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Our File:
Notre dossier: 4-588311

Your File:
Votre dossier:

August 22, 2011

Ms. Deidre Hilary
Canadian Human Rights Commission
344 Slater Street
Ottawa, Ontario
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Dear Ms. Hilary:

Re: Mississaugas of the New Credit First Nation v. INAC
Court File No.: CHRC 2009 1016

We are in receipt of Mr. Elson's submissions dated July 27, 2011 and wish to provide the following brief response.

It is our position that the Canadian Human Rights Tribunal decision in *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada* ("First Nations") was correctly decided and is directly applicable to the present complaint.

The *First Nations* case is entirely analogus to the present case. In *First Nations*, the complainant argued that the funding of First Nations child welfare services on reserve is inadequate when compared to the funding that provinces provide to children residing off reserve. As in our case, the Crown argued that funding / transfer payments do not constitute a provision of "services" within the meaning of the *CHRA*, and that federal funding cannot as a matter of law be compared to provincial funding.

In *First Nations*, the Tribunal Chair Chotalia decided the very issue that is being put forth by Aboriginal Affairs and Northern Development Canada in our case: whether two different service providers can be compared to each other. Chairperson Chotalia clearly stated that the *Act* allows an Aboriginal person who receives lesser service from a government to file a complaint if a non-Aboriginal person receives better service from the *same* government. However, the *Act* does not allow an Aboriginal person, or any other person, to claim differential treatment on the basis that another person receives better service from a *different* level of government.

Chairperson Chotalia concluded that even if she were to find that INAC is a service provider as asserted by the complainants, the *CHRA* does not allow INAC as a federal service provider to be compared to the provinces as service providers. Thus, the

complaint could not succeed, even if a further hearing were held on the services question. Accordingly, she dismissed the complaint.

The complainants assert that this case can be distinguished from *First Nations* on the basis that they also make a complaint of discrimination based on disability which does not require a federal/provincial comparison. However, this argument ignores the point that funding is not a service under section 5 of the *Act*. Aboriginal Affairs and Northern Development Canada does not provide education services, but rather, only provides funding. As stated in previous submissions, the real provider of education services is the Council, who determines how to use the block of special education funding it receives from Aboriginal Affairs and Northern Development Canada. At its essence, the complaint is about the tuition costs imposed by the province for special education off reserve. Therefore, even if a federal/provincial comparison is not necessary, the Commission still has no jurisdiction in this case.

Therefore, it is Aboriginal Affairs and Northern Development Canada's position that the decision in *First Nations* is determinative of the issues in the present complaint and as such, this complaint ought to be dismissed.

Further, please be advised that Kris Hill's contact information is as follows:

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Yours truly,

Victoria Yankou
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Regulatory Law Division