

Court File No. *T-638-11***FEDERAL COURT OF CANADA****ASSEMBLY OF FIRST NATIONS**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY,
CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO and
AMNESTY INTERNATIONAL**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

April 13, 2011

Issued by: "C. Gauthier"
(Registry Officer)

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AND TO: **THE CANADIAN HUMAN RIGHTS TRIBUNAL**
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APPLICATION

This Is An Application For Judicial Review In Respect of the Decision of Shirish P. Chotalia, Chairperson of the Canadian Human Rights Tribunal ("Tribunal") rendered on March 14th, 2011 (2011 CHRT 4), and communicated to the Applicant on that date, whereby the Tribunal dismissed the human rights complaint filed by the Applicant and the Respondent, First Nation Child and Family Caring Society, based on a preliminary motion by the Attorney General of Canada.

The complaint asserts discrimination in the provision of child welfare services for registered status Indian children living on reserve contrary to section 5 of the *Canadian Human Rights Act*.

Before the Applicant was afforded an opportunity to introduce evidence at a *viva voce* hearing, the Tribunal dismissed the complaint ruling that the *Canadian Human Rights Act* requires a comparator and does not allow for comparisons between different service providers.

The Applicant makes Application for:

1. An order quashing or setting aside the Decision of the Tribunal and remitting the matter back to a differently constituted Tribunal with a direction that the Tribunal proceed to hear the Complaint on its merits at a full hearing on this matter.
2. The costs of this Application; and
3. Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the Application are:

1. The Tribunal acted without jurisdiction, exceeded its jurisdiction or failed to exercise its jurisdiction by incorrectly and unreasonably dismissing the Complaint on a preliminary basis.
2. Tribunal failed to observe principles of natural justice, procedural fairness and other procedures which it was required by law to observe in that it dismissed the complaint without giving the parties a full and ample opportunity to present their evidence on all relevant issues at a full hearing on the merits.
3. The Tribunal erred in law by:
 - i. Failing to take appropriate account of the legal historical context and unique constitutional position of First Nations people in Canada in interpreting and applying the *Canadian Human Rights Act*;
 - ii. Incorrectly interpreting section 5(b) of the *Canadian Human Rights Act*.
 - a) To include a comparator requirement for a finding of discrimination, or
 - b) To include a narrow comparator test in the context of the present discrimination complaint against the federal government, given the unique legal historical situation and constitutional status of First Nations people;
 - iii. Failing to take appropriate account of, and to give necessary effect to, the legislative intent behind amendments to the *Canadian Human Rights Act*, particularly the repeal of s. 67 of the *Act*, in interpreting section 5(b); and
 - iv. Failing to consider or to give appropriate consideration and effect to international human rights law, including the *UN Declaration on the Rights of Indigenous Peoples*, and the international *Convention on*

the Rights of the Child, in interpreting and applying section 5(b) of the *Act*.

4. The Tribunal based its Decision on erroneous findings of fact, or mixed fact and law or made erroneous inferences of fact that were not reasonable based on the evidence before it, or acted in a way that was otherwise contrary to law;
5. The *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 18 and 18.1, and the *Federal Court Rules*;
6. The *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.
7. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295 (Annex), UN GAOR, 61st Sess., Supp. No. 49, Vol. III, UN Doc. A/61/49 (2008) 15.
8. *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3, entered into force 2 September 1990.
9. The *Indian Act*, R.S.C 1985, c. I-5.
10. The *Department of Indian Affairs Act*, R.S.C. 1985, I-6.
11. The *Constitution Act, 1867*, ss. 91 and 92, and the *Constitution Act, 1982*, s. 35.
12. Such further and other grounds as the Applicant may advise and this Honourable Court may permit.

This Application will be supported by the following material:

1. The Affidavit of Sarah Snake to be affirmed and filed with the Registry;
2. The record of proceeding of the Tribunal; and
3. Such further or other material as counsel may advise and this Honourable

Court may permit.

April 13, 2011



David C. Nahwegahbow, LL.B, IPC

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ASSEMBLY OF FIRST NATIONS
Applicant


-and-

ATTORNEY GENERAL OF CANADA, et al
Respondents

FEDERAL COURT
Proceedings commenced at Ottawa

NOTICE OF APPLICATION

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I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 12th day of APR 14 2011 A.D. 2011
Dated this 14th day of APR 2011

YOGINDER GULLIA
REGISTRY OFFICER
AGENT DU GREFFIER