



BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

- and -

ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(REPRESENTING THE MINISTER OF INDIAN AFFAIRS AND NORTHERN
DEVELOPMENT CANADA)**

Respondent

- and -

CHIEFS OF ONTARIO

- and -

AMNESTY INTERNATIONAL

Interested Parties

RULING

PANEL: Sophie Marchildon
Réjean Bélanger
Edward P. Lustig

2012 CHRT 18
2012/08/24

I. CONTEXT

[1] The Complainants filed a human rights complaint alleging that the inequitable funding of child welfare services on First Nations reserves amounted to discrimination on the basis of race and national ethnic origin, contrary to section 5 of the *Canadian Human Rights Act*, RCS 1985, c H-6 (the *Act*). In light of the uniqueness and importance of this case and the aboriginal community's interest in being able to observe the proceedings, the Aboriginal Peoples Television Network (the "APTN") requested, in a letter dated October 22, 2009, permission from the Tribunal to film the complaint proceedings including opening and closing statements, testimony of witnesses, questions, objections and arguments. The Tribunal denied this request in a decision dated May 28, 2010, (2012 CHRT 16) on the basis that allowing camera access would be detrimental to the fairness of the hearing and could undermine the integrity of the proceedings. APTN subsequently filed an application for judicial review of this decision.

[2] On March 14, 2011, the Tribunal rendered a decision (2011 CHRT 4) granting a motion brought by the Respondent for the dismissal of the complaint on the ground that the issues raised in the complaint were beyond the Tribunal's jurisdiction (the "jurisdictional motion"). This decision was also subsequently the subject of an application for judicial review before the Federal Court.

[3] On June 3, 2011, the Federal Court rendered its decision on the issue of APTN's request for camera access to the Tribunal proceedings (2011 FC 810). The Court found that the Tribunal's decision 2012 CHRT 16 was made without regard to the material before it and was unreasonable when measured against the available record. The Court concluded that the decision fell short of the standard of justification, transparency and intelligibility required by *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9, and allowed APTN's application for judicial review. However, in light of the Tribunal's decision 2011 CHRT 4 in which it was held that it had no jurisdiction to consider the underlying complaint, the matter of the re-determination of the decision not to grant camera access was deferred until the judicial determination of the jurisdictional motion was resolved.

[4] On April 18, 2012, the Federal Court rendered its decision, reported at 2012 FC 445, setting aside the Tribunal's 2011 CHRT 4 decision and remitting the matter to a differently constituted panel of the Tribunal for re-determination in accordance with its reasons. On July 10, 2012, Vice-Chairperson and Acting Chairperson Gupta appointed a panel of three members to hear the complaint.

[5] In light of the Federal Court's decision 2012 FC 445, which has resolved the jurisdictional motion, the panel must now proceed with the re-determination of the motion to grant camera access in accordance with the Federal Court's reasons in its decision 2011 FC 810.

II. ANALYSIS

[6] The panel has examined the submissions made by the parties in 2009 following APTN's initial request for camera access and the Respondent's recent request in a letter dated August 21, 2012, for an opportunity to submit additional submissions on the question of camera access. However, in light of the Federal Court's reasons in its decision 2011 FC 810, the panel is of the view that while the question of the operating guidelines for the camera access remains to be determined, the Federal Court's reasons definitively reject the Tribunal's reasons in support of a total ban on broadcasting. Indeed, these reasons compel the panel to conclude that camera access must be allowed during the proceedings and that, therefore, additional submissions on this issue would only delay the present matter unnecessarily.

[7] Camera access will, however, have to be allowed in accordance with operating guidelines that have yet to be defined. These guidelines will strive to balance any potential negative impacts of filming with the interest of people living on reserve to observe the proceedings at issue. In this regard, the panel is committed to engaging with the parties in discussions to establish operating guidelines that will be suitable to all. The panel aims to schedule a date for these discussions in the near future and will be canvassing the parties' availabilities in this regard shortly.

III. RULING

[8] The Tribunal grants APTN's motion for camera access, subject to the operating guidelines that will be determined by the Tribunal forthwith.

Signed by

Sophie Marchildon
Panel Chairperson

Signed by

Réjean Bélanger
Tribunal Member

Signed by

Edward P. Lustig
Tribunal Member

OTTAWA, Ontario
August 24, 2012

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1340/7008

STYLE OF CAUSE: 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)

RULING OF THE TRIBUNAL DATED: August 24, 2012

APPEARANCES:

Paul Champ For the Complainant, First Nations Child and Family Caring Society of Canada

David Nahwegahbow For the Complainant, Assembly of First Nations

Daniel Poulin For the Canadian Human Rights Commission
Samar Musallam

Jonathan Tarlton For the Respondent
Melissa Chan
Edward Bumburs

Michael Sherry For the Chiefs of Ontario, Interested Party

Justin Safayeni For Amnesty International, Interested Party