

ASSEMBLY OF FIRST NATIONS



TECHNICAL BULLETIN

Canadian Human Rights Tribunal – Child Welfare October 2013

*The Assembly of First Nations issues regular updates work underway at the national office.
More information can be found at www.afn.ca.*

The Assembly of First Nations (AFN) provides the below update on the joint human rights complaint regarding First Nations child welfare currently before the Canadian Human Rights Tribunal (CHRT). **Hearings continue October 28, 2013**, with AFN producing witnesses to testify on the intergenerational impacts of residential schools and the historical inequities of funding for First Nation programs.

Background

The AFN has actively advocated for progressive changes to child and family services for the benefit of First Nation children, their families and workers in the field.

It has been long established that First Nation children have been tragically overrepresented in child and family welfare services care, but there were very few enquiries into the reasons. In the late 1990s the AFN and Indian and Northern Affairs (INAC – now Aboriginal Affairs and Northern Development Canada or AANDC) partnered together to address this gap in knowledge through a joint National Policy Review on looking at child welfare programs in First Nations communities. The findings of the National Policy Review identified many problems in federal child welfare programs and policies.

Despite these findings, the federal government indicated that it needed more detailed and clear-cut statistics to generate changes in policy. Further joint work on child welfare was carried out between AFN and INAC from 2001 through 2005. Issues were examined in great detail by respected experts in the economic, statistical and social work disciplines. The Wen:de Reports were released in 2005, documenting the challenges. Wen:de concluded that the main reason for the high rates of First Nation children in state care was due to the federal government not funding child welfare intervention and prevention programs or support services to First Nation families. Wen:de also revealed that First Nation child welfare agencies receive approximately 22% less funding than provincial agencies, yet they carry a higher case load of child welfare files.

The 2006 AFN Leadership Action Plan on Child Welfare was a further attempt by the AFN to resolve the inequities in child welfare services for First Nation families. The Leadership Action Plan insisted that First Nations children must have an equal opportunity to grow-up with their family, in their community, immersed in their culture. No First Nation child should be deprived of this opportunity as a result of poverty, poor housing or an inability to access basic services.

By 2007, there was still no action by the federal government. The situation for First Nations child and family service agencies remains largely the same despite the increasing amount of information pointing to the need for increased funding, policy changes, improved authorities and jurisdictional work.

The Human Rights Complaint

Throughout its joint work with AANDC, the AFN was able to accumulate a large volume of clear scientific data and statistics on federal child welfare programs. Despite years of advocacy and compelling evidence, it was clear that the federal government would not be changing its child welfare program.

On February 27, 2007, the AFN and the First Nations Child and Family Caring Society of Canada (FNFCSC) jointly filed a human rights complaint with the Canadian Human Rights Commission (CHRC) stating that the provision of child and family services on-reserve by the Government of Canada is discriminatory.

The CHRC agreed that there was substance to the challenge and referred the complaint to the Canadian Human Rights Tribunal (CHRT) for further inquiry. The merits of this human rights complaint are currently being heard before the CHRT. A three person panel began hearings on February 22, 2013. The presiding panel consists of Chair Sophie Marchildon, Edward Lustig and Réjean Bélanger.

AFN National Chief Shawn Atleo made an opening statement at the CHRT February 22, 2013. To date, 14 witnesses have appeared on behalf of AFN and the FNFCSC. **Hearings will begin again October 28, 2013**, with AFN producing additional witnesses to testify on the intergenerational impacts of residential schools and the historical inequities of funding for First Nation programs.

Proceedings

The CHRT began hearing this human rights case February 22, 2013.

The following witnesses have appeared and provided evidence with respect to the alleged discrimination in federal funding levels and services:

- Cindy Blackstock - February 25 - March 1st, 2013;
- Jon Thompson - April 2, 2013;
- Dr. Nico Trocme – April 2 – 4, 2013;
- Derald Dubois (SK) – April 8 – 9, 2013.
- Elsie Flett (MB) – August 28 – 29, 2013
- Carolyn Behdaovich (MB) – August 30, 2013
- Tom Goff (ON) – September 3, 2013
- Betty Kennedy (ON) – September 4, 2013
- Theresa Stevens (ON) – September 5 – 6, 2013
- Dr. John Loxely – September 11 – 12, 2013
- Brenda Ann Cope (NS) – September 23, 2013
- Judy Levi (NB) – September 24, 2013
- Raymond Shingoose (SK) – September 25, 2013
- Darin Keewatin (AB) – September 26, 2013

The CHRT hearings on the human rights complaint will continue the last week of October, 2013. From October 28 to November 1, AFN will commence its part of the case and will call Dr. John Milloy to testify on the impacts of residential schools, intergenerational impacts, policies of the federal government and funding levels for the residential schools and their links to child welfare.

On November 6 and 7, CHRC witness Darin Keewatin from Alberta will resume his testimony, followed by AFN Witness Dr. Caroline Tait, who will address the transition from the Indian Residential School System to the child welfare system, including the impact of what is called the “60s Scoop”.

From December 2 to 16, the CHRC will bring forward witnesses.

From December 16 to 18, AFN Witness Dr. Cornelia Wieman will testify about intergenerational impacts of the Residential Schools experience on the mental health of First Nations peoples in Canada.

Important Statistics

See attached Fact Sheet

Next Steps

Once the AFN, FNCFCS and the CHRC conclude their case through its witnesses, the Attorney General is expected to begin its defense starting January 6 through to March 2014. Originally, the Attorney General was set to call 14 witnesses. However, they since have indicated that they will not be calling all of their witnesses.

The AFN and FNCFCS human rights complaint is of vital importance and will have far reaching implications for First Nations and the federal government. In a legal context, the complaint is unique in that it addresses the issue of whether or not First Nations peoples, simply by being part of a particular "ethnic group," are able to file complaints against the Federal Government for alleged discrimination in the provision of a service.

Many among the human rights legal community in Canada see this as an important test of the *Canadian Human Rights Act*. The outcome will determine the extent to which First Nation people living on-reserve can use the *Canadian Human Rights Act* as a tool to implement positive change in their communities.

The case will set a precedent for other on-reserve programs and services, such as police, health, and education. The AFN is committed to this case and is making every effort to ensure the Tribunal understands the impacts of federal policies on the most precious and most vulnerable part of our population: our children and will keep First Nations informed as the hearing moves forward.

For more information please visit <http://www.afn.ca/index.php/en/canadian-human-rights-tribunal>.