

National Children's Alliance (NCA)

E-mail Digest, week of 17-21 November, 2003

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| 1. Update: | National Plan of Action |
| 2. Reminder: | Monitoring and Advocacy Workshop |
| 3. Announcement: | Health Canada Consultation |
| 4. Invitation: | NCA Annual National Symposium |
| 5. News: | New case law relating to children's rights |
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1. The much-anticipated National Plan of Action* will ultimately not go to the Cabinet before the New Year. Following the consultative process that concluded in June of this year, Health Canada and HRDC had taken over the drafting of the Plan, but it has since been returned to Senator Pearson. A draft will be circulated in December for feedback. The time line for the Plan eventually going to Cabinet is not yet confirmed, which means that the Government will thus be late in its commitment to submit its National Plan to the United Nations Committee on the Rights of the Child.

*In May 2002, at the United Nations Special Session on Children, leaders of the world's governments committed themselves to creating a better world for children. These commitments are described in full in the outcome document from the Special Session on Children entitled "A World Fit for Children". To help them fulfil their promises, the governments of the world agreed to prepare "national action plans with a set of specific time-bound and measurable goals and targets ... taking into account the best interest of the child, ... and in conformity with all human rights and fundamental freedoms" (paragraph 59 of A World Fit for Children).

2. There is still space available for interested members to participate in the NCA Workshop "Keeping the Promises – the Role of Monitoring in the Advocacy of the National Children's Alliance". It will take place on 27th and 28th November at the Chateau Cartier in Aylmer, Quebec. Hotel rooms and travel subsidies are still available on a first-come, first-serve basis. Please visit <http://www.nationalchildrensalliance.com/> to register: you will be prompted to enter the username : ncamember and the password: children.

3. The Office of Nutrition Policy and Promotion of Health Canada will be holding a meeting on 20 January 2004 to share findings from the on-going review of Canada's Food Guide to Healthy Eating and discuss next steps with

stakeholders. The NCA is looking for volunteers to attend this consultation on behalf of the Alliance. The meeting will be held at the RA Centre, 2451 Riverside Drive, Ottawa, from 9:00am to 4:00pm. If interested in participating, please contact Victoria Smith by e-mail at: Food_Guide_Review@hc-sc.gc.ca or by telephone at (613) 941-8597 for registration information. If you do decide to attend, please also let the Alliance know by e-mailing Tara Ashtakala, Manager of the NCA, at <mailto:tashtakala@nvo-onb.ca>.

4. Mark your calendars! The NCA Annual National Symposium is being planned for March, 2004. Due to feedback we have received from our members about having a meeting outside of Ottawa, we have looked into the possibility of holding the Symposium in Kananaskis, Alberta, where we are being offered excellent rates for hotel accommodation (\$75/night). The dates being considered are the 25th and 26th, as these are the only dates where there is no spring break for school pupils in any of the provinces. This year's event will focus on the overall theme of Monitoring: different sessions will examine diverse aspects of monitoring, including: election advocacy, Aboriginal issues, access to data. The overall goal of the Conference is to learn about the current state of monitoring of government commitments and measures relating to children's progress, to gather knowledge about previous and current experiences in monitoring children's rights and well-being and to determine how civil society in Canada can move forward in developing a third-party role in monitoring. Participation will be open to NCA members, to provincial/regional/local affiliates of NCA Member organizations and to Aboriginal groups. Travel subsidies will be available for airfare to and from Kananaskis; participants will be expected to cover the cost of accommodation at the hotel where the Symposium is being held.

5. Minority Language Education Rights were the subject of a Supreme Court decision on 6 November 2003, in the case of Doucet-Boudreau v. Nova Scotia (Minister of Education). The case sets an important precedent for the enforcement of the right of English or French linguistic minorities in Canada to educate their children in their language, as enshrined in Section 23 of the Canadian Charter of Rights and Freedoms; it also establishes the validity of judicial monitoring of government obligations under the *Charter* in general.

In this case, Francophone parents living in five school districts in Nova Scotia applied for an order directing the Province and the Conseil scolaire acadien provincial to construct, furnish and equip, out of public funds, homogeneous French language facilities and programs at the secondary school level. The trial judge found that the Government of Nova Scotia violated s. 23 by delaying the

fulfilment of its obligations, despite clear evidence that assimilation of Francophones in Nova Scotia was reaching critical levels. Under the enforcement provision of the Charter at s. 24, he ordered the Province and the Conseil to use their "best efforts" to provide school facilities and programs by particular dates; he also retained jurisdiction to hear reports on the status of those efforts. The Province appealed the latter part of the order and the majority of the Court of Appeal agreed. When the parents appealed to the Supreme Court of Canada, a majority of the justices decided that an appropriate and just remedy in the circumstances of a *Charter* claim is one that meaningfully vindicates the rights and freedoms of the claimants and employs means that are legitimate within the framework of this country's constitutional democracy. While minority language education rights are granted to individuals, they apply only if the "numbers warrant". For every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation of linguistic minorities, which carries the risk that numbers might cease to "warrant" and governments could thus potentially avoid the duties imposed upon them by s. 23. The meaningful protection of *Charter* rights, in particular the enforcement of s. 23, combined with the urgent need for timely action in protecting linguistic minorities, may thus in some cases "require the introduction of novel remedies", said McLachlin C.J. and Gonthier, Iacobucci, Bastarache and Arbour JJ.

Justices Major, Binnie, LeBel and Deschamps dissented, arguing that superior courts' powers to craft *Charter* remedies are bound by rules of fundamental justice and by constitutional boundaries. As a general rule, courts should avoid interfering in the management of public administration. "Once they have rendered judgment, they should resist the temptation to directly oversee or supervise the administration of their orders and operate under a presumption that judgments of courts will be executed with reasonable diligence and good faith". In this case, the trial judge acted outside his bounds, the dissenting justices said, and breached the constitutional principle of separation of powers. Proper consideration of the principles of procedural fairness and the separation of powers is required to establish an "appropriate and just" remedy under the terms of s. 24(1) of the *Charter*. In this case, the minority opinion argued that refusing superior courts the power to order reporting hearings would not deny a claimants' access to a recognized *Charter* remedy. The deadline ordered by the trial judge for the Government to complete construction of the facilities, along with the possibility of a contempt order for failing to do so, would have been sufficient to ensure compliance with the order.

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