



COMMUNITY NOTICE

September 9, 2014

Update on the Social Case Appeal Hearing

The hearing of the federal government's appeal of the NB, NS and PEI First Nations' win in the Social Case occurred yesterday morning at the Law Court in Halifax. Over 50 people, including Chiefs, Band Councillors, Social Development Administrators (SDAs), Kwilmu'kw Maw-klusuaqn Negotiations Office's Senior Mi'kmaq Advisor and community members filled the court room.

In the hearing, the lawyer for Canada tried to argue that the Court decision should be overturned as the Treasury Board Authority for social assistance always meant that social assistance rates and eligibility requirements had to strictly mirror provincial rates and requirements. Canada said that they had failed to enforce this requirement for many years. They also claimed that any consultation that was owing, was met through training sessions put on in 2011.

Our legal representatives, Naiomi Metallic and Jason Cooke, of Burchells LLP, reviewed the history of social assistance on reserve and many documents filed in the case with the judges in order to show that there was a clear and intentional change in approach taken by Aboriginal Affairs and Northern Development Canada (AANDC) in 2011. AANDC went from interpreting its Treasury Board Authority from requiring 'reasonable comparability' with provincial rules to having it strictly 'mirror' provincial rules.

Burchells LLP pointed out that this did not result in identical treatment between provincial recipients and First Nations recipients. For example, with their changes, AANDC was not providing a rental subsidy whereas welfare recipients in the provinces do receive one. AANDC did this to save money and in doing so their staff realized that the changes would result in significantly lower payments to First Nation recipients across the 30 First Nation communities in the Maritimes. Despite knowing that this would cause hardship (including causing more child welfare apprehensions), AANDC still went ahead. Naiomi Metallic emphasized to the Court that AANDC cannot just do whatever it wants; there have to be some limits on what it can do to First Nations people and she asked the Court to spell out some of those limits in its decision.

The judges listened very attentively to the Burchells lawyers' arguments and asked many questions. They will be issuing a written decision, which can normally take anywhere from 3 months up to a year.

The Burchells lawyers feel good about how the hearing went and look forward to getting a decision. They would like to thank all those who were able to make it to the hearing – they feel that it made a real difference!

For additional information, please contact:

Crystal Dorey

Communication Officer

Kwilmu'kw Maw-klusuaqn Negotiation Office

crystaldorey@mikmaqrights.com

902-843-3880