



News release

18 April 2012

Federal Court decision clears the way so that landmark discrimination case on First Nations children can finally be heard

(Ottawa) In a decision released today, the Federal Court directed the Canadian Human Rights Tribunal to examine evidence that First Nations children are being discriminated against because of federal underfunding of child protection services on reserve. This decision confirms that the federal government can be held accountable under the Canadian Human Rights Act for ensuring that First Nations people on reserve have fair and equitable access to government services.

The First Nations Child and Family Caring Society (FNCFCS) and the Assembly of First Nations (AFN) filed the discrimination complaint more than five years ago. However the evidence has never been examined because of a series of technical objections raised by federal government lawyers.

“Today is a bright day for First Nations children,” says FNCFCS Executive Director Dr. Cindy Blackstock. “The evidence of discrimination in the delivery of basic child welfare services, and the terrible consequences for First Nations children will finally be given the serious consideration that it deserves.”

“This decision highlights the importance of immediately working in mutual respect and partnership as required under the United Nations Declaration on the Rights of Indigenous Peoples,” said AFN National Chief Shawn A-in-chut Atleo. “We must all agree that lengthy and costly legal battles are not the way forward. The priority is to deliver on justice and fairness for our children, and the way forward must be about working together focused on real action and results for our kids and all First Nation peoples.”

Although the inequities in First Nations child welfare have been well documented by the Auditor General of Canada and others, the discrimination complaint was dismissed by Canadian Human Rights Tribunal Chair Shirish Chotalia who agreed with Canada that federally funded child welfare services on reserve should not be compared with provincially funded child welfare services off reserve even though the same laws apply. AFN, the Caring Society and the Canadian Human Rights Commission were concerned that such a ruling would immunize Ottawa from any accountability for inequitable services on reserve and thus the decision was appealed to Federal Court. The hearing was held on Feb 13-15, 2012 with approximately 200 people attending each day.

"Today's Federal Court decision is a victory for the principles of fairness and justice, but most importantly for First Nations children. The battle is not over and we will not rest until our children receive the services they need and that are routinely provided to non-First Nations children across this country," said AFN Ontario Regional Chief Angus Toulouse.

In the decision, the Federal Court confirms that Canadian legislation must be interpreted in a manner consistent with the Charter, that Aboriginal peoples should not be excluded from Canadian Human Rights mechanisms, and that they occupy a unique position within Canada's constitutional and legal structure. It further confirms that despite the disadvantage and marginalization experienced by many First Nations people, the appropriate applications of international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child are relevant, appropriate and can lead to significant application of justice.

The Court also affirmed that the interpretation of Canadian laws, including the Canadian Human Rights Act, should reflect the values and principles of international human rights laws and, in its reasons, referred to instruments such as the Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples.

"International human rights laws and standards are clear that there can be no excuse for discrimination," said Amnesty International Canada spokesperson Craig Benjamin. "We are very pleased that the Court has sent such a strong message to the federal government about its duty to live up to its international human rights obligations."

The Federal Court has instructed the Tribunal to begin hearings as soon as possible into the substance of the complaint.

The Canadian Human Rights Commission, the Chiefs of Ontario and Amnesty International have all intervened in support of the complaint.

- 30 -

FOR MORE INFORMATION PLEASE CONTACT:

Cindy Blackstock, First Nations Child and Family Caring Society: 613-230-5885 ext. 222 or cblackst@fncaringsociety.com

Jenna Young, Assembly of First Nations: 613-241-6789, ext. 401 or jyoung@afn.ca

André Morriveau, Chiefs of Ontario: 416-597-1266 or andre@coo.org

Elizabeth Berton-Hunter, Amnesty International Canada: 416-363-9933, ext. 332