

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA
and ASSEMBLY OF FIRST NATIONS

Complainants

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

ATTORNEY GENERAL OF CANADA

Respondent

and

AMNESTY INTERNATIONAL CANADA

Proposed Interested Party

**MEMORANDUM IN AID OF ARGUMENT OF
AMNESTY INTERNATIONAL CANADA**

PART I - OVERVIEW

1. Amnesty International Canada (“AI Canada”) seeks an order granting it intervenor status as an interested party, pursuant to s. 50 of the *Canadian Human Rights Act* (the “Act”) and Rule 8(4) of the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04) (the “Rules”), for the purpose of rendering assistance to the Tribunal by way of argument regarding whether the federal government’s failure to fund Indigenous child and family services at the same level as non-Indigenous children is contrary to Canada’s international obligations and the Act.

PART II - THE FACTS

A. Background

2. The complaint is an allegation of discrimination in the provision of a service on the grounds of race and national or ethnic origin. The Complainants allege that the Respondent, Indian and Northern Affairs Canada (represented by the Attorney General of Canada), discriminates against Indigenous children in the provision of a service by inadequately funding child welfare services contrary to s. 5 of the Act.

B. Amnesty International Canada

3. Amnesty International (“AI”) is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people’s fundamental human rights.

4. AI is impartial and independent of any government, political persuasion or religious creed. AI is financed by subscriptions and donations from its worldwide membership, and receives no government funding. AI Canada is a Part II corporation under the *Canada Corporations Act*, R.S.C. 1970, c. C-32. AI and AI Canada seek to advance and promote international human rights at both the international and national level.

5. As part of its work to achieve this end, AI and AI Canada monitor and reports on human rights abuses, participates in international committee hearings, intervenes in domestic judicial proceedings, and prepares briefs for and participates in national legislative processes and hearings.

C. AI Canada's Activities Regarding Indigenous Peoples

6. AI Canada has long recognized that the situation of Indigenous peoples represents one of the critical human rights issues in Canada. AI Canada's work in this regard includes:

- (a) investigating individual complaints of mistreatment by police and the justice system;
- (b) working with specific communities involved in land rights disputes;
- (c) collaborating with the Native Women's Association of Canada in a long-term campaign on violence against Indigenous women; and
- (d) engaging with United Nations human rights bodies and mechanisms, including special rapporteurs, working groups and treaty bodies in their ongoing monitoring of human rights concerns relating to Indigenous peoples in Canada;

i. Ipperwash Inquiry

7. AI Canada worked closely with the family of Dudley George, who was shot by police at Ipperwash Provincial Park. AI Canada campaigned for a provincial inquiry into the circumstances surrounding the shooting, acted as an intervener in the policy phase of the Ipperwash Inquiry, and has continued to work for the implementation of the Inquiry recommendations.

8. Among the submissions made by AI Canada before the Inquiry, it argued that the inquiry should interpret Canada's obligations towards Indigenous peoples in light of international human rights standards.

ii. Land Disputes

9. AI Canada also advocates for the just resolution of land disputes with Indigenous nations.

10. In this respect, AI has published two reports on the situation of the Lubicon Cree in northern Alberta entitled “Time is wasting”: Respect for the land rights of the Lubicon Cree long overdue” (2003) and “Land and Life Under Threat: The Lubicon Cree” (2008).

11. AI Canada has also published reports on the conflict over logging at Grassy Narrows. In 2007, AI Canada published “The law of the land: Amnesty International Canada’s position on the conflict over logging at Grassy Narrows” and in 2009, “A Place to Regain Who We Are: Grassy Narrows First Nation, Ontario.”

iii. Violence Against Indigenous Women

12. AI Canada has actively campaigned for the end to violence against Indigenous women. In October 2004, AI Canada published a report on discrimination and violence against Indigenous women in Canada called "Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada." The report examines the social and economic context of the high rates of violence experienced by Indigenous women in Canada.

iv. AI Canada’s Expertise Regarding Canada’s Obligations to its Indigenous Peoples at International Law

13. AI Canada has an active and long-standing interest in protecting the rights of Indigenous children in Canada and in advocating for non-discriminatory funding for Indigenous child and family services.

14. On this subject, AI Canada has made submissions and reports to numerous international organizations including the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the UN Human Rights Committee and before the UN Human Rights Council.

15. AI Canada recently made the following submissions to various international organizations regarding human rights and in particular the rights of Indigenous peoples:

(a) *Amnesty International Submission to the UN Human Rights Council* (Universal Periodic Review of Canada, Fourth session of the UPR Working Group of the Human Rights Council), February 2009;

(b) *Human Rights for All: No Exceptions* (Amnesty International's Submissions to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of the examination of the 17th and 18th Periodic Reports submitted by Canada), 2009;

(c) *It Is A Matter of Rights: Improving the protection of economic, social and cultural rights in Canada* (Amnesty International's Briefing to the UN Committee on Economic, Social and Cultural Rights on the occasion of the review of Canada's fourth and fifth periodic reports concerning rights referred in the International Covenant on Economic, Social and Cultural Rights), submitted March 27, 2006;

(d) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations* (Amnesty International Canada's Submissions to the

United Nations Human Rights Committee on the occasion of the consideration of the Fifth Periodic Report of Canada), 2005.

16. AI and AI Canada played an active role in the negotiation and adoption of the *UN Declaration on the Rights of Indigenous Peoples*:

(a) AI Canada represented AI at the UN Working Group on the Draft Declaration from 2004-2006;

(b) In 2006, AI Canada co-hosted a symposium on national implementation of international norms for Indigenous rights that was attended by the UN Special Rapporteur;

(c) Domestically, AI Canada has lobbied the federal government to support the Declaration; organized a briefing for Parliamentarians on the implementation of the *UN Declaration on the Rights of Indigenous Peoples* in 2008; and

(d) AI Canada has issued numerous public statements on the government of Canada's failure to ratify the Declaration.

PART III - ISSUES AND THE LAW

A. Should AI Canada be granted intervenor status as an interested party?

i. The Test

17. The Tribunal has a wide discretion with respect to the granting of interested party status under s. 50 of the *Act*.¹

18. The test on an application to be added as an interested party is whether the *applicant's expertise would be of assistance* in the determination of the issues before the Tribunal.²

ii. Importance of Canada's Obligations at International Law

19. On numerous occasions, the Tribunal has relied on Canada's obligations under international human rights law in its interpretation and application of the *Act*.³

20. The Canadian Human Rights Commission has recognized the increasing importance of international human rights standards as a "source of interpretation for Canadian human rights law."⁴

21. The *Act* is a significant legislative means by which Canada has implemented its anti-discrimination obligations at international law. Indeed, Canada relies on its domestic human rights legislation, including the *Act*, in its reports to UN Treaty bodies to demonstrate Canada's compliance with international human rights law:

1. *Pieters v. Department of National Revenue*, 2001 CanLII 25843 (CHRT) [*Pieters*] at ¶ 14.

2. *Ibid.* at ¶ 14; *Warman v Lemire*, 2006 CHRT 8 at ¶ 18.

3. See for e.g. *Stanley v. Canada (Royal Canadian Mounted Police)* (1987), 1987 CanLII 98 (CHRT); *Nealey v. Johnston*, 1989 CanLII 151 (CHRT); *Brown v. Canada (Royal Canadian Mounted Police)*, 2004 CanLII 30 (CHRT) at ¶ 81-84.

4. Canadian Human Rights Commission, *Annual Report 2001* (Ottawa: Minister of Public Works and Government Services, 2002) at 6, accessed online on September 13, 2009 (http://www.chrc-ccdp.ca/publications/2001_ar/page6-en.asp?lang=en&url=%2Fpublications%2F2001_ar%2Fpage6-en.asp).

Many of the international human rights instruments that Canada has ratified are directed against discrimination. [...] An important means of implementing this feature of international obligations is through human rights legislation (or human rights codes).⁵

22. Not only is international human rights law relevant to the interpretation of the Act and its application to the issue of Canada's obligations of non-discriminatory funding of Indigenous child and family services because the Act *implements* certain of Canada's international human rights obligations, but it also part of the necessary legal *context* to properly apply the Act in the circumstances of this complaint.

23. As the Supreme Court of Canada held in *Baker v. Canada (Minister of Citizenship and Immigration)*:

[...] the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in R. Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994), at p. 330:

[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred. [Emphasis the Court's.]⁶

iii. AI Canada's Expertise Will Be of Assistance to the Tribunal

24. AI Canada brings an important perspective and approach to the issues raised in this complaint. If granted interested party status, AI Canada's submissions would be unique and

5. Canada, *Core document forming part of the reports of State Parties: Canada* (1998) at ¶ 130, 138, accessed online on September 13, 2009 (<http://www.unhcr.org/refworld/country,,HRI,,CAN,4562d94e2,3de0dc9e4,0.html>).

6. [1999] 2 S.C.R. 817 at ¶ 70-71.

would not be duplicative of those of other parties. None of the parties propose to make submissions from the perspective of a non-governmental international human rights organization with AI Canada's experience, expertise and history regarding human rights.

25. AI Canada is uniquely positioned as an international non-governmental organization to bring a truly international perspective to this complaint. AI Canada has extensive knowledge of the international norms that are relevant to this complaint.

26. If granted interested party status, AI Canada would make submissions on the following issues:

(a) Canada's general obligations under international law including the *Universal Declaration of Human Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *United Nations Convention on the Rights of the Child*; the *Convention on the Elimination of Racial Discrimination*, and the *UN Declaration on the Rights of Indigenous Peoples*;

(b) whether the federal government's failure to fund Indigenous child and family services at the same level as non-Indigenous children is contrary to its international human rights obligations and the Act;

(c) whether the federal government has a positive obligation to provide adequate funding of child and family services in Indigenous communities in order to ensure that the best interests of Indigenous children are protected.

27. AI Canada's intervention will not prejudice any of the parties.

28. However, the outcome of these proceedings will directly impact on AI Canada's activities, both within Canada and internationally, in securing non-discriminatory funding for Indigenous child and family services in Canada.

PART IV - ORDER REQUESTED

29. AI Canada requests that this Tribunal make an order granting it intervenor status as an interested party, pursuant to s. 50 of the Act and Rule 8(4) of the Tribunal, for the purpose of rendering assistance to the Tribunal by way of argument regarding whether the federal government's failure to fund Indigenous child and family services at the same level as non-Indigenous children is contrary to its international obligations and the Act.

30. AI Canada requests an opportunity to make written submissions and, at the discretion of the member hearing the complaint, oral submissions.

31. AI Canada does not ask to lead evidence, cross-examine witnesses, or to participate in the hearing beyond making useful and relevant legal argument central to the issues in this complaint.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 14, 2009

Counsel for Amnesty International Canada

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Pieters v. Department of National Revenue*, 2001 CanLII 25843 (CHRT)
2. *Warman v Lemire*, 2006 CHRT 8
3. *Stanley v. Canada (Royal Canadian Mounted Police)*, 1987 CanLII 98 (CHRT)
4. *Nealey v. Johnston*, 1989 CanLII 151 (CHRT)
5. *Brown v. Canada (Royal Canadian Mounted Police)*, 2004 CanLII 30 (CHRT)
6. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817

**SCHEDULE “B”
RELEVANT STATUTES**

Canadian Human Rights Act, R.S., 1985, c. H-6, s. 50

Conduct of inquiry

50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.

Power to determine questions of law or fact

(2) In the course of hearing and determining any matter under inquiry, the member or panel may decide all questions of law or fact necessary to determining the matter.

Additional powers

(3) In relation to a hearing of the inquiry, the member or panel may

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint;

(b) administer oaths;

(c) subject to subsections (4) and (5), receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law;

(d) lengthen or shorten any time limit established by the rules of procedure; and

(e) decide any procedural or evidentiary question arising during the hearing.

Limitation in relation to evidence

(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

Conciliators as witnesses

(5) A conciliator appointed to settle the complaint is not a competent or compellable witness at the hearing.

Witness fees

(6) Any person summoned to attend the hearing is entitled in the discretion of the member or panel to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court.

Canadian Human Rights Tribunal Rules of Procedure (03-05-04)

8 ADDITION OF PARTIES AND INTERESTED PARTIES

Motion for interested party status

8(1) Anyone who is not a party, and who wishes to be recognized by the Panel as an interested party in respect of an inquiry, may bring a motion for an order granting interested party status.

Motion to specify extent of participation

8(2) A motion under 8(1) shall comply with the requirements of Rule 3 and shall specify the extent of the desired participation in the inquiry.

Addition of party on motion of another party

8(3) Where the Commission, a respondent or a complainant seeks to add a party to the inquiry, it may bring a motion for an order to this effect, which motion shall be served on the prospective party, and the prospective party shall be entitled to make submissions on the motion.

Addition of party by its own motion

8(4) Anyone who is not a party, and who wishes to be added to the inquiry as a party, may bring a motion under Rule 3 for an order to this effect.