

FEDERAL COURT

BETWEEN:

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

FEDERAL COURT

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY

Applicant

-and-

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AFFIDAVIT OF KRISTA ROBERTSON
VOLUME 1 of 4

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FEDERAL COURT

Docket: T-578-11/ T-630-11/ T-638-11

B E T W E E N:

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

-and-

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**ATTORNEY GENERAL OF CANADA,
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**AFFIDAVIT OF KRISTA ROBERTSON (ON BEHALF OF THE RESPONDENT,
THE ATTORNEY GENERAL OF CANADA)**

I, KRISTA ROBERTSON, of the City of Ottawa, in the Province of Ontario, Litigation Case Manager with Aboriginal Affairs and Northern Development Canada MAKE OATH AND SAY:

1. I am a Litigation Case manager employed by Aboriginal Affairs and Northern Development Canada (“Aboriginal Affairs”) previously known as Indian and Northern Affairs Canada, at their offices located in Gatineau, Quebec, and as such have personal knowledge of the facts and matters to which I herein depose, except where stated to be based on information and belief and in those I do verily believe.
2. In or about July 2009, I became the Litigation Case Manager with respect to the complaint filed with the Canadian Human Rights Commission (“Commission”) by the First Nations Child and Family Services Caring Society of Canada (“Caring Society”) and the Assembly of First Nations (“AFN”) against the federal government (“Canada”). This complaint is designated Commission no. 20061060 (“Complaint 20061060”).
3. In this role, I liaise and work with the litigation counsel concerning the conduct of this file. This includes being provided with copies of all correspondence, by letter and email, concerning the litigation. I, in turn, communicate and work with other officials with Aboriginal Affairs and provide input and direction to our litigation counsel.
4. I have thoroughly reviewed this file and have personal knowledge of matters that occurred before I became Litigation Case Manager in July 2009, as well as all matters occurring after that date.
5. On March 14, 2011, the Canadian Human Rights Tribunal (“Tribunal”) granted Canada’s motion for a ruling that questions arising out of the complaint are not within the jurisdiction of the Tribunal. A true copy of the Tribunal’s decision of March 14, 2011 is attached to this affidavit as Exhibit “1”.
6. The Tribunal’s March 14, 2011 decision is the subject of this consolidated judicial review application.

7. Prior to swearing this affidavit, I reviewed the affidavit filed by Melanie Matte, dated May 6, 2011 (“the Matte Affidavit”) and the affidavit filed by Cindy Blackstock, dated May 31, 2011 (“the Blackstock Affidavit”), both of which were filed in this consolidated judicial review application.

Referral of Complaint 20061060 to the Tribunal

8. Complaint 20061060 was filed on February 26, 2007 and is attached to the Matte Affidavit as Exhibit “1”.
9. On June 4, 2007, the Commission wrote to Canada advising that Complaint 20061060 was being forwarded to the Director of Investigations, and that the investigator assigned to the complaint would be in contact shortly. A true copy of the Commission’s correspondence of June 4, 2007 is attached to this affidavit as Exhibit “2”.
10. The Commission further wrote to Canada on August 7, 2007 advising that an investigator would be assigned shortly and that it was the investigator's responsibility to gather the evidence in relation to the allegations and, once the investigation is complete, to report on the findings to the Members of the Commission. A true copy of the Commission’s correspondence of August 7, 2007 is attached to this affidavit as Exhibit “3”.
11. The August 7, 2009 correspondence requested that Canada provide its position and any supporting documentation if it intended on making an objection pursuant to section 41 of the *Canadian Human Rights Act* (“the Act”). On May 6, 2008, Canada provided submissions addressing section 41. In these submissions, Canada indicated that it would provide its substantive position on the complaint if the Commission accepted it had jurisdiction over the subject matter of the complaint. A copy of Canada’s section 41 submissions of May 6, 2008 is attached to the Blackstock Affidavit as Exhibit “B”.
12. By letter from the Commission dated October 14, 2008, Canada was informed that the Commission had decided on September 30, 2008 to deal with Complaint

20061060 pursuant to subsection 41(1) of the Act. A copy of the Commission's correspondence dated October 4, 2008 and the Commission's decision of September 30, 2008 is attached to the Matte Affidavit as Exhibit "3".

13. The Commission further decided, pursuant to section 49 to request the Chairperson of the Tribunal to institute an inquiry into the Complaint 20061060.

Judicial review of the Commission's decision to refer Complaint 20061060 to the Tribunal

14. On November 13, 2008, Canada brought an application in the Federal Court for judicial review of the Commission's decision of October 14, 2008. This proceeding was assigned Court file number T-1753-08 ("Proceeding T-1753-08").
15. As part of Proceeding T-1753-08, Canada made a request for the documentation before the Commission when it decided to refer the complaint directly to the Tribunal. By letter dated November 25, 2008, the Commission provided the Rule 318 Certificate, with the relevant documents enclosed. A true copy of the Commission's Rule 318 Certificate and attached documents is attached to this affidavit as Exhibit "4".
16. Proceeding T-1753-08 was stayed by Order of Prothonotary Aronovitch on November 24, 2009. An appeal of this Order was dismissed on March 30, 2010.

Adjournment of the September 2009 Tribunal Hearing Dates

17. Exhibit 9 of the Matte Affidavit contains the Notice of Hearing with hearing dates before the Tribunal, commencing on September 14, 2009.
18. Prior to September 14, 2009, the Complainants before the Tribunal, the Caring Society and AFN, had two changes of counsel. A true copy of the Notice of Change in Representation dated May 28, 2009 is attached to this affidavit as Exhibit "5".
19. By letter to the Tribunal from Wilson Christen LLP dated August 26, 2009, counsel for the Caring Society and AFN advised they were no longer solicitors for the

Complainants. A true copy of the letter from Wilson Christen LLP dated August 26, 2009 is attached to this affidavit as Exhibit "6".

20. Following the second change in counsel, the Commission took carriage of the prosecution of Complaint 20061060, acting in the public interest, as the Caring Society and the AFN did not have counsel.
21. The Commission brought a motion on August 25, 2009 to adjourn the September 14, 2009 hearing dates. A copy of the Commission's motion requesting an adjournment is attached at Exhibit "10" to the Matte Affidavit.
22. Canada subsequently filed a motion on September 1, 2009 to adjourn the hearing before the Tribunal. A copy of Canada's motion dated September 1, 2009 requesting an adjournment is attached at Exhibit "11" to the Matte Affidavit.
23. On September 1, 2009, the Tribunal issued a Direction respecting the hearing of the motions on September 14, 2009. A true copy of the Tribunal's September 1, 2009 Direction is attached to this affidavit as Exhibit "7".

Procedure before the Tribunal

24. Exhibit 24 of the Matte Affidavit contains correspondence from counsel for the Caring Society dated November 9, 2009.
25. On November 10, 2009, Canada replied to the November 9, 2009 letter from counsel for the Caring Society. A true copy of Canada's November 10, 2009 letter is attached to this affidavit as Exhibit "8".
26. On November 12, 2009, counsel for the Commission also responded to the November 9, 2009 letter from counsel for the Caring Society. A true copy of the Commission's email dated November 12, 2009 is attached to this affidavit as Exhibit "9".
27. Exhibit 25 of the Matte Affidavit contains correspondence from counsel for the Caring Society dated December 4, 2009.

28. Canada replied to the December 4, 2009 correspondence of the Caring Society by letter dated December 10, 2009. A true copy of Canada's letter dated December 10, 2009 is attached to this affidavit as Exhibit "10".

Canada's motion to dismiss Complaint 20061060 for lack of jurisdiction

29. On December 21, 2009, Canada filed a motion to dismiss Complaint 20061060 for lack of jurisdiction. The motion was returnable January 19, 2010.
30. Counsel for the Caring Society replied to Canada's motion to dismiss by letter to the Tribunal dated December 30, 2009. A true copy of the Caring Society's letter dated December 30, 2009 is attached to this affidavit as Exhibit "11".
31. On December 30, 2009, the Commission responded by email to the Tribunal on the scheduling of the motion. A true copy of the Commission's email dated December 30, 2009 is attached to this affidavit as Exhibit "12".
32. On December 30, 2009, the AFN responded to the motion to dismiss and indicated its agreement with the submissions made by the counsel for the Caring Society dated December 30, 2009. A true copy of the AFN's email dated December 30, 2009 is attached to this affidavit as Exhibit "13".
33. On December 30, 2009, both the Chiefs of Ontario and Amnesty International responded to the motion to dismiss and indicated their agreement with the submissions made by the counsel for the Caring Society dated December 30, 2009. True copies of the email from the Chiefs of Ontario dated December 30, 2009 and the email from Amnesty International dated December 30, 2009 are attached to this affidavit as Exhibit "14".
34. On January 4, 2010, Canada answered the December 30, 2009 replies of the other parties concerning the motion to dismiss and its scheduling. A true copy of the email from Canada dated January 4, 2010 is attached to this affidavit as Exhibit "15".

35. With respect to re-scheduling the motion to dismiss, Canada provided correspondence to the Tribunal on March 12, 2010 and March 17, 2010 providing dates of availability. True copies of the two letters from Canada dated March 12, 2010, and the letter dated March 17, 2010, are attached to this affidavit as Exhibit "16".
36. The Tribunal set the hearing for the motion to dismiss for September 28 and 29, 2010. A true copy of the Tribunal's Direction dated March 24, 2010 is attached to this affidavit as Exhibit "17".
37. On March 29, 2010, the Tribunal advised counsel for Canada that the motion to dismiss could be heard on June 2-3, 2010. Canada agreed to these dates by letter dated March 30, 2010. A true copy of Canada's letter dated March 30, 2010 is attached to this affidavit as Exhibit "18".
38. As the other parties agreed to the June 2-3, 2010 dates, the Tribunal issued a Direction setting the hearing of the motion to dismiss at that time. A true copy of the Tribunal's Direction letter dated March 31, 2010 is attached to this affidavit as Exhibit "19".
39. The hearing of the motion to dismiss took place on June 2-3, 2010. A true copy of the transcripts of the hearing on these days, as received from the Tribunal, are attached to this affidavit as Exhibits "20" and "21" respectively.
40. As part of Canada's motion to dismiss the complaint for lack of jurisdiction, the following affiants were cross-examined on the affidavits sworn as evidence in the motion: Odette Johnston, Cindy Blackstock, Tom Goff and Elsie Flette.
41. As part of this consolidated judicial review application, the Tribunal provided a Rule 317 Certified Index of the documentation which was before the Tribunal at the time the Tribunal's March 14, 2011 decision was rendered. I have reviewed the Tribunal's Certified Index, with accompanying letter dated May 6, 2011, which is attached as Exhibit "W" to the Blackstock Affidavit.

42. Included in this Certified Index are the cross-examinations of the affiants: Odette Johnston, Cindy Blackstock, Tom Goff and Elsie Flette. A true copy of each transcript of these cross-examinations as attached to this affidavit as follows:

Cindy Blackstock, cross-examination of February 23, 2010 Exhibit "22"

Tom Goff, cross-examination of February 25, 2010 Exhibit "23"

Odette Johnston, cross-examination of February 26, 2010 Exhibit "24"

Elsie Flette, cross-examination of March 3, 2010 Exhibit "25"

43. In addition, true copies of the exhibits from the above cross-examinations, which were included in Canada's motion to dismiss the complaint for lack of jurisdiction, are attached to this affidavit as follows:

Letter to Mr. Michael Wernick from Richard Tarduiff, undated with attached Human Rights Commission Complaint Form (from the cross-examination of Cindy Blackstock) Exhibit "26"

1965 Welfare Agreement (from the cross-examination of Tom Goff) Exhibit "27"

44. Exhibit "56" of the Matte Affidavit contains correspondence from the Tribunal dated May 26, 2010. This correspondence provides the Tribunal's ruling on the posting of the motion record material, which concerned the cross-examination of Odette Johnston, on the internet. It lists correspondence received from the Caring Society and Canada. The Matte Affidavit provides one of the pieces of correspondence at Exhibit "55" but does not provide the other three pieces of correspondence listed. True copies of the three remaining pieces of correspondence listed in the Tribunal's direction of May 6, 2010 are attached to this Affidavit as follows:

Caring Society's letter of May 17, 2010 Exhibit "28"

Canada's letter of May 17, 2010 Exhibit "29"

Tribunal Case Management Meetings

45. Throughout the Tribunal hearing process, there were six Case Management Meetings held between the parties and the Tribunal on the following dates: February 4, 2009, April 8, 2009, July 24, 2009, August 13, 2009, November 6, 2009 and December 14, 2009. Following each of these Case Management Meetings, the Tribunal issued written Directions. True copies of these written Directions are attached to this affidavit as follows:

February 18, 2009	Exhibit "31"
April 17, 2009	Exhibit "32"
July 30, 2009	Exhibit "33"
August 18, 2009	Exhibit "34"
November 12, 2009	Exhibit "35"
December 23, 2009	Exhibit "36"

46. In addition, the Tribunal provided us with a DVD audio recording of the case management meetings held on November 6, 2009 and December 14, 2009. These audio DVDs were received by Canada and sent out for transcription by a professional transcribing service for the preparation of a written transcript. True copies of the transcripts of the case management conference calls with the Tribunal on November 6, 2009 and December 14, 2009 are attached to this Affidavit as Exhibits "37" and "38".

47. A true copy of the December 18, 2009 correspondence from the Tribunal enclosing copies of the digital voice recordings for the above case management conference calls is attached to this Affidavit as Exhibit "39".

48. A true copy of the undated letter from the AFN to the Tribunal requesting a recording of the case management call on November 4, 2009 is attached to this Affidavit as Exhibit "40."

Process Mediation

49. In the case management conference with the Tribunal and parties on December 14, 2009, the Tribunal offered the parties an opportunity to meet with a Tribunal member for process mediation.
50. Following the case management conference, the December 23, 2009 Tribunal Direction stated that the complainants and the Commission accepted the Tribunal's offer of a process mediator and that Canada would indicate its position with respect to the offer of process mediation by Monday, December 21, 2009. The December 23, 2009 Tribunal Direction further indicated that in the event the parties agreed to the process mediator, they would make themselves available during the week of January 11, 2010
51. By email dated December 17, 2009 to the Tribunal, Canada indicated its agreement with process mediation. A true copy of the Canada's December 17, 2009 email is attached to this affidavit as Exhibit "41".

Retaliation complaint by the Caring Society

52. Attached as Exhibit K to the Blackstock Affidavit is the motion brought before the Tribunal by the Caring Society, to authorize the complainant to amend Complaint 20061060 by adding allegations of retaliation, contrary to section 14.1 of the *Canadian Human Rights Act*.
53. On January 28, 2010, Canada sent correspondence to counsel for the Caring Society addressing the allegation of retaliation. A true copy of Canada's January 28, 2010 correspondence is attached to this affidavit as exhibit "42".


Mandamus application of the Caring Society

54. Prior to the issuance of the March 14, 2011 decision of the Tribunal, the Caring

Society filed a Notice of Application in the Federal Court, requesting the Tribunal be compelled to issue a decision on Canada's motion to dismiss the complaint. This matter was assigned Federal Court file number T-333-11 and was filed on February 28, 2011.

55. Following the filing of the Notice of Application in T-333-11, the Commission issued a public statement with respect to the application. By email dated March 1, 2011 the Tribunal forwarded communication to the legal counsel for the parties. A true copy of the March 1, 2011 email including within an enclosed email from the Commission dated February 28, 2011, is attached to this affidavit as Exhibit "43".
56. I make this affidavit in support of Canada's response to the consolidated application for judicial review of the Tribunal's March 14, 2011 decision and for no improper purpose.

SWORN before me in the City of)
in the Province of *Quebec* this *15* day of)
July, 2011)



COMMISSIONER OF OATHS)
Member of the Quebec Bar)
F. DESCOTEAUX)



KRISTA ROBERTSON