

Our file 1001

April 24, 2013

**BY COURIER**

Jonathan Tarlton  
Melissa Chan  
Department of Justice Canada  
Duke Tower, 5251 Duke Street  
Suite 1400  
Halifax, Nova Scotia B3J 1P3

Dear Mr Tarlton and Ms Chan:

**Re First Nations Child and Family Caring Society, Assembly of First Nations et al  
v. Attorney General of Canada - Tribunal File #: T1340/7008**

Consistent with the obligation of ongoing disclosure, I am enclosing a CD-Rom of information received by my client on April 9, 2013, under the *Access to Information Act* ("ATIA") along with a covering letter from Aboriginal Affairs and Northern Development. Dr Blackstock had made a request for "information on the enhanced funding approach/model for First Nations Child and Family Services dated, or likely to be dated, between November 1, 2011 and October 31, 2012". It has taken us two weeks to thoroughly review this package and we find that it contains many highly relevant documents for the complaint, particularly concerning the Enhanced Prevention Focused Approach ("EPFA"). This includes evaluations of the implementation of the EPFA in Saskatchewan, Quebec, PEI and Nova Scotia.

We are frankly quite surprised and disappointed that these documents were not disclosed by the Respondent. Once you have discussed this matter with your client, it would be appreciated if you could explain how or why these documents were omitted from the Respondent's earlier disclosures.

On reviewing this ATIA package, it is also apparent that further documents have not been disclosed. Some emails make reference to several audits conducted by Deloitte and Touche as part of an overall "Audit of the Implementation of the Child and Family Services Enhanced Prevention Focused Approach". Copies of all such audits are relevant in our view. This package has provincial audits for Saskatchewan, Quebec, PEI and Nova Scotia, but there is also reference to an Alberta audit, which we don't have. Further, some of the documents refer to letters from agencies complaining about their financial circumstances. The letters aren't included and we would be

interested to see letters of complaints from agencies in the EPFA provinces. Since Dr Blackstock's request for documents ended October 31, 2012, we ask that all relevant documents from that date also be produced, with particular attention paid to EPFA audits or documents concerning Manitoba, Newfoundland, Yukon and Ontario.

In addition, the *ATIA* package refers to several documents that have been withheld under certain exemptions such as third party "trade secrets", federal-provincial consultations, and documents that reflect briefings to the Minister. *ATIA* exemptions are not applicable to disclosure obligations in legal proceedings, and we would ask that these withheld documents also be produced.

Finally, we note that Minister Duncan (as he then was) instructed his Deputy Minister to carry out an investigation into allegations that Dr Blackstock's privacy was violated. Minister Duncan made a statement to the House of Commons to this effect on November 17, 2011. Can you please confirm if that investigation was in fact conducted? We have not received any documents in that regard. It is our view that the investigation and its results are relevant to the proceeding and should be disclosed.

We look forward to hearing from you.

Yours truly,



Paul Champ

Encl.

c: Philippe Dufresne and Daniel Poulin, Canadian Human Rights Commission  
David Nahwegahbow and Stuart Wuttke, Assembly of First Nations  
Mike Sherry, Chiefs of Ontario  
Justin Safayeni, Stockwoods (Amnesty International)



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Our File: 17-82297-1  
Notre dossier:

Your file:  
Votre dossier:

Via Email

May 7, 2013

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Dear Counsel:

**Re: *First Nations Child and Family Caring Society et al v Attorney General of  
Canada (T1340/7008)***

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We are writing to address the concerns raised by Mr. Champ in his correspondence of April 24, 2013 with respect to disclosure.

In his correspondence, Mr. Champ provided us with a recent ATIP disclosure. Please be advised that we also received this disclosure from our client at the time it was released to the requestor. We were in the process of preparing these documents for disclosure in the Respondent's list of documents, however as Mr. Champ has already provided them, we trust that this is sufficient and that we do not need to duplicate what Mr. Champ has already provided.

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withheld, unredacted

Canada

Mr. Champ's correspondence also raises a matter which we believe it is timely to address – the Respondent's disclosure. As we have stated throughout the case conferences since this matter has been re-convened, we have a substantial number of documents still to disclose and this disclosure is on-going. After receiving Mr. Champ's letter, we requested an update from our client on the status of the disclosure. We have just been advised that there are over 50,000 additional documents that have been identified as potentially relevant, which the client is in the process of gathering to provide to us. In addition, we have been advised there is unspecified number of email documents which are also subject to disclosure. We have further been advised that the expected date of completion of gathering, indexing and providing these documents to us between September and December 2013. Included in this number are documents which originate from the regions, as well as headquarters.

Prior to this matter being re-convened, disclosure was requested from the Respondent up to 2009. Since that time, we have been working towards not just satisfying this disclosure request, but also updating our disclosure beyond that date. It is our understanding that we have now disclosed most of the documents up to 2010.

It would be helpful for us to have a discussion with counsel on how far they wish this disclosure to reach. Clearly, the business of AANDC with respect to child welfare will be continuing right up and past the time that this Tribunal hearing will conclude. Therefore, we think it would be helpful to determine a mutually agreed upon cut-off date for document disclosure, as it will be impossible to continually update documents throughout the Tribunal hearing. If we were to do so, this would result in a never-ending disclosure where the case might be closed but documents may still be arising.

We also believe it would be useful to discuss whether there are certain targeted documents in which you have the greatest interest or if there are certain documents we could exclude from production. We would be happy to have a discussion with you on the types of documents and their sources that remain to be disclosed.

We are interested in hearing from you on how you would like to proceed in light of these outstanding documents. We believe it may be beneficial to have a conversation among counsel before addressing this issue with the Tribunal.

We look forward to hearing from you on how you wish to proceed.

Yours truly,



Melissa Chan  
Counsel  
Civil Litigation and Advisory Services

MC/snc

Our file 1001

May 9, 2013

**BY EMAIL**

Melissa Chan  
Counsel  
Department of Justice Canada  
Duke Tower, 5251 Duke Street  
Suite 1400  
Halifax, Nova Scotia B3J 1P3

Dear Ms Chan:

**Re First Nations Child and Family Caring Society, Assembly of First Nations et al  
v. Attorney General of Canada - Tribunal File #: T1340/7008**

Further to your letter dated May 7, 2013, I would like to express that my client is deeply upset at the Respondent's admission that it has not disclosed a "substantial number" of documents. Given the continuing nature of the case, it was recognized that there would always be ongoing disclosure, but we never contemplated or understood that the Respondent was still sitting on large swathes of relevant documents. Indeed, it was our understanding that the Respondent's disclosure obligations were largely met by February 25, 2013. Now, after a few weeks of hearings, and with some witnesses already having completed their testimony, we are informed that more than 50,000 documents are still out there.

My client was concerned that all relevant documents had not been disclosed, despite my assurances to the contrary. In particular, Dr Blackstock believed there should be more documents related to the Enhanced Prevention Funding Formula. This was why she made a request under the *Access to Information Act* to see if any other documents might come to light. This has led to over 4,000 pages of documents being produced, many of them highly relevant to the case and, in our view, prejudicial to the Respondent's position that Enhanced had fixed the inequities in its child welfare program.

The timeframe of September to December 2013 for remaining disclosure is simply not acceptable to my client. That would mean that a large number of relevant documents would not be disclosed until after all the witnesses have testified. I do not understand how a hearing can be conducted in that manner.

We will be addressing this issue with the Tribunal on Monday, May 13, 2013. We will be seeking an order that the Respondent be required to produce all disclosure by June 14, 2013. Once we have received and reviewed those materials, we will potentially be seeking other remedies, such as the right to recall witnesses.

Finally, I would ask that the following material be provided by May 13, 2013:

1. An unredacted version of all documents in my client's ATIP request. There is no need to have them listed, but since you already have the CD it should not be difficult to simply make a copy for us. I note that I made this request in my previous letter.
2. A copy of the EPFA evaluations or audits for Manitoba. These documents were not in Dr. Blackstock's ATIP package, although there was some reference to them. The Commission is calling two witnesses from Manitoba next week and I believe we should have these critical documents before they testify.

EPFA evaluations and audits for other provinces should be disclosed as soon as possible. As noted in my previous letter, there is reference in the ATIP package to an audit for Alberta, and we gather there are also audits for Quebec and Newfoundland.

We look forward to hearing from you.

Yours truly,



Paul Champ

- c: Philippe Dufresne and Daniel Poulin, Canadian Human Rights Commission  
David Nahwegahbow and Stuart Wuttke, Assembly of First Nations  
Mike Sherry, Chiefs of Ontario  
Justin Safayeni, Stockwoods (Amnesty International)