



FEDERAL COURT

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

- and -

ATTORNEY GENERAL OF CANADA,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY,
ASSEMBLY OF FIRST NATIONS, CHIEFS OF ONTARIO,
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 Ottawa.

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 Court 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 Court 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.

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

April , 2011

Issued by:

**ORIGINAL SIGNED BY
J-F ROCHON
A SIGNÉ L'ORIGINAL**

APR 05 2011

..... (Registry Officer)

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Counsel for Respondent, Amnesty International

AND TO: Canadian Human Rights Tribunal
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Application

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the ruling made by the Canadian Human Rights Tribunal ("the Tribunal"), dated March 14, 2011 (2011 CHRT 4), in which the Tribunal allowed the Attorney General of Canada's preliminary motion and dismissed the complaint filed by First Nations Child and Family Caring Society and Assembly of First Nations (the Complainants).

The complaint involves an allegation of discrimination in the provision of a service on the grounds of race and national or ethnic origin. The Complainants allege that Indian and Northern Affairs Canada discriminates against Aboriginal children by inadequately funding child welfare services on reserve contrary to section 5 of the *Canadian Human Rights Act*.

Before the hearing on the merits could begin, the respondent Attorney General of Canada filed a preliminary motion arguing that the complaint should be dismissed. The respondent alleged that the funding of child welfare services was not a service and that there was no proper comparator.

While the Tribunal properly found that it was premature to rule on the service issue, it then went on to conclude that, as a question of law, the *Canadian Human Rights Act* does not allow for comparisons between two service providers. The Tribunal dismissed the complaint as it found that because the complaint compared federal funding with provincial funding, it had no chance of success.

The applicant makes application for:

1. An order quashing the Tribunal's ruling and remitting the matter back to a differently constituted Tribunal for redetermination in accordance with the Court's reasons.
2. Such further and other relief as this Honourable Court may deem just or appropriate.

The grounds for the application are:

1. The Tribunal acted without jurisdiction, or acted beyond its jurisdiction or refused to exercise its jurisdiction in that it purported to review the Commission's decision to refer the complaint for further inquiry when it dismissed the complaint on the merits on a preliminary basis;
2. The 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 on the merits without giving the parties a full and ample opportunity to present their evidence on all relevant issues;
3. The Tribunal erred in law in making its decision in that it adopted a narrow approach to the notion of comparator groups, and found that federal and provincial funding could never be compared to establish discriminatory underfunding of services to Aboriginal persons contrary to the *CHRA*;
4. The Tribunal based its decision on erroneous findings of fact and mixed fact and law and/or erroneous inferences of fact that were not reasonable based on the evidence before it;
5. The *Federal Courts Act*, R.S. 1985, c. F-7, ss. 18 and 18.1;
6. The *Canadian Human Rights Act*, R.S. 1985, c. H-6, ss. 2, 5, 48.9, 49, 50; and
7. 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 Mélanie Matte to be sworn and filed with the Registry; and
2. The record of proceeding of the Canadian Human Rights Tribunal;
3. Such further or other materials as counsel may advise and this Honourable Court may permit.

Dated at Ottawa this *5th* day of April, 2011.



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LE ROCHON
REGISTRY OFFICER
AGENT DU GREFFE

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme
à l'original déposé au dossier de la Cour.

Filing date APR 05 2011
Date de dépôt _____

Dated APR 05 2011
Fait le _____


J. ROCHON
REGISTRY OFFICER
AGENT DU GREFFE