

PRESS RELEASE

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Document shows that the First Nations' Social Case would have had a different outcome

In October of this year, the Supreme Court of Canada announced that it would not hear the First Nations' case on Social Assistance brought forth by the Assembly of Nova Scotia Mi'kmaq Chiefs, as well as Chiefs in New Brunswick and Prince Edward Island. The *Chief Jesse Simon v. Attorney General of Canada* case was a four-plus year fight for First Nations' to stop Canada from proceeding with drastic cuts and changes to the Social Assistance Program on-reserve.

Recently our research team discovered a critical government document that was not produced by Canada, which would have changed the outcome of the case.

The document, filed as "Circular 107" by the Government of Canada, confirms that, from the outset of providing social assistance on-reserve based on provincial rates and standards in 1964, Indigenous and Northern Affairs Canada (then Indian Affairs) permitted flexibility with the application of provincial rules – exactly what the Chiefs had argued for throughout the case. Circular 107 clearly states that it was in fact, the policy of the Department to allow adaptation of provincial rates and standards so that local circumstances could be taken into account. This key document would have likely changed the outcome of the court proceedings drastically.

The Federal Court of Appeal decision, overturning the Chiefs win in the Federal Court, ruled that Department funding authorities required strict application of provincial rules and the Department had always followed this. Circular 107, which is a government policy statement on how those authorities were to be implemented, confirms the opposite. "Circular 107 appears to be fatal to the reasoning of the Federal Court of Appeal and the position taken by the government throughout the case," said Naomi Metallic, legal counsel for the First Nations. "It means flexibility and adaptation of provincial rules was the prevailing departmental policy and any break away from this, which the changes proposed under the Harper government clearly were, trigger legal duties on the part of the government, including the duty to meaningfully consult and study impacts before making drastic changes."

Circular 107 also confirms the policy that First Nations are to receive the equivalent of the "full range of assistance" available to needy persons in the provinces. The Chiefs argued throughout the proceedings that the proposed change would not result in equal treatment to people in the provinces, because they did not account for the range of complementary social development programs that low income individuals receive from the provinces. Circular 107 suggests this would be inconsistent with government's original policy.

"It's important for us, and for the people we represent, to find out why this was left out of the court case," stated Chief Leroy Denny, Social Portfolio Lead for the Assembly of Nova Scotia Mi'kmaq Chiefs. "Given the importance of this document to the case, it is hard to understand how it could have been overlooked."

The government had the legal obligation to put all relevant legal documents on the record and Canada failed to meet its legal duty to disclose this key evidence to the court and the Chiefs.

"The government needs to make this right," continued Denny. "Collectively, the Maritime First Nations have spent a lot of time and money to bring this case to court when it's now clear that Canada had options other than forcing our people into greater poverty."

The Chiefs of Nova Scotia, New Brunswick and Prince Edward Island have brought this Circular to the attention of the Federal Government, the Minister of Indigenous Affairs, the Minister of Justice and the Attorney General. We expect that the Government of Canada will work with us to address the significant omission and to negotiate a better social assistance plan for the long term.

The Kwilmu'kw Maw-klusuaqn Negotiation Office/Mi'kmaq Rights Initiative works on behalf of the Assembly of Nova Scotia Mi'kmaq Chiefs in the negotiations and consultations between the Mi'kmaq of Nova Scotia, the Province of Nova Scotia and the Government of Canada. KMKNO was developed by the Mi'kmaq, for the Mi'kmaq. The purpose of these negotiations and consultations is to implement our Aboriginal and Treaty rights from the Treaties signed by our ancestors in the 1700's. For further information visit our website at www.mikmaqrights.com

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For additional information:

Crystal Dorey, Communications Officer
Kwilmu'kw Maw-klusuaqn Negotiation Office
Phone: (902) 843-3880 Cell: (902) 957-0549
E-mail: crystaldorey@mikmaqrights.com