Child Welfare Funding Case: Canadian Government's Procedural Delays (As of March 2013)

Human Rights Complaint Filed

February 2007

The Caring Society & AFN file the complaint at the Canadian Human Rights Commission

Canada writes to the Commission's Assessor arguing that the complaint is outside the jurisdiction of the Act for two reasons:

- (1) Canada does not provide child welfare "services" under s.5 of the Act, it is merely a funder ("Services Issue").
- (2) Since Canada does not fund child welfare for anyone but First Nations, it is not discriminating ("Comparator Issue").

COMMISSION

September 2008

The Assessor denies Canada's request, and recommends that the Commission refer the complaint to the Tribunal.

Commission Refers Complaint to Tribunal

September 2008

The Commission refers the complaint to the Tribunal for a hearing.

Canada applies to Federal Court for judicial review of the referral to the Tribunal. Argues Services Issue and Comparator Issue.

FEDERAL COURT

November 2009

Prothonotary Aronovitch stayed Canada's application pending the Tribunal's hearing on the merits.

FEDERAL COURT

March 2010

Canada appealed. Justice O'Reilly upholds the stay decision. (2010 FC 343)

Tribunal Process... Towards a Hearing ... ?

February 2009
Case Conf.

Chair Sinclair

February 2009
Canada asks for preliminary decisions on Services Issue and Comparator Issue. Chair Sinclair refused.

September–December 2009

Hearing on the merits begins. Caring Society presents opening statement. Chiefs of Ontario and Amnesty International Canada granted intervenor status. Thirteen additional weeks of hearings scheduled.

December 2009

New Chair Chotalia vacates all hearing dates.

Canada files a motion to dismiss the complaint on Services Issue and Comparator Issue.

MANDAMUS

The Tribunal did not decide on Canada's motion for a long time. The Caring Society asked the court to force the Tribunal to make a decision; then the Tribunal decision was released

TRIBUNAL

March 2011

Chair Chotalia grants Canada's motion. Finds that Services Issue cannot be dealt with on a preliminary motion, but dismisses the complaint on Comparator Issue.

FEDERAL COURT

2011-2012

The Caring Society, the AFN and the Commission applied to Federal Court for judicial review of the Tribunal's decision.

Justice Mactavish granted their application, and set aside the Tribunal's decision to dismiss the complaint. (2012 FC 445)

The case is sent back to the Tribunal. Canada appeals.

Federal court of appeal and tribunal hearings

2012

Canada applies to federal court of appeal to overturn the federal court decision. All other parties opposed.

Tribunal hearings to proceed concurrently

TRIBUNAL

February 25, 2013

Canadian Human Rights Tribunal begins hearings. Hearings will continue for 14 weeks ending in the summer of 2013.

FEDERAL COURT

March 2013

Federal Court of Appeal (A-145-12) dismisses Canada's application after one day of hearings. Canada has 60 days to appeal to the Supreme Court of Canada.

Learn more about the case at www.fnwitness.ca

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