



Department of Justice
Canada

Ministère de la Justice
Canada

Prairie Regional Office
(Winnipeg)
National Litigation Sector
601-400 St. Mary Avenue
Winnipeg, MB R3C 4K5

Bureau régional des Prairies (Winnipeg)
Secteur national du contentieux
400, avenue St. Mary, pièce 601
Winnipeg (Manitoba) R3C 4K5

Telephone/Téléphone: 204-294-5563
Fax /Télécopieur: 204-983-3636
Email/Courriel: Dayna.Anderson@justice.gc.ca

Via Email

Our File Number: LEX-500219273

July 28, 2026

Chairperson Khurana
Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

**Re: First Nations Child and Family Caring Society of Canada et al
v. Attorney General of Canada
CHRT File T1340/7008 – Request for Reconstitution of Panel**

Dear Chairperson Khurana,

We act for the Attorney General of Canada (Canada) in this proceeding.

We write to respectfully request that you exercise your authority to restore the panel to its previous three-member composition.

Background

The Tribunal constituted a three-member panel to inquire into this matter in 2012, consisting of members Bélanger, Marchildon and Lustig. This structure was adopted following a motion by the Assembly of First Nations (AFN), supported by the First Nations Child and Family Caring Society of Canada (Caring Society) and not opposed by Canada, on the basis that the complaint raised novel and highly complex issues.¹

In granting the AFN's motion to assign a three-member panel, the Tribunal noted:

Specifically, the AFN suggests there is an advantage in complex cases to having the insight and contribution to the deliberative process of two additional members, which also increases confidence in the decision rendered. The complexity and importance of the issues raised in this complaint have been acknowledged by both the Tribunal and the Federal Court.²

¹ *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 [2012 CHRT 16].

² 2012 CHRT 16 at para 28.

Following Member Bélanger’s death in 2015, the remaining members³ issued the Merit Decision in 2016 CHRT 2. For over a decade since then, they have presided over a complex remedial phase. The number of interested parties has increased from two to nine. The Tribunal has retained jurisdiction over most aspects of the proceeding and rendered more than thirty-five remedial decisions containing wide-ranging orders. These include deciding that a \$23.4 billion settlement satisfied its compensation orders⁴ and approving an \$8.5 billion agreement to entirely reform the First Nations Child and Family Services (FNCFS) Program in Ontario, with exemptions for two First Nations.⁵

Member Lustig resigned on July 7, 2026, leaving Member Marchildon as the sole remaining member of a three-member decision-making body. In correspondence to the parties dated July 8, 2026, and at the subsequent July 21, 2026 Case Management Conference Call (CMCC), Member Marchildon indicated that she intends to continue presiding over the matter alone and she will be doing so with the confidence of the Chairperson. Counsel for Canada advised at the July 21, 2026 CMCC, and in subsequent correspondence to the Tribunal dated July 24, 2026, that we were actively considering our position on the panel’s composition and reserved our position on that issue.

The panel is inquorate

The panel was constituted as a three-member decision-making body, reflecting the Tribunal’s assessment that the complexity and importance of the issues warranted a multi-member structure.⁶ That structure has governed both the Merit Decision and the lengthy remedial phase that followed.

The panel has now lost two of its three members, making it inquorate.⁷ As a matter of administrative law, quorum is a requirement of lawful tribunal decision-making.⁸ A tribunal or panel must have the minimum number of members necessary to exercise its jurisdiction. Where a multi-member body falls below quorum, its ability to act is constrained and its decision-making authority is impaired.⁹

³ By way of context, Member Marchildon was first appointed as a full-time member of the Tribunal on May 31, 2010. Member Lustig was first appointed as a part-time member on February 20, 2008. Both of their appointments have since expired, with their continued participation approved by the Chairperson via section 48.2(2) of the *Canadian Human Rights Act*, RSC 1985, c H-6.

⁴ *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2023 CHRT 44.

⁵ *First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* (30 March 2026), Ottawa T1340/7008 (CHRT) (Ontario Final Agreement Letter Decision).

⁶ 2012 CHRT 16 at paras 28–29.

⁷ *Interpretation Act*, RSC, 1985, s 22(2)(c) [**Interpretation Act**].

⁸ Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis Canada Inc, 2022) “The Need for a Quorum” §2.22. 2.

⁹ *IBM Canada Ltd v Deputy MNR, Customs and Excise*, 1991 CanLII 13584, [1992] 1 FC 663 at 672–74 (FCA).

Quorum requirements are not merely technical; they are essential to the valid exercise of adjudicative authority. A lack of quorum cannot be waived, particularly given the public nature of the Tribunal's functions.¹⁰

Here, the panel was constituted to operate as a three-member decision-making body. With only one member remaining, the panel can no longer function as contemplated. This supports reconstitution so that the Tribunal may exercise its mandate and bring the proceeding to completion within the deliberative structure on which it has proceeded to date.

Authority to reconstitute the panel

The Chairperson's authority under section 49(2) of the *Canadian Human Rights Act* is broad and includes discretion to determine and adjust panel composition where required by the circumstances of the complaint. The Tribunal has confirmed that this discretion extends to process-related and case-management decisions, including the structure and conduct of proceedings.¹¹

This authority encompasses an implied statutory power to reconstitute a panel where its composition has materially changed in a complex and ongoing matter.¹²

The parties' interests

Reconstituting the panel at this stage of the remedial process will not give rise to any procedural unfairness and will have at most a limited impact on the parties' interests, including financial and non-financial resources.

There is no need to relitigate any issue previously determined by the panel. Rather, as set out in further detail below, 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.

Being unfamiliar with the historical record in this case is not a procedural barrier to reconstituting the panel. The proceeding has moved into a phase that is driven by new evidence that has yet to be filed by the parties and/or considered by the previous panel. The need to engage with the history of the file is a manageable aspect of the process and does not outweigh the prospective, evidence-driven nature of the remaining work.

¹⁰ *Parlee v College of Psychologists of New Brunswick*, 2004 NBCA 42 at paras 25–28 and 36–37; *British Columbia Government Employees' Union v British Columbia (Public Service Commission)*, 10 BCLR 87, 1979 CanLII 273 at paras 18–19, 23 (SC).

¹¹ *Mississaugas of the Credit First Nation v Attorney General of Canada*, 2025 CHRT 60 at paras 22–30; *Cain v Correctional Service of Canada*, 2026 CHRT 37 at para 42.

¹² *Brink's Canada Ltd v Canada (Human Rights Commission)*, [1996] 2 FC 113 at para 29 (TD). See also *Interpretation Act*, s 31(3).

In these circumstances, reconstituting the panel would support procedural fairness by ensuring that future determinations are made with the benefit of a full and balanced deliberative structure.

Proportionality

The principle of proportionality requires that proceedings be managed in an active and efficient manner, having regard to their nature, complexity, and stage.¹³ The Tribunal may also consider whether a proposed course of action will contribute to delay or impede resolution.¹⁴

Here, the matter has reached a highly advanced and resource-intensive phase, with multiple parallel streams of litigation and participation by at least thirteen parties. Proportionality supports a structure that is appropriately calibrated to the demands of the proceeding. Reconstituting the panel would align the Tribunal's decision-making structure with the scale and complexity of the litigation.

These litigation streams deal with various matters concerning the FNCFS Program and Jordan's Principle. A brief summary follows.

FNCFS Program Long-Term Process

Following its decision in 2025 CHRT 80, the Tribunal established a process to adjudicate the parties' long-term reform plans. The schedule extends into 2027, and includes ongoing federal negotiations, staged affidavit evidence (the most recent affidavit evidence having been filed on July 24 and 27, 2026), a new interested party process, a 12-day evidentiary hearing, and written and oral submissions.

Notably, the co-complainants are seeking a minimum of five additional years of Tribunal remedial jurisdiction beyond the 2027 phase, for this aspect of the proceeding alone.¹⁵

¹³ *Temate v Canada (Attorney General)*, 2022 CHRT 31 at para 9; *Liu v Canada (Attorney General)*, 2025 CHRT 90 at paras 20–21.

¹⁴ *Whitelaw v Canada (Attorney General)*, 2025 CHRT 43 at para 55; *Benji v Canada (Attorney General)*, 2025 CHRT 65 at para 54.

¹⁵ Affidavit of Cindy Blackstock, affirmed December 22, 2025, Exhibit 1 at page 51 (pdf page 55): "The Tribunal shall retain jurisdiction over the complaint in relation to FNCFS for a minimum of five (5) years from the date of its FNCFS long-term reform order and thereafter until Canada has demonstrated sustained compliance (that is independently verified) with the National FNCFS Reforms and the risk of recurrence of discrimination has been eliminated."

Jordan's Principle Interim Process

The Tribunal is also in the process of scheduling a new proceeding to consider Jordan's Principle interim orders, as discussed at the July 21, 2026 CMCC.

Jordan's Principle Long-Term Process

The Tribunal has indicated its intention to retain jurisdiction over Jordan's Principle across the country, until long-term reform of Jordan's Principle is achieved.¹⁶ At present, there is no process scheduled to address this aspect of the proceeding, which we understand will require further case management, new evidence and substantive determinations.

Official Languages Issues

As directed by the Tribunal, the parties have filed submissions on the Official Languages issues jointly raised by First Nations of Quebec and Labrador Health and Social Services Commission, and Assembly of First Nations Quebec-Labrador, including whether Canada has a duty to translate documents filed in the proceedings. A decision from the Tribunal is pending.

Consultation and Retention of Jurisdiction Issues

In January 2025, the Caring Society filed a motion for orders that the Tribunal retain jurisdiction and require that Canada consult with the co-complainants on long-term reform of the FNCFS Program and Jordan's Principle. The Tribunal opted to proceed without a hearing, and all filings were complete as of May 22, 2025. A decision from the Tribunal is pending.

Request

We respectfully request that you restore the panel in this proceeding to its previous three-member composition.

This request is made in a spirit of procedural efficiency and with a view to supporting the orderly continuation - and ultimately the completion - of a proceeding of unusual complexity, length, scale, and importance. Reconstituting the panel would re-establish the adjudicative structure previously contemplated and assist in ensuring that the remaining stages of the proceeding are managed in a manner that is consistent with the Tribunal's mandate and the public interest.

¹⁶ See for example *First Nations Child & Family Caring Society of Canada and Assembly of First Nations v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2025 CHRT 6 at para 602.

We would be pleased to address any questions the Tribunal may have or provide further submissions as required.

Yours truly,



Dayna Anderson
Senior General Counsel

c.c.

Canadian Human Rights Tribunal
240 Sparks Street, 6th Floor West
Ottawa, Ontario K1A 1J4

Attn: Member Marchildon

Email: Registry.Office@chrt-tcdp.gc.ca

David Taylor and Kiana Saint-Macary
Conway Baxter Wilson LLP
400-411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9
Email: dtaylor@conwaylitigation.ca
ksaintmacary@conwaylitigation.ca

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

Sarah Clarke and Robin McLeod
Clarke Child and Family Law
36 Toronto Street, Suite 950
Toronto, Ontario M5C 2C5
Email: sarah@childandfamilylaw.ca
robin@childandfamilylaw.ca

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

Peter N. Mantas, Gabrielle Cyr,
Tina Sun and Clive Ngan
Fasken Martineau DuMoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, Ontario K1P 6L5
Email: pmantas@fasken.com
gcyr@fasken.com
tsun@fasken.com
cngan@fasken.com

Counsel for the Complainant, the
Assembly of First Nations

Anshumala Juyal and Khizer Pervez
Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Email: Anshumala.Juyal@chrc-ccdp.gc.ca
khizer.pervez@chrc-ccdp.gc.ca

Maggie Wente, Sinéad Dearman, Benjamin
Brookwell, Jessie Stirling-Voss, Katelyn
Johnstone, Ashley Ash, and Jenna Rogers
Olthuis Kleer Townshend LLP
250 University Avenue, 8th Floor
Toronto, Ontario M5H 3E5

Counsel for the Interested Party, the
Canadian Human Right Commission

Email: mwente@oktlaw.com
sdearman@oktlaw.com
bbrookwell@oktlaw.com
jstirling@oktlaw.com
kjohnstone@oktlaw.com
aash@oktlaw.com
jrogers@oktlaw.com

Counsel for the Interested Party, Chiefs of
Ontario

Julian N. Falconer, Asha James,
Shelby Percival, Erin McMurray and
Meaghan Daniel
Falconers LLP
10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9
Email: julianf@falconers.ca
ashaj@falconers.ca
shelbyp@falconers.ca
ErinM@falconers.ca
meaghand@falconers.ca

Justin Safayeni and Stephen Aylward
Stockwoods LLP
TD North Tower
77 King Street West, Suite 4130
Toronto, Ontario M5K 1H1
Email: justins@stockwoods.ca
stephenA@stockwoods.ca

Counsel for the Interested Party,
Amnesty International

Counsel for the Interested Party,
Nishnawbe Aski Nation

Justin Safayeni and Spencer Bass
Stockwoods LLP
TD North Tower
77 King Street West, Suite 4130
Toronto, Ontario M5K 1H1
Email: justins@stockwoods.ca
spencerb@stockwoods.ca

Pierre-Simon Cleary, Sophie Gagné and
Marc-Olivier Brousseau
First Nations of Quebec and Labrador
Health and Social Services Commissions
250, place Chef Michel Laveau, local 102
Wendake, Quebec G0A 4V0
Email: pcleary@csssbnql.com
sophie.gagne@csssbnql.com
mobrousseau@csssbnql.com

Counsel for Interested Party, Taykwa
Tagamou Nation and Chippewas of
Georgina Island

Counsel for Interested Party, First Nations
of Quebec and Labrador Health and Social
Services Commissions and Assembly of
First Nations Quebec-Labrador

Daniel Goudge and Alexandra Heine
 Stockwoods LLP
 TD North Tower
 77King Street W, Suite 4130
 Toronto, Ontario M5K 1H1
 Email: dang@stockwoods.ca
alexandrah@stockwoods.ca

Counsel for the Interested Party, Our
 Children Our Way

Harold Cochrane and Alyssa Cloutier
 Cochrane Sinclair LLP
 Swan Lake First Nation
 115-300 Alpine Way
 Headingley, Manitoba R4H 0E1
 Email: hcochrane@cochranesinclair.ca
acloutier@cochranesinclair.ca

Counsel for the Interested Party, the
 Southern Chief's Organization

Liam A. Smith and Tuma T.W. Young, K.C.
 NWL, IPC
 Smith Law Droit Inc.
 P.O. Box 8010 Membertou PO
 Membertou First Nation, Nova Scotia B1S
 2N0
 Email: liam@smithlawinc.com
tuma@smithlawinc.com

Counsel for the Interested Party, National
 Children's Chief's Commission

Carly Fox and Jasen Erbeznik
 Fox LLP
 79 Redwood Meadows Drive
 Redwood Meadows, Alberta T3Z 1A3
 Email: cfox@foxllp.ca
jerbeznik@foxllp.ca

Counsel for the Interested Party, the
 Assembly of Manitoba Chiefs

Scott Smith, Alexander DeParde and
 Taskeen Nawab
 Aird & Berlis LLP
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, Ontario M5J 2T9
 Email: ssmith@airdberlis.com
adeparde@airdberlis.com
tnawab@airdberlis.com

Counsel for the Interested Party, National
 Children's Chief's Commission