

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

First Nations Child and Family Caring Society of Canada

- and -

Assembly of First Nations

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada

(Representing the Minister of Indian Affairs and Northern Development of Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Amnesty International

Interested Parties

Ruling

Members: Sophie Marchildon, Réjean Bélanger and Edward P. Lustig

Date: August 23, 2012

Citation: 2012 CHRT 17

I. Context

[1] The Complainants filed a human rights complaint alleging that the inequitable funding of child welfare services on First Nations reserves amounted to discrimination on the basis of race and national ethnic origin, contrary to section 5 of the *Canadian Human Rights Act*, RCS 1985, c. H-6 (the *Act*). In a decision dated March 14, 2011, reported at 2011 CHRT 4, the Tribunal granted a motion brought by the Respondent for the dismissal of the complaint on the ground that the issues raised in the complaint were beyond the tribunal's jurisdiction: the "jurisdictional motion". The Tribunal determined that it did not possess jurisdiction pursuant to section 5(b) of the *Act* to hear the complaint as there could be no finding of adverse differential treatment on the part of the Government of Canada in absence of a proper comparator group. This decision was subsequently the subject of an application for judicial review before the Federal Court.

[2] On April 18, 2012, the Federal Court rendered its decision, reported at 2012 FC 445, setting aside the Tribunal's decision and remitting the matter to a differently constituted panel of the Tribunal for re-determination in accordance with its reasons.

[3] In the Case Management Conference Call held on June 25th, 2012 and later summarized by the Tribunal in a letter dated June 29th, 2012, the parties requested that Member Marchildon issue a directive on the interpretation of the Federal Court's remittance order in its decision 2012 FC 445. More specifically, the parties sought guidance as to whether the order, remitting the matter back to the Tribunal for re-determination in accordance with its reasons, required that the Tribunal rehear the motion to dismiss that had been the subject of the judicial review before the Federal Court. Member Marchildon requested that parties make submissions on this issue, setting deadlines for initial submissions and replies for the upcoming two weeks.

[4] On July 10th, 2012, Vice-Chairperson and Acting Chairperson Gupta revised his initial one-member appointment to this matter and appointed a panel of three members composed of Members Marchildon, Lustig and Bélanger (2012 CHRT 16). Consequently, the present ruling has been decided upon by all members of the panel.

II. Analysis

[5] It is to be noted that in each of their submissions regarding this issue, the parties have requested that the Tribunal proceed to a hearing on the merits of the complaint subject to the hearing of outstanding preliminary motions.

[6] With this in mind and having carefully examined the parties' submissions on this issue, along with the Federal Court's reasons in its decision 2012 FC 445, the panel is of the view that in reversing the Tribunal's determination that it did not possess jurisdiction to hear the complaint, the Federal Court has definitively determined the jurisdictional issue. Indeed, in remitting the matter back to the Tribunal, the Federal Court did not suggest that re-determination should take the form of another hearing and, more importantly, it provided specific reasons which compel the Tribunal to reach the conclusion that the jurisdictional motion must be dismissed: See *Turanskaya v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 254 at para. 6 and *Marsh v. Canada (Royal Canadian Mounted Police)*, 2006 FC 1466 at para. 45. Another hearing on this motion would defeat the purpose of the judicial review process.

[7] Accordingly, as it is bound by the Federal Court's decision and the reasons contained therein, the Tribunal must now, subject to other outstanding preliminary motions, proceed with the complaint on its merits.

III. Ruling

[8] The Tribunal dismisses the Respondent's motion for dismissal of the complaint on the basis of the jurisdictional issue.

Signed by

Sophie Marchildon
Panel Chairperson

Signed by

Réjean Bélanger
Tribunal Member

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
August 23, 2012

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada).

Ruling of the Tribunal dated: August 23, 2012

Appearances:

Paul Champ, for the Complainant First Nations Child and Family Caring Society of Canada

David Nahwegahbow, for the Complainant Assembly of First Nations

Daniel Poulin and Samar Musallam, for the Canadian Human Rights Commission

Jonathan Tarlton, Melissa Chan and Edward Bumburs, for the Respondent

Michael Sherry, for the Interested Party Chiefs of Ontario

Justin Safayeni, for the Interested Party Amnesty International