

**COMPLAINT FORM  
CANADIAN HUMAN RIGHTS COMMISSION**

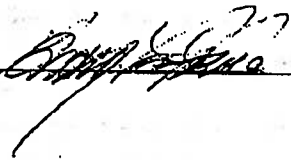
We the Mississaugas of the New Credit First Nation (MNCFN) Chief and Council wish to lodge, what we believe to be, a 'Prima Facie Case of Systemic Discrimination' against the Department of Indian and Northern Affairs Canada (INAC) on the basis of race and disability.

We receive funding from Indian & Northern Affairs Canada to provide elementary school education to our members residing on our reserve. If any of our member children wish to attend school off reserve their families must pay the tuition costs; this includes access to specialized schools for special needs as well. With regards to Special Education we received \$171,123 from INAC for the 08/09 school; 125,143 of which was used in our LSK elementary school to pay the Special Educ. Teacher and four Education Assistants on behalf of 49 students, the balance of \$45,980 was targeted to address the needs of our students in the secondary school system (off reserve). This requirement to pay tuition costs (for either public school or specialized public schools) does not apply to parents and their children who live off the reservation.


**Chronology of Events:**

- Spring 2008 in meeting held between MNCFN educational staff and specialized workers from Landsdowne Children's Centre, the Grand Erie District School Board (GEDSB), Chedoke Medical Centre it was concluded that two special needs children (members) with Downs Syndrome residing in the community could not be accommodated at MNCFN's LSK elementary school
- September 2008 a meeting was held with representatives from the (GEDSB) to identify a school that could meet the needs of the children  
-school in Cayuga holding two seats pending letter of sponsorship at the cost of \$175,432 (including transportation) for 2008/09
- In September of 2008 it was brought to the attention of the MNCFN Chief and Council that there were two special needs twins with Downs Syndrome who could not be accommodated at our school  
-Special Education funding for both the elementary and secondary schools provided for 08/09 by INAC was 171,123 (45,980 provincial special needs to support secondary school students, 125,143 LSK –used for Special Educ. Teacher, and four EA salaries to work with 49 LSK children

Signature



Date



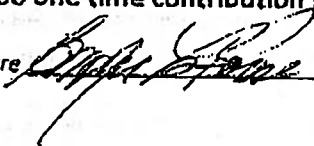
- October 14/08 MNCFN Council Motion resolved to find funding to support the two children for the 2009-09 school year (council so resolved while recognizing the costs are well beyond the Special Education funds received)
  - Director of Education to research funding sources to cover the costs of equipment and tuition
  - draft letter to INAC to inform that Council has taken interim steps to get the children in school but it is their position that INAC is responsible for the costs and to request meeting to discuss MNCFN needs for special/high cost needs educational funding
- December 08 Chief, Executive Director and Education Director met with INAC officials regarding funding needs for the two Special Needs Children
  - MNCFN position is this is an 'exceptional circumstance' as per clause 5.1 and 5.2 of the Multiyear Funding Agreement with INAC:

*5.1 In the event that exceptional circumstances occur during the term of this Agreement, the council may return to the Minister to seek changes to the level of funding or to obtain assistance.*

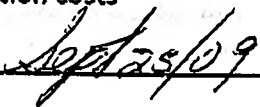
*5.2 Section 5.1 is intended to address exceptional circumstances (including, but not limited to health, safety and socio-economic issues) which were not reasonably foreseeable at the time this Agreement was entered into and which have a significant impact on the Council's performance of the terms and conditions of this Agreement. In the event the Minister agrees to change the level of funding, that change shall be made by way of an Amending Agreement.*

- Dec. 18, 2008 MNCFN Proposal to INAC requesting funding pursuant to sections 5.1 and 5.2 of our Multiyear Funding Agreement:
  - Transportation (5yrs subject to a 3% yearly increase) \$38,000
  - Specialized Student Support Services (cost \$132,166) yearly request of \$97,660
- January 2009 INAC indicates MNCFN to receive one time capital funding in the amount of \$93,659 (as discussed in Dec. 08 meeting use to offset transportation costs for the children --ie. Need escorts on bus, with special restraints etc)
  - arrangement made with Caledonia Transport to lease new bus purchased with the funds with actual annual payment being an offset (\$11,497) of the costs to transport the two children
- March 10, 2009 INAC indicates the department approved:
  - \$16,400 for assistance with tuition and student accommodation costs for 5 yrs.
  - \$39,000 one time contribution for transportation costs

Signature



Date



- April 9, 2009 INAC clarifies why only a portion of the funding request was approved for the exceptional circumstance:

*The majority of your request fell under funding authorities related to Special Education funding. Currently the Chiefs of Ontario allocate all special education funding as per a formula based approach. As such all funds in this area are exhausted annually INAC cannot provide any additional funds under this authority.*

*However the funding that was approved fell under capital, tuition, and student transportation services authorities in which INAC could provide additional dollars:*

*-\$93,659 purchase special needs vehicle*

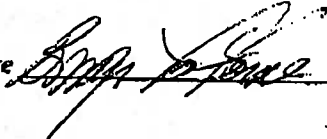
*-\$16,400 for tuition/student accommodation for five years*

*-one time contribution of \$39,000 for O&M cost related to the special needs transportation vehicle*

**CONCLUSION: SYSTEMIC DISCRIMINATION ON THE BASIS OF RACE AND DISABILITY**

The Canadian Constitution provides for a separation of federal and provincial areas of jurisdiction. The federal government is responsible for Status Indians and their lands, while the provincial governments are responsible for the provision of services such as education. In Ontario as in other provinces children of residents do not have to pay to attend school (revenue is obtained through property tax) including schools that specialize in addressing the needs of special needs children. Generally, children living on reserve receive schooling on reserve (federal schools on reserve have been delegated to band councils through funding arrangements). First Nations who have children in need of Specialized Schools must pay directly to the Municipal school board for such services. As the Special Education funding received from INAC is insufficient to cover such costs, the impact of the First Nation not paying for these costs is a denial of service to children in need, or to pay and possibly place the First Nation in a deficit situation. First Nations that go into a 8% deficit may be placed under third party management by INAC.

This jurisdictional issue and negative impact of denial of service for First Nations was recognized by the Canadian government in the early 1960's with regards to Child Welfare and Social Assistance. That is, the 'catch 22' argument between the federal government and provinces was that the federal government should pay for the services given their Constitutional responsibility for First Nations, while the federal government argued that such services were the Constitutional responsibility of the provinces. Subsequently, the federal government developed a cost-share agreement called the "1965 Welfare Agreement, that Ontario did become a signatory to, and thus addressed the issue of provision of service to First Nations living on reserve. This information is provided to illustrate that jurisdictional issues can and must be addressed to ensure the access to critical services to First Nations living on reserve.

Signature  Date Sept 25/09

## **FURTHER DETAILS:**

The following paragraphs were inserted by amendment made in January of 2010. They concern the “services” that the special needs children were denied, Canada’s role in the provision of those services, and the proper “comparison group.”

### **Disability claim:**

Canada discriminated against the two special needs children on the ground of **disability** in relation to “education and schooling services” (“the services”) when compared to “children living on the MNCFN reserve without special needs” (“the comparison group”), or in the alternative, when compared to children living elsewhere in Canada and Ontario without special needs.

Canada is engaged in the provision of education and schooling services for children living on the MNCFN reserve and on other First Nations reserves across Canada. For example,

- 1) Canada funds, and is responsible for, the education and schooling of First Nations children living on reserve;
- 2) Canada’s First Nations elementary/secondary education program pays for on-reserve schools, reimbursement to provinces for First Nations children attending off-reserve provincial schools, and support services such as transportation, counselling, accommodation, and financial assistance;
- 3) Canada determines the amount of funding available for the education and schooling of on-reserve First Nations children;
- 4) Canada determines the funding available to accommodate on-reserve special needs First Nations children so that they can receive comparable education and schooling services;
- 5) Canada has legal and *de facto* control over the level and quality of education and schooling services provided to on-reserve First Nations children; and
- 6) Canada is one of the main architects of the education system for First Nations children living on First Nations land.

MNCFN also claims that the discrimination against these two special needs children is just one example of Canada’s systemic discrimination against special needs children living on the MNCFN reserve and other reserves across Canada concerning the provision of education and schooling services.

### **Race claim:**

Canada discriminated against the two special needs children on the ground of **race** in relation to “education and schooling services (including special education)” (“the services”) when compared to “non-First Nations children with special needs living in Ontario, other Canadian provinces, and/or the three Canadian territories” (“the comparison group(s)").

As detailed above, Canada is engaged in the provision of education and schooling services (including special education) to First Nations children living on reserves. In addition, as part of Canada's constitutional federal jurisdiction and responsibility, Canada is engaged in the provision of education and schooling services (including special education) in the three Canadian territories: Yukon, Northwest Territories, and Nunavut. For example,

- 1) Canada has the ultimate constitutional jurisdiction over all matters in the territories;
- 2) Canada provides between 70 and 100 percent of the funding for social programs in the territories, including funding for education and schooling services (including special education); and
- 3) Canada has *de facto* control over the level and quality of education and schooling services (including special education) provided in the territories.

MNCFN also claims that the discrimination against these two First Nations special needs children is just one example of Canada's systemic discrimination against on-reserve First Nations children with special needs in the provision of education and schooling services (including special education) on the MNCFN reserve and across Canada.

#### **Facts relevant to the race and disability claims:**

Canada denied the two special needs children education and schooling services when, among other things, it did not provide the funding required to send them to a school that could accommodate their special needs. Although MNCFN has provided the required funding, this cannot continue in the future (as discussed below) and does not change Canada's denial of services. The MNCFN and the education authority for the MNCFN (the LSK Education Authority) do not have enough funding or revenues to accommodate the educational and schooling needs of these two special needs children. Other highly disabled children living on the MNCFN reserve will soon require education and schooling services. MNCFN and the education authority also do not have enough funding or revenues to provide these children with comparable education and schooling services.

The discrimination against the two special needs children is ongoing, as is the related systemic discrimination.

MNCFN retains the right to disclose additional material facts, adjust its position on the legal issues, and seek additional forms of relief later in these proceedings, particularly after the Commission investigation has occurred and in the statement of particulars required under Rule 6 of the *Canadian Human Rights Tribunal Rules Of Procedure*.