

FEDERAL COURT

B E T W E E N:

ATTORNEY GENERAL OF CANADA

APPLICANT

and

FIRST NATIONS CHILD & FAMILY CARING SOCIETY OF
CANADA, ASSEMBLY OF FIRST NATIONS, CANADIAN
HUMAN RIGHTS COMMISSION, CHIEFS OF ONTARIO,
NISHNAWBE ASKI NATION and AMNESTY INTERNATIONAL
CANADA

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OVERVIEW

1. In the decision under review, nearly ten years after it found that Canada had discriminated against First Nations children, the Canadian Human Rights Tribunal (“Tribunal”) reiterated the settled minimum legal standards governing long-term reform orders on First Nations child and family services. It directed the complainants to consult, asked Canada a single question that could be answered by letter, fixed a date for the filing of plans supported by affidavit evidence, and called for monthly updates. Everything of substance it reserved for a later hearing on evidence and argument.

2. Canada answered the question on August 29, 2025 and, on December 22, 2025, filed its plan with five affidavits “with prejudice” to the outcome of this judicial review. The plan asks the Tribunal to approve Canada’s National Framework without modification, to find that it satisfies the Tribunal’s 2016 cease and desist order outside Ontario, and, save as to Jordan’s Principle, to end the Tribunal’s jurisdiction on 1 April 2027. The complainants consulted broadly with First Nations, Elders and Knowledge Keepers, child and family services experts and young people across Canada (except Ontario) and filed their Loving Justice plan at the same time. At Canada’s request, the hearing schedule provides for Canada to file regional agreements negotiated pursuant to its plan and invite interested parties supportive of its position. Canada also told the Tribunal that a hearing before 1 April 2027 is of the utmost importance to it. The evidence is to be completed in January 2027, and argument heard in March 2027.

3. Canada’s application for judicial review of 2025 CHRT 80 thus comes too late to undo the steps already taken, and too early to review the long-term reform orders not yet made. Indeed, Canada itself has acquiesced to the orders and did not seek a stay: the plans have been prepared and filed, and Canada has actively pursued negotiations with First Nations and First Nations organizations to implement its plan. Every objection Canada now raises can be raised before the Tribunal, which has already answered Canada’s questions, and settled a question of scope as Canada had urged.

4. The application fails in any event. The Tribunal imposed no remedial term under s. 53(2) of the *Canadian Human Rights Act* (“CHRA”), ordered Canada to consult with no one, and, when asked, provided additional details on the source of its directions. Canada’s complaints of unfairness fare no better. In February 2025, Canada itself described the process leading to the decision under review as one that called for no argument; it was offered a reply if it wished one; and it was told in April 2025 that the Tribunal sought only a quick round of short submissions. It asked for neither reply nor leave to file evidence and raised no objection until the ruling had issued.

5. First Nations children have now waited over a decade for the reform ordered in 2016. The Caring Society asks that the application be dismissed with costs, or alternatively stayed. In the further alternative, any relief should be confined to the defect established and should not disturb the hearing dates or the Panel’s composition.

PART I - STATEMENT OF FACTS

A. THE COMPLAINT AND THE REMEDIAL PHASE

6. In 2007 the First Nations Child and Family Caring Society of Canada (“Caring Society”) and the Assembly of First Nations (“AFN”), the complainants, filed a complaint with the Canadian Human Rights Commission (“Commission”). They alleged that Canada’s funding of child and family services for First Nations children on reserve and in the Yukon was discriminatory, and that jurisdictional disputes between governments delayed or denied services to First Nations children. The complaint was referred to the Tribunal in 2008. The Chiefs of Ontario (“COO”) and Amnesty International Canada became interested parties in 2009, and the Nishnawbe Aski Nation (“NAN”) in 2016.¹ A three-member panel was assigned to the inquiry in 2012. After one member died in 2015, the other two (“the Panel”) issued the decision on the merits and the many remedial rulings that followed it.²

¹ Affidavit of Duncan Farthing-Nichol, affirmed 22 October 2025 [Farthing-Nichol Aff.] at paras 5–6, 9, Application Record of the Attorney General of Canada [ARC] at 11–12. Pinpoints to the ARC are to its continuous pagination.

² *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2012 CHRT 16](#).

7. On 26 January 2016 the Panel found that Canada had discriminated against First Nations children and families on reserve and in the Yukon, through the design, management and control of its First Nations Child and Family Services Program (“FNCFS Program”) and its corresponding funding formulas, and through its narrow approach to Jordan’s Principle. It ordered Canada to cease its discriminatory practices and to reform the program.³ Canada sought judicial review neither of that decision nor of the first orders for immediate relief, made in the following months, in which the Panel described the breadth of its remedial authority under s. 53(2) of the CHRA.⁴

8. In 2018, having closed the immediate relief phase, the Panel turned to “compensation and long term relief”, observing that it “cannot simply make final orders and close the file”.⁵ It also settled the complainants’ place in the design of remedies. Accepting the Commission’s submission that the complainants had “invaluable expertise to contribute”, it ordered Canada, under s. 53(2)(a), “to consult not only with the Commission, but also directly with the AFN, the Caring Society, the COO and the NAN”, and required needs assessments to be analyzed “in consultation with the Parties, interested parties ... and other experts”. A consultation protocol followed in March 2018.⁶ The orders for immediate relief were to endure until one of several events occurred, among them reform “completed in accordance with best practices

The Tribunal’s rulings in this proceeding share this style of cause, with variations in the description of the respondent Minister; other than the decision on the merits and the decision under review, they are cited below by neutral citation alone. See also Farthing-Nichol Aff. at paras 7–8, 10 (ARC 11–12); Notice of Application in Court File No T-3593-26, issued 17 September 2026 [T-3593-26 Notice], grounds 2–4.

³ *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#) at paras [458](#), [481](#) [Merits Decision].

⁴ *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, [2021 FC 969](#) at paras [28](#), [30](#), [32](#) [Caring Society FC]; [2016 CHRT 10](#) at paras [15–16](#); *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA].

⁵ [2018 CHRT 4](#) at paras [385](#), [387](#).

⁶ [2018 CHRT 4](#) at paras [398](#), [400](#), [408](#), [418](#), [431](#); Affidavit of Jasmine Kaur, affirmed 23 July 2026 [Kaur Aff.] at para 4 (ARC 667–668).

recommended by the experts ... and the parties and interested parties”.⁷ Canada did not seek judicial review of that ruling.

9. In 2021 this Court upheld the Panel’s retention of jurisdiction and its dialogic approach to remedies.⁸ In March 2022, at the joint request of the complainants and Canada, the Panel made consent orders on long-term reform following an Agreement-in-Principle of 31 December 2021 (“AIP”), and it retained jurisdiction “[p]ending a complete and final agreement on long term relief on consent or otherwise”.⁹

B. THE FEBRUARY 2025 PROCESS

10. In January 2025 the Caring Society sought an order directing Canada to consult with the complainants on national long-term reform (“Consultation Motion”).¹⁰

11. On 10 February 2025 the Panel wrote to the parties of its own motion (“February Direction”). It had “outstanding questions for the parties that go beyond the Caring Society’s motion for consultation”, and was “seriously considering options to move forward with the long-term remedial phase”. The dialogic approach, it said, “is not meant to be waiting for years and years of delay without finality”. It was therefore “giving an opportunity for the parties to share their views on the above for the Panel’s consideration before it decides next steps”. It sought the parties’ views, not their evidence, and it set Jordan’s Principle aside “for the time being”.¹¹

12. Canada understood the request as one that “does not call for argument or rebuttal”, and as “simply intended to inform the Panel’s management of these proceedings”.¹² The Caring Society, supported by the AFN, asked that Canada file first; Canada agreed; and the Tribunal so directed, adding: “If Canada wishes to reply,

⁷ [2018 CHRT 4](#) at para [413](#).

⁸ *Caring Society FC* at paras [131–139](#), [162](#).

⁹ [2022 CHRT 8](#) at paras [25–26](#), [154](#), [175](#).

¹⁰ Farthing-Nichol Aff. at para 11 (ARC 12–13).

¹¹ Farthing-Nichol Aff., Exh. L (ARC 348–349).

¹² Farthing-Nichol Aff., Exh. P (ARC 364–365).

Canada should make a request to the Tribunal once all submissions have been filed.”¹³ Canada made no such request.¹⁴

13. Canada’s response of 17 March 2025 was a brief letter urging the Tribunal to decide first the motion of the COO and the NAN for unconditional approval of the Ontario Final Agreement (“OFA”), and to hold the Consultation Motion in abeyance. For “the specifics” of the history of negotiations, it referred to an affidavit filed on the Consultation Motion. It filed no evidence.¹⁵

14. The complainants responded later in March. The Caring Society asked that Canada be required to consult with the complainants and with the National Children’s Chiefs Commission (“NCCC”), a body established by resolutions of the First Nations-in-Assembly in October 2024. The AFN asked that Canada be ordered “to return to the table to work collaboratively and in good faith with the NCCC, AFN Executive, and the Caring Society”.¹⁶ The Commission’s view, as the Decision records it, was that “it is respectfully the decision of the Tribunal to determine how to advance the long-term remedial stage”.¹⁷ On 2 April 2025 the Tribunal clarified that “it did not invite parties to file evidence in its question on long-term [reform] at this time. The question was intended to get a quick round of short submissions from the parties.” No party objected. Canada’s affidavit on this application does not refer to that clarification.¹⁸

15. Meanwhile, the Tribunal received thirteen motions for interested party status, related to the OFA approval motion. Many of these expressed concern that the OFA would serve as a template for, or otherwise determine, national reform.¹⁹ The Tribunal

¹³ Farthing-Nichol Aff. at para 15 and Exhs. M, P and Q (ARC 354, 364–365, 367).

¹⁴ Farthing-Nichol Aff. at paras 21–22 (ARC 17–18).

¹⁵ Farthing-Nichol Aff., Exh. S (ARC 372–374).

¹⁶ Farthing-Nichol Aff., Exhs. T and U (ARC 376–385, 500–501); *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, [2025 CHRT 80](#) at para [17](#) [Decision]. References to the Decision are to the final edited version released on 29 October 2025: Kaur Aff. at para 11 and Exh. H (ARC 669, 709–710).

¹⁷ Decision at para [38](#).

¹⁸ Kaur Aff. at para 5 and Exh. B (ARC 668, 681).

¹⁹ [2025 CHRT 85](#) at paras [25](#), [27](#), [28](#), [30](#), [31](#), [35](#), [37](#), [38](#), [41](#), and [44](#).

called these requests “unprecedented”, and invited the parties, Canada among them, to respond by 16 June 2025 to those parts of the motions that sought to join the proceedings generally.²⁰ Canada filed its factum on the Consultation Motion on 15 May 2025, two months after its response to the February Direction. That motion remains under reserve.²¹

16. The Tribunal convened a case management conference call (“CMCC”) for 25 July 2025, whose agenda included “[h]ow to best move forward to resolve outstanding matters in the best interest of First Nations children and families while keeping with section 48.9(1) of the CHRA”.²² In remarks later circulated in writing, the Panel Chair recalled that the Panel had “signaled that it would consider the parties’ views, ... the experts, the chiefs’ views expressed through their resolutions (that apply to this complaint and fall within our jurisdiction)”. She noted that some motions for interested party status reflected the moving parties’ view “that Canada has not returned to the table of negotiations for the FNCFS Program outside Ontario”, and observed that the findings and orders of 2016 “are made to last”. She said that “regardless of how we decide the consultation motion, there is a need to make long-term reform orders or settlement agreement approvals sooner than later”.²³

17. The Panel’s summary of the CMCC records the question put to Canada, to which no answer was expected at the CMCC itself: “Would Canada agree on a voluntary basis to return to the table of negotiations on long-term reform outside of Ontario, at least once, to meet with the National Children’s Chiefs Commission?” Counsel for Canada undertook to put the question to her client, observing that “there is no perfect answer”. The Panel Chair reiterated that agreement remained the ideal outcome, but that “the Panel cannot wait for years if parties do not agree or do not

²⁰ Kaur Aff., Exhs. R and S (ARC 775–776, 779).

²¹ Farthing-Nichol Aff. at paras 12(g), 13 (ARC 14).

²² Kaur Aff., Exh. C (ARC 683–684).

²³ Farthing-Nichol Aff., Exh. BB (ARC 527–528).

engage in negotiations”, and that “[t]he Panel may receive the parties’ proposed options and issue further relief orders concerning the long-term, if necessary.”²⁴

C. THE DECISION

18. The Decision, issued on 20 August 2025, required Canada to say, by 29 August, whether it would meet the NCCC or reconsider meeting the complainants, “on a voluntary basis, for the same purpose”. It directed the complainants to consult, in accordance with non-exhaustive parameters, with the NCCC, First Nations Chiefs and other experts, including First Nations and First Nations organizations outside Ontario, and to file a national plan with affidavit evidence by 22 December 2025. If Canada did not join in a plan on consent, it was to file its own, separate, plan by the same date. The complainants and Canada were to report on their progress monthly, and the Ontario and national matters were to proceed concurrently.²⁵

19. The Decision imposed no measure of redress, approved no plan, required Canada to consult or negotiate with no one, and left the Consultation Motion undecided. The next steps, including reply evidence and cross-examination, were left to a future CMCC.²⁶ The Decision summarized Canada’s letter of 17 March 2025, gave reasons for declining to decide the Ontario motion first, and disclaimed any imputation of blame for missed deadlines.²⁷

D. THE CLARIFICATIONS, AND WHAT FOLLOWED

20. On 29 August 2025 Canada posed a series of questions “[t]o assist with an orderly discussion” at the CMCC that the Panel had said it would convene. Canada disclosed, for the first time, that its officials had met the NCCC on 11 and 18 August 2025, and it raised concerns regarding the scope of the NCCC’s proposals.²⁸

21. The Tribunal answered within a fortnight. It called the Decision its “procedural ruling to move the proceedings forward”, said that it had not relied on the Consultation

²⁴ Farthing-Nichol Aff., Exhs. AA and BB (ARC 519–520, 528).

²⁵ Decision at paras [113](#), [119–126](#).

²⁶ Decision at paras [9](#), [130](#).

²⁷ Decision at paras [41–46](#), [88](#), [98–99](#).

²⁸ Farthing-Nichol Aff., Exhs. DD and EE (ARC 568–571, 577).

Motion record, and confirmed: “[t]he Tribunal did not order Canada to consult or negotiate.” The order directing the complainants to consult “does not confer upon non-parties an official consultation status at the Tribunal”. The order concerning the NCCC “has now been satisfied”, though the Tribunal added that, had it known of the meetings earlier, it “would have considered this aspect of the matter differently”. The Decision’s parameters for the plans to be filed were drawn from prior rulings. A party unable to meet one need only “provide a reasonable explanation”. It raised the question of scope with all parties, described the next step as “a process leading to its consideration of the merits of the potentially competing plans, including the filing of evidence and argument”, and “welcome[d] follow-up questions from Canada or any other party”.²⁹

22. On 17 September 2025 the Tribunal, confirming that all nine of the parameters related to the plans were addressed in its previous rulings, removed the words “some of” from the paragraph preceding that list; it supplied a compilation of excerpts from those rulings; and it scheduled a CMCC whose first agenda item was the Decision.³⁰ Canada filed this application two days later. On 3 October 2025 the Tribunal confirmed, as Canada had urged, that the complaint does not extend to the Northwest Territories or, outside Jordan’s Principle, to First Nations children off reserve.³¹ At the 20 October 2025 CMCC, the only question from Canada recorded regarding the Decision concerned whether plans were due on 20 or 22 December 2025.³²

23. Canada’s monthly update of 25 September 2025 confirmed its position that there was “no practical utility in additional consultations or negotiations” with the complainants.³³

24. Both plans were filed on 22 December 2025. Canada’s plan relies on the Decision and on “the proportionality principle expressed in s. 48.9(1)”. It asks the

²⁹ Farthing-Nichol Aff., Exh. EE (ARC 575–583).

³⁰ Farthing-Nichol Aff., Exhs. GG and HH (ARC 623, 625–642); Kaur Aff., Exh. D (ARC 686).

³¹ Farthing-Nichol Aff., Exh. KK (ARC 664).

³² Kaur Aff., Exh. G (ARC 696).

³³ Farthing-Nichol Aff., Exh. JJ (ARC 654–655, 657).

Tribunal to approve Canada’s National Framework “without condition, for the purpose of implementation outside Ontario on April 1, 2027”, to find that the Framework “satisfies the Tribunal’s order in 2016 CHRT 2 that Canada cease its discrimination relating to the FNCFS Program outside Ontario”, and to end the Tribunal’s jurisdiction outside Ontario, save as to Jordan’s Principle. It proposes regional agreements within the Framework. The plan is filed “in compliance with this Tribunal’s orders in 2025 CHRT 80, but is expressly provided with prejudice to the outcome of Canada’s related judicial review application”. Asked about that caveat in January 2026, Canada explained that it preserved the Minister’s flexibility but “did not alter the publicly announced commitment to sustainable child and family services program funding”.³⁴

25. In January 2026 Canada proposed a schedule for further long-term reform proceedings with room for “updates arising from regional negotiations”, extending into 2027. The complainants opposed it. The Tribunal refused to exclude from the schedule the evidence of potential regional agreements that Canada wished to file, since to do so “could amount to a pre-determination” of Canada’s plan, and it accepted a schedule of nearly a year.³⁵ By May 2026, the Tribunal had admitted further interested parties, the NCCC among them, and on 5 May 2026 it set a procedure for bringing regional agreements before it.³⁶ A timetable “mutually acceptable” to the parties, which counsel for Canada had reviewed in draft, followed. It records that “Canada has advised that it is of utmost importance to it that a hearing be held prior to April 1, 2027”, and Canada’s recognition “that it may not be possible for the Tribunal to rule by April 1, 2027”. It provides for the evidence to be completed in January 2027 and argument heard on 8 to 10 March 2027. The Tribunal accepted this timetable on 22 May 2026.³⁷

26. On 8 July 2026 the Tribunal advised that Member Lustig had resigned and that Member Marchildon would continue to preside. Canada asked the Tribunal Chairperson to restore the Panel to three members. After receiving submissions, the

³⁴ Kaur Aff. at para 13 and Exhs. I and K (ARC 669–670, 737, 743–744).

³⁵ Kaur Aff., Exhs. K and L (ARC 744, 747).

³⁶ Kaur Aff., Exh. N (ARC 765–768).

³⁷ Kaur Aff. at paras 20–21 and Exhs. O and P (ARC 670–671, 759–760, 765).

Chairperson refused on 18 August 2026, with reasons to follow. Canada has sought judicial review of that refusal.³⁸ The OFA was approved by letter decision of 30 March 2026, and Canada's application for judicial review of elements of that decision, in Court File No T-2155-26, is held in abeyance pending release of the full reasons.³⁹

E. THE HISTORY OF NATIONAL NEGOTIATIONS

27. Much of Canada's memorandum concerns responsibility for the failure of national negotiations.⁴⁰ That account is contested, is the subject of the motion under reserve, and is not before this Court. Whether a procedural direction as to how the Tribunal will inform itself was lawfully made does not depend on which party, if any, is to blame for the absence of an agreement.

PART II - POINTS IN ISSUE

28. The application raises three questions: (1) whether the Court should entertain it at all, given that the Decision was interlocutory; (2) if so, whether Canada has shown the Decision to be unreasonable or procedurally unfair; and (3) if so, what relief is appropriate, particularly whether there is any basis to quash the Decision in its entirety and remit the matter to a differently constituted panel. The first two should be answered in the negative, and the third, if it arises, by relief confined to the defect established.

PART III - STATEMENT OF SUBMISSIONS

A. THE APPLICATION SHOULD NOT BE ENTERTAINED

29. The Caring Society's motion to strike the application as premature is to be heard with the application. The Caring Society relies on its written representations on that motion for the governing principles. It adds here what bears on this application.⁴¹

³⁸ Kaur Aff. at para 24 (ARC 671); Court File No. T-3593-26 Notice of Application, grounds 5–8.

³⁹ Kaur Aff., Exh. P (ARC 766); Order of Associate Judge Molgat dated 29 May 2026 in Court File No T-2155-26.

⁴⁰ Memorandum of Fact and Law of the Applicant, the Attorney General of Canada, dated 9 September 2026 [Applicant's MFL] at paras 9–15, 49–52.

⁴¹ Written Representations of the Moving Party dated 9 September 2026 [Motion Representations].

30. A ruling may be final “in the sense that it has decided the issue and that it has no plans to revisit it”, and yet interlocutory, because it “simply deals with a procedural matter that is not determinative of[] the substantive issue between the parties”.⁴² The Decision is such a ruling. It imposed no remedial term of the kind s. 53(2) of the CHRA describes. Its reference to s. 53(2) pertains to the continuing jurisdiction within which the directions were given; it does not convert them into remedies. Only administrative action that affects legal rights, imposes legal obligations or causes prejudicial effects is amenable to review.⁴³ The order Canada attacks most directly binds only the complainants, and the orders requiring Canada to answer a question and to file a plan have been carried out. The Tribunal itself called the Decision a “procedural ruling”, and reserved the merits for a hearing on evidence and argument now fixed for 2027.⁴⁴

31. Canada says the Decision “dictates the process, timelines, parameters and participants” of reform.⁴⁵ It dictates none of them finally. The timeline has since been set on consent, with room made at Canada’s request for possible regional agreements; the parameters yield to a reasonable explanation; the participants were admitted by later rulings; and the process is the one the Tribunal has followed since 2018.⁴⁶

32. Absent exceptional circumstances, a party may not proceed to court until the administrative process has run its course. This rule is of “next to absolute” stringency.⁴⁷ The reasons for it are the reasons against this application. Early intervention

risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a ‘correctness’ standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of

⁴² *Black v Canada (Attorney General)*, [2013 FCA 201](#) at para [8](#) [*Black*].

⁴³ *Air Canada v Toronto Port Authority*, [2011 FCA 347](#) at para [29](#) [*Air Canada*]; *Society of Composers, Authors and Music Publishers of Canada v Apple Canada Inc.*, [2026 FCA 122](#) at para [17](#) [*SOCAN*]; Decision at paras [118–126](#).

⁴⁴ Farthing-Nichol Aff., Exh. EE (ARC 576, 583); Kaur Aff., Exh. O (ARC 762–763).

⁴⁵ Applicant’s MFL at para 72.

⁴⁶ Farthing-Nichol Aff., Exh. EE (ARC 580); Kaur Aff., Exhs. L, N, O and P (ARC 747, 754–755, 762–763, 765–766); 2018 CHRT 4 at para [402](#).

⁴⁷ *C.B. Powell Limited v Canada (Border Services Agency)*, [2010 FCA 61](#) at para [31](#) [*C.B. Powell*]; *Dugré v Canada (Attorney General)*, [2021 FCA 8](#) at para [37](#).

proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes.⁴⁸

33. Each of those dangers is present here. The record on long-term reform will be complete only after the hearings of 2027. Canada asks the Court to settle “the boundaries of the Tribunal’s remedial jurisdiction in these and future proceedings”⁴⁹ before the Tribunal has exercised that jurisdiction. Canada already has three applications before this Court arising from the same inquiry.⁵⁰ And the regime Parliament enacted directs the Tribunal to proceed informally and expeditiously.

34. The alternative forum (i.e., the Tribunal) has, moreover, proved its adequacy in use. Where a tribunal is transparent that its conclusions may be revisited in its continuing process, an applicant who goes to court instead “has an alternative remedy that it has not exhausted”.⁵¹ This Tribunal answered Canada’s questions within a fortnight, invited more, and placed the ruling first on the agenda of its next CMCC. On the one question Canada pressed through that process, that of the scope of the proceeding, it ruled in Canada’s favour within five weeks; and when Canada asked to file evidence of regional agreements, it accommodated this request.⁵² Canada remains free to argue before the Tribunal that a parameter cannot be met, that its plan satisfies the 2016 order, and that the Tribunal’s jurisdiction should end. It is doing so. Review of the Tribunal’s final decision will remain available to Canada if it is dissatisfied.⁵³

35. The labels attached to Canada’s grounds do not create an exception. “[T]he use of the label ‘jurisdiction’ to justify judicial interference with ongoing administrative

⁴⁸ *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, [2012 SCC 10](#) at paras [36–37](#) [*Halifax*]; *C.B. Powell* at para [32](#); Motion Representations at paras 20–30.

⁴⁹ Applicant’s MFL at para 87.

⁵⁰ Court File Nos T-3594-25, T-2155-26 and T-3593-26.

⁵¹ *SOCAN* at paras [23](#), [27](#).

⁵² *Farthing-Nichol Aff.*, Exhs. DD, EE and KK (ARC 568, 575, 577, 583, 664); *Kaur Aff.*, Exhs. D and L (ARC 686,747–748); *Strickland v Canada (Attorney General)*, [2015 SCC 37](#) at para [42](#) [*Strickland*].

⁵³ *Forner v Professional Institute of the Public Service of Canada*, [2016 FCA 35](#) at para [13](#); *Air Canada* at para [25](#).

decision-making processes is no longer appropriate”.⁵⁴ Neither procedural fairness concerns nor important legal or constitutional questions meet the threshold.⁵⁵ Canada’s quarrel is not with the procedural direction in 2025 CHRT 80, but with the settled remedial standards the Tribunal drew from its earlier, final, decisions. This application cannot be used as a collateral attack on those decisions.

36. Canada’s own course sharpens the point. It answered the Tribunal’s question, filed its plan “in compliance with this Tribunal’s orders” and “with prejudice” to the outcome of this application, and pressed for a hearing before 1 April 2027. It now asks that the process carrying it there be undone. A party that complains of parallel processes and inefficiency, and answers them with an interlocutory application to this Court, “has, by bringing the present application, continued the very mischief he sought to avoid”.⁵⁶ Judicial review is, besides, discretionary, and may be declined where an adequate alternative exists.⁵⁷ This is particularly so in this case, which also engages the honour of the Crown, the duty of diligent implementation, and the integrity required of a respondent seeking to bring Tribunal-supervised human rights remedies to an end.

B. STANDARDS OF REVIEW

37. Reasonableness governs both the Tribunal’s interpretation of its authority and the merits of the Decision, as Canada accepts. Parliament gave the Tribunal the primary responsibility for remedying discrimination, and this Court has held, in this proceeding, that deference is owed to it accordingly.⁵⁸ “Respectful attention to a decision maker’s demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime.”⁵⁹ The content of the duty of

⁵⁴ *C.B. Powell* at para [42](#).

⁵⁵ *Herbert v Canada (Attorney General)*, [2022 FCA 11](#) at para [11](#); *SOCAN* at paras [28–29](#).

⁵⁶ *Farthing-Nichol Aff.*, Exh. DD (ARC 568–573); *Kaur Aff.*, Exhs. I and O (ARC 737,759–760); *Boulos v Canada (Attorney General)*, [2012 FC 292](#) at para [24](#).

⁵⁷ *Strickland* at paras [37](#), [40](#).

⁵⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at paras [10](#), [67](#), [85](#) [*Vavilov*]; Applicant’s MFL at para 41; *Caring Society FC* at para 139.

⁵⁹ *Vavilov* at para [93](#).

fairness depends on context, and the rules governing this inquiry reserve to the Panel “the jurisdiction to decide any matter of procedure not provided for” by them.⁶⁰ The duty is to be measured against a procedural direction given within a continuing inquiry, and not against a final determination of rights.

C. THE TRIBUNAL ACTED WITHIN ITS AUTHORITY

38. Canada’s argument on authority proceeds as though the Tribunal had imposed a remedial term.⁶¹ It did not. Canada does not dispute that the Tribunal may seek “additional information” or exercise “routine case-management powers”.⁶² That is what it did: it gave a direction as to the proposals and evidence it wishes to receive before exercising its powers under s. 53(2)(a) of the CHRA. A tribunal charged with eliminating systemic discrimination in an inquiry of this scale is not confined to receiving such proposals as the respondent chooses to make. The CHRA and the Tribunal’s rules provide for what the Tribunal did. It “shall inquire into the complaint”, may “decide all questions of law or fact necessary to determining the matter”, and must proceed “as informally and expeditiously as the requirements of natural justice and the rules of procedure allow”.⁶³

39. Those powers serve legislation that is remedial in a special sense. The CHRA “seeks ‘to give effect’ to the principle of equal opportunity for individuals by eradicating invidious discrimination”, its remedies “must be effective, consistent with the ‘almost constitutional’ nature of the rights protected”, and relief under s. 53(2)(a) “is itself prospective”.⁶⁴ This Court approved, in this proceeding, the Tribunal’s

⁶⁰ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] [2 SCR 817](#) at paras [21–28](#); *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04), r 1(6) [Former Rules], Annex to the Caring Society’s Memorandum of Fact and Law. The Former Rules govern this inquiry: the request to institute it was made before the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, came into force, and the parties have not consented to their application (2021 Rules, r 2).

⁶¹ Applicant’s MFL at paras 54–61.

⁶² Applicant’s MFL at para 58.

⁶³ CHRA, ss [48.9\(1\)](#), [50\(1\)–\(2\)](#); Former Rules, rr 1(1)(c), 1(2), 1(6), 3(2)(c), 5(3)(f).

⁶⁴ *Robichaud v Canada (Treasury Board)*, [1987] [2 SCR 84](#) at paras [9](#), [13](#); *CN v Canada (Canadian Human Rights Commission)*, [1987] [1 SCR 1114](#) at 1142.

retention of jurisdiction and its dialogic approach to remedies.⁶⁵ It accepted, too, that the determination of effective remedies demands innovation and flexibility on the Tribunal's part, and that the CHRA is structured to encourage both. The Decision describes itself as a "creative and innovative decision, consistent with the *Grover* decision" on which this Court's prior holding regarding the Tribunal's approach rests.⁶⁶

40. *Johnstone* does not assist Canada. The Tribunal there ordered the employer to adopt written policies "satisfactory to Ms. Johnstone and the CHRC". The Federal Court struck the part of the order that included the complainant as "a party to be consulted", while affirming that the Tribunal has "a broad remedial authority", and that the CHRA "overrides the employer's right to manage its own enterprise without interference from external agencies or persons".⁶⁷ The Court of Appeal varied what remained on a narrower ground. Distinguishing "developing a policy in consultation with the [Commission]" from "having that policy subject to its approval", it held that the Tribunal had offered "no explanation as to the statutory basis on which it can make such an order", and it held that whether consultation carries an implicit power of approval was "best left to be decided later".⁶⁸

41. The difference is fundamental. In *Johnstone* the complainant was given a part in the respondent's performance of a remedial order: the employer's own policies were to satisfy her. Here the complainants develop nothing for Canada and approve nothing of Canada's. Their submissions will inform an adjudication by the Tribunal; they will not stand in its place. Proposing the remedy one seeks is not a policy function assigned by the Tribunal.⁶⁹ It is what every complainant does, and the part the CHRA guarantees to every party to an inquiry: "a full and ample opportunity ... to appear at the inquiry,

⁶⁵ *Caring Society FC* at paras [131–139](#), [162](#).

⁶⁶ *Caring Society FC* at para [138](#); Decision at para [112](#).

⁶⁷ *Canada (Attorney General) v Johnstone*, [2013 FC 113](#) at paras [164–168](#), and Judgment at para 3.

⁶⁸ *Canada (Attorney General) v Johnstone*, [2014 FCA 110](#) at paras [120–122](#) [*Johnstone FCA*].

⁶⁹ Applicant's MFL at para 56.

present evidence and make representations”.⁷⁰ And the Decision requires nothing of the NCCC or of any other non-party.⁷¹

42. The remaining differences confirm the point. No remedial term is in issue, and the order, in the Tribunal’s words, “does not confer upon non-parties an official consultation status at the Tribunal”. The explanation that was found wanting in *Johnstone*, moreover, was given twice in this case: in the Decision, which explains that the Tribunal cannot hear from every First Nation without paralysing the proceedings, and that the complainants and the NCCC “can aptly consult and gather relevant Nations specific, local and regional perspectives”; and in the letter of 12 September 2025 and the compilation that followed.⁷²

43. Canada accepts that the Tribunal may order a respondent to consult the complainants, but says nothing permits an order that the complainants consult others.⁷³ Consultation beyond the parties has, however, been part of the design of this proceeding from the start. Long-term relief was always to be informed “by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies”.⁷⁴ The orders of 2018 required consultation with “other experts”, and the consent orders of 2022, which Canada sought alongside the complainants, drew on evidence from beyond the parties.⁷⁵ The compilation the Tribunal supplied in September 2025 collects its rulings “mentioning the need to have consultations with First Nations and First Nations experts, who are not necessarily part of these proceedings, to assist in crafting effective remedies”.⁷⁶

⁷⁰ CHRA, s [50\(1\)](#).

⁷¹ Decision at paras [119–126](#).

⁷² Decision at paras [108–110](#); Farthing-Nichol Aff., Exhs. EE and HH (ARC 579–581, 625–642).

⁷³ Applicant’s MFL at para 54.

⁷⁴ Decision at para [77](#).

⁷⁵ [2018 CHRT 4](#) at paras [408](#), [418](#); [2022 CHRT 8](#) at paras [25–26](#), [30–33](#), [114–117](#).

⁷⁶ Farthing-Nichol Aff., Exh. HH (ARC 625).

44. Canada invokes the Tribunal's own statements that it does not make policy and that Canada must be allowed flexibility.⁷⁷ The Decision respects both: Canada wrote its plan on its own terms, and a parameter it cannot meet calls only for a reasonable explanation. To receive a proposal is not to adopt it, still less to legitimize it;⁷⁸ the proposals said to reach beyond the complaint were identified within weeks, and the scope of the proceeding confirmed. The NCCC was given no status by the Decision. It was later admitted as an interested party by rulings not before this Court.⁷⁹ And the Tribunal did receive submissions on the NCCC's participation, contrary to what Canada says:⁸⁰ both complainants sought the NCCC's involvement going forward.⁸¹

45. Subsection 48.9(1) of the CHRA supports the Decision. The Tribunal invoked it as the source of "a duty to move the matter toward completion", observing that the CHRA "does not contemplate the Tribunal waiting indefinitely for the parties to take steps in that direction"; Canada's own plan invokes the same provision.⁸² The Decision set up no "parallel process".⁸³ It explains how its orders relate to the Consultation Motion, which is "broader in scope": they are "necessary to best inform the Tribunal on the appropriate next steps", they are made "regardless of whether the Tribunal grants the Consultation Motion", and whatever the outcome of that motion the Tribunal "will nonetheless already have something tangible on which to rely".⁸⁴ As for the further submissions on issues that Canada says "had already been fully canvassed",⁸⁵ it was Canada that raised the question of scope on 29 August 2025, relying on a letter the NCCC had written in August, after the Consultation Motion record had long been closed.⁸⁶ The Tribunal settled that question within five weeks, as Canada had urged.

⁷⁷ Applicant's MFL at para 57.

⁷⁸ Applicant's MFL at para 58.

⁷⁹ Kaur Aff., Exhs. G, I and N (ARC 694, 739, 754–755); Farthing-Nichol Aff., Exhs. EE and KK (ARC 580–581, 664–665).

⁸⁰ Applicant's MFL at para 60.

⁸¹ Farthing-Nichol Aff., Exhs. T and U (ARC 376–385, 500–501).

⁸² Farthing-Nichol Aff., Exh. EE (ARC 576); Kaur Aff., Exh. I (ARC 737).

⁸³ Applicant's MFL at paras 67–70.

⁸⁴ Decision at para [9](#).

⁸⁵ Applicant's MFL at para 70.

⁸⁶ Applicant's MFL at para 35.

Canada counts the AIP among the issues already canvassed, and faults the Tribunal for not addressing evidence that the complainants' positions were inconsistent with it;⁸⁷ yet the AIP was never before the Tribunal in full: Canada itself describes it as "confidential and subject to settlement privilege".⁸⁸

46. The Tribunal did not decide, without the Consultation Motion record, two issues raised by that motion.⁸⁹ It compelled Canada to consult with no one. And the question whether the Ontario motion should be decided first was Canada's own, raised in its response to the February Direction and answered with reasons. Holding the Consultation Motion in abeyance was a choice within the Tribunal's control.⁹⁰

D. CANADA WAS HEARD, AND WHAT IT FILED WAS CONSIDERED

47. Canada's complaints that the Tribunal ignored its evidence and treated it unfairly are one grievance in three guises:⁹¹ that Canada did not know what the Tribunal might do, could not answer it, or was not heard when it did. Even on the elevated standard Canada invokes, the duty was met, for Canada had notice of what the Tribunal might do, an opportunity to answer it, and its submissions were heard. And when Canada did raise a concern, in its letter of 29 August 2025, the Tribunal addressed it within a fortnight and resolved it within five weeks.⁹²

(i) Notice and opportunity

48. Notice began with the February Direction, which announced questions going beyond the Consultation Motion and said that the Panel was considering options for moving the long-term phase forward.⁹³ The phase itself had been open since 2018, and in January 2025 the Tribunal had already said that, if settlement proved impossible, it

⁸⁷ Applicant's MFL at paras 69, 82.

⁸⁸ Farthing-Nichol Aff. at para 12(g)–(h) (ARC 14); Exhs. DD, EE, JJ and KK (ARC 568–571, 578, 654–655, 664).

⁸⁹ Applicant's MFL at paras 67–70.

⁹⁰ Decision at paras [98–99](#); Farthing-Nichol Aff., Exhs. L and S (ARC 349, 372–374); Former Rules, r 1(6).

⁹¹ Applicant's MFL at paras 44–53, 71–86.

⁹² Farthing-Nichol Aff., Exhs. DD, EE and KK (ARC 568, 575, 664).

⁹³ Farthing-Nichol Aff., Exh. L (ARC 348–351).

“can make systemic long-term orders informed by the parties”.⁹⁴ From March 2025, Canada knew that both complainants were urging consultation with the NCCC. On 25 July 2025 the Panel Chair recalled that the Panel had said it would consider the views of experts and of the chiefs, and told Canada’s counsel that the Panel “may receive the parties’ proposed options and issue further relief orders concerning the long-term”. Canada’s statement that the Tribunal “gave no indication that it was contemplating the impugned orders” cannot stand with those words, spoken twenty-six days before the Decision, in the context of a CMCC at which Canada was represented by counsel.⁹⁵ Had the Tribunal’s intention to proceed with long-term reform raised a genuine concern, Canada was obliged to raise that concern forthwith.

49. The “different approach” of which the Tribunal later wrote, and on which Canada also relies, was the one the February Direction had announced: an inquiry other than the Consultation Motion.⁹⁶ Canada complains, too, that the February Direction did not warn that the Tribunal would close “the long-term remedial phase chapter” once the parties had responded.⁹⁷ The Tribunal did not close it. It set in motion the process by which that chapter is to be closed, on evidence and argument heard in 2027.⁹⁸ As this Court held in this proceeding, a tribunal that explains in its rulings “what had transpired previously and what would happen next” gives notice of the matters to be determined, and where each party “was afforded an opportunity to make submissions on any issues that the Tribunal requested”, “[n]o one was taken by surprise”.⁹⁹

50. Canada was given the first word, and an express invitation to have the last. It made no request to reply, although it now says that, had it known the Tribunal’s intentions, “it would have sought, at minimum, the opportunity to file reply submissions”.¹⁰⁰ It says, too, that the parties did not address whether the Tribunal

⁹⁴ 2018 CHRT 4 at para [386](#); [2025 CHRT 6](#) at para [237](#).

⁹⁵ Applicant’s MFL at para 78; Farthing-Nichol Aff., Exhs. T, U, AA and BB (ARC 376–385, 501, 519–520, 527–528).

⁹⁶ Farthing-Nichol Aff., Exhs. EE and L (ARC 575, 348).

⁹⁷ Applicant’s MFL at para 74.

⁹⁸ Farthing-Nichol Aff., Exh. L (ARC 349); Kaur Aff., Exh. O (ARC 759).

⁹⁹ *Caring Society FC* at paras [281](#), [304](#).

¹⁰⁰ Applicant’s MFL at para 76.

should order consultations. Both complainants did, and Canada had their submissions while the offer of a reply stood open.¹⁰¹ Canada did not object when the Tribunal confirmed that no evidence was invited, and it did not seek leave to file any.¹⁰²

51. Canada was not denied an opportunity; it declined those it had. Allegations of procedural unfairness “cannot be raised on appeal or judicial review if they could reasonably have been the subject of timely objection in the first-instance forum”. A party that knows of a procedural problem “cannot stay still in the weeds and then, once the matter is in the appellate court, pounce”, and its objection must come “at the earliest practical opportunity”.¹⁰³ Canada knew the terms of the invitation to reply from 27 February 2025, the complainants’ proposals from late March 2025, and the limits of the exercise from 2 April 2025. Having objected to none of it, Canada “must be taken to have been content with the matter”.¹⁰⁴

(ii) *What the Tribunal considered*

52. Canada’s letter of 17 March 2025, its only response to the February Direction, was summarized at length in the Decision, down to the four “specifics” drawn from the affidavit Canada had filed on the Consultation Motion. Its request that the Ontario motion be decided first was answered with reasons: “The OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a National FNCFS long-term reform remedy.” The guidance Canada hoped to draw from deciding the Ontario motion first¹⁰⁵ was thus, in the Tribunal’s view, not to be had. The Decision also recorded Canada’s account of the work it had done and funded since 2016.¹⁰⁶ Canada says the Tribunal disregarded arguments that “merely ‘reiterated’” the Consultation Motion materials.¹⁰⁷ The Tribunal said the opposite: “[w]hile some

¹⁰¹ Farthing-Nichol Aff., Exhs. Q, T and U (ARC 367, 376–385, 500–501).

¹⁰² Kaur Aff. at para 5 and Exh. B (ARC 668, 681).

¹⁰³ *Taseko Mines Limited v Canada (Environment)*, [2019 FCA 320](#) at paras [46–47](#) [*Taseko*].

¹⁰⁴ *Taseko* at para [49](#).

¹⁰⁵ Applicant’s MFL at para 47.

¹⁰⁶ Decision at paras [41–46](#), [98–99](#), [104](#).

¹⁰⁷ Applicant’s MFL at para 45.

parties reiterated arguments previously raised in the consultation motion, the Tribunal considered only those submissions provided in response to its February 10, 2025, request.”¹⁰⁸ Whatever their origin, the arguments Canada advanced in answer to the February Direction were considered.

53. The submissions Canada says were ignored had not been made when the February Direction was answered. Its factum on the Consultation Motion was filed two months later, and it never sought leave to add it by way of reply.¹⁰⁹ The record of the Consultation Motion is, moreover, the record of a different motion, “broader in scope”, on which the Tribunal has yet to rule.¹¹⁰ Nor was the Tribunal bound to import the whole of that record into an exercise that Canada had earlier acknowledged addressed the Panel’s management of the proceedings, and that the Tribunal subsequently confirmed called for “a quick round of short submissions” and not evidence.¹¹¹ Subsection 48.9(1) of the CHRA commands informality and expedition. It is an unpromising foundation for Canada’s objections, and a worse one for Canada’s desired remedy, which would begin the process again before a new panel.

(iii) The two facts said to have been overlooked

54. The first concerns the meetings with the NCCC. Canada’s counsel undertook on 25 July 2025 to put the Panel’s question regarding willingness to meet with the NCCC to her client; the meetings took place in August 2025; and the Tribunal learned of them from Canada’s letter of 29 August 2025. It thanked Canada, said that it would have considered “this aspect of the matter differently” had it known earlier, and in the same passage treated the order concerning the NCCC as satisfied. The “aspect” was paragraph 119 of the Decision, which asked Canada whether it would meet the NCCC. A party cannot found a complaint of unfairness on information it held and did not share, least of all where the order concerned was treated as satisfied at the first opportunity.

¹⁰⁸ Farthing-Nichol Aff., Exh. EE (ARC 575).

¹⁰⁹ Farthing-Nichol Aff. at para 12(g) (ARC 14); Exh. P (ARC 364–365); Kaur Aff., Exh. B (ARC 681).

¹¹⁰ Decision at para [9](#); Farthing-Nichol Aff. at paras 12–13 (ARC 13–14).

¹¹¹ Farthing-Nichol Aff., Exh. P (ARC 364); Kaur Aff., Exh. B (ARC 681)

The later reference to Canada’s earlier refusal, and to the Decision as the Tribunal’s “one final request”, describes the position when the Decision was made.¹¹²

55. The second concerns scope. Canada raised scope on 29 August 2025. On 12 September 2025 the Tribunal put the scope-related question to all parties, and on 3 October 2025 it confirmed the scope of the proceeding as Canada had urged.¹¹³ That is the Tribunal’s process working as it should. The Tribunal did not, moreover, find the parties “far apart”.¹¹⁴ It said that both sides “may have significantly shifted their approach”. The “lack of consensus” that concerned it, which Canada now presents as disagreement among the parties,¹¹⁵ was Canada’s own phrase from its letter of 29 August 2025, describing uncertainty among First Nations about “whether one national long-term reform strategy is the right approach”.¹¹⁶ Canada’s broader claim, that the Tribunal conceded that the Consultation Motion record would have changed its determination,¹¹⁷ misreads the Tribunal’s letter. What the Tribunal said would have made a difference was the fact of the August 2025 meetings, which post-dated Canada’s Consultation Motion submissions by nearly three months. On scope, it expressed only a concern, which it then resolved in Canada’s favour.¹¹⁸

(iv) The findings said to be contradicted

56. Canada identifies four findings said to be contradicted by the Consultation Motion record.¹¹⁹ Its task before this Court is to show shortcomings “sufficiently central or significant to render the decision unreasonable”.¹²⁰ It shows none.

¹¹² Farthing-Nichol Aff., Exhs. AA, DD and EE (ARC 519, 569, 577, 581).

¹¹³ Farthing-Nichol Aff., Exhs. EE, JJ and KK (ARC 577, 653–662, 664).

¹¹⁴ Applicant’s MFL at para 31.

¹¹⁵ Applicant’s MFL at para 48.

¹¹⁶ Farthing-Nichol Aff., Exhs. DD and EE (ARC 571, 577–578).

¹¹⁷ Applicant’s MFL at paras 3, 53, 69.

¹¹⁸ Farthing-Nichol Aff. at para 12(g)–(h) (ARC 14); Exhs. DD, EE and KK (ARC 569, 577–578, 664).

¹¹⁹ Applicant’s MFL at paras 49–52.

¹²⁰ *Vavilov* at para [100](#).

57. The first, that Canada had refused to return to negotiations, is the Decision’s record of a submission made in the motions for interested party status, not a finding. Its premise was Canada’s own position that further negotiation with the complainants would serve “no practical utility”.¹²¹ The fourth, that Canada still owed consultation obligations, was not made either. The Decision recorded that the orders of 2018 “were directed at Canada”, left the Consultation Motion undecided, and ordered Canada to consult with no one.¹²² As to the third, the Tribunal explained why four months would suffice to deliver the plans: much of the work had been done over the years, and Canada, having been prepared to bring a national agreement before the Tribunal, knew what the cessation of the discrimination required. Canada filed its plan on the day fixed. Any concerns regarding the scope of the complainants’ plan are to be dealt with as part of the hearing into the plans, pursuant to the Tribunal’s direction of 3 October 2025.¹²³

58. The second concerns the dialogic approach, which Canada says broke down when the Caring Society departed from negotiations.¹²⁴ The dialogue this Court endorsed is between the parties and the Tribunal: it “gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access information about Canada’s efforts to bring itself in compliance with the decisions”.¹²⁵ Its purpose is to reach long-term orders “whether by consent or determination of the Tribunal (based on the parties’ evidence and submissions)”.¹²⁶ A breakdown of negotiations between the parties does not end that dialogue. As the Decision recognizes, the Tribunal to decide what the parties could not agree on.¹²⁷

(v) *Davis, and the passages said to be adverse*

59. Canada relies on *Davis*,¹²⁸ but that case tells against this application. There, the

¹²¹ Decision at para [101](#); Farthing-Nichol Aff., Exh. JJ (ARC 655).

¹²² Decision at paras [9](#), [102](#); Farthing-Nichol Aff., Exh. EE (ARC 575, 578).

¹²³ Farthing-Nichol Aff., Exhs. EE and KK (ARC 582, 664); Kaur Aff., Exh. I (ARC 737–739).

¹²⁴ Applicant’s MFL at para 50.

¹²⁵ *Caring Society FC* at para [136](#).

¹²⁶ Decision at para [75](#).

¹²⁷ Decision at para [112](#).

¹²⁸ Applicant’s MFL at para 73.

Tribunal, of its own motion and without notice, added a remedial term that no party had proposed: operations of the kind in issue were not to be conducted “elsewhere in the country” without the participation of an Aboriginal police force. The Attorney General “was given no opportunity to adduce evidence or make submissions”, and the term bore no causal nexus to the complaint as upheld.¹²⁹ Here, no remedial term was imposed, consultation with the NCCC had been raised on the record by both complainants, and the order binds them and not Canada.¹³⁰ The process it sets in motion serves the reform ordered in 2016, which remains unfinished.

60. Canada also says it should have been permitted to adduce evidence on “the parameters, participants, process and timelines” of long-term reform.¹³¹ It has been, and will be. The parameters set out for the plans invite, on their own terms, a party to explain, on evidence, why one cannot be met. Canada has filed five affidavits with its plan, and will cross-examine the other parties’ affiants in January 2027.¹³²

61. The passages Canada calls adverse findings will not bear that weight.¹³³ Canada says the February Direction did not seek submissions on its dealings with the NCCC.¹³⁴ Both complainants raised the NCCC’s role in March 2025, and the Panel put the question to Canada’s counsel in July 2025. Far from impugning Canada’s commitment to reform, the Decision credited “its willingness to sign a National long-term agreement that was ultimately rejected”.¹³⁵ It disclaims blame for missed deadlines, and it leaves Canada free: “Canada can agree to negotiate or not”.¹³⁶ Its account of why cease and desist orders in systemic cases must endure speaks of respondents generally. The Panel Chair had told the parties in July 2025 that the orders of 2016 “are made to last”, and

¹²⁹ *Canada (Attorney General) v Davis*, [2017 FC 159](#) at paras [33–34](#), [39](#) [*Davis*].

¹³⁰ Farthing-Nichol Aff., Exhs. T and U (ARC 376–385, 500–501).

¹³¹ Applicant’s MFL at para 81.

¹³² Farthing-Nichol Aff., Exh. EE (ARC 580); Kaur Aff., Exhs. I and O (ARC 737, 759–760).

¹³³ Applicant’s MFL at paras 80, 82–86.

¹³⁴ Applicant’s MFL at para 82.

¹³⁵ Farthing-Nichol Aff., Exhs. T, U and AA (ARC 376–385, 500–501, 519); Decision at para [104](#).

¹³⁶ Decision at paras [88](#), [107](#).

Canada's own plan proceeds on the footing that the 2016 order must be satisfied before jurisdiction ends.¹³⁷ The status of the mediation on Jordan's Principle was on the agenda of the July 2025 conference, and the Tribunal's account of it came from Canada's own letter of 14 August 2025.¹³⁸ Nor did the Decision's reference to the interested party motions take Canada by surprise: the premise that Canada had not returned to the table was Canada's own. Its response to the February Direction asked that national reform await the Ontario motion, and it described its course after the draft national agreement was rejected as the pursuit of reform "with willing partners".¹³⁹

62. Paragraph 115 of the Decision, which says that the parties' "commitment to this ruling and orders will inform the Tribunal on next steps",¹⁴⁰ is addressed to all parties. Its natural meaning is that their engagement with the process will inform the Tribunal's continued reliance on consensual means in the matters still before it. It penalizes no one for seeking review.¹⁴¹

E. THE REASONS ARE ADEQUATE

63. Canada calls the parameters for the plans "mandatory" and unexplained.¹⁴² They are instead non-exhaustive guideposts for plans the Tribunal has yet to assess. They bind nothing finally: a party that cannot meet a parameter need only "provide a reasonable explanation".¹⁴³ Canada asked for the parameters' basis and had an answer within a fortnight. The parameters come from previous rulings, sometimes in words "synonymous or similar" to those used before, as where "sustainable for generations to come" became "remain sustainable for present and future generations".¹⁴⁴

¹³⁷ Decision at paras [61–62](#); Kaur Aff., Exh. I; Farthing-Nichol Aff., Exh. BB (ARC 528).

¹³⁸ Kaur Aff., Exh. C (ARC 684); Decision at para [86](#).

¹³⁹ Farthing-Nichol Aff., Exh. S (ARC 372–374); Applicant's MFL at para 14.

¹⁴⁰ Applicant's MFL at paras 72, 79, 87.

¹⁴¹ Decision at paras [105–107](#), [112](#), [115](#).

¹⁴² Applicant's MFL at paras 62–65.

¹⁴³ Farthing-Nichol Aff., Exh. EE (ARC 580).

¹⁴⁴ Farthing-Nichol Aff., Exhs. DD and EE (ARC 570, 579).

64. What Canada calls inconsistency (“quasi-totality”, “most, if not all”, “the spirit” of prior rulings) is a tribunal’s ordinary language explaining summarily that its parameters restate principles found across more than nine years of rulings. When asked, the Tribunal promptly confirmed that all nine parameters came from those rulings and removed the words “some of”, which it explained had been “a precaution, recognizing that certain words and expressions function as synonyms”.¹⁴⁵ Canada calls the amendment a reversal.¹⁴⁶ It was a clarification. A tribunal that answers a question regarding a procedural ruling by clarifying it does not render that ruling unintelligible. Indeed, each parameter is sourced in one or more earlier rulings, as the Tribunal confirmed in September 2025:

- (a) Remedies that are lasting, adequately resourced and sustainable: the Tribunal’s retention of jurisdiction “until sustainable long-term relief and reform has been addressed”.¹⁴⁷
- (b) Flexibility, and improvement upon previous orders: “more adjustments will need to be made as the quality of information increases”, and the Tribunal “can amend its orders to clarify, enhance, or reflect the parties’ wishes if they consent and do not remove recognized rights”.¹⁴⁸
- (c) Regional and local First Nations perspectives, and remedies centred on First Nations: attention to “the specific needs of First Nations children, families, communities and Nations”, met by “First Nations-led and designed prevention programs”, and the provision for Nation-specific agreements.¹⁴⁹
- (d) Remedies based on evidence and the best available research: relief “in the most meaningful way possible with the evidence available now”, and final orders only after “an evidence-based finding”.¹⁵⁰
- (e) Alignment with the spirit of the findings, applied without rigidity: the Tribunal “is not stating that it cannot amend its orders if the FSA does not mirror the Tribunal’s orders”.¹⁵¹

¹⁴⁵ Farthing-Nichol Aff., Exhs. EE and GG (ARC 575, 579–580, 623).

¹⁴⁶ Applicant’s MFL at para 64.

¹⁴⁷ [2022 CHRT 41](#) at para [227](#); Farthing-Nichol Aff., Exh. HH (ARC 625–642).

¹⁴⁸ 2018 CHRT 4 at para [415](#); 2022 CHRT 41 at para [492](#).

¹⁴⁹ 2022 CHRT 41 at para [227](#); 2018 CHRT 4 at para [413](#).

¹⁵⁰ 2018 CHRT 4 at para [387](#); 2022 CHRT 41 at para [517](#).

¹⁵¹ 2022 CHRT 41 at para [492](#).

- (f) Cultural appropriateness, substantive equality and the best interests of the child: “the principle of substantive equality considering the specific needs of First Nations children”, and “culturally appropriate social services for indigenous children”.¹⁵²
- (g) The *Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*: orders made in “the spirit of the UNDRIP”, and the Merits Decision’s reliance on the Convention.¹⁵³
- (h) Remedies that do not narrow the Tribunal’s findings and orders: its retention of jurisdiction “includes not narrowing its orders”.¹⁵⁴

65. Two of the phrases Canada singles out need no precedent.¹⁵⁵ Improvement upon previous orders is the design of the remedial phase, in which interim orders were to be superseded by long-term orders “that would constitute an improvement upon the immediate orders”.¹⁵⁶ And “strive for excellence, rather than perfection”, like “flexible” and “non-rigid”, was included, as the Tribunal explained, to reflect Canada’s statements that earlier orders need not be mirrored exactly and that compromise is required.¹⁵⁷ Canada thus objects to wording inserted to reflect its own position.

66. Reasons are not to be assessed “against a standard of perfection”, nor divorced “from the history of the proceedings”, and reasonableness review “is not a ‘line-by-line treasure hunt for error’”.¹⁵⁸ Read with that history, and with the explanations that Canada solicited, the reasons for the parameters are not obscure. Should any obscurity remain, the forum for dispelling it is the Tribunal, in the proceedings to come.¹⁵⁹

F. REMEDY

67. The orders of 20 August 2025 have run their course. Quashing them would restore nothing to Canada, and would dissolve the framework within which its own

¹⁵² 2022 CHRT 41 at para [227](#); Merits Decision at para [465](#).

¹⁵³ 2018 CHRT 4 at para [412](#); Merits Decision at para [448](#).

¹⁵⁴ 2022 CHRT 41 at para [179](#).

¹⁵⁵ Applicant’s MFL at para 65.

¹⁵⁶ Decision at para [72](#).

¹⁵⁷ Farthing-Nichol Aff., Exhs. AA and EE (ARC 519, 579).

¹⁵⁸ *Vavilov* at paras [91](#), [102](#).

¹⁵⁹ *SOCAN* at para [27](#); Kaur Affidavit, Exh. O (ARC 759–763).

requested remedies are to be decided, including the timetable it reviewed in draft and the hearing it described as of the utmost importance.¹⁶⁰ It would also reach those who are not before this Court: the interested parties admitted to the hearings of 2027, and the First Nations children and families outside Ontario for whom those hearings are the road to the long-term reform they have awaited since 2016. The Court may shape relief to avoid “any disproportionate impact on the parties or the interests of third parties”.¹⁶¹

68. The direction that any reconsideration proceed “without treating the Decision, its findings, or its parameters as binding”¹⁶² would go further still. The parameters are drawn from earlier, final, rulings and findings. They reiterate settled legal standards governing the long-term reform required to remedy the discrimination that Canada was ordered to cease in 2016. Canada cannot use this application to do indirectly what it did not do directly: attack the prior remedial decisions that established those standards. Indeed, this Court has held in an earlier decision regarding this proceeding that a party which leaves a ruling unchallenged cannot later attack it: “Canada had every opportunity to seek a judicial review of that decision but chose not to”.¹⁶³ Canada’s own plan, moreover, invokes the 2016 order as the measure of its compliance.¹⁶⁴

69. Canada’s request for a differently constituted panel rests first on Member Lustig’s resignation, from which it infers that “a differently constituted panel is required”.¹⁶⁵ Canada says that a new panel would “preserve both the appearance and reality of fairness”, but that is the language of bias, which Canada does not plead. The test is whether an informed person, “viewing the matter realistically and practically”, would think it more likely than not that the decision-maker “would not decide fairly”, and Canada makes no attempt to meet it.¹⁶⁶ The Panel’s composition is, besides, a matter Canada has already taken to the Tribunal’s Chairperson, who refused its request.

¹⁶⁰ Kaur Aff., Exhs. I, O and P (ARC 737, 739, 759–760, 765–766).

¹⁶¹ *MiningWatch Canada v Canada (Fisheries and Oceans)*, [2010 SCC 2](#) at para [52](#) [*MiningWatch*].

¹⁶² Applicant’s MFL at para 89.

¹⁶³ Decision at paras [63](#), [67](#), [69–70](#); *Caring Society FC* at paras [224](#), [289](#).

¹⁶⁴ Kaur Aff., Exh. I (ARC 739).

¹⁶⁵ Applicant’s MFL at para 88.

¹⁶⁶ *Wewaykum Indian Band v Canada*, [2003 SCC 45](#) at para [60](#).

Canada’s memorandum does not mention that refusal, which is now the subject of Canada’s application in Court File No T-3593-26.¹⁶⁷

70. To grant Canada’s relief sought would multiply proceedings and invite inconsistent results.¹⁶⁸ Even where fairness has been breached, this Court commonly returns a matter to the same decision-maker, weighing “judicial resources and administrative efficiencies”, and it has done so even where the original decision-maker had already decided the issue in question, the ground of review being procedural.¹⁶⁹ The Panel has been seized of this inquiry since 2012, the remedial phase is in its eleventh year, the grounds of review are procedural, and Canada itself has pressed for a hearing before 1 April 2027.

71. Nor is it a ground for removal that the Tribunal answered Canada’s questions and continued to administer the process,¹⁷⁰ as a tribunal seized of a continuing remedial inquiry must do. And the Decision has not “hampered” Canada’s efforts to reform the program:¹⁷¹ its plan, its regional negotiations and the schedule it helped to set are all going forward.¹⁷² No remedy is needed, either, to let Canada pursue regional agreements: the Tribunal has already set a procedure for bringing them before it.¹⁷³

72. Should the Court decline to dismiss the application, it should stay it until the Tribunal has determined the plans, as argued on the motion to strike. Such a stay would have a fixed horizon, and at its end the Court would have a full record, and the Tribunal’s reasons, on the questions Canada now raises in the abstract.¹⁷⁴

¹⁶⁷ CHRA, s 49(2); T-3593-26 Notice, grounds 5–8.

¹⁶⁸ *Halifax* at para [36](#); *Canada v Hudson*, [2024 FCA 33](#) at para [47](#).

¹⁶⁹ *Balazuntharam v Canada (Citizenship and Immigration)*, [2015 FC 607](#) at paras [27–29](#); *Canada (Citizenship and Immigration) v Cabigas*, [2023 FC 517](#) at paras [11–13](#).

¹⁷⁰ Applicant’s MFL at para 88.

¹⁷¹ Applicant’s MFL at para 88.

¹⁷² CHRA, ss 48.9(1), 50(1)–(2); Former Rules, r 1(6); *Caring Society FC* at paras [131–139](#); *Kaur Aff.*, Exhs. I and O (ARC 739, 759–760).

¹⁷³ Applicant’s MFL at para 90; *Kaur Aff.*, Exh. N (ARC 754–755).

¹⁷⁴ *Mylan Pharmaceuticals ULC v AstraZeneca Canada Inc.*, [2011 FCA 312](#) at paras [5, 14](#); Motion Representations at paras 31–38.

73. If error is found, relief should be confined to it, as in *Johnstone*, where six words were varied and the matter left with the same Tribunal, and in *Davis*, where two remedies were set aside and the rest left standing. Where a declaration answers the applicant's stated concern, broader relief should be refused.¹⁷⁵ Any relief should leave the hearing dates undisturbed and the composition of the Panel to the proceeding in which that question is already before this Court.

PART IV - STATEMENT OF THE ORDER SOUGHT

74. The Caring Society seeks an Order:

- (a) dismissing the application as premature or, in any event, on its merits;
- (b) alternatively, staying the application pending the Tribunal's determination of the long-term reform plans outside Ontario;
- (c) in the further alternative, granting relief confined to any defect established, without remitting the matter to a differently constituted panel and without directing that the Tribunal's prior findings and parameters be treated as not binding;
- (d) awarding the Caring Society its costs; and
- (e) granting such further relief as this Court considers just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of October, 2026.



**David Taylor, Sarah Clarke and
Mohammed Elshafie**

**Counsel for the Respondent,
First Nations Child and Family Caring Society of Canada**

¹⁷⁵ *Johnstone FCA* at paras 122, 126(b); *Davis* at para [40](#); *MiningWatch* at paras [50–51](#).

PART V - LIST OF AUTHORITIES

States and Regulations	
1.	<i>Canadian Human Rights Act</i> , RSC 1985, c H-6
2.	<i>Canadian Human Rights Tribunal Rules of Procedure</i> (03-05-04)
3.	<i>Canadian Human Rights Tribunal Rules of Procedure, 2021</i> , SOR/2021-137
Jurisprudence	
4.	<i>Air Canada v Toronto Port Authority</i> , 2011 FCA 347
5.	<i>Baker v Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817
6.	<i>Balazuntharam v Canada (Citizenship and Immigration)</i> , 2015 FC 607
7.	<i>Black v Canada (Attorney General)</i> , 2013 FCA 201
8.	<i>Boulos v Canada (Attorney General)</i> , 2012 FC 292
9.	<i>Canada (Attorney General) v Davis</i> , 2017 FC 159
10.	<i>Canada (Attorney General) v First Nations Child and Family Caring Society of Canada</i> , 2021 FC 969
11.	<i>Canada (Attorney General) v Johnstone</i> , 2013 FC 113
12.	<i>Canada (Attorney General) v Johnstone</i> , 2014 FCA 110
13.	<i>C.B. Powell Limited v Canada (Border Services Agency)</i> 2010 FCA 61
14.	<i>Canada (Citizenship and Immigration) v Cabigas</i> , 2023 FC 517
15.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65
16.	<i>Canada v Hudson</i> , 2024 FCA 33
17.	<i>CN v Canada (Canadian Human Rights Commission)</i> , [1987] 1 SCR 1114
18.	<i>Dugré v Canada (Attorney General)</i> , 2021 FCA 8
19.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2012 CHRT 16
20.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)</i> , 2016 CHRT 2

21.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada</i> , 2016 CHRT 10
22.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada</i> , 2018 CHRT 4
23.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada</i> , 2022 CHRT 8
24.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada</i> , 2022 CHRT 41
25.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada</i> , 2025 CHRT 6
26.	<i>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)</i> , 2025 CHRT 80
27.	<i>Forner v Professional Institute of the Public Service of Canada</i> , 2016 FCA 35
28.	<i>Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)</i> , 2012 SCC 10
29.	<i>Herbert v Canada (Attorney General)</i> , 2022 FCA 11
30.	<i>MiningWatch Canada v Canada (Fisheries and Oceans)</i> , 2010 SCC 2
31.	<i>Mylan Pharmaceuticals ULC v AstraZeneca Canada Inc.</i> , 2011 FCA 312
32.	<i>Robichaud v Canada (Treasury Board)</i> , [1987] 2 SCR 84
33.	<i>Society of Composers, Authors and Music Publishers of Canada v Apple Canada Inc.</i> , 2026 FCA 122
34.	<i>Strickland v Canada (Attorney General)</i> , 2015 SCC 37
35.	<i>Taseko Mines Limited v Canada (Environment)</i> , 2019 FCA 320
36.	<i>Wewaykum Indian Band v Canada</i> , 2003 SCC 45

CANADIAN HUMAN RIGHTS TRIBUNAL RULES OF PROCEDURE (03-05-04)

1 PURPOSE, INTERPRETATION

Purpose

1(1) These Rules are enacted to ensure that

(a) all parties to an inquiry have the full and ample opportunity to be heard;

(b) arguments and evidence be disclosed and presented in a timely and efficient manner; and

(c) all proceedings before the Tribunal be conducted as informally and expeditiously as possible.

Application

1(2) These Rules shall be liberally applied by each Panel to the case before it so as to advance the purposes set out in 1(1).

Definitions

1(3) In these Rules,

“Commission” means the Canadian Human Rights Commission established under s. 26 of the *Canadian Human Rights Act* « *Commission* »

“Panel” means the Member or Members assigned by the Chairperson to any aspect of an inquiry, including a case conference, a motion, or the hearing of the merits of the complaint; **membre instructeur*+

“party”, in respect of an inquiry, means

RÈGLES DE PROCÉDURE DU TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE (03-05-04)

1 OBJET, INTERPRÉTATION

Objet

1(1) Les présentes règles ont pour objet de permettre

a) que toutes les parties à une instruction aient la possibilité pleine et entière de se faire entendre;

b) que l’argumentation et la preuve soient présentées en temps opportun et de façon efficace;

c) que toutes les affaires dont le Tribunal est saisi soient instruites de la façon la moins formaliste et la plus rapide possible.

Application

1(2) Les présentes règles doivent être appliquées de façon libérale par le membre instructeur dans l’affaire dont il a été saisi, afin de favoriser les fins énoncées au paragraphe 1(1).

Définitions

1(3) Aux fins des présentes règles,

« Commission » désigne la Commission canadienne des droits de la personne, créée en vertu de l’article 26 de la *Loi canadienne sur le droits de la personne*; « *Commission* »

« intimé » désigne la personne faisant l’objet de la plainte; « *respondent* »

« membre instructeur » désigne le ou les membres affectés par le président à tout aspect d’une instruction, y compris une conférence préparatoire, une requête ou

the Canadian Human Rights Commission, the complainant, and the person against whom the complaint was made; **partie+*

“Registrar” means the Registrar referred to in s. 48.8 of the *Canadian Human Rights Act* and includes any Registry Officer acting under the supervision of the Registrar; **registraire+*

“respondent” means the person against whom the complaint was made. **intimé+*

l’audience sur le bien-fondé de la plainte; « *Panel* »

« *partie* », dans le cas d’une instruction, désigne la Commission canadienne des droits de la personne, le plaignant et la personne faisant l’objet de la plainte; « *party* »

« *registraire* » désigne le registraire aux termes du paragraphe 48.8 de la *Loi canadienne sur les droits de la personne* ainsi que tout agent du greffe agissant sous sa surveillance; « *Registrar* »

Dispensing with Rules – abridgement or extension of time

1(4) The Panel may, on the motion of a party or on its own initiative, dispense with compliance with any Rule where to do so would advance the purposes set out in 1(1).

Dates and time limits are peremptory

1(5) Unless the Panel grants an extension or an adjournment, all time limits for complying with these Rules and all dates set for a hearing, a motion or a case conference are peremptory.

Rules not exhaustive

1(6) The Panel retains the jurisdiction to decide any matter of procedure not provided for by these Rules.

2 SERVICE, FILING

Service

2(1) Unless otherwise stipulated, all written communications made under the Rules shall be served on all parties and filed with the Registry.

Methods of service

2(2) Service may be effected by delivering the document to the party, or the party=s

Dérogation aux règles – abrègement ou prorogation des délais

1(4) Le membre instructeur peut, suite à une requête d’une des parties ou de son propre chef, déroger aux présentes règles dans les cas où une telle dérogation sert les fins énoncées au paragraphe 1(1).

Dates et délais impératifs

1(5) À moins que le membre instructeur n’accorde une prorogation ou un ajournement, tous les délais établis pour l’observation des présentes règles et toutes les dates fixées relativement à des audiences, à des requêtes ou à des conférences préparatoires sont impératifs.

Caractère non exhaustif des règles

1(6) Le membre instructeur conserve le pouvoir de se prononcer sur toute question de procédure non prévue par les présentes règles.

2 SIGNIFICATION, DÉPÔT

Signification

2(1) À moins de dispositions à l’effet contraire, toutes les communications écrites visées par les présentes règles doivent être signifiées à toutes les parties et déposées auprès du greffe.

Façons de signifier

2(2) Les significations sont faites en communiquant le document à la partie ou à son

representative, by the following means:

- (a) facsimile communication, where the document does not exceed 20 pages;
- (b) bailiff or process server;
- (c) registered mail, ordinary mail, courier; or
- (d) delivery in person.

Proof of service

2(3) Service may be proven by

- (a) affidavit of service;
- (b) written statement signed by the person who effected the service;
- (c) solicitor=s certificate;
- (d) admission of the party served; or
- (e) sworn testimony before the Panel

which identifies the document and the person served and establishes the manner and time of service.

Filing

2(4) Filing is accomplished by delivering, mailing or faxing the document to the Registry at the following address or facsimile number:

Canadian Human Rights Tribunal
160 Elgin Street
11th floor, Suite 11A-100
Ottawa, ON
K1A 1J4
Facsimile (613) 995-3484

Language of documents

2(5) All documents required to be filed under these Rules shall be in either English or French or, if in a third language, be accompanied by a translation in English or French and an affidavit attesting to the accuracy of the translation.

représentant par l'un des moyens suivants :

- a) par télécopieur, pour les documents d'au plus 20 pages;
- b) par huissier;
- c) par courrier recommandé, courrier ordinaire ou messagerie; ou
- d) en mains propres.

Preuve de signification

2(3) La preuve d'une signification peut être établie par

- a) un affidavit de signification;
- b) une déclaration écrite signée par la personne qui a fait la signification;
- c) un certificat du procureur;
- d) un aveu de la partie ayant fait l'objet de la signification; ou
- e) un témoignage fait sous serment devant le membre instructeur;

qui précise le document signifié, le nom de la personne faisant l'objet de la signification ainsi que le mode et le moment de celle-ci.

Dépôt

2(4) Le dépôt est fait en postant ou communiquant le document au greffe à l'adresse ou au numéro de télécopieur suivant :

Tribunal canadien des droits de la personne
160, rue Elgin
11^e étage, pièce 11A-100
Ottawa (Ontario)
K1A 1J4
Télécopieur : (613) 995-3484

Langue des documents

2(5) Tous les documents qui doivent être déposés conformément aux présentes règles doivent être rédigés soit en français soit en anglais ou, s'ils sont rédigés dans une autre langue, être accompagnés d'une version française ou anglaise et d'un affidavit attestant la

fidélité de la traduction.

3 MOTIONS, ADJOURNMENTS

Notice of motion

3(1) Motions, including motions for an adjournment, are made by a Notice of Motion, which Notice shall

- (a) be given as soon as is practicable;
- (b) be in writing unless the Panel permits otherwise;
- (c) set out the relief sought and the grounds relied upon; and
- (d) include any consents of the other parties.

Response, argument, order

3(2) Upon receipt of a Notice of Motion, the Panel

- (a) shall ensure that the other parties are granted an opportunity to respond;
- (b) may direct the time, manner and form of any response;
- (c) may direct the making of argument and the presentation of evidence by all parties, including the time, manner and form thereof;
- (d) shall dispose of the motion as it sees fit.

3 REQUÊTES, AJOURNEMENTS

Avis de requête

3(1) Les requêtes, y compris les requêtes d'ajournement, sont présentées par voie d'avis de requête. Ledit avis doit

- a) être donné dans les plus brefs délais possibles;
- b) être communiqué par écrit, à moins que le membre instructeur permette de procéder différemment;
- c) indiquer le redressement recherché et les motifs invoqués à l'appui; et
- d) préciser tout consentement obtenu des autres parties.

Réponse, argumentation, ordonnance

3(2) Dès réception de l'avis de requête, le membre instructeur

- a) doit s'assurer de donner aux autres parties la possibilité de répondre;
- b) peut préciser sous quelle forme, de quelle manière et à quel moment la réponse doit être présentée;
- c) peut donner des directives au sujet de la présentation de l'argumentation et de la preuve par toutes les parties, et préciser notamment sous quelle forme, de quelle manière et à quel moment elles doivent être présentées;
- d) doit disposer de la requête de la façon qu'il estime indiquée.

4 ADMINISTRATIVE INFORMATION

CHRC provides information

4(1) A request by the Commission that the Chairperson of the Tribunal institute an inquiry into a complaint shall be accompanied by a written notice in accordance with Form 1, wherein the Commission shall indicate, to the best of its current knowledge or belief,

(a) the name and telephone number of counsel representing the Commission;

(b) the current postal address, telephone number, facsimile number and electronic address of each complainant and respondent;

(c) the name, postal address, telephone number, facsimile number and electronic address of any counsel who are representing other parties in the matter;

(d) the anticipated language of the proceeding; and

(e) any special arrangements required for the hearing.

Questionnaire

4(2) The Registrar may solicit further information from a party by questionnaire. That party shall complete the questionnaire and file it with the Registry in accordance with the direction given.

5 CASE CONFERENCES

Panel may schedule case conference

5(1) The Panel may schedule a case conference to resolve matters of an administrative or procedural nature in respect of the inquiry;

4 RENSEIGNEMENTS D'ORDRE ADMINISTRATIF

Renseignements à fournir par la CCDP

4(1) Toute demande de la Commission visant à faire instituer par le président du Tribunal une instruction sur une plainte doit être accompagnée d'un avis écrit conforme à la Formule 1 dans lequel elle indique au meilleur de sa connaissance à ce moment

a) le nom et le numéro de téléphone de l'avocat qui la représente;

b) l'adresse postale, le numéro de téléphone, le numéro de télécopieur et l'adresse électronique actuels de chaque plaignant et intimé;

c) le nom, l'adresse postale, le numéro de téléphone, le numéro de télécopieur et l'adresse électronique des avocats qui représentent d'autres parties en l'espèce;

d) la langue qui sera vraisemblablement utilisée durant la procédure;

e) toute disposition spéciale à prendre en ce qui touche l'audience.

Questionnaire

4(2) Il se peut que le registraire demande à une partie de fournir de plus amples renseignements au moyen d'un questionnaire. Sur réception dudit questionnaire, la partie y répond et le dépose au greffe conformément aux directives données.

5 CONFÉRENCES PRÉPARATOIRES

Organisation d'une conférence préparatoire par le membre instructeur

5(1) Le membre instructeur peut prévoir une conférence préparatoire afin de résoudre des questions de nature administrative ou procédurale ayant trait à l'instruction;

(a) Case conferences may be held by telephone conference or in person;

(b) Before a case conference is scheduled, and where it is expedient to do so, the Registrar may consult with the parties to take into account their preferences as to place and time;

(c) After the case conference has been scheduled, the Panel shall give notice to all parties as to the place and time for the case conference, and any issues or motions which the Panel wishes to deal with at the case conference.

Parties may raise matters

5(2) A party who wishes to raise any matter or make a motion at the case conference shall deliver a Notice of Motion in accordance with Rule 3.

Argument, orders, directions

5(3) At the case conference the Panel,

(a) shall ensure that all parties are present or have received notice of the case conference;

(b) may hear argument on a motion or give directions under 3(2)(b) and 3(2)(c);

(c) may, after hearing the parties on an issue or motion, render any order which advances the purposes set out in 1(1);

(d) may set dates for the hearing of the inquiry;

(e) may set dates for complying with the obligations of Rule 6; and

(f) may deal with any other matters

a) Les conférences préparatoires peuvent prendre la forme de conférences téléphoniques ou de réunions.

b) Avant la prévision d'une conférence préparatoire, le registraire peut, s'il le juge opportun, consulter les parties pour tenir compte de leurs préférences relativement au lieu et à la date.

c) Une fois que le moment de la conférence préparatoire a été fixé, le membre instructeur doit aviser toutes les parties du lieu et de la date où elle se tiendra et de toute question ou requête qu'il souhaite y traiter.

Possibilité pour les parties de soulever des questions

5(2) Si une partie souhaite soulever une question ou présenter une requête à la conférence préparatoire, elle doit présenter un avis de requête conformément à la règle 3.

Argumentation, ordonnances, directives

5(3) À la conférence préparatoire, le membre instructeur

a) doit s'assurer que toutes les parties sont présentes ou ont reçu un avis au sujet de la conférence préparatoire;

b) peut entendre des arguments reliés à une requête ou donner des directives conformément aux alinéas 3(2)b) et 3(2)c);

c) peut, après avoir entendu les parties au sujet d'une question ou d'une requête, rendre toute ordonnance servant les fins énoncées au paragraphe 1(1);

d) peut fixer les dates d'audience;

e) peut fixer des délais à respecter pour se conformer aux obligations prévues par la règle 6;

f) peut traiter de toute autre question

necessary for the conduct of the proceeding.

ayant trait au déroulement de la procédure.

6 STATEMENT OF PARTICULARS, DISCLOSURE, PRODUCTION

Statement of Particulars

6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,

(a) the material facts that the party seeks to prove in support of its case;

(b) its position on the legal issues raised by the case;

(c) the relief that it seeks;

(d) a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

(e) a list of all documents in the party's possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

(f) a list identifying all witnesses the party intends to call, other than expert witnesses, together with a summary of the anticipated testimony of each witness.

Reply

6(2) The complainant and the Commission shall serve and file a Reply within the time fixed by the Panel,

6 EXPOSÉ DES PRÉCISIONS, DIVULGATION, PRODUCTION

Exposé des précisions

6(1) Chaque partie doit signifier et déposer dans le délai fixé par le membre instructeur un exposé des précisions indiquant :

a) les faits pertinents que la partie cherche à établir à l'appui de sa cause;

b) sa position au sujet des questions de droit que soulève la cause;

c) le redressement recherché;

d) les divers documents qu'elle a en sa possession – pour lesquels aucun privilège de non-divulgence n'est invoqué – et qui sont pertinents à un fait, une question ou une forme de redressement demandée en l'occurrence, y compris les faits, les questions et les formes de redressement mentionnés par d'autres parties en vertu de cette règle;

e) les divers documents qu'elle a en sa possession – pour lesquels un privilège de non-divulgence est invoqué – et qui sont pertinents à un fait, une question ou une forme de redressement demandée en l'occurrence, y compris les faits, les questions et les formes de redressement mentionnés par d'autres parties en vertu de cette règle;

f) les noms des divers témoins – autres que les témoins experts – qu'elle a l'intention de citer ainsi qu'un résumé du témoignage prévu de chacun d'eux.

Réplique

6(2) Le plaignant et la Commission doivent signifier et déposer une réplique dans le délai fixé par le membre instructeur,

(a) where they intend to prove facts or raise issues to refute the respondent's Statement of Particulars; and

(b) where these facts or issues were not identified in their Statement of Particulars under 6(1).

a) s'ils ont l'intention de prouver des faits ou de soulever des questions afin de réfuter l'exposé des précisions de l'intimé;

b) si ces faits ou questions n'ont pas été mentionnés dans l'exposé des précisions qu'ils ont présenté en vertu du paragraphe 6(1).

Expert witness reports and reports in response

6(3) Within the time fixed by the Panel, each party shall serve on all other parties and file with the Tribunal,

(a) a report in respect of any expert witness the party intends to call, which report shall,

(i) be signed by the expert;

(ii) set out the expert's name, address and qualifications; and

(iii) set out the substance of the expert's proposed testimony; and

(b) a report in respect of any expert witness the party intends to call in response to an expert's report filed under 6(3)(a), which report shall comply with the requirements of 6(3)(a).

Rapports des témoins experts et rapports en réponse

6(3) Chaque partie doit signifier à toutes les autres parties et déposer devant le Tribunal, dans le délai fixé par le membre instructeur,

a) un rapport pour chaque témoin expert qu'elle a l'intention de citer. Ledit rapport doit

(i) être signé par l'expert;

(ii) préciser le nom de l'expert, son adresse et ses titres de compétence;

(iii) indiquer l'essentiel du témoignage que l'expert en question entend présenter;

b) un rapport pour chaque témoin expert qu'elle a l'intention de citer en réponse à un rapport d'expert déposé en vertu de l'alinéa 6(3)a), lequel rapport doit être conforme aux exigences énoncées à l'alinéa 6(3)a).

Production of documents

6(4) Where a party has identified a document under 6(1)(d), it shall provide a copy of the document to all other parties. It shall not file the document with the Registry.

Production de documents

6(4) Si une partie a fait mention d'un document conformément à l'alinéa 6(1)d), elle doit en fournir une copie à toutes les autres parties. Elle ne dépose pas le document au greffe.

Ongoing disclosure and production

6(5) A party shall provide such additional disclosure and production as is necessary

(a) where new facts, issues or forms of relief are raised by another party's Statement of Particulars or Reply; or

Divulgence et production continues

6(5) Une partie doit divulguer et produire les documents supplémentaires nécessaires

a) si de nouveaux faits ou de nouvelles questions ou formes de redressement sont soulevés dans l'exposé des précisions ou la réplique d'une autre partie; ou

(b) where the party discovers that its compliance with 6(1)(d), 6(1)(e), 6(1)(f), 6(3) or 6(4) is inaccurate or incomplete.

b) si elle constate qu'elle ne s'est pas conformée correctement ou complètement aux alinéas 6(1)d), 6(1)e) et 6(1)f) ou aux paragraphes 6(3) ou 6(4).

7 BOOKS OF AUTHORITIES

Content of book of authorities

7(1) Subject to 7(3), a party may serve and file a book of authorities containing copies of the statutory provisions, case law and other legal authorities to which a party intends to refer.

Passages highlighted

7(2) The relevant passages in each authority shall be highlighted.

Tribunal book of jurisprudence

7(3) Where a party intends to refer to a decision that appears in the Canadian Human Rights Tribunal Book of Jurisprudence, only the excerpt relied upon shall be included in the party's book of authorities.

8 ADDITION OF PARTIES AND INTERESTED PARTIES

Motion for interested party status

8(1) Anyone who is not a party, and who wishes to be recognized by the Panel as an interested party in respect of an inquiry, may bring a motion for an order granting interested party status.

7 CAHIERS DE TEXTES FAISANT AUTORITÉ

Contenu du cahier de textes faisant autorité

7(1) Sous réserve du paragraphe 7(3), une partie peut signifier et déposer un cahier de textes faisant autorité qui renferme des copies des dispositions législatives, de la jurisprudence et d'autres textes juridiques faisant autorité auxquels elle a l'intention de se référer.

Passages surlignés

7(2) Les extraits pertinents de chaque texte faisant autorité doivent être surlignés.

Cahier de jurisprudence du Tribunal

7(3) Si une partie entend se référer à une décision qui figure dans le cahier de jurisprudence du Tribunal canadien des droits de la personne, seul l'extrait invoqué à l'appui doit être inclus dans son cahier de textes faisant autorité.

8 ADJONCTION DE PARTIES ET DE PARTIES INTÉRESSÉES

Requête pour agir en qualité de partie intéressée

8(1) Une personne qui n'est pas une partie et qui souhaite être reconnue par le membre instructeur comme partie intéressée à l'égard d'une instruction peut présenter une requête à cet effet.

Motion to specify extent of participation

8(2) A motion under 8(1) shall comply with the requirements of Rule 3 and shall specify the extent of the desired participation in the inquiry.

Addition of party on motion of another party

8(3) Where the Commission, a respondent or a complainant seeks to add a party to the inquiry, it may bring a motion for an order to this effect, which motion shall be served on the prospective party, and the prospective party shall be entitled to make submissions on the motion.

Addition of party by its own motion

8(4) Anyone who is not a party, and who wishes to be added to the inquiry as a party, may bring a motion under Rule 3 for an order to this effect.

9 HEARING, EVIDENCE

Hours of hearing

9(1) Unless the Panel directs otherwise, the hours of a hearing before the Panel are from 9:30 a.m. to 5:00 p.m.

Special arrangements, interpreter

9(2) A party who requires the services of an interpreter at the hearing, or who requires special arrangements for the hearing, shall notify the Registrar as soon as the party becomes aware of the requirement.

No previously undisclosed evidence, issue, relief

9(3) Except with leave of the Panel, which leave shall be granted on such terms and conditions as accord with the purposes set out in 1(1), and subject to a party's right to lead evidence in reply,

Nécessité de préciser dans la requête la participation souhaitée

8(2) Toute requête présentée conformément au paragraphe 8(1) doit se conformer aux exigences énoncées à la règle 3 et doit préciser le degré de participation à l'instruction recherché.

Adjonction d'une partie à la demande d'une autre partie

8(3) La Commission, l'intimé ou le plaignant qui désire ajouter une partie à l'instruction peut présenter une requête visant à obtenir une ordonnance à cet effet, qui doit être signifiée à la partie éventuelle, laquelle a droit à présenter des arguments au sujet de la requête.

Adjonction d'une partie à sa propre demande

8(4) Une personne qui n'est pas une partie et qui souhaite être ajoutée comme partie à l'instruction peut présenter une requête conformément à la règle 3 visant à obtenir une ordonnance à cet effet.

9 AUDIENCE, PREUVE

Heures des audiences

9(1) À moins de directives contraires du membre instructeur, l'audience se tient de 9 h 30 à 17 h.

Démarches spéciales, interprète

9(2) Si une partie doit être assistée d'un interprète à l'audience ou si des démarches spéciales doivent être prises à son endroit en vue de l'audience, elle doit aviser le registraire dès qu'elle devient consciente dudit besoin.

Questions, éléments de preuve ou redressement non divulgués

9(3) À défaut d'obtenir l'autorisation du membre instructeur, laquelle doit être accordée à des conditions conformes au fins énoncées au paragraphe 1(1), et sous réserve du droit d'une partie de présenter des éléments de preuve en réplique,

(a) a party who does not raise an issue under Rule 6 shall not raise that issue at the hearing;

(b) a party who does not, under Rule 6, identify a witness or provide a summary of his or her anticipated testimony shall not call that witness at the hearing;

(c) a party who does not disclose and produce a document under Rule 6 shall not introduce that document into evidence at the hearing;

(d) a party who does not, under Rule 6, identify the relief which it seeks shall not make representations in respect of that relief at the hearing; and

(e) a party who has not complied with 6(3) shall not introduce an expert report into evidence nor call an expert witness at the hearing.

a) une partie ne peut soulever à l'audience d'autres questions que celles qu'elle a soulevées conformément à la règle 6;

b) une partie ne peut faire témoigner à l'audience un témoin qu'elle n'a pas identifié conformément à la règle 6 et pour lequel elle n'a pas fourni de résumé du témoignage prévu;

c) une partie ne peut produire en preuve à l'audience un document qu'elle n'a pas divulgué et produit conformément à la règle 6;

d) une partie ne peut présenter à l'audience d'observations au sujet d'une forme de redressement recherché qu'elle n'a pas identifiée conformément à la règle 6;

e) une partie ne peut ni produire en preuve un rapport d'expert, ni faire témoigner un témoin expert à l'audience si elle ne s'est pas conformée au paragraphe 6(3).

Admission of documents from books of documents

9(4) Except with the consent of the parties, a document in a book of documents does not become evidence until it is introduced at the hearing and accepted by the Panel.

Evidence taken outside a hearing

9(5) A party may bring a motion for an order to examine a person who is unable to attend a hearing, for the purpose of adducing that person's evidence at the hearing.

Directions for taking evidence outside a hearing

9(6) In granting a motion under 9(5), the Panel shall give directions regarding

Admission de documents figurant dans les cahiers de preuve documentaire

9(4) À défaut du consentement des parties, un document figurant dans un cahier de preuve documentaire ne peut devenir un élément de preuve tant qu'il n'a pas été présenté à l'audience et admis en preuve par le membre instructeur.

Éléments de preuve recueillis en dehors d'une audience

9(5) Une partie peut présenter une requête visant à obtenir une ordonnance pour interroger une personne qui n'est pas en mesure d'assister à une audience, en vue de produire à l'audience le témoignage de cette personne.

Directives concernant les éléments de preuve à recueillir en dehors de l'audience

9(6) S'il fait droit à une requête présentée conformément au paragraphe 9(5), le membre instructeur doit donner des directives concernant

(a) the time, place and manner of the examination and cross-examination;

(b) the notice to be given to the person being examined and to the parties;

(c) the attendance of witnesses; and,

(d) the production of requested documents or material.

a) la date, le lieu et le mode de déroulement de l'interrogatoire et du contre-interrogatoire;

b) l'avis à donner à la personne qui sera interrogée et aux parties;

c) la présence des témoins;

d) les documents ou le matériel à produire.

Constitutional questions

9(7) Where a party intends to challenge the constitutional validity, applicability or operability of a statute or regulation before the Panel, it shall serve notice in accordance with s. 57 of the *Federal Court Act* and Form 69 of the *Federal Court Rules, 1998*.

Hearing in absence of a party

9(8) A hearing may proceed even though a party fails to appear before the Panel, where the Panel is satisfied that the party received proper notice of the hearing.

Exclusion of witnesses

9(9) Subject to 9(10), a Panel may order that a witness be excluded from the hearing room until called to give evidence.

Exception, order of testimony

9(10) An order under 9(9) may not be made in respect of

(a) a witness who is a party; or

(b) a witness whose presence is essential to instruct counsel for a party

but the Panel may require the witness referred to in (a) or (b) to give evidence before any other witnesses are called to give evidence.

Questions relatives à la Constitution

9(7) Si une partie entend invoquer des motifs constitutionnels devant le membre instructeur pour contester la validité, l'applicabilité ou l'opération d'une loi ou d'un règlement, elle doit donner un avis à cet effet conformément à l'article 57 de la *Loi sur la Cour fédérale* et à la Formule 69 des *Règles de la Cour fédérale (1998)*.

Audience en l'absence d'une partie

9(8) Le membre instructeur peut tenir une audience même si une partie ne se présente pas devant lui, s'il est persuadé que ladite partie a été dûment avisée de la tenue de l'audience.

Exclusion de témoins

9(9) Sous réserve du paragraphe 9(10), le membre instructeur peut ordonner l'exclusion d'un témoin de la salle d'audience jusqu'à ce qu'il soit appelé à témoigner.

Exception, ordre des témoignages

9(10) Aucune ordonnance ne peut être rendue conformément au paragraphe 9(9) à l'égard

a) d'un témoin qui est une des parties, ou

b) d'un témoin dont la présence est essentielle pour donner des directives à l'avocat d'une partie,

mais le membre instructeur peut exiger que le témoin visé par l'alinéa a) ou b) fasse sa déposition avant que d'autres témoins soient cités à le faire.

Non-communication with excluded witnesses

9(11) Except with leave of the Panel, where an order is made excluding a witness from the hearing, no person shall communicate with the witness regarding evidence given during his or her absence, nor provide the witness access to the verbatim transcript of the inquiry, until after the witness has been called and has finished giving evidence.

Awards of interest

9(12) Unless the Panel orders otherwise, any award of interest under s. 53(4) of the *Canadian Human Rights Act*,

(a) shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada; and

(b) shall accrue from the date on which the discriminatory practice occurred, until the date of payment of the award of compensation.

10 TRANSITIONAL PROVISIONS***Proceedings governed by present Rules***

10(1) Where a complaint is referred to the Tribunal under the *Canadian Human Rights Act* after April 30, 2004, all procedural matters and hearings in respect of the complaint shall be dealt with in accordance with these Rules.

Proceedings governed by former Rules

10(2) Procedural matters and hearings in respect of complaints to which 10(1) does not apply shall continue to be governed by the Canadian Human Rights Tribunal Interim Rules of Procedure, dated August 1, 2000.

Pas de communications avec les témoins exclus

9(11) Dans le cas où le membre instructeur a rendu une ordonnance d'exclusion à l'égard d'un témoin, personne ne doit, à moins d'une autorisation du membre instructeur à cet effet, communiquer avec le témoin au sujet des éléments de preuve présentés en son absence et notamment lui donner accès à la transcription intégrale de l'instruction, tant que ledit témoin n'a pas été appelé à témoigner et n'a pas complété sa déposition.

Intérêts

9(12) À moins d'ordonnance contraire de la part du membre instructeur, tous les intérêts accordés conformément au paragraphe 53(4) de la *Loi canadienne sur les droits de la personne* doivent

a) être calculés à taux simple sur une base annuelle en se fondant sur le taux officiel d'escompte fixé par la Banque du Canada (données de fréquence mensuelle);

b) courir de la date où l'acte discriminatoire s'est produit jusqu'à la date du versement de l'indemnité.

10 DISPOSITIONS TRANSITOIRES***Instances régies par les présentes règles***

10(1) Les présentes règles régissent toutes les questions de procédure et toutes les audiences relatives aux plaintes renvoyées au Tribunal en vertu de la *Loi canadienne sur les droits de la personne* après le 30 avril 2004.

Instances régies par les anciennes règles

10(2) Les questions de procédure et les audiences auxquelles le paragraphe 10(1) ne s'applique pas continuent d'être régies par les Règles de procédure provisoires du Tribunal canadien des droits de la personne en date du

1^{er} août 2000.

L:\Rules-Regles(2004)