

FEDERAL COURT

B E T W E E N:

FIRST NATION CHILDREN AND FAMILY CARING SOCIETY

Applicant

-and-

**CANADIAN HUMAN RIGHTS TRIBUNAL,
ASSEMBLY OF FIRST NATIONS,
CANADIAN HUMAN RIGHTS COMMISSION,
CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL CANADA and
ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

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 the 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 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.

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

February 25, 2011

Issued by: _____
(Registry Officer)

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APPLICATION

The Canadian Human Rights Tribunal has a statutory duty under section 48.9(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, (the “Act”) to conduct hearings as expeditiously as the requirements of natural justice will allow. The Applicant is being deprived of that statutory right and seeks a writ of *mandamus* directing the Tribunal to schedule proceedings into its complaint.

Four years ago, on February 27, 2007, the First Nations Child and Family Caring Society (the Applicant or “Caring Society”) and the Assembly of First Nations filed a human rights complaint (“the Complaint”) under the Act, alleging that the Department of Indian and Northern Affairs Canada (“INAC”) provided unequal and inequitable funding for the delivery of child welfare services to First Nations children and families on reserve, thus causing a disproportionate number of First Nations children to be apprehended from their families and placed in state care. The Complaint also alleges that First Nations children are adversely affected and deprived of equal access to those government services due to jurisdictional disputes between and within governments.

The Canadian Human Rights Commission decided to refer the Complaint to the Canadian Human Rights Tribunal (“Tribunal”) on September 30, 2008. From January 2009 until August 2009, Grant Sinclair, the Chairperson of the Human Rights Tribunal at the time, presided over all case conferences pertaining to the Complaint. The adjudication of the Complaint was scheduled to commence on September 14, 2009. The first hearing day was also presided over by Mr Sinclair. Following the first day of the proceeding, Chairperson Sinclair scheduled further hearing dates from November 16, 2010 through to the anticipated concluding dates in March 2010.

On November 2, 2009, Shirish Chotalia assumed her appointment as the new Chairperson of the Canadian Human Rights Tribunal. On November 6, 2009, she presided over a case conference regarding the Complaint, at which time she informed the parties that she was vacating all November 2009 hearing dates. On December 21, 2009, the Attorney General filed a notice of motion to dismiss this complaint on a preliminary basis. Shortly afterwards, Chairperson Chotalia vacated all hearing dates which had been set for January, February and March 2010. The Attorney General's motion was subsequently scheduled for hearing by the Tribunal in June 2010.

The Attorney General's motion was heard by the Tribunal on June 2 and 3, 2010. Although the Tribunal's own directive provides that all decisions should be rendered within four months of the oral arguments, as of the date of this application no decision on the Attorney General's motion has been rendered. In the meantime, the Complaint before the Tribunal remains frozen, with no hearing dates scheduled. The Parties have written the Tribunal seeking a bottom-line decision with reasons to follow so hearing dates on the merits can be scheduled. To date, the Tribunal has not responded to those requests.

First Nations Peoples from all over Canada have expressed their concerns about the delays in the adjudication of the Complaint. Aside from the impact on the natural justice rights of the Applicant and the other complainant Assembly of First Nations, the most serious harm is caused to vulnerable children who are being removed from their families in record numbers and placed in state care. If the Complaint is allowed, it will mean INAC will have to increase funding for child welfare services on reserves, resulting in more children receiving the support that they need while staying in their homes and communities. It is crucial that the Complaint be heard expeditiously, as required by section 48.9(1) of the *Canadian Human Rights Act*.

The Applicants makes application for:

- (a) A writ of *mandamus* requiring the Canadian Human Rights Tribunal to set dates for the hearing into the merits of the complaint within the next 45 days;
- (b) The costs of this Application; and
- (c) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) Subsection 48.9(1) of the *Canadian Human Rights Act*;
- (b) Practice Note No. 1 of the *Canadian Human Rights Tribunal*, October 22, 2007;
- (c) UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 12;
- (d) Sections 18(1) and 18.1(1) of the *Federal Courts Act*.

The application will be supported by the following material:

- (a) The Affidavit of Cindy Blackstock; and
- (b) Such further and other materials as counsel may advise and this Honourable Court

may permit.

Dated: February 25, 2011

Paul Champ

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