

Backgrounder

Historic ruling in First Nations child welfare case

The ruling by the Canadian Human Rights Tribunal (Tribunal) in the First Nations child welfare case, as it is known, could have a profound impact on how the Government of Canada funds other First Nations programs and services on reserves.

The case went before the Tribunal in 2013 for a full hearing on the merits. The Canadian Human Rights Commission (CHRC) participated in the case on behalf of the public interest. Amnesty International Canada and the Chiefs of Ontario also intervened in the case.

In total, there were 70 hearing days between February 25, 2013 and October 24, 2014. More than 500 exhibits were filed, more than 25 witnesses testified.

Timeline

- **February 2007:** First Nations Child and Family Caring Society of Canada together with the Assembly of First Nations file a discrimination complaint against the Government of Canada on the basis of race and national or ethnic origin. The complainants allege that the federal government's First Nations Child and Family Services Program, as well as its on-reserve funding formulas, result in inequitable levels of child welfare services for First Nations children and their families who live on reserves.
- **September 2008:** CHRC refers the complaint to the Tribunal for adjudication.
- **March 2011:** Tribunal dismisses the complaint, accepting the Government of Canada's argument that federal and provincial funding levels cannot be compared.
- **April 2011:** CHRC applies to the Federal Court for judicial review, arguing that if the complaint were to be dismissed, it could undermine Canada's human rights legislation and shield the federal government from discrimination complaints related to funding for services on reserves.
- **April 2012:** Federal Court overturns the Tribunal's decision and orders a full hearing on the merits of the case.
- **May 2012:** Government of Canada appeals Federal Court ruling calling for a full hearing.
- **February 25, 2013:** Tribunal begins the hearing.
- **March 2013:** Federal Court of Appeal dismisses the Government of Canada's appeal of the Federal Court's order of a full Tribunal hearing.
- **October 20-24, 2014:** Final arguments and conclusion of the hearing.

Quick Facts

- According to Statistics Canada, almost half (48.1 per cent) of all children in foster care are Aboriginal children, yet Aboriginal children represent only 7 per cent of all children in Canada.
- According to the First Nations Child and Family Caring Society of Canada, federal government funding for child welfare services on reserves is 22% lower than the funding provided by provinces and territories for similar services off reserve. (*Wen: de Report*, 2005)
- A 2008 Auditor General report found the federal government's funding formulas did not take into account the disproportionate rate at which First Nations children on reserves are taken into care, nor were they based on the actual needs of First Nations children and their families.
- A 2011 Auditor General report concluded that the delivery of child welfare services to First Nations was limited due to structural flaws in the federal government's funding formulas. The report also stated that "there has yet to be a notable change in the number of First Nations children in care."
- Five of the Calls to Action from the Truth and Reconciliation Commission deal with Indigenous child welfare. Call to Action 1 called on the federal, provincial, territorial and Aboriginal governments specifically to commit to reducing the number of Aboriginal children in care, and outlines measures, including adequate resources, which would help them to accomplish this.

Associated Links

- [Federal Court's 2012 ruling](#)
- [Federal Court of Appeal's 2013 ruling](#)
- [May 2008 Auditor General report](#)
- [June 2011 Auditor General status report](#)
- 2005 [Wen: de Report](#)

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