

# WHAT IS THE CANADIAN HUMAN RIGHTS TRIBUNAL ON FIRST NATIONS CHILD WELFARE?

## Canadian Human Rights Tribunal on First Nations Child Welfare

### Why is the Tribunal important?

The Human Rights Tribunal makes a formal judgment about complaints filed under the Canadian Human Rights Act. The Tribunal has the authority to decide whether First Nations children are being discriminated against. If so, it can order a remedy to the discrimination against First Nations children and families.

### What is at stake for First Nations children?

The Tribunal decision will set a precedent on the federal government's provision of services in child welfare and also in health, education, housing and other social services.

If the Tribunal decides that there is discrimination taking place, the government will be required to make immediate changes to the services it provides to First Nations children and families. This could result in significant improvements for First Nations Child and Family Service Agencies and the children and families they support.

### What is the basis for a Tribunal hearing?

The Canadian Human Rights Tribunal hears cases of alleged discrimination that may violate the Canadian Human Rights Act (the Act). The Act states that all Canadians have the right to equality, equal opportunity, fair treatment, and an environment free of discrimination based on enumerated grounds. The Tribunal process is a public hearing comparable to a court proceeding, but the Tribunal only hears cases related to discrimination. Cases are put forward by the Canadian Human Rights Commission (Commission), on behalf of the Canadian public. Based on the evidence and the law, the Tribunal decides if discrimination has occurred. If so, it decides how to compensate the victim and prevent similar cases of discrimination in the future. Tribunal decisions are legally binding.<sup>1</sup>

### What are the main arguments before the Tribunal in this case?

The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a complaint alleging that the Government of Canada's department of Aboriginal Affairs and Northern Development Canada (AANDC) is providing child and family services to First Nations on-reserve that are flawed and are not equal to the services received by children and families living off-reserve. The Caring Society and the AFN (also referred to as the Complainants) attest that AANDC controls the delivery of child welfare services on-reserve through its policies, programs and funding. They argue that these services discriminate against First Nations children and families living on-reserve under the Act. As a result, they suggest, a higher number of First Nations children are placed in out of home care by the child welfare system. The Caring Society requests the Tribunal to render a finding of discrimination and order remedies.

To counter this, the federal government argues that funding is not a service in accordance with the Act. Furthermore, the government argues that child welfare services delivered to First Nations on-reserve cannot be compared to off-reserve services delivered by the provinces/territories, because the Act cannot be applied to comparisons between two different service providers

### Who are the Complainants?

Complainants are the parties that initiate the complaint: The First Nations Child and Family Caring Society, a national non-profit organization providing research, policy, professional development and networking support to First Nations Child and Family Service Agencies and the Assembly of First Nations, a national advocacy organization representing First Nations peoples in Canada.

### Who is the Respondent?

The Respondent is the defendant or party that responds to the complaint: The Attorney General of Canada represents the federal government's Minister of Aboriginal Affairs and Northern Development (AANDC). The Minister represents AANDC, the federal department that is responsible for meeting Canada's obligations and commitments to First Nation, Inuit and Métis peoples.

### Who are the Interested Parties?

Interested parties are not complainants or respondents, but others that have an interest in the proceedings: The Chiefs of Ontario is a political forum and secretariat for collective decision-making, action, and advocacy for the 133 First Nations communities located in the province of Ontario. Amnesty International is a non-governmental organization focused on preventing and ending human rights abuses and demanding justice for those whose rights have been violated.

### What is the Commission?

The Canadian Human Rights Commission hears complaints from the public, applying the principles of the Canadian Human Rights Act (the Act) and, if necessary, proceeds with a Tribunal. The Commission, operating independently from the government, administers the Act.\*

servicing two different publics.<sup>2</sup> Accordingly, the federal government requests that the case be dismissed.

### What is the timeline of the Tribunal in this case?

In February 2007, the Caring Society and the AFN filed a human rights complaint with the Canadian Human Rights Commission, alleging that child welfare services provided to First Nations children and families on-reserve are flawed, inequitable and discriminatory. The Canadian government argued that the complaint was outside the jurisdiction of the Canadian Human Rights Act and requested that the complaint be dismissed, but Canada's request was denied. The Commission referred the complaint to the Tribunal in September 2008.

Canada then applied to the Federal Court for a judicial review of the referral to the Tribunal, arguing that services by two different providers to two different publics cannot be compared and that funding cannot be considered a service. The Federal Court stayed Canada's application. Canada's second appeal was also stayed.

In 2009, the Tribunal began a hearing on the merits of the Caring Society and the AFN complaint. Amnesty International and the Chiefs of Ontario were granted intervenor status in the hearings. Canada asked the Tribunal to bypass the hearings and render preliminary decisions on their main issues, but was refused. Shortly afterwards, the government appointed a new chair of the Human Rights Tribunal. The new chair vacated all scheduled hearing dates and Canada filed a new motion to dismiss the complaint. In March 2011 the new chair dismissed the complaint, based on the government's argument that services provided by the federal government cannot be compared to those provided by the provinces/ territories.

The Caring Society, the AFN and the Commission then applied to the federal court for judicial review of the Tribunal's decision; the application was granted in 2012. Canada applied to overturn this decision. Meanwhile, the hearings proceeded at the Tribunal. In 2013, the Federal Court of Appeal dismissed Canada's appeal of the Federal Court's decision. Canada did not appeal this decision. The Tribunal then amended the complaint to include allegations of retaliation and intimidation against the Caring Society and some of its staff. The government was also ordered to submit 100,000 documents that it withheld in violation of the Tribunal process.<sup>3</sup>

In February 2013, the Tribunal began to hear evidence from 25 witnesses (18 for the Commission and the Complainants and seven for the federal government). The final witness testified in May 2014. Additionally, approximately 500 documents were filed as evidence. Final arguments for the case were heard in October 2014 and a ruling is expected by mid-2015.<sup>4</sup>

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To view the final submissions to the Canadian Human Rights Tribunal on First Nations Child Welfare in full, please visit: <http://www.fncaringsociety.com/final-arguments>.

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<sup>1</sup> Summarized from the [Canadian Human Rights Tribunal website](#).

<sup>2</sup> Summarized from First Nations Child and Family Caring Society Factum; the Assembly of First Nations Factum and the Aboriginal Affairs and Northern Development Canada Factum.

<sup>3</sup> Summarized from the First Nations Child and Family Caring Society's [Procedural Diagram 2007-2015](#).

<sup>4</sup> Summarized from the First Nations Child and Family Caring Society's Information Sheet: [The Canadian Human Rights Tribunal on First Nations Child Welfare](#).

\* Summarized from the [Canadian Human Rights Tribunal website](#).