁵ and that Crown conduct involving Indigenous Peoples must be assessed in light of reconciliation and the honour of the Crown.¹⁶ Such delay is difficult to reconcile with the objectives of reconciliation and with Canada’s own stated approach to civil litigation involving Indigenous Peoples, which calls for litigation conduct that advances reconciliation, avoids unnecessary delay, and promotes the just resolution of disputes involving Indigenous rights and interests.¹⁷

17. The potential for such prejudice weighs strongly against Canada’s request, particularly where the Member with primary responsibility for the complaint remains available, prepared, and willing to continue. In this context, a request that would foreseeably delay the remedial phase of a case involving proven discrimination against First Nations children should be scrutinized closely before being accepted as consistent with fairness, efficiency, or reconciliation.

IV. Canada’s request must be viewed in its context, including Canada’s other efforts to contest the Tribunal’s management of this Inquiry

18. Canada’s attempt to anchor its request in a concern for efficiency and cooperation merits scrutiny. In reality, the request to reconstitute the Panel with two new Members comes in the

¹⁴ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 67-71; *Kanithasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 35-37.

¹⁵ *Hryniak v Mauldin*, 2014 SCC 7 at paras 27-33.

¹⁶ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 32; *Manitoba Métis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at paras 73-74; *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 298.

¹⁷ *Attorney General of Canada’s Directive on Civil Litigation Involving Indigenous Peoples* at “Core Objectives”, “Litigation Guideline #4” and “Litigation Guideline #7”.

midst of an application for judicial review of 2025 CHRT 80, in which Canada is already seeking to have the complaint remitted to a differently-constituted panel of the Tribunal.¹⁸

19. Further, Canada’s request comes as the complainants and interested parties are pressing to complete the work set out by the Tribunal in its interim ruling regarding Jordan’s Principle in 2025 CHRT 6. It also comes at a stage in the complaint at which Canada has refused to engage in any further consultations with the complainants, despite the Tribunal’s efforts to establish and maintain a dialogic approach to the remedial process, which was endorsed by the Federal Court.¹⁹ Canada’s request for two additional Members cannot be divorced from its other efforts to disrupt, alter or resist the active remedial steps already being managed by Member Marchildon.

20. Canada’s position and request also add unnecessary complexity to several matters presently pending before the Tribunal.²⁰ This is illustrated by Canada’s August 4, 2026 correspondence advancing the position that the Panel is inquorate and that Member Marchildon cannot issue the pending detailed reasons regarding the Ontario Final Agreement as reasons of the Tribunal and should instead provide only a written statement in her personal capacity, distinct from the Tribunal’s reasons. This position, together with Canada’s request to appoint two additional Members and its challenge to 2025 CHRT 80 seeking remittal of the complaint to a

¹⁸ T-3594-25: *Attorney General of Canada v First Nations Child and Family Caring Society of Canada et al*, challenges this Tribunal’s First procedural ruling in 2025 CHRT 80 seeks “[a]n order requiring that the Decision be remitted to a differently constituted panel of the Tribunal for redetermination in accordance with this Court’s directions”.

¹⁹ *Canada v First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#).

²⁰ (1) the release of the full reasons for the Tribunal’s approval of the Ontario Final Agreement; (2) the Panel’s reasons for disqualifying one of the Caring Society’s experts on the Ontario Final Agreement approval motion; (3) a Caring Society motion seeking Canada’s return to the consultation table, which the Panel placed in abeyance; and (4) a motion from the Interested Party FNQLHSSC/AFNQL regarding the translation of certain documents in this complaint.

differently constituted panel, forms part of a broader pattern of Canada seeking to constrain, alter, or reframe the Tribunal's continuing adjudicative role after adverse or contested Tribunal decisions. That pattern is relevant to the Chairperson's assessment of fairness, adjudicative independence, and public confidence in the integrity of these proceedings.

21. Acceding to Canada's request could cast a shadow over the remaining proceedings and the public's confidence in the integrity of the Tribunal's adjudicative process. The request for the appointment of two additional Members is made by the respondent, which has been the subject of numerous unanimous orders to cease discrimination and take measures to redress it by a Panel of which Member Marchildon formed part. The request is opposed by the complainants and the First Nations Interested Parties from whom submissions were sought, who together have succeeded in proving systemic discrimination and securing remedies, while also having several of their requests or positions rejected by the same unanimous Panel.²¹ In that context, appointing two additional Members, at Canada's sole request, risks creating the appearance that a respondent found to have committed wilful and reckless systemic discrimination against very vulnerable children may successfully alter the composition of the Tribunal's decision-making body for the remaining remedial phase. The concern can be dispelled by confirming that the complaint may continue before Member Marchildon as a single-Member Panel, thereby preserving the continuity, independence, and integrity of the Tribunal's adjudicative process.

²¹ See, for instance, the Panel's endorsement of Canada's proposed approach to proceedings regarding First Nations Child and Family Service long-term reform following the April 30, 2026 Case Management Conference or the Panel's agreement with a number of Canada's concerns regarding the implementation of Jordan's Principle in [2025 CHRT 6](#) (see for e.g. at paras [54-73](#) and [95-119](#)).

V. Member Marchildon should continue to case manage these proceedings

22. The Caring Society appreciates Member Marchildon's suggestion with respect to the appointment of another Member to case manage these proceedings while she remains seized of substantive issues. However, the Caring Society's view is that Member Marchildon should continue her case management role, whether as a single-Member Panel or as Chair of a three-Member Panel.²² She is intimately familiar with the record in this matter and is also familiar with all parties, and the dynamics between them. Given the importance of procedural flexibility in completing the remaining steps in this proceeding, case management should fall to the decision-maker with the greatest level of familiarity with this matter: Member Marchildon.

VI. Conclusion

23. The Caring Society respectfully requests that the Tribunal Chairperson dismiss Canada's request and confirm Member Marchildon's capacity to continue to preside over this complaint. Any prejudice to Canada from proceeding before the Member with primary responsibility for this complaint for more than fourteen years would be minimal, if it exists at all. Further delay risks postponing relief for First Nations children whose rights have already been repeatedly affirmed by the Tribunal. Fairness, efficiency, reconciliation, and the integrity of the Tribunal's remedial process therefore all favour continuity: the complaint should continue before Member Marchildon as a single-Member Panel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of August, 2026.



**David P. Taylor, Sarah Clarke, Logan Stack,
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²² Subject to the Tribunal Chairperson's presence on such a reconstituted three-Member Panel.