



January 6, 2014

**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 find below a decision from Sophie Marchildon, Panel Chair, on behalf of the Panel:

On December 9, 2013, the Caring Society filed a Notice of Motion indicating that they intended to file a motion to the Tribunal on December 10, 2013, or soon thereafter. The Notice of Motion is entitled: Motion for an Order Admitting Documents as Evidence for the Truth of their Contents. With this Motion, the Caring Society seeks:

“an Order that all documents contained in HR Binders 1 to 13 which were obtained from the Respondent through the *Access to Information Act*, *Privacy Act*, or disclosure in these proceedings are hereby admissible as evidence for the truth of their contents, regardless of whether or not the author or recipient of the document is called as a witness, and whether or not they are put to any other witness”.

The Caring Society made the motion before the Tribunal on December 10, 2013. Parties made submissions on the motion on this date. In seeking the admission of HR Binders 1 to 13, the Caring Society asks the Tribunal to declare Rule 9(4) of the *Canadian Human Rights Tribunal Rules of Procedure* (the Rules of Procedure) inapplicable during the present proceedings. Rule 9(4) of the Rules of Procedure reads:

*Admission of documents from books of documents*

**9(4)** Except with the consent of the parties, a document in a book of documents does not become evidence until it is introduced at the hearing and accepted by the Panel.

The Commission made submissions in support of the Caring Society's Motion. The Respondent, on the other hand, opposes the Motion. The Respondent has also requested that the Tribunal take this opportunity to define the parameters of witness recall.

The Tribunal has reviewed the parties' submissions and the supporting evidence on both the Motion and the question of witness recall. Concerned with the practical implications of a decision on the present motion and with the desire to provide the parties with greater certainty in moving forward with this case as quickly as possible, the Tribunal issues the following decision with reasons to follow:

Considering that:

- the Tribunal is master of its own procedure;
- paragraph 50(3)(c) of the CHRA provides that the Panel may "receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit whether or not that evidence or information is or would be admissible in a court of law";
- the Tribunal is not bound by traditional rules regarding the admissibility of hearsay evidence; and
- paragraph 48.9(1) of the CHRA provides that "Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow;"

The Tribunal determines the following:

- a. Rule 9(4) of the Tribunal's Rules of Procedure will continue to apply. As such, documents will continue to be admitted into evidence, on a case-by case basis, once they are introduced during the hearing and accepted by the Panel;
- b. There will be no need to call witnesses for the sole purpose of authenticating documentary evidence. Any issues raised relating to authentication will be considered by the Panel at the weighing stage;
- c. For the purposes of Rule 9(4), a document has not been fully "introduced" at the hearing until counsel or a witness for the party tendering it has indicated:
  - i. which portions of the document are being relied upon; and
  - ii. how these portions of the document relate to an issue in the case.
- d. Should a party wish to rely on evidence during its final argument that was not introduced according to the procedure above (either prior to or subsequent to this order), appropriate curative measures may be taken by the Panel, and in particular, the opposing party may be allotted additional time to adequately prepare a response, including calling additional witnesses and bringing forward additional documentary evidence, in accordance with the principles of procedural fairness. This may result in an adjournment of the proceedings.

With regard to the recalling of witnesses, the Tribunal determines the following:

- e. In the circumstances of this case, the purpose of recalling a witness is to place him or her in the same position they would have been in, had they benefitted from the entirety of the Respondent's disclosure. The witness will therefore be

entitled to speak to the newly disclosed documents and to any issues arising as a result.

Yours truly,



Rachel J. Boyer

Executive Director & Registrar

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