SCC File No.: 37208

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN :

CANADIAN HUMAN RIGHTS COMMISSION

APPELLANT

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT

- and -

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(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

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PART I

A. Overview

1. The African Canadian Legal Clinic ("ACLC") submits that the Federal Court of Appeal (FCA) erred in undermining the primacy of human rights legislation in Canada.[1] Specifically, the FCA erred in its finding that (i) the provision of benefits through non-discretionary legislation does not constitute a "service" under the *Canadian Human Rights Act* ("*CHRA*"),[2] (ii) the primacy of human rights legislation was not undermined by the Canadian Human Rights Tribunal's ("CHRT") interpretation of s. 5 of the *CHRA*.

2. First, Human Rights Tribunals often provide a more accessible route to justice than the Canadian Court system, which can be costly, time consuming and difficult to navigate without the assistance of counsel.

3. Second, the Tribunal gives the opportunity for the individual claimant's hardship, pain, or loss caused by the discriminatory law to be recognized in a legal forum. [3] African Canadians rely heavily on Human Rights Tribunals to have their experiences of anti-Black racism exposed and validated.

4. Third, a Tribunal's declaration that the law discriminates has denunciatory value that is important to social progress. It provides accountability, often for historically rooted injustices, by exposing and censuring the law. Declaratory relief provides a starting point for healing, reconciliation, and remedial action.

B. Statement of the Facts

5. The ACLC adopts and relies upon the facts pleaded by the Appellant in their Memorandum of Argument.

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[1] *Canadian Human Rights Commission v Attorney General of Canada*, 2016 FCA 200, [2017] 2 FCR 211.
[2] RSC 1985, c H-6 [*CHRA*].
[3] *Gwinner v Alberta (Human Resources and Employment)*, 2002 ABQB 685, 217 DLR (4th) 341, aff'd 2004 ABCA 210, 245 DLR (4th) 158 [*Gwinner*].

PART II – POSITION ON THE APPELLANT'S QUESTIONS

6. The ACLC concurs with the Appellant that the appropriate standard of review in this case is correctness, but that the standard of review does not matter as this appeal must be allowed on either standard.

7. The ACLC agrees with the Appellant's submission that the term "services" applies to benefits provided by way of legislated eligibility criteria. Furthermore, human rights statutes apply where claimants seek access to legislated benefits but are deprived due to discriminatory eligibility criteria.

PART III – STATEMENT OF ARGUMENT

8. Legislation that violates fundamental human rights protections should be subject to scrutiny and "review" by Human Rights Tribunals ("Tribunal"). Due to the systemic and pervasive nature of anti-Black racism, African Canadians rely on Human Rights Tribunals as a relatively more accessible and viable way to protect their equality rights. The declaratory relief available through such Tribunals is a vital mechanism for addressing past and continuing injustices against the African Canadian community.

A. Increased Accessibility of Human Rights Tribunals

9. As a historically marginalized group, African Canadians have suffered the combined barriers of institutionalized discrimination and socio-economic disadvantage.[4] As a result, for a racialized and marginalized claimant, a relatively less costly Tribunal hearing may be the only means to access justice.[5] It may represent the only accessible avenue for a lower income African Canadian to demonstrate to Parliament that the law must be amended to comply with

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[4] Ontario Human Rights Commission, "Policy and Guidelines on Racism and Racial Discrimination" (9 June 2005), see especially 1.4, online: Ontario Human Rights Commission.
[5] *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 22, [2016] 2 SCR 293 [*Edmonton East*].

human and Constitutional rights.[6] The ruling may also have the added benefit of informing the government's review of the law.

10. As a result of the specialized nature of Human Rights Tribunals, Tribunal members have increased experience and expertise in dealing with issues of discrimination and identifying "systemic problems or recurring patterns across multiple individual disputes."[7] The Tribunals' experience with issues of race-based discrimination and the necessity of such experience in the current public climate is clear: in 2014[8] and 2015,[9] race was the third highest ground of discrimination claimed before the Canadian Human Rights Commission ("CHRC"), following disability and national/ethnic origin. In 2016, it rose to second.[10]

11. In contrast, the long, costly and complicated nature of Constitutional challenges in Superior Court renders that forum largely inaccessible for marginalized and economically disadvantaged groups. It is no coincidence that there is not a critical body of jurisprudence that demonstrates that Superior Courts have dealt with or understand the intersection of racism and section 15 of the *Charter*.[11] It has been noted that, relative to Courts, "administrative tribunals may be especially well-placed to develop and implement novel

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[6] *Knoll North America Corp v Adams*, 2010 ONSC 3005 (CanLII), 104 OR (3d) 297; *Bekele v Cierpich*, 2008 HRTO 7 (CanLII); *Armstrong v Anna's Hair & Spa*, 2010 HRTO 1751 (CanLII); *Nassiah v Peel (Regional Municipality) Services Board*, 2007 HRTO 14 (CanLII); *Pieters v Peel Law Association*, 2010 HRTO 2411 (CanLII) aff'd 2013 ONCA 396, 116 OR (3d) 81; David M Tanovich, "The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System," (2008) 40 SCLR (2d) 656; David Tanovich, "Using the Charter to Stop Racial Profiling: The Development of an Equality-Based Conception of Arbitrary Detention," (2002) 40 (2) Osgoode Hall Law Journal 145.

[7] Christie Ford, "Dogs and Tails: Remedies in Administrative Law" in Lorne Sossin and Colleen Flood, eds, *Administrative Law in Context*, 2d ed (2012) at 4 [Dogs and Tails].

[8] Canadian Human Rights Commission, "2014 Issues Outcome Engagement – Annual Report to Parliament" at 18, online: Canadian Human Rights Commission.

[9] Canadian Human Rights Commission, "By the Numbers" (2015), online: Canadian Human Rights Commission.

[10] Canadian Human Rights Commission, "People First – The Canadian Human Rights Commission's 2016 Annual Report to Parliament" at 57, online: Canadian Human Rights Commission.

[11] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15.

remedies thanks to their subject specific expertise, their field sensitivity, and their particular statutory mandates."[12] It is therefore respectively submitted that the Superior Courts should not be the sole avenue of redress for these claimants.

B. Recognition of Claimant's experiences in a legal forum

12. Access to a Tribunal to obtain a ruling that a law discriminates on the basis of race, contrary to the *CHRA*, has important legal and moral value to the claimant, society, and the administration of justice, irrespective of the unavailability of monetary or Constitutional remedies.

13. Even in cases where monetary or other remedies are unavailable, a finding of discrimination by a Tribunal may serve to identify sources of harm while validating the individual experiences of African Canadians. Public recognition of wrongdoing can facilitate healing and reconciliation, as occurs where a government issues a formal apology or declines to continue litigating an issue. It is the Tribunal's recognition of the issues at stake that provides the claimant(s) with a sense of justice having been done and allows them to move forward.

14. Likewise, a Tribunal's declaration that the law discriminates legitimizes the claimant's position that they have suffered an injustice that needs to be remedied by the government.[13] It provides a sense that justice has been served even when a remedy is contingent on the government responding to that finding.

15. The decision of the CHRT 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)*[14] illustrates the influence of a Tribunal finding in recognizing and validating the experience of those who have been discriminated against. The CHRT's finding validated the experiences of

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[12] Dogs and Tails, supra note 7 at 7.
[13] *Gwinner*, supra note 3.
[14] 2016 CHRT 2 (CanLII) [*First Nations Child and Family Caring Society*].

thousands of First Nations' children, youth and families and educated the public about this important issue.[15]

16. An analogous source of validation through declaratory relief is demonstrated by the recent Coroner's Inquests into the police shootings of unarmed Black men with mental health differences. Most recently, the Inquests into the shooting deaths of Jermaine Carby and Andrew Loku examined the issues through the lens of anti-Black racism. Those Inquests touched on the *Charter* right of equality in the context of police use of lethal force. In both cases, the juries found the deaths at the hands of a police officer to satisfy the Inquest's definition of a homicide and provided useful recommendations for the government.[16]

C. The *Charter* Dialogue and the Value of a Finding of Discrimination

17. The ACLC submits that a Tribunal's declaration that a law is discriminatory has advisory value that is important to legal and social progress. It also provides accountability by exposing and censuring the law as racist or sexist. Declaratory relief by Tribunals is a vital vehicle for identifying sources of discrimination.

18. This Court has consistently recognized that declaratory relief is "an effective and flexible remedy for the settlement of real disputes": *R v Gamble*.[17]

19. A Court can properly issue a declaratory remedy so long as it has the jurisdiction over the issue at bar, the question before the Court is real and not theoretical, and the person raising it

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[15] See also John Paul Tasker, "Federal government failing to comply with ruling on First Nations child welfare: tribunal", *CBC News* (15 September 2016) online: CBC News; Amnesty International, "A Year to Get it Right: Amnesty International's 2017 Human Rights Agenda for Canada" (23 January 2017) at 7, 9-10, 37 online: Amnesty International.

[16] Makda Ghebreslassie, "'We are going to hold their feet to the fire' : Advocates want Loku inquest recommendations in place in 1 year", *CBC News* (30 June 2017) online: CBC News; Office of the Chief Coroner, *Verdict of Coroner's Jury (Carby)*, Ontario Ministry of Community Safety and Correctional Services; Office of the Chief Coroner, *Verdict of Coroner's Jury (Loku)*, Ontario Ministry of Community Safety and Correctional Services.

[17] [1988] 2 SCR 595 at 649, 1988 CanLII 15 (SCC) at para 81.

has a real interest to raise it. This Court's ruling in *Khadr v Canada*[18] affirmed the value of declaratory relief in advancing social justice:

> [47] The prudent course at this point, respectful of the responsibilities of the executive and the courts, is for this Court to allow Mr. Khadr's application for judicial review in part and to grant him a declaration advising the government of its opinion on the records before it which, in turn, will provide the legal framework for the executive to exercise its functions and to consider what actions to take in respect of Mr. Khadr, in conformity with the *Charter*.
>
> [48] The appeal is allowed in part. Mr. Khadr's application for judicial review is allowed in part. This Court declares that through the conduct of Canadian officials in the course of interrogations in 2003-2004, as established on the evidence before us, Canada actively participated in a process contrary to Canada's international human rights obligations and contributed to Mr. Khadr's ongoing detention so as to deprive him of his right to liberty and security of the person guaranteed by s. 7 of the *Charter*, contrary to the principles of fundamental justice. Costs are awarded to Mr. Khadr.

20. The value of declaratory relief to the victims of discrimination is supplemented by its contribution to the development of an equality rights dialogue[19] between Human Rights Tribunals and various legislative bodies.

21. Human Rights Tribunal rulings serve as a basis for dialogue with governments about laws that discriminate on the basis of race. Their value is not tied to or reduced by an inability to strike down legislation. It is more multifaceted. Similar to how other issues of public interest are identified through litigation, tribunals contribute to dialogue and engagement thereby fulfilling a broader mandate.

22. Tribunals should be given the ability to tackle public interest issues that fall within their broader mandate so that they are able to serve a purpose similar to that of Superior or Federal Court proceedings in educating the government about flawed laws, albeit at a lesser cost. For

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[18] 2010 SCC 3 at paras 47-48, [2010] 1 SCR 44 [*Khadr*].
[19] P Hogg and A Bushell, "The *Charter* Dialogue Between Courts and Legislatures" (1997), 35 Osgoode Hall LJ 75 [*Charter* Dialogue].

instance, in *Thibaudeau v Canada*,[20] provisions of the *Income Tax Act* concerning child support deductions were challenged under s. 15(1) of the *Charter*. A majority of this Court declined to find that the challenged provisions contravened s. 15(1). Despite having won in the Courts, Parliament decided to amend the challenged provisions due to the media interest the case had generated.[21] As noted by Peter Hogg and Alison Bushell:

> Canada's legislators are not indifferent to the equality and civil liberties concerns which are raised in *Charter* cases, and do not always wait for a court to "force" them to amend their laws before they are willing to consider fairer, less restrictive, or more inclusive laws. The influence of the *Charter* extends much further than the boundaries of what judges define as compulsory. *Charter* dialogue may continue outside the courts even when the courts hold that there is no *Charter* issue to talk about.[22]

23. Likewise, in *Khadr*, this Court found that the appropriate remedy was to grant Mr. Khadr a declaration that his *Charter* rights had been infringed and to allow the government "a measure of discretion in deciding how best to respond."[23]

24. The declaration in *Khadr* served as an important advisory function to the public, the legal community and the legislature. There is no doubt that it inspired a settlement to the dispute. As this Honourable Court stated in *Solosky v The Queen*,[24] "[t]he fact that a declaration today cannot cure past ills, or may affect future rights, cannot of itself, deprive the remedy of its potential utility in resolving the dispute…."[25]

25. The ACLC therefore submits that the inability of Tribunals to render legislation invalid does not necessarily preclude them from participating in a robust equality rights dialogue with legislatures in order to bring attention to discriminatory laws or regulations. This Court has

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[20] [1995] 2 SCR 627 [*Thibaudeau*].
[21] A further discussion of dialogue occurring when laws are upheld can be found in *Charter* Dialogue, supra note 5 at 104.
[22] *The Charter Dialogue*, supra note 17 at 105.
[23] *Khadr*, supra note 16 at para 2.
[24] [1980] 1 SCR 821 [*Solosky*].
[25] *Ibid*, at para 834.

repeatedly recognized the specialized nature of administrative decision-makers.[26] An effective remedy could be a pronouncement by the Tribunal that the law has discriminatory features that may be vulnerable to a *Charter* challenge, or could be rendered inoperable.[27]

PART V – REQUEST FOR ORAL ARGUMENT

26. This Honourable Court has granted the ACLC five (5) minutes for oral argument, by way of Order dated August 24, 2017.

PART IV – COSTS

27. The Intervener does not seek costs and asks that no costs be awarded against the ACLC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at TORONTO, this 3rd day of October, 2017.

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[26] *Edmonton East*, supra note 5 at para 22.

[27] *Gwinner*, supra note 3; *Québec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, 2004 SCC 30 at paras 26-27, [2004] 1 SCR 789.

PART VI – AUTHORITIES CITED

LEGISLATIVE AUTHORITIES	Cited at paragraph:
Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15 / *Charte canadienne des droits et libertés*, partie I de la *Loi constitutionnelle de 1982*, constituant l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982, c 11, art 15.	11, 16, 19, 22, 23, 25
Canadian Human Rights Act, RSC 1985, c H-6, s 5 / *Loi canadienne sur les droits de la personne*, LRC (1985), ch H-6, art 5.	1, 12
JURISPRUDENCE	
Armstrong v Anna's Hair & Spa, 2010 HRTO 1751 (CanLII).	9
Bekele v Cierpich, 2008 HRTO 7 (CanLII).	9
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Knoll North America Corp v Adams, 2010 ONSC 3005 (CanLII), 104 OR (3d) 297.	9
Nassiah v Peel (Regional Municipality) Services Board, 2007 HRTO 14 (CanLII).	9
Pieters v Peel Law Association, 2010 HRTO 2411 (CanLII) aff'd 2013 ONCA 396, 116 OR (3d) 81.	9
Québec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal, 2004 SCC 30 at paras 26-27, [2004] 1 SCR 789.	25

SECONDARY SOURCES

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SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal)

FACTUM of the AFRICAN CANADIAN LEGAL CLINIC INTERVENER

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