

Social Worker's Reflections on Being a Witness at the Canadian Human Rights Tribunal Hearing, June 2-3, 2010, on the Under-Funding of Child Welfare Services for First Nations Children on Reserves

Gillian McCloskey, OASW Associate Executive Director, attended the Canadian Human Rights Tribunal hearings on June 2-3, 2010 on the under-funding of child welfare services for First Nations children on reserves. Her experience as a "witness" to this process is captured in the form of an interview by Dr. Dan Andreae, Chair of the Association's Government Relations Advisory Committee, on June 14th.

Q: What was the purpose of the Canadian Human Rights Tribunal hearing?

A: This Canadian Human Rights (CHR) Tribunal hearing came about as a result of the complaint launched by the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations against the Federal Government in regard to the long-standing pattern of under-funding of child welfare services and inequitable treatment of vulnerable First Nations Children on reserves. After ten fruitless years of First Nations' organizations working with government to address this issue, this complaint was filed in 2007. Parties participating at the hearing included: the Federal Government (referred to as "Canada"), Canadian Human Rights Commission, Chiefs of Ontario, Assembly of First Nations, Amnesty International, and First Nations Child and Family Caring Society of Canada (referred to as "Caring Society"). The Tribunal was presided over by Chair Shirish Chotalia.

Q: How did your "witnessing" this Tribunal hearing affect you personally?

A: I was very moved by the process right from the beginning. The hearing started with a prayer by an Elder who prayed to the Creator for the lands, the language, and cultural traditions of First Nations Peoples to not be forgotten and especially – the most precious gift of all – the children. It set the tone and true focus for the hearing.

There were at least 100 people in the audience, many of whom were Aboriginal and from other parts of the country. I was struck by how intently they were listening to the proceedings, even late in the day. This seemed indicative of how gripping, emotionally charged and significant the experience was for them.

I had a conversation with an Ottawa-based alternative school teacher who had brought some of his students to observe. He has been actively involved with an organization called Indigenous People Watch. He expressed dismay that First Nations People are forced to set up blockades to draw attention, and cited the incident in 1991 when a group of First Nations Peoples were displaced from their land by Hydro-Québec and were forced into a very small reserve.

I was touched by the symbolic gifts surrounding Cindy Blackstock, the Caring Society's Executive Director, who sat beside her counsel. These items, which were clearly meaningful to her, included a feather, small flag and teddy bear.

I felt ashamed by the lack of action on the part of the Federal Government and its focus on legal

loopholes at the expense of the human dimension. They chose to dismiss the complaint rather than to address the real issue – the severe mistreatment of vulnerable First Nations children and families on reserves. I came to realize that the dynamics of what transpired in those two days is a microcosm of what has been going on in this country for centuries.

I found the argument by one of the Assembly of First Nations' counsel haunting. They questioned how is it that the voice of First Nations Peoples, who are steeped in an oral tradition, is confined to affidavits and documents?

More than anything, I was inspired by the courage and perseverance demonstrated by Cindy Blackstock and the Caring Society in challenging the Federal Government.

Q: Why was it important for OASW to be a “witness” at this Tribunal hearing?

A: It was important to be a “witness” at these proceedings to demonstrate OASW’s support for this ground-breaking case against the Federal Government, which represents a quintessential issue of human rights for Canada. The inequitable treatment of First Nations children – Canadian children – is shameful, and the Government of Canada must be held accountable for its behaviour. In a profession that is founded on a commitment to the dignity and worth of all persons, being a witness to the hearing and thus signalling that there is widespread interest in the hearing was very important.

As Cindy Blackstock remarked to me during a break, and as the Elder who began the proceedings with her prayer affirmed and the counsel representing the Assembly of First Nations focused attention on, “*it’s all about the children.*” The Tribunal hearing was a profoundly powerful experience I shall never forget.

Q: What were the arguments put forward by the Federal Government?

A: It is noteworthy that the Federal Government has twice tried to have the courts dismiss the complaint based upon a legal technicality. Again during the Tribunal hearing, arguments by the Federal Government centered around the legal technicality that the Federal Government provides funds, not services, under the definition of the *Canadian Human Rights Act*. The Federal Government has repeatedly argued that the CHR Tribunal had no jurisdiction to make a decision on this case. Canada’s counsel promoted the concept of “federalism” which respects the division of powers between the Federal and Provincial Governments. He purported that the Federal Government does not regulate the child welfare system and is solely a “funder”, while the Provincial Government is the provider of services.

According to the Federal Government, there is no comparator group for First Nations children on reserves which it views as fundamental to a human rights violation claim.

The Federal Government maintained as well that this matter could be resolved through a political process as opposed to the CHR Tribunal mechanism, and that every case is not necessarily amenable to the *Canadian Human Rights Act*.

Q: What other groups spoke to the dismissal of the Tribunal hearing, and what were their challenges to the Federal Government's arguments?

A: This is a historic human rights challenge and because of the Federal Government motion to dismiss the complaint, arguments presented were either for or against dismissal. Five groups presented arguments in support of the Tribunal hearings going forward:

- **Canadian Human Rights Commission**
- **Chiefs of Ontario**
- **Amnesty International**
- **Assembly of First Nations**
- **First Nations Child and Family Caring Society of Canada**

Details of the well-articulated arguments can be found by clicking:

<http://www.oasw.org/en/membersite/pdfs/WitnessArticle-Appendix-GMcCloskey-June2010.pdf>.

In my estimation, the most powerful, eloquent and persuasive argument was made by the first of two lawyers for the **Assembly of First Nations** who talked about the children being the most important resource. He talked about the tragic failure on the part of the Crown to protect, as he said, the Indians and the dispossession of their lands. He stated: "We have an intransigent government. It is systematic discrimination, and the Tribunal needs to use the *Canadian Human Rights Act* to eradicate this."

Q: How did the Tribunal hearing wrap up?

A: Canada's counsel provided a rebuttal and, despite the arguments put forth by the other groups, he reiterated some of his earlier points. It was confounding that he repeatedly referred to the matter as a *conundrum*.

The Tribunal Chair reserved judgment. She stated that this is a very complex matter, and she will carefully go through all the information and documents and provide a judgment as quickly as possible.