

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2018 CHRT 27
Date: September 17, 2018
File No.: T1340/7008

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 Indigenous and Northern Affairs Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Amnesty International

- and -

Nishnawbe Aski Nation

Interested Parties

Ruling

Members: Sophie Marchildon and Edward P. Lustig

Confidentiality order pursuant to section 52 of the Canadian Human Rights Act

[1] The Complainants and Interested Parties (with the exception of Amnesty International) have each brought motions challenging, among other things, Canada's implementation of Jordan's Principle in relation to this Panel's decision and orders in *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), 2016 CHRT 2 ("the Decision"). Canada and the Commission filed submissions in response to the motions. The motions were heard from March 22 to 24, 2017 in Ottawa.

[2] On May 26, 2017, the Panel issued a subsequent ruling with further orders on Jordan's Principle, 2017 CHRT 14. In the ruling, the Panel ordered Canada to report on the implementation of the Tribunal's orders as follows:

B. Canada is ordered to serve and file a report and affidavit materials detailing its compliance with each of the above orders by **November 15, 2017**.

C. The Complainants and the Interested Parties shall provide a written response to Canada's report by **November 29, 2017**, and shall indicate: (1) whether they wish to cross-examine Canada's affiant(s), and (2) whether further orders are requested from the Panel.

[3] On November 15, 2017, Canada filed its affidavit in compliance with the order B reproduced above.

[4] On November 29, 2017, the COO requested the Tribunal to make a confidentiality order in regards to an Affidavit they filed with the Tribunal, in response to Canada's affidavit, given it contained sensitive information about a particular case in one of the Independent First Nations. The COO submitted that although they redacted the child's personal information from the materials, they are sensitive to the fact that in a small community, a case like this one may be well known to community members. The COO requests that Ms. J's affidavit and accompanying exhibits be kept sealed from the public record to protect the privacy of the child's family and that they be shared only with the parties. All parties and interested parties agreed to this confidentiality order.

[5] After consideration, the Panel made an oral ruling on May 9, 2018 and, pursuant to section 52 1(c) of the *CHRA*, ordered that the Affidavit of Ms. J. be kept confidential and not accessible to the public. The Panel advised the parties they would receive a written copy of this ruling, hence the present document.

[6] Section 52 of the *CHRA* is reproduced below:

Hearing in public subject to confidentiality order

52 (1) An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that

(a) there is a real and substantial risk that matters involving public security will be disclosed;

(b) there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;

(c) there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; (emphasis ours) or

(d) there is a serious possibility that the life, liberty or security of a person will be endangered.

Confidentiality of application

(2) If the member or panel considers it appropriate, the member or panel may take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (1).

R.S., 1985, c. H-6, s. 52; 1998, c. 9, s. 27.

[7] On August 1, 2018, during a case management conference call, all parties agreed that all other documents, affidavits and materials filed with the Tribunal regarding the implementation of the Panel's orders are part of the evidentiary and public record, subject to redactions to identifying information and, unless directed otherwise by the Tribunal.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
September 17, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

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

Ruling of the Tribunal Dated: September 17, 2018

Date and Place of Hearing: May 9, 2018; Ottawa, Ontario

Appearances:

David Taylor, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Stuart Wuttke, Thomas Milne, David Nahwegahbow and Julie McGregor, counsel for the Assembly of First Nations, the Complainant

Brian Smith, counsel for the Canadian Human Rights Commission

Jonathan Tarlton and Robert Frater, Q.C., counsel for the Respondent

Krista Nerland and Maggie Wente, counsel for the Chiefs of Ontario, Interested Party

Akosua Matthews, counsel for the Nishnawbe Aski Nation, Interested Party