



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

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REFERENCE: G/SO 215/51 CAN (156)
CE/JA/sn 2020/2010

29 February 2012

Dear Ms. Brodsky,

I have the honour to transmit to you, for information, a copy of the State party's further submission dated 28 February 2012, concerning communication No. 2020/2010, which you submitted to the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Ms. Sharon Mcivor and Mr. Jacob Grismer.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ibrahim Salama', with a long horizontal line extending to the right.

Ibrahim Salama
Director
Human Rights Treaties Division

Ms. Gwen Brodsky
307 west 18th Avenue
Vancouver, British Columbia
Canada V5Y2A8



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de la
Conférence du désarmement

Note No.: YTGR0118

Reference: Communication No. 2020/2010 – McIvor & Grismer

The Permanent Mission of Canada to the Office of the United Nations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit additional observations of the Government of Canada on the admissibility and merits of the communication of Ms. Sharon McIvor and Mr. Jacob Grismer, Communication No. 2020/2010.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 28 February 2012



**FURTHER SUBMISSION OF THE GOVERNMENT OF CANADA ON THE
ADMISSIBILITY AND MERITS OF THE COMMUNICATION TO THE
HUMAN RIGHTS COMMITTEE OF SHARON McIVOR AND JACOB GRISMER
COMMUNICATION NO.2020/2010**

1. By letter dated December 6, 2011, the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) transmitted to Canada additional comments submitted on behalf of Ms. Sharon McIvor and Mr. Jacob Grismer (authors) with respect to their communication No.2020/2010 to the Human Rights Committee (Committee) under the *Optional Protocol to the International Covenant on Civil and Political Rights* (Optional Protocol). By further letter dated December 19, 2011, the Secretariat transmitted to Canada some further materials, in the nature of an affidavit, submitted on behalf of the authors.
2. Canada continues to rely on the facts and argument contained in its submission dated August 22, 2011. In this submission, Canada offers additional observations in response to the comments and affidavit filed on behalf of the authors.

The Authors Use of the Language of Exclusion

3. Canada observes that the authors continue to apply the language of “exclusion” to refer to the distinction between the various paragraphs of subsection 6(1) of the *Indian Act*. Canada further observes that the authors claim that Canada is misleading the Committee by its explanation of the effects of the various paragraphs of subsection 6(1) and of subsection 6(2).
4. Canada has reviewed the chart and the explanations it provided to the Committee in its submission dated August 22, 2011 and is firmly of the view that it is not misleading the Committee in its description of the provisions of the *Indian Act* in issue and their application to the authors. Canada’s chart and explanations focus on the application of the *Indian Act* over time to the authors.
5. Canada maintains that no individual who satisfies the eligibility criteria in any paragraph or subsection of section 6 of the *Indian Act* is excluded from or ineligible for Indian status. The authors use the language of exclusion to advance their claim that there is some additional benefit to eligibility for Indian status under paragraph (a) of subsection 6(1) when compared to the other paragraphs of subsection 6(1). Canada maintains that there is only one Indian status and the various provisions of section 6 of the *Indian Act* set out the basis by which individuals are eligible for that status.

Financial Implications of Section 6 Eligibility

6. Canada notes that the authors, in their comments dated December 5, 2011, assert that “the ability of the bands to accept and provide for non-status members is constrained by the financial reality that federal government funding to bands depends on the number of

registered Indians they include.”¹ As explained by Canada, the authors are both registered as Indians under the provisions of section 6 of the *Indian Act*. When the federal government provides funding to Indian Bands which is linked to the number of members of the band who are status Indians, all individuals with status are included, regardless of what paragraph or subsection of section 6 of the *Indian Act* determines their eligibility for that status.

The Record of the Communication

7. Canada notes that the authors continue to rely on the reasons of Madame Justice Ross, of the Superior Court of British Columbia (trial level) as providing the “record underlying the complaint.”² Canada maintains that the reasons of the trial judge are not the sum total of the record or facts underlying this communication. Canada points not only to the reasons of the British Columbia Court of Appeal, which reversed the decision of the trial judge in part, but also to the additional facts and observations Canada has provided to the Committee in its submissions.

In Conclusion

8. Canada maintains its position and asks the Committee to find the communication to be inadmissible. Canada also maintains that the communications should not succeed on the merits.

February 28, 2012

¹ Submission on behalf of the authors dated December 5, 2011, at p.vi

² *Ibid.*, at paras.26 & 27

