

Federal Court



Cour fédérale

Date: 20260713

Docket: T-3594-25

Ottawa, Ontario, July 13, 2026

PRESENT: Case Management Judge Sylvie M. Molgat

BETWEEN:

ATTORNEY GENERAL OF CANADA

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Applicant

And

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

Respondents

ORDER

UPON the Respondent, First Nations Child and Family Caring Society of Canada [Caring Society] having advised of its intention to bring a motion to strike the Notice of Application on the grounds that it is premature;

UPON hearing the submissions of the parties at a case management conference held to discuss various procedural matters, including whether the proposed interlocutory motion to strike should be dealt with in advance of any other procedural steps in the application;

CONSIDERING the Court's Direction dated November 17, 2025;

CONSIDERING the written submissions of the Caring Society, the Applicant, Attorney General of Canada [Canada] and the Respondent Assembly of First Nations;

CONSIDERING that the Respondents, Canadian Human Rights Commission, Amnesty International Canada, Nishnawbe Aski Nation and Chiefs of Ontario take no position on the issue;

CONSIDERING that applications for judicial review are intended to proceed expeditiously, any objection should, as a general rule, be addressed at the hearing of the application on the merits, and that “motions to strike an application for judicial review should be resorted to only in the most exceptional circumstances, i.e. when the application is bereft of any possibility of success.”: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 FC 588 (FCA) at p. 596-98; *Odynsky v. League for Human Rights of B’Nai Brith Canada*, 2009 FCA 82 at paras. 5-7; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, [JP Morgan], 2013 FCA 250 at paras. 47-48; *McCarthy v. Canada (Attorney General)*, 2020 FC 930 at para. 8;

CONSIDERING the general rule is that judicial review should not be brought until all available and adequate administrative recourses have been exhausted: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 at paras. 30-32 and 45; *JP Morgan; Lin v. Canada (Public Safety and Emergency Preparedness)*, 2021 FCA 81 [Lin] at para. 5;

CONSIDERING that, in appropriate cases, the general rule against premature judicial reviews can form the basis of a preliminary motion to strike, and that potential bars to judicial review should be raised at the earliest opportunity: *JP Morgan; Lin* at paras. 7-9; *Sahtu Divisional Educational Council v. Canada (Attorney General)*, 2025 FC 1710 at para. 17;

CONSIDERING that a sequencing application is not the forum to determine the merits of a party's motion; rather, the Court must consider the *prima facie* strength of the motion and determine whether allowing it to be heard before the hearing on the merits militates in favour of judicial economy and efficiency: *Berenguer v. WOW Air ehf*, 2019 FC 407 at para. 17;

CONSIDERING that this application arises from a decision by the Canadian Human Rights Tribunal [Tribunal] (2016 CHRT 2) that found that First Nations children and families living on reserve and in the Yukon were denied equal child and family services under paragraph 5(a) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA] and/or were adversely differentiated under paragraph 5(b) [Merit decision]. The Tribunal's finding of discrimination pertained to Canada's funding of the First Nations Child and Family Services Program [FNCFS Program] and the funding of Jordan's Principle for related health services to First Nations children. The Tribunal ordered that the Applicant immediately cease its discriminatory practices and engage in any reforms needed to bring itself into compliance with the Merit Decision: *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969 [*First Nations CFCS 2021*] at paras. 2 and 24-28;

CONSIDERING that since the Merit decision, the Tribunal has retained jurisdiction, issuing approximately 35 rulings, and Canada has sought judicial review of two (2) of the Tribunal's remedial orders. In dismissing those applications the Court found, in part, that if Canada wanted to challenge certain aspects it should have applied for judicial review of some of the Tribunal's earlier rulings: *First Nations CFCS 2021* at paras. 224, 231, 289 and 304;

CONSIDERING that the present application for judicial review concerns a ruling by the Tribunal released August 20, 2025, and amended on September 17, 2025: 2025 CHRT 80

[Decision] in the matter of *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada*, Tribunal file number T1340/7008;

CONSIDERING that the Decision contains at least ten (10) orders made pursuant to sections 48.9(1) and 53(2) of the *CHRA* and the Tribunal's previous orders and retention of jurisdiction: 2025 CHRT 80 at paras. 118-127;

CONSIDERING that the Notice of Application seeks an order in the nature of *certiorari*, setting the aside the Decision, and remitting it to a differently constituted panel of the Tribunal in accordance with such directions as the Court may consider appropriate;

CONSIDERING that Canada pleads that, in issuing the Decision, the Tribunal breached natural justice and the duty of fairness; that the Decision was unreasonable because the Tribunal (a) unreasonably interpreted its statutory authority; (b) ordered unreasonable remedies; (c) unreasonably exercised its discretion; and (d) unreasonably failed to consider evidence and submissions;

CONSIDERING that the Caring Society contends that the application is premature as it challenges an interlocutory decision by the panel of the Tribunal; that the orders are of a procedural case planning nature made in service of the ongoing proceedings before the Tribunal and that Canada cannot have recourse to the Court until the Tribunal makes final orders regarding long-term reform for Canada's FNCFS Program;

CONSIDERING that the Caring Society's submissions do not include a draft notice of motion for the proposed motion to strike;

CONSIDERING that Canada submits that the Decision is wide-ranging and finally determines the timeline, parameters, requirements, parties (including non-party participants) in long-term reform for Canada's FNCFS Program, including evidence and consultations and that it significantly impacts its legal rights and interests;

CONSIDERING that Canada asserts that it has exhausted all effective remedies to challenge the Decision, that there is no statutory appeal mechanism available and that the underlying application is in line with the Court's findings in *First Nations CFCS 2021* at paras. 224 and 289;

CONSIDERING that a motion to strike is a tool that promotes judicial economy by "avoiding burdening the parties and the court system with claims that are doomed from the outset" (*Fitzpatrick v. Kodiak Regional RCMP Force District 12*, 2019 FCA 1040 at para 14), and that a judicial review that is doomed to fail wastes judicial resources "and should be nipped in the bud": *Lin* at para.7;

CONSIDERING that it is not clear that the Notice of Application is fundamentally flawed, such that it is doomed to fail, and that the issue of whether the application for judicial review is premature is, in the Court's view, debatable;

CONSIDERING that "a motion to strike is an exceptional remedy, especially in the context of an application for judicial review". In the circumstances of this case, it would be more appropriate to deal with the issue of alleged prematurity of the application in the context of the hearing on the merits where the application judge will have the benefit of a full grasp of the complex factual and procedural context underlying the Tribunal's remedial oversight to deal with

the Caring Society's objection (*First Nations CFCS 2021* at para. 6; *Esgenoôpetitj (Burnt Church) First Nation v. Canada (Human Resources and Skills Development)*, 2010 FC 1195 at para. 32);

CONSIDERING the very broad powers granted to the Court pursuant to Rule 385(1) of the *Rules: Badawy v. 1038482 Alberta Ltd.*, 2019 FCA 150 at para. 17; *Onischuk v. Canada (Revenue Agency)*, 2021 FC 486 at paras. 16-18;

AND CONSIDERING that the Court is not convinced that scheduling the proposed motion to strike prior to the hearing of the application on the merits would ensure the efficient use of judicial resources and promote the just, most expeditious and least expensive determination of the proceeding;

THIS COURT ORDERS that:

1. The issue of the prematurity raised by First Nations Child and Family Caring Society of Canada is left to the hearing of the application for judicial review.
2. The parties shall confer and submit, by no later than **July 24, 2026**, a jointly proposed timetable for next steps, together with their common availability for a case management conference if required.

"Sylvie M. Molgat"
Associate Judge