

Our File No. 1001

February 4, 2011

BY EMAIL

Maryse Choquette
Registry Officer
Canadian Human Rights Tribunal
11th Floor, 160 Elgin Street
Ottawa, ON K1A 1J4

Dear Ms Choquette:

Re: FNCFCS et al. v. Attorney General of Canada (Tribunal File #: T1340/7008)

On behalf of the complainant First Nations Child and Family Caring Society (“Caring Society”), we are writing to request that the Respondent’s motion to dismiss this complaint be determined without further delay. Please bring this letter to the attention of the Chair at your earliest opportunity.

The Caring Society would like to underscore that February 27, 2011 will mark the fourth year anniversary of the filing of the present complaint against the Government of Canada for its discriminatory provision of child welfare services to First Nations children and families living on reserve and its failure to implement Jordan’s Principle. Proceedings before the Tribunal commenced in September 2009, but have subsequently been paralyzed by preliminary motions brought by the Respondent and the Tribunal’s failure to dispose of them in an expeditious manner. It must be emphasized that this is not a complaint that primarily seeks financial compensation. Rather, it calls for systemic public interest remedies that will have a significant and immediate impact on the lives of children in need. As the Caring Society has repeated numerous times, the urgency of this complaint should be manifest to all concerned.

Tragically, First Nations children and families continue to be severely and irreparably harmed by jurisdictional disputes within and between governments and as a result of the unequal treatment they receive in child welfare services. Recent reports examining the provision of child welfare services in the provinces of New Brunswick, Saskatchewan and

Alberta all confirm that this is the case.¹ Various sources have also confirmed that these urgent problems can be remedied if the Government of Canada were to take action. For example, the 2008 Report in the Inquest of the death of Tracia Owen, a Manitoba teen who hanged herself after being removed from her native community of Little Grand Rapids, Manitoba, recommended that flexible funding arrangements be put in place by INAC in order to meet the needs of children and teens who are at risk.² In December 2009, two Ministers of British Columbia wrote to the federal Minister of Indian and Northern Affairs urging him to provide better child welfare services on reserves in order to remedy the dire situation of many First Nations families.³

The harm caused by the delays in the adjudication of this complaint and in particular, the Respondent's motion to dismiss, cannot be overstated. An estimated 27,000 First Nations children, including 8,000-9,000 children on reserves, are presently in state custody, and the Government of Canada's discriminatory programs in child welfare services are a significant contributing factor. When four years of a child's life is lost so are the most special and formative moments of their lives.

The importance of expeditiousness in cases involving children's rights has been recognized by legislatures across the country. Family and adoption legislation in nearly every Canadian province expressly require courts to avoid delays when dealing with cases involving children as this is considered fundamentally against his or her best interests.⁴ As was suggested by

¹ "Hand-in-Hand: A Review of First Nations Child Welfare in New Brunswick" Office of the Ombudsman and Child and Youth Advocate of the Province of New Brunswick, February 2010, pp. 38, 40, 91. This report urges INAC to increase its levels of investment in preventative child welfare services. It also calls for the immediate implementation of Jordan's Principle. "For the Good of Our Children and Youth: A New Vision, A New Direction" Saskatchewan Child Welfare Review Panel Report, November 2010, pp. 29. The report finds "frustration with the level of funding INAC has provided to First Nation Child and Family Services Agencies. Per capita child welfare funding on-reserve has fallen short of per capita funding in the mainstream provincial systems." The report also recommended that Jordan's Principle be implemented to "ensure that individual children do not experience delays in getting services they need while the new structure and arrangements are being negotiated and developed." "Closing the Gap Between Vision and Reality: Strengthening Accountability, Adaptability and Continuous Improvement in Alberta's Child Intervention System" Final Report of the Alberta Child Intervention Review Panel June 30, 2010, p. 147.

² Report on Inquest of the Honourable Judge John Guy in the Matter of the Death of Tracia Owen, issued January 11, 2008.

³ Letter from Mary Polak and George Abbott to Minister Chuck Strahl, dated November 18, 2009, Complainants' Record, Tab 16

⁴ See, e.g. *Child And Family Services Act*, S.N.W.T. (Nu.) 1997, c. 13, s. 2(j); *Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 1(d)(x); *Children and Family Services Act*, S.N.S. 1990, c. 5 s. 3(2)(k); *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 s. 4(1)(g); *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 2(o); *Child, Youth and Family Services Act*, S.N.L. 1998, c. C-12.1 s. 9(i); *Child and Family Services Act*, S.S. 1989-90, c. C-7.2 4(h); *Child and Family Services Act*, C.C.S.M. c. C80 2(g)

Granger, J. in the *Hurdle v. Hurdles*, when society delays in determining cases involving children's rights and their best interests,

“the effects of such delay may impact on the children and on our nation in the future. **It is difficult to imagine a judicial process which should be assigned a higher priority**”.⁵

In light of the clear importance of this case, it is most unfortunate that the Tribunal has not yet issued its decision regarding the Government of Canada's motion to dismiss. Based on the Tribunal's own Practice Note No.1, which requires that rulings on the merits of complaints be issued within four months, we had anticipated that a decision would be rendered in October 2010, at the very latest. We soon will be approaching eight months since the preliminary motion was argued, or double the recommended period for final rulings in the Practice Note.

Our client is extremely disappointed and worried about these delays given the vulnerability of children and families who are at the center of this case. Because of this, we have been instructed to request that a decision be issued as a matter of priority and urgency by the Tribunal, with reasons to follow if necessary.

Yours truly,



Paul Champ

cc Jonathan Tarlton, Department of Justice
Daniel Poulin, Canadian Human Rights Commission
David Nahwegahbow, Assembly of First Nations
Cindy Blackstock, First Nations Child and Family Caring Society
Mike Sherry, Chiefs of Ontario
Owen Rees, Stockwoods (Amnesty International)

⁵ *Hurdle v. Hurdles* (1991), 31 R.F.L. (3d) 349