

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Ottawa, Canada, K1A 1J4

October 28, 2025

By e-mail

(See Distribution List)

Dear Parties,

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

Please see below the summary of the Case Management Conference Call (CMCC) that was held on October 20, 2025. The summary includes any Directions/Orders from the Tribunal. Any updates since the CMCC are noted in *italics*. This summary has been written by the Panel.

Sophie Marchildon, Panel Chair, Edward Lustig, Panel Member

David Taylor, Sarah Clarke, Robin McLeod, Counsel with Dr. Cindy Blackstock, Brittany, Matthews, and Laurence Allard for the Caring Society

Peter N. Mantas and Clive Ngan, Counsel with Ashleigh Delaye, Hailey Barkman for the Assembly of First Nations, and Liam Smith, observer for the National Children's Chiefs' Commission (NCCC).

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

Dayna Anderson, Kevin Staska, Sarah Bird, Sarah-Dawn Norris and Alicia Dueck-Read, Counsel for Canada

Maggie Wente, Sinéad Dearman, Jenna Rogers, Jessie Stirling, Ashley Ash, Katelyn Johnstone, Counsel with Nicole Bakes for the Chiefs of Ontario

Meaghan Daniel, Counsel with David Schwartz, Paralegal for the Nishnawbe Aski Nation (NAN)

Spencer Bass, Counsel for Taykwa Tagamou Nation and Chippewas of Georgina Island

Judy Dubois, Registry Officer

1. Introductory remarks, comments and questions for the parties

Panel chair Marchildon made an introduction **emphasizing that the focus of this case is not solely on reconciliation but more importantly, on entirely eliminating the mass removal of First Nations children from their homes and families and communities and Nations which affects the very existence and identity of First Nations, and the core identity of the children. Therefore,**

the matter is urgent. The Panel is willing to continue the work so that systemic discrimination is completely eliminated for generations to come¹.

The Chiefs of Ontario's counsel Maggie Wentz, has objected to the presence of Counsel Liam Smith submitting that his presence on behalf of the NCCC is antagonistic. The Panel members noted the objection and authorized Counsel Smith to remain on the call as an observer.

The Panel chair asked the AFN to provide a clear position on the NCCC's status. The Tribunal panel understands that the NCCC is not a party however, it considers the NCCC as part of the AFN given that they report to the AFN Chiefs-in-Assembly. Counsel Mantas explained that the NCCC is a body that was created, a commission, that was created within the AFN by the Chiefs and Assembly. It's not the AFN. The AFN is the AFN, but it is a body within it that is playing an important role in trying to advance some of the issues.

Counsel Mantas has committed to provide the AFN's clear position to the Tribunal.

Panel chair Marchildon advised that the questions portion of agenda item #1 would be raised by the panel during the discussion of the other items.

2. OFA schedule

Counsel Wentz for the COO agreed to propose a schedule for submissions and hearing dates for the Panel's consideration. The parties agreed to provide their views on the suggested schedule. She clarified that the OFA is crafted in such a way that the earliest possible implementation date would be 60 days after Tribunal approval. But if it can't come into effect for April 1st, 2026, then the First Nations in Ontario will lose a year of funding, because it won't be in effect until, sort of, the next fiscal year.

The Tribunal agreed that the issues on a publication ban and sealing order requests will be addressed by way of motions and, after such motions are filed, that parties to the OFA motion, including the interested parties, can suggest a proposed schedule for brief written submissions on the matter. At the end of the call counsel Clarke asked the Panel if it would be helpful to include the deadlines for the submissions on the preliminary motions in the revised OFA schedule and the Panel chair answered that it would be helpful.

Following the CMCC, the Tribunal received correspondence including proposed schedules for the OFA joint motion on October 21 and 23, 2025, from Chiefs of Ontario and on October 22, 2025, from the Caring Society. The Tribunal has considered this correspondence. The Tribunal agrees with the October 31, 2025, date proposed by the COO, for the preliminary motions to be filed. As counsel Clarke suggested, the Tribunal requests the parties to work together on a revised schedule for the OFA joint motion, once the motions have been filed. The Tribunal appreciates the COO and the Caring Society's efforts to assist in the revised OFA schedule. The revised OFA schedule should include sufficient time for all parties to file submissions on the motions and for the Panel to consider them. Moreover, the schedule should also include the written submissions discussed in item 3 below. The Panel will make its best efforts to rule on all preliminary matters expeditiously. However, as the Panel has not yet received the various motions and submissions, it reserves the right to

¹ The Panel has previously used the terms "**multiple generations**". This is the Panel's view on the meaning of **generations to come**.

postpone the December hearing dates, if necessary, to allow sufficient time to address all preliminary issues.

The Panel chair agreed to counsel Wente's request to provide as part of the Panel's direction, some guidelines about how much in advance the Panel would like notice of any procedural matters to be dealt with at the CMCC. The Panel can now confirm that 4 business days would be appreciated.

The Caring Society did not raise the question of sur-reply in the classic sense but rather in response to their interpretation that the Panel's had contemplated the possibility of having non-affiant witnesses, come forward in relation to this matter and to preserve their right. The Panel chair confirmed that the Caring Society's interpretation was correct.

The Commission counsel mentioned during the CMCC, that she was participating in a hearing with Member Lustig during the week of February 23, 2025. However, this is subject to change and the Tribunal can confirm its availability shortly.

3. AGC's, letter dated October 15, 2025, including an objection to some of the evidence recently filed by the opposing party, First Nations Child and Family Caring Society of Canada (Caring Society), and by the Interested Parties, Taykwa Tagamou Nation (TTN) and Chippewas of Georgina Island (CGI).

Counsel Anderson indicated that the letter was sent on behalf of all moving parties AGC, COO and NAN. This is to strike out, some of the evidence filed by the Caring Society and the interested parties on the grounds that they have, basically insulated them from cross-examination, by not attaching purported expert reports and substantive evidence as exhibits to affidavits filed by others. Therefore, in the joint moving parties' views, this raises some important questions of procedural fairness, because the evidence cannot be tested. The joint moving parties' are also of the view that proportionality doesn't support their inclusion, taking into account the evidence that's been filed to date. One of the Engage First reports, assumes that funding is required for both on and off reserve, which the Tribunal has now clarified is out of scope of this complaint. we could do something similar as what we're doing for the other preliminary matters, and just have short, period for written submissions, and perhaps deal with it that way. That would be the joint moving parties' suggestion.

Counsel for TTN and CGI suggested those issues to be addressed at the hearing.

The Panel chair mentioned that she will discuss this with Member Lustig since sometimes it is better to deal with the matters ahead of the hearing to streamline the issues given the limited hearing days and sometimes it is dealt with at the hearing.

Following the CMCC, the Panel members have decided that this will be decided prior to the hearing by way of written submissions and not at the December 2025 hearing. The parties should include this matter as part of the OFA revised schedule.

4. Caring Society's October 10, 2025, request concerning the Status of Paragraph 5 of the Amended Notice of Motion Regarding the OFA.

Counsel Clarke requested a direction from the Panel on if it considered this still a live issue or if it is considered moot.

Panel Chair Marchildon mentioned that the Panel appreciated that everybody filed extensive submissions on this point, and that was originally to decide paragraph 5. However, Canada has now joined the joint motion. Therefore, the Panel chair confirmed that the issues raised in paragraph 5 are considered moot by the Panel.

5. Parties' questions on 2025 CHRT 80, as planned in the ruling, if any. Discussion on the parties and the Tribunal's views on long-term reform outside Ontario's hearing schedule

Counsel Clarke – Oct 16 letter re: disclosure – there are some documents that require further disclosure in order for the development of a long term National plan to be properly done. Panel chair Marchildon asked if the request for agreements since 2016 meant that they were not considered by the IFSD studies in previous years. Counsel Clarke replied that the Caring Society wants to make sure that they fully understand where everyone is at. This is only out of an abundance of caution. The Caring Society is not asking for these agreements to delay the preparation of reporting to the Tribunal in December 2025. That is certainly not, the Caring Society's aim, or strategy, or anything like that. The Caring Society very much want to move forward, and meet the deadlines that the Tribunal has set.

Canada added that in 2023, they had provided an update to the Tribunal which listed all of the agreements and contained all of them, therefore, that has already been provided.

Caring Society Counsel: the Caring Society has written to Canada counsel to request their confirmation that, capacity funding does fit under the consultation protocol in relation to the activities under 2025 CHRT 80. Canada has not accepted or refused, but they have not been able to give an affirmative date by which they can inform the Caring Society of their decision.

Canada counsel: On consultation funding, they do not have instructions. The Caring Society's request was only received, on October 15th. The consultations that they are seeking funding for do not involve Canada. The request, made to date by the NCCC is not insignificant. It is close to \$9 million, and that does not include funding for the Caring Society and the AFN. Also, as noted in Canada's consultation materials, \$7.6 million was already paid by Canada to the Caring Society, and \$26.4 million to the AFN to the end of last year.

Panel chair Marchildon in response to counsel Anderson's question, confirmed that the date for the National Long-term reform plan is December 22, 2025, and not Saturday December 20, 2025. There are a number of typos in the ruling such as the mention of 2022 CHRT 4 instead of 8 and other editing corrections to be made. The Tribunal will provide a copy identifying the editing changes to the parties shortly.

Panel chair Marchildon on the National long-term reform plan outside Ontario schedule:

The Panel Chair confirmed that the Panel expected the reports to be accompanied by affidavits and supporting materials, and that a process similar to that used for the OFA would be followed to proceed to a hearing.

Sarah Clarke, Caring Society Counsel mentioned that's very helpful to know and with that information, she can take that away and try to work with Ms. Anderson on a proposed, schedule to follow, and report back to the tribunal sometime in mid to late November.

The Panel chair found this acceptable for the Tribunal.

6. Next steps on the interim orders under Jordan's Principle in 2025 CHRT 6.

Caring Society Counsel: the Caring Society advised, the parties to the mediation on Friday that it's their view that there is no prospect at this time for progress on the consultation items ordered in the Tribunal's Jordan's principle decision and are now looking to the panel to provide some direction and guidance on how to move forward with adjudication on those items. The Caring Society is open to concurrently, trying to make progress where possible, outside of an adjudication process, but do feels the time now is to move on the adjudication process, given how long it has been and how impactful the ongoing issues under Jordan's principle are having on children who are waiting.

Counsel Peter Mantas for the AFN: Action should be taken to start moving things along as, as Ms. Clark indicated. the AFN are taking some steps to see if this will allow the negotiations to continue, the mediation to continue, and to perhaps get some progress. There is a need to move and perhaps things can run concurrently.

Counsel Dearman for the COO mentioned that fairly strong efforts were made on all sides. The COO intends to pursue a regional engagement and mediation approach while also participating in the litigation, should that proceed on a national basis. COO will be present to speak to some regional aspects.

Counsel Daniel for the NAN mentioned that the NAN are similarly interested in a regional process, and we'll be also looking to participate in litigation should it proceed.

Counsel Anderson: Canada agrees with the other parties that the consultations are taking a long time, but that does reflect the complexity of the issues, which from an operational standpoint are novel and difficult to implement. So ISC has been working on reviewing and testing options to further clear the backlog. Canada's position is that forcing the issues back into litigation at the same time as mediation is just not going to help the situation. Canada doesn't see it as being necessary to litigate at this time. It would be more helpful to leave the parties at the mediation to work on continuing to test issues and trying to resolve the backlog in that way.

Following the CMCC, the Panel members discussed this matter and confirm that, to date, no motion has been filed with the Tribunal to address the issues raised at the CMCC on this point. Should a motion be filed, the Tribunal will adjudicate it in due course.

Should you have any questions, please do not hesitate to contact the Registry Office by e-mail at registry.office@chrt-tcdp.gc.ca or by fax at 613-995-3484.

Yours truly,

Judy Dubois
Registry Officer

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