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JUL 30 2010

Ms. Cynthia Jamieson  
Mississaugas of the New Credit First Nation  
2789 Mississauga Road  
RR 6  
Hagersville, Ontario N0A 1H0

Dear Ms. Jamieson:

I am writing to inform you of the decision taken by the Canadian Human Rights Commission in your complaint (20091016) against Indian and Northern Affairs Canada.

Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to subsection 41(1) of the *Canadian Human Rights Act*, to deal with the complaint.

The decisions of the Commissions are attached.

The officer responsible for the complaint will contact you to discuss the matter further.

For your information, either party to a complaint can ask the Federal Court to review a Commission's decision under subsection 18(1) of the *Federal Courts Act*. The application to the Court must normally be filed within 30 days of receipt of the Commission's decision. Also, please note that the Court has found that the Commission cannot be a respondent in a judicial review of its own decision. Please refer to Rule 303(1) of the Federal Courts Rules, which indicates that an applicant shall name as a respondent every person directly affected by the order sought in the application, other than the tribunal whose decision is under review. To enquire about the procedures, please contact the Federal Court office in Ottawa at (613) 992-4238 or visit the website at [www.fct-cf.gc.ca](http://www.fct-cf.gc.ca).

Yours sincerely,

David Langtry

Encl.



## Record of Decision Under Sections 40/41

### Complaint Information

File Number(s): 20091016  
Date of Complaint(s): September 28, 2009  
Complainant(s): Mississaugas of the New Credit First Nation  
Respondent(s): Indian and Northern Affairs Canada

### Decision under section 41(1)

The Commission decided for the reason(s) identified below, to deal with the complaint under section 41(1) of the *Canadian Human Rights Act*.

### Material considered when decision made

The following documents were reviewed:


- ▶ complaint form received September 28, 2009
- ▶ Section 40/41 Report dated May 10, 2010
- ▶ submission from complainant dated June 7, 2010
- ▶ submission from respondent dated June 4, 2010

### Reasons for decision

The Commission adopts the following analysis set out in the Section 40/41 Report:

*The complaint raises public interest issues in that the allegations address the education of First Nations children with special needs. The complainant has established that it has reasonable grounds for believing that the respondent is carrying out a practice that discriminates in the provision of services and that this practice is linked to one or more of the 11 grounds of the Act. Whether or not a prima facie case exists cannot be determined at this stage.*

### Signature

  
Deputy Chief Commissioner

July 14, 2010

Date



## Record of Decision Under Sections 40/41

### Complaint Information

File Number(s): 20091016  
Date of Complaint(s): September 28, 2009  
Complainant(s): Mississaugas of the New Credit First Nation  
Respondent(s): Indian and Northern Affairs Canada

### Decision under section 41(1)

The Commission decided for the reason(s) identified below, to deal with the complaint under section 41(1) of the *Canadian Human Rights Act (CHRA)*.

### Material considered when decision made

The following documents were reviewed:

- ▶ complaint form received September 28, 2009
- ▶ Section 40/41 Report dated May 10, 2010
- ▶ submission from complainant dated June 6, 2010
- ▶ submission from respondent dated June 4, 2010

### Reasons for decision

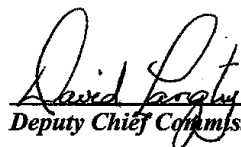
The Commission adopts the following analysis set out in the Section 40/41 Report:

*The complainant alleges that First Nations children with special needs are discriminated against on the grounds of race and disability because the respondent does not support them in attending school off of their reserve. This practice or policy could reasonably be considered discriminatory on its face, and can reasonably be considered to have an adverse effect.*

*The federal government legislative authority over "Indians and Lands Reserved for Indians" pursuant to s.91(24) of the Constitution Act has never been exhaustively defined by the Courts. What is known through the case law is that persons with Indian status under the Indian Act living on reserve lands are not the only Aboriginal people subject to this federal jurisdiction (Re Eskimos [1939] S.C.R. 10). Indian and Northern Affairs' (INAC) role and responsibilities in funding education in the context of the allegations raised in the complaint are unclear.*

*In Leslie Hicks v. Attorney General of Canada (2008 FC 1059), the Federal Court held that decisions under paragraph 41(1)(c) of the CHRA attract a higher level of judicial scrutiny. The Court said that at this early screening stage, the Commission should only decide not to deal with a complaint if it is "plain and obvious" that there is not a prima facie case of discrimination. This is the test that guides analysis and decision-making at this stage of the Commission process.*

### Signature

  
Deputy Chief Commissioner

July 14, 2010

Date