

Federal Court



Cour fédérale

A decision was issued today by the Honourable Anne L. Mactavish of the Federal Court in files T-578-11, T-630-11 and T-638-11:

IN THE MATTER OF THE CANADIAN HUMAN RIGHTS COMMISSION v. ATTORNEY GENERAL OF CANADA et al

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY v. ATTORNEY GENERAL OF CANADA et al

ASSEMBLY OF FIRST NATIONS v. ATTORNEY GENERAL OF CANADA et al

Summary: Three applications for judicial review were filed with respect to a decision of the Canadian Human Rights Tribunal (the “Tribunal”) to dismiss a complaint by the First Nations Child and Family Caring Society and the Assembly of First Nations. The complaint alleged that the Government of Canada under-funds child welfare services for on-reserve First Nations children and that this amounts to discrimination. Upon review, the Court concluded that:

- the process followed by the Tribunal was not fair as it considered a substantial volume of extrinsic material in arriving at its decision;
- the Tribunal erred in failing to provide any reasons as to why the complaint could not proceed under subsection 5(a) of the *Canadian Human Rights Act*;
- the Tribunal erred in interpreting subsection 5(b) of the *Act* as requiring an identifiable comparator group in every case in order to establish adverse differential treatment in the provision of services;
- in determining that no appropriate comparator group was available to assist in its discrimination analysis, the Tribunal erred in failing to consider the significance of the Government’s own adoption of provincial child welfare standards in its programming manual and funding policies.

As a result, the three applications for judicial review are granted.

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