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Via Email

Our File Number: LEX-500219273

August 4, 2026

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

Dear Member Marchildon,

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

We acknowledge receipt of the Tribunal's correspondence dated July 23, 2026, including a proposed approach regarding the issuance of detailed reasons for the March 30, 2026, letter decision (Decision) approving the *Final Agreement on Long-Term Reform of the First Nations Child and Family Services Program in Ontario* (Ontario Final Agreement) with exemptions. As requested, we have given significant consideration to the context of this case and the impacts on First Nations children, families, and Nations in Ontario, and are addressing the issue through a human rights and administrative law lens.

We also acknowledge the August 4, 2026 joint submissions filed by Chiefs of Ontario and Nishnawbe Aski Nation. The interest they express in receiving detailed reasons is important and worthy of careful consideration, particularly given the significance of the issues and the broader context of these proceedings. However, while that interest is important, it must be assessed in light of the legal and procedural constraints that govern the Tribunal's authority.

Administrative Law Considerations

As a matter of administrative law, Canada cannot consent to the proposed approach. In the highly unusual factual and legal circumstances of this case, the inquorate Panel cannot, in our view, take further steps that purport to constitute the issuance of further detailed reasons for the Decision as reasons of the Tribunal.

As explained in our correspondence to the Chairperson on July 28, 2026, the Panel was constituted as a three-member decision-making body.¹ Following Member Lustig's resignation, the Panel is now inquorate.² A panel without quorum cannot exercise its authority under the *Canadian Human Rights Act*, including issuing further detailed reasons for a panel decision.³

Quorum is a mandatory condition of valid tribunal decision-making and cannot be waived, particularly given the public nature of the Tribunal's functions.⁴ Where quorum is absent, any purported exercise of the Tribunal Panel's authority under the *Canadian Human Rights Act* — including issuing reasons for a panel decision — would be without legal authority and therefore invalid.

Even if the quorum issue is addressed, the Tribunal's statements during the July 21, 2026 Case Management Conference Call and subsequent correspondence of July 23, 2026 indicate that there has been no finalized and mutually adopted agreement with respect to the further detailed reasons for the Decision. During the July 21, 2026 Case Management Conference Call, it was confirmed that the sole remaining Panel member has been preparing the further detailed reasons independently, and that Member Lustig would need to review and approve them, despite his resignation. It was subsequently confirmed that Member Lustig will not review or approve the further detailed reasons.⁵ In these circumstances, any further detailed reasons now issued could not be said to reflect the reasons of the Tribunal Panel as constituted at the time of the Decision. This is so notwithstanding the characterization advanced by certain parties that the Decision itself constitutes a complete expression of shared reasons; the Decision expressly contemplated the issuance of further detailed reasons, which were to be reviewed and finalized in accordance with the process previously described.

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.

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

³ Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis Canada Inc, 2022) "The Need for a Quorum" §2.22. 2; *IBM Canada Ltd v Deputy MNR, Customs and Excise*, 1991 CanLII 13584, [1992] 1 FC 663 at 672–74 (FCA).

⁴ *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).

⁵ In email correspondence from the Tribunal on July 23, 2026, it was stated:

Dear parties, following the CMCC held on July 21, 2026, I conveyed to Member Lustig the parties' appreciation for his work and their well wishes. I also informed him that, during the CMCC, I had advised the parties that he would review the detailed reasons concerning the OFA and sign the decision, and that Canada had expressed comfort in that understanding.

Upon further consideration, Member Lustig requested that I convey to the parties that, following his immediate resignation, he does not believe it would be appropriate for him to have any further involvement in the case, including in the review of the detailed reasons for the Letter-Decision concerning the OFA. He therefore remains a co-signatory to the Letter-Decision.

Having received the letter to the Chairperson dated July 31, 2026, we appreciate that the remaining member may take the position that she is able to continue to act in relation to the proceeding. However, the issue here is not the member's general ability to engage with the file, but rather whether, in the absence of quorum and any collective adoption of the further detailed reasons, there is a lawful basis for issuing reasons that can properly be attributed to the Tribunal Panel as constituted at the time of the Decision.

While further detailed reasons cannot, in our view, be issued as the reasons of the Tribunal, a practical solution may be that the remaining member provide a written statement in her personal capacity setting out her views and analysis of the matter. This would be distinct from, and would not purport to complete, the Tribunal's reasons for the Decision. This approach would assist the parties in understanding the member's perspective while respecting the legal constraints on the Tribunal's exercise of its authority under the *Canadian Human Rights Act*. It would preserve transparency and assist the parties' understanding, while avoiding any concern that the Tribunal is purporting to issue further detailed reasons for the Decision that cannot properly be attributed to the panel as constituted at the time of the Decision.

We recognize that the interest expressed by Chiefs of Ontario and Nishnawbe Aski Nation in receiving detailed reasons is important and deserving of careful consideration, particularly given the significance of the Decision. However, that interest cannot displace the legal threshold question of whether further detailed reasons can properly be issued as reasons of the Tribunal Panel. The present circumstances place Canada in a position where it must take a principled approach grounded in the governing statutory framework and the requirement that Tribunal reasons be attributable to the decision-making body as constituted at the time of the decision.

Human Rights Considerations

Notwithstanding the panel's inquorate status and any issue concerning the further detailed reasons, the March 30, 2026, Letter Decision stands as a decision of a properly constituted panel, made when quorum was intact, and benefits from a presumption of validity.⁶

No party to the Tribunal's Ontario Final Agreement proceeding has challenged the Agreement's approval in Federal Court. While Canada has challenged those portions of the Letter Decision that exempt Taykwa Tagamou Nation and Georgina Island First Nation from the Ontario Final Agreement, Canada has always welcomed the Tribunal's approval of the Ontario Final Agreement and remains steadfast in its commitment to its implementation.

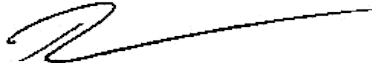
From a human rights lens, the Ontario Final Agreement represents a comprehensive, non-discriminatory remedy for First Nations in Ontario that remedies the discrimination found in

⁶ *IBM Canada Ltd v Deputy MNR, Customs and Excise*, 1991 CanLII 13584, [1992] 1 FC 663 at 672-74 (FCA); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paras 99-100.

2016 CHRT 2. The Ontario Final Agreement endures, regardless of the Tribunal's ability to issue further detailed reasons. Canada remains committed to implementing the Ontario Final Agreement and the Trilateral Agreement in partnership with Chiefs of Ontario and the Nishnawbe Aski Nation. This work represents an important step forward in building a more stable, equitable, and hopeful future for First Nations children and families in Ontario.

We remain available to provide further submissions if required.

Yours truly,



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c.c.

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