Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2026 CHRT 123
Date: November 3, 2026
File No.: T1340/7008

Between:

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

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] The Canadian Human Rights Commission ("the Commission") referred these complaints to the Tribunal almost two decades ago, in 2008. In 2012 the Acting Tribunal Chairperson granted a request filed by one of the Complainants, the Assembly of First Nations (AFN), and appointed a three-member panel to hear the case because of the complexity and importance of the issues in this proceeding (2012 CHRT 16 at para 28 [the "Assignment Ruling"]).

[2] One of the three panel members died in 2015. The remaining members, Sophie Marchildon, the panel Chair, and Ed Lustig, continued adjudicating the proceeding for another 11 years. They issued the merits decision in 2016 (2016 CHRT 2) and retained jurisdiction to address outstanding remedies and to supervise the implementation of the interim remedies it ordered.

[3] Member Lustig resigned from the panel on July 7, 2026. Following his resignation, the Respondent, the Attorney General of Canada (AGC), filed a motion asking me to exercise my authority to restore a three-member panel of Tribunal adjudicators to complete this proceeding. It says there is no longer the minimum number of members needed and that the remaining member lacks the legal authority to continue. It also argues that it would be more efficient, procedurally fair and in the public interest to reconstitute a three-member panel to deal with any remaining issues in this proceeding.

[4] These are my reasons for dismissing the AGC's request. The AGC's claim that a single Tribunal member cannot complete the proceeding has no basis in the *Canadian Human Rights Act, RSC 1985, c H-6)* (the "Act"). Appointing two new Tribunal adjudicators 14 years into a proceeding that is on a Tribunal-ordered timetable for completion would also add delay, expense, complexity, uncertainty and prejudice to the proceedings at a time when it should be ending. Administrative tribunals were created to provide informal, expeditious adjudication. The AGC's request does not support that goal.

[5] This is a historic, important case. But the Tribunal has a responsibility to all parties, including those in other proceedings. Diverting additional members to this case would

undermine the Tribunal's ability to hear cases fairly and expeditiously and prejudice other litigants waiting for their cases to be heard.

II. BACKGROUND

[6] I asked the panel Chair, Sophie Marchildon, for her views on the request as she has presided over this matter for 14 years. I sent her response to the other parties and asked the Complainants, the Canadian Human Rights Commission (the "Commission") and three Interested Parties who had been granted full participatory rights in these proceedings for their submissions. The Complainants, the Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN) oppose the AGC's request. The Commission takes no position, and Amnesty International did not respond. The AGC filed a reply on August 14, 2026.

[7] On August 18, 2026, I advised the parties that I was dismissing the request with reasons to follow.

III. ISSUES

1. Does the Chairperson have the authority to review panel composition?
2. Does the remaining member have the authority to complete the inquiry?
3. If so, are there other reasons to reconstitute the panel at this time?

IV. LEGAL FRAMEWORK

[8] The Chairperson has supervision over and direction of the work of the Tribunal, including the allocation of work among the members and the management of the Tribunal's internal affairs (s. 48.4(2)).

[9] Tribunal proceedings must be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s.48.9(1) of the Act).

[10] Upon receipt of a request to institute an inquiry from the Commission, the Chairperson may assign a member to hear the complaint but may also assign a panel of

three members if he or she considers that the complexity of the complaint requires it (s.49(2)).

[11] Decisions about assignment are fact-specific, and in making a decision about assignment or reassignment, the Chairperson must consider the resources and availability of members and the Tribunal's obligations to proceed informally, expeditiously and fairly (*Cain v Correctional Service of Canada*, 2026 CHRT 37 at para 42 [*Cain*]), *Mississaugas of the Credit First Nation v Attorney General of Canada*, 2025 CHRT 60 at paras 22-30 [MCFN]).

V. ANALYSIS

1. Does the Chairperson have the authority to review panel composition?

[12] Yes. The AGC submits that the Chairperson's authority under s.49(2) of the Act is broad and includes the discretion to determine and adjust panel composition where required by the circumstances of the complaint. It relies on *MCFN* at paras 22-30 and *Cain* at para 42, arguing that I have already found that my discretion extends to process-related and case-management decisions, including the structure and conduct of proceedings.

[13] The AGC also argues that the Chairperson's authority encompasses an implied statutory power to reconstitute a panel where its composition has materially changed in a complex and ongoing manner, relying on *Brink's Canada Ltd. v. Canada (Human Rights Commission)*, [1996] 2 FC 113 at para 28 [*Brink's*]. The Complainant First Nations Child and Family Caring Society of Canada (the "Caring Society"), submits that the power to appoint a panel is vested in the Chairperson, who has the discretion to change the composition of an appointed panel for the purposes of the Act to be served in relation to the same complaint, relying on *Brink's* and the Assignment Ruling at para 23.

[14] While I acknowledge that the merits hearing had not yet begun in either *Brink's* or at the time of the Assignment Ruling, I agree that the composition of a panel as originally constituted is not absolute. The Chairperson retains discretion to change the composition of the panel where doing so facilitates the purposes of the Act, while giving due regard to

adjudicative independence, fairness and any potential prejudice to a party (*Brink's* and MCFN at 28).

[15] I agree with the AFN that the Assignment Ruling does not memorialize a permanent three-member structure nor create a continuing quorum requirement. I also agree that the Act does not provide that the departure, death or resignation of members automatically ousts the authority of the remaining member(s) to continue the inquiry. To the contrary, the statutory scheme prioritises flexible, fair and expeditious adjudication and entrusts the Chairperson with broad supervisory authority over assignments and the allocation of Tribunal work.

[16] The Tribunal must have the necessary authority to accomplish its statutory mandate, both through the powers expressly granted, but also by implication. This includes all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), [2006] 1 SCR 140 at paras 50-51). In my view, this extends to ensuring that Tribunal proceedings can proceed expeditiously and fairly, and that all cases are allocated the internal resources necessary for them to be heard and determined in a timely manner.

2. Does the remaining member have the authority to complete the inquiry?

[17] Yes. Although none of the parties invoked the principles of statutory interpretation, this is the necessary starting point to determine whether the remaining member has the authority, as a single member of the original three-member panel, to complete the inquiry. A proper statutory interpretation of s. 49(2) of the Act confirms that the quorum requirement is a single member.

[18] Statutory interpretation requires considering the words used in legislation "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21). The modern principle requires a tribunal to interpret statutory language "according to a textual, contextual and

purposive analysis to find a meaning that is harmonious with the Act as a whole" (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para 10).

[19] Section 49(2) of the Act provides:

> On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint, but the Chairperson may assign a panel of three members if he or she considers that the complexity of the complaint requires the inquiry to be conducted by three members.

[20] The text of the provision makes it obligatory for the Chairperson to institute an inquiry by assigning *a* member. It is significant that the provision stipulates that the Chairperson *shall* institute an inquiry and assign a single member but *may* assign a panel of three members. The legislature made the appointment of additional members optional. A panel of three is not required to hear the case. Even when the complexity of the case is such that the Chairperson considers that the inquiry needs to be conducted by three members, it remains optional for the Chairperson to assign three members.

[21] The AGC relies on the fact that the Act is silent on whether an inquiry originally assigned to a three-member panel because of its complexity can automatically convert to a single member panel when two members are no longer available. This argument fails to grapple with the different language used in assigning an inquiry to a single member or a panel – namely, the permissive *may* for assigning it to a panel of three but the mandatory *shall* for assigning it to an individual member.

[22] Context can include a consideration of the applicable legislative history.

[23] The Act was subject to significant amendments in 1998 (*An Act to Amend the Canada Evidence Act and the Criminal Code in respect of Persons with Disabilities, to Amend the Canadian Human Rights Act in respect of Persons with Disabilities and Other Matters and to make Consequential Amendments to Other Act*, SC 1998, c. 9, s. 27). Notably, prior to this amendment, s. 49(2) read:

> A Tribunal may not be composed of more than three members.

[24] However, there was a distinction between a Tribunal composed of three members and one composed of fewer than three members. The distinction was found in section 55 of the Act, which permitted an appeal to a Review Tribunal if a decision was made by a panel of less than three members:

> Where a Tribunal that made a decision or order was composed of fewer than three members, the Commission, the complainant before the Tribunal or the person against whom the complaint was made may appeal the decision or order by service notice, in a manner and form prescribed by order of the Governor in Council, within thirty days after the decision or order appealed was pronounced, on all persons who received notice from the Tribunal under section 50(1).

[25] The 1998 amendments removed the Review Tribunal from the CHRA.

[26] This legislative history is helpful in interpreting the current section 50(2) of the Act. Notably, there was historically no distinction between a panel of one or two members. Furthermore, the previous legislation was clearly worded such that there was a maximum, but no minimum, composition of a panel to hear a case. The only difference was the possibility of an internal appeal to the Review Panel if the case was heard by a panel of less than three members.

[27] This context supports an interpretation that the minimum number of members to hear a case is one. The pre-1998 version of the legislation clearly only required a single member and did not impose a greater quorum requirement if a panel of three was reduced to a single member. Had the legislature intended to change that by introducing a minimum quorum of two, they could have made the change by including an explicit quorum requirement in the statutory revisions.

[28] Lastly, it is necessary to consider the purpose of the provision. The AGC, in reply submissions, argues that automatically converting an inquiry assigned to a three-member panel to a single member inquiry when two members are no longer available would undermine the purpose of section 49(2) because it would effectively negate the Chairperson’s determination that the complexity of the complaint required adjudication by three members.

[29] I reject the AGC's argument. First, it fails to grapple with the statutory language that stipulates that the complexity requirement is explicitly for three members. A panel *may* be assigned where the Chairperson is of the view that "the complexity of the complaint requires the inquiry to be conducted by three members." Therefore, it is the reduction from three to two members that would, if anything, undermine the Chairperson's determination that the complexity required adjudication by a panel of three members. This is not tenable, however, considering the permissive statutory language in regard to assigning a panel, compared to the mandatory language for assigning a single member. Furthermore, it has been over a decade since the panel has had three members and no party has objected to the reduction from three members to two, despite the issues that could have resulted from an even number of adjudicators. The parties have long since lost their opportunity to object that the panel no longer has the three members required by the complexity of the matter. Their long silence on this matter can be taken as a recognition that they no longer view it as having the complexity to require three members.

[30] Secondly, the AGC's argument fails to appreciate the core purpose of s. 49(2) is to *institute* an inquiry. In addressing that purpose, it requires that a single member be appointed but makes appointing a panel of three members permissive. The provision therefore provides flexibility to the Chairperson.

[31] This interpretation is also consistent with the flexibility present in the rest of the Act. For example, it is consistent with the objective under s. 48.9(1) of the Act to proceed as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. An interpretation of s. 49(2) that would automatically deprive a panel of the ability to proceed is inconsistent with the broader purpose of the statutory scheme.

[32] The *Interpretation Act,* RSC 1985, c I-21 [*Interpretation Act*] states that it applies unless a contrary intention appears:

> 3 (1) Every provision of this Act applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

[33] The Act addresses the minimum number of members required to hear a complaint. The *Interpretation Act* therefore does not apply and the AGC's arguments and caselaw on quorum are not relevant.

[34] The authorities cited by the AGC such as *IBM Canada Ltd v Deputy MNR, Customs and Excise* [1992] 1 FC 663 at 672-74 (FCA) [*IBM*] do not assist because they either address the implications if the statute does not indicate a quorum or if an established quorum requirement is not met. I have already found that is not the case here, as the minimum quorum requirement is one, which is clearly met.

[35] Finally, in reply submissions, the AGC submits that when statutory jurisdiction and powers are assigned to a group of individuals, the default common law quorum is a majority of the group. Even if s.22(2) of the *Interpretation Act* does not apply, the AGC maintains that the common law quorum for a three-member panel would be a majority, relying on *Murray v. Rockyview (Development Appeal Board)*, 1980 ABCA 113 at para 62 [*Murray*] and *Boucher v. Metis Nation of Alberta Association*, 2009 ABCA 5 at para 36 [*Boucher*].

[36] These arguments and cases do not assist the AGC. *Murray* is a 1980 case involving the adjournment of a Development Appeal Board considering a development permit for the Flintstones Fun Park so that three members of the seven-member board could visit waterslides in the United States. *Boucher* refers to *Murray* and is relied on for the same principle, namely whether a deliberative body can sit if fewer than all its members attend and take part. Both cases find that if the governing document is silent, then full attendance is not necessary, and a quorum suffices, presumed to be a majority of the members of the body.

[37] Quorum is determined by the enabling statute, not by the total number of members that the Acting Chairperson appointed in 2012, which does not bind me in perpetuity. None of the authorities relied on by the AGC change my view that the Act itself foresees and addresses the minimum quorum of *one* member.

I do not need to "reconfirm", "reassign" or "reappoint" the panel

[38] Several of the submissions purport to relay what I said or did or suggest that I previously made a determination of some kind in this proceeding. I issued no decision, nor direction to the parties in this matter. Member Lustig resigned, and I was not seized of the question of the composition of the panel or the remaining member's authority to continue with this proceeding until the AGC filed this request.

[39] While some parties suggest I could or should confirm or "reconfirm" Member Marchildon's appointment or "reassign" the remaining member, I disagree.

[40] As a single member retains jurisdiction, I did not need to make any determination when Member Lustig resigned, and I need make no determination now. I therefore do not accept that I must act to "fix" a quorum issue, or that there even is a "quorum issue".

[41] As set out below, the other arguments the AGC raises in support of its request to reconstitute a three-member panel are all ill-conceived and must fail.

3. If so, are there are other reasons to justify reconstituting the panel at this time?

[42] No. The AGC does not provide any foundation for its speculative and declaratory claims that its proposed approach would enhance efficiency and support the "orderly continuation – and ultimately the completion – of a proceeding of unusual complexity, length, scale and importance".

[43] The AGC argues that reconstituting the panel will have "at most a limited impact on the parties' interests", including financial and non-financial resources. It submits that there is no need to relitigate any previously determined issue, and that the proceeding has "transitioned into a distinct, forward-looking phase that requires consideration of new and evolving evidence, much of which has yet to be filed or tested before the Tribunal". It says that reconstituting the panel with two, or perhaps three new members, would "support procedural fairness by ensuring that future determinations are made with the benefit of a full and balanced deliberative structure".

[44] The AGC cannot have it both ways – it cannot be that the proceeding is as complex as it was in 2012 before 72 days of a merits hearing when a three-member panel was deemed necessary, but also so different such that having knowledge of the immense historical record is immaterial because the proceeding is at such a "distinct" and "forward-looking phase". Further, if the current stage of the proceeding involves "new and evolving evidence" and is so distinct that it does not matter who presides it, then what is the proceeding about? Does it bear any resemblance to the proceeding the Tribunal determined should be heard by three members 14 years ago? By arguing there is no procedural fairness concern in adding new members at this time, the AGC suggests that the panel is now engaged in a new proceeding, separate from the initial matter the Commission referred.

[45] While I agree with the AGC that changes in panel membership are sometimes unavoidable in long-running proceedings, I am not persuaded that departing from the principle that "she who hears decides" is justified at this time, particularly as the parties report being on a fixed timetable for completion.

[46] As the AFN submits, the parties spent months negotiating a timetable for the national long-term reform process, which was accepted by the Tribunal subject to directions, and includes completing final oral submissions in March 2027. Adding two new members would threaten that timetable.

[47] The AGC has not explained how adding new Tribunal members will make the adjudication and conclusion of this proceeding more efficient or reflect a "proportionate" use of resources. It is inconceivable that coordinating three members' schedules, including other members who already carry a full case load, would "support the orderly and efficient completion of this proceeding" as the AGC contends.

[48] I agree with the AFN that while a three-member panel may have been the best approach in 2012 as the Tribunal was about to embark on 72 days of hearing, the best way to manage complexity now is for the remaining member and panel chair to see the proceedings to their conclusion. As the Caring Society submits, Member Marchildon has presided over every element of this complaint since it was assigned to her more than fourteen years ago and has indicated that she has borne primarily responsibility for this case.

[49] There is also a significant opportunity cost to the AGC's proposal. The time two new members spend working on this proceeding is time they will not spend on other parties' cases. The Tribunal also has a responsibility to the parties in other complaints, whose matters are no less important to those who have elected to pursue them. Those hearings risk being adjourned or files delayed while two new members would dedicate their time to this proceeding.

[50] Finally, the AGC submits that the proceeding is even more complex today than it was in 2012 because it now includes multiple ongoing litigation streams, participation by at least 13 parties, new evidentiary records and full-scale federal policy reform, arguing that the proceeding has reached a "highly advanced and resource-intensive phase". The number of interested parties has increased from two to nine. The Tribunal has retained jurisdiction over most aspects of the proceedings and rendered more than thirty-five remedial decisions containing wide-ranging orders.

[51] It summarizes some of these outstanding "litigation streams":

- the parties' long-term reform plans, with proceedings extending into 2027, including ongoing federal negotiations, a new interested party process, a 12-day evidentiary hearing and oral and written submissions;
- the co-complainants are seeking a minimum of at least 5 additional years of Tribunal remedial jurisdiction beyond the 2027 phase, for this aspect of the proceeding alone;
- the Tribunal is scheduling a new proceeding to consider Jordan's Principle interim orders;
- the Tribunal has indicated its intention to retain jurisdiction over Jordan's Principle across the country, until long-term reform is achieved (2025 CHRT 6 at para 602), all of which remains outstanding with no process scheduled;
- Official Languages issues and disputes about whether Canada has a duty to translate documents filed in the proceeding;

- Consultation and retention of jurisdiction issues, with a Tribunal decision pending on the Caring Society's motion for orders that the Tribunal retain jurisdiction and require Canada consult with the co-complainants on long-term reform of the FNCFS Program and Jordan's Principle;

[52] The AGC maintains that proportionality "supports a structure that is appropriately calibrated to the demands of the proceeding", and that "[r]econstituting the panel would align the Tribunal's decision-making structure with the scale and complexity of the litigation".

[53] I disagree. In my view, the list above clearly highlights two things. First, this proceeding has morphed into something that is far removed from the initial litigation in this matter. Second, what this case needs is *less* complexity, not more of it. It requires *less* procedure, not more. I do not accept that the proceedings, which should be ending, are now so complex that the panel Chair who has presided over this matter from the beginning, cannot complete them within a reasonable time.

[54] A decade after the panel issued the merits decision, this case should be coming to a close, not *growing* in complexity. I do not accept that Parliament intended any proceeding, however important, to continue indefinitely, to continue expanding nor to consume a disproportionate share of the Tribunal's resources. To grant the AGC's motion would be to accept the premise that as the proceeding has continued to morph and grow, the panel should mirror its increase in complexity and scale. Members are independent in managing their proceeding, but I have a responsibility as Chairperson to the institution, to other parties, and to taxpayers to respect the statutory mandate that Parliament conferred on the Tribunal (ss.48.9(1) and 48.4(2) of the Act). Proportionality, particularly in a human rights tribunal context, does not mean encouraging a growth in complexity, let alone adding to it.

All parties expressed concerns about delay and the length of these proceedings

[55] All the parties who filed submissions in response to the AGC's request commented on the time this proceeding has gone on, and on how critical it is to avoid further delay. For example: "This proceeding has been ongoing for far too long" (AFN); "The importance of a timely resolution is built into the CHRA... even in cases of significant complexity" and "delay

is contrary to the purpose of administrative law broadly" (COO and NAN); "[f]urther delay risks postponing relief for First Nations children whose rights have already been repeatedly affirmed by the Tribunal" (Caring Society); "Canada agrees that these proceedings must continue expeditiously and does not seek delay, suspension of existing timetables, or adjournment of upcoming proceedings" (AGC).

[56] Some submissions also refer to the impact of delay on First Nations children specifically. AFN submits that First Nations and First Nations children, youth, and families should not be made to wait any longer for final, durable and effective remedies. It notes that an entire generation has passed, and that children born when the complaint was first brought in 2007 are now adults with children of their own.

[57] In making the decision to assign a three-member panel, the Acting Chairperson commented on the importance of the expeditious resolution of this complaint, quoting the Caring Society's May 2012 letter to the Tribunal:

> …expeditiousness is of utmost importance to our clients. [...] Every delay that occurs in this matter causes thousands of First Nations children to be further isolated from their families and communities and deprived of adequate and culturally relevant care. Any further delays would bring the administration of justice into disrepute and cause significant prejudice to the victims of discrimination (Assignment Ruling at para 28).

[58] The Caring Society's words about the importance of expeditiousness were written 14 years ago. Yet in 2026, the AGC's motion is based – at least in part – on the fact that this proceeding has become more complex than it was then, which it says merits the allocation of *more* Tribunal resources, which will invariably add delay and undermine the prospect of a timely end to this case.

[59] As all the parties purport to share a commitment to proceeding expeditiously in the name of First Nations children and reconciliation, they should work to that end.

[60] Parties to Tribunal proceedings make choices that have consequences. The parties in this case are all sophisticated and well-represented by highly experienced counsel. They are not innocent passengers being carried along the road to the end of their hearing, with no agency or control over the outcome or the time and path taken to get there (*Richards v.*

Correctional Service Canada, 2025 CHRT 107 at para 61). By not having due regard for proportionality and cooperation, the parties can make hard things harder, and long things longer [*Williams* at para 12].

[61] However, the responsibility under the Act to conduct fair and expeditious proceedings rests with the Tribunal, not the parties. Turning proceedings into a decades-long, unending process is inconsistent with the principles guiding human rights tribunals, which were put in place to provide a fast, flexible and informal alternative to the traditional court system (*Canada (CHRC) v. Canada (AG),* 2012 FC 445 at para 127 [*FC Caring Society 2012*]. Unending proceedings undermine public confidence, particularly for an administrative tribunal, the purpose of which is to hear and decide cases in a timely way. It also impacts the Tribunal's ability to deliver a service to other litigants waiting for their cases to be heard, which runs counter to the public interest. The Tribunal was not created as a vehicle for endless litigation. It is not a government department or program.

[62] These proceedings must end, and the AGC's request to add two new members does not support that goal.

VI. ORDER

[63] The Respondent's request is dismissed.

Signed by

Jennifer Khurana
Chairperson

Ottawa, Ontario
November 3, 2026

Canadian Human Rights Tribunal
Parties of Record

File No.: T1340/7008

Style of Cause: First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: November 3, 2026

Motion dealt with in writing without appearance of parties

Written representations by:

David P. Taylor, Sarah Clarke, Logan Stack, Robin McLeod and Henna Mohan, counsel for the First Nations Child and Family Caring Society of Canada, Counsel for the Complainant

Peter Mantas, for the Assembly of First Nations, Counsel for the Complainant

Dayna Anderson and Sarah-Dawn Norris, Counsel for the Attorney General of Canada, Counsel for the Respondent

Sinead Dearman, Counsel for the Chiefs of Ontario (COO), Interested Party, on behalf of COO and the Nishnawbe Aski Nation