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# RESPONSES

Canada's Response to the Fort McKay First Nation  
Treaty Land Entitlement Inquiry  
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RESPONSE TO THE INDIAN CLAIMS COMMISSION REPORT  
FORT MCKAY FIRST NATION —  
TREATY LAND ENTITLEMENT DECEMBER 1995

On December 6, 1996, the Indian Claims Commission released its report into the Fort McKay First Nation Treaty Land Entitlement Inquiry and recommended that Canada accept the claim for negotiation under the Specific Claims Policy. In the interests of expediting a review of the report and resolution of the claim, the Commission also recommended that a meeting be arranged among the parties 90 days following the release of the report to formally draw the inquiry to a close. The Commission scheduled a meeting on March 12, 1996, for the parties to discuss the report and its implications, but the meeting was cancelled because Canada had not completed its internal review of the report. On March 29, 1996, the Commission wrote to the Hon. Ronald A. Irwin, Minister of Indian Affairs, expressing its concerns about the cancellation of the meeting and requesting that it be rescheduled for April 12, 1996.

On April 1, 1996, Minister Irwin responded to the Commission's report. The following are excerpts from that letter:

First, I want to assure you that I am very interested in your work on TLE claims, and we are giving careful attention to your conclusions.

I know that you and the Fort McKay First Nation are anxious to have our response on your recommendation. Before I can provide that, I must draw attention to the fact that the First Nation has active litigation outstanding against Canada on the same issue. It is not the practice of this department to attempt resolution of claims while we are being sued. In this instance, the claim has proceeded through the Indian Specific Claims Commission (ISCC) because you decided to conclude the hearing and make your recommendation. Left to us, we would not have continued work while being sued.

We are not prepared to engage in efforts which may lead to a resolution of the claim on a policy basis while the litigation remains alive. Accordingly I ask that the First Nation place the litigation in abeyance.

If they do so, it would be my further recommendation that the ISCC carry out research on this claim in accordance with the approach to TLE outlined in your report. I suggest that, in relying on the conclusions of research put before you in the hearing, you may be including or excluding people who would or would not be eligible under your recommended approach.

I further suggest that it is premature for the ISCC to recommend we accept the claim for negotiation until this work is done.

On April 4, 1996, Jerome Slavik, legal counsel for the Fort McKay First Nation, wrote to Mr. Ron Maurice, Commission Counsel, regarding Minister Irwin's letter. Mr. Slavik advised that

... Fort McKay *is not in active litigation against Canada* on this issue. In 1991, the Department of Justice requested that the litigation on this matter be held in abeyance pending the outcome of the specific claims process. Our client agreed to hold this litigation in abeyance and *for five (5) years*, no steps have been taken to proceed with litigation. [Mr. Slavik's emphasis.]

With respect to Minister Irwin's comment that it was premature for the Commission to recommend acceptance of the claim until further research had been concluded, Mr. Slavik stated:

In all previous TLE claims we have negotiated, it has *always* been the policy of DIAND to determine the final number of claimants and full extent of the TLE obligation *after* validation of the claim and commencement of negotiations. This is particularly true where there is clearly an outstanding lawful obligation for TLE and only a few persons amongst the whole "entitlement population" about whom the Band and DIAND may disagree.

Therefore, Mr. Slavik took the position that it was not necessary for the Commission to do further research and reiterated his request for a meeting with Canada to discuss the report. Although some steps had in fact been taken by the First Nation and Canada in the litigation, Mr. Slavik confirmed that the action had not been actively pursued and that it would be held in abeyance pending a response to the report from the Minister of Indian Affairs.

On May 17, 1996, Commission Co-Chair P.E. James Prentice and Commissioner Carole T. Corcoran replied to the Minister's letter informing him that the Commission had been advised that the action was in abeyance and requested a response from Minister Irwin on whether Canada was prepared to "review the claim on its merits in the interests of resolving this matter without the necessity of litigation." Furthermore, Commissioners Prentice and Corcoran strongly disagreed with the Minister's statement that it was premature for the Commission to recommend acceptance of the claim because the conclusions reached during the course of the inquiry were based on cogent and reliable evidence. They concluded that, even if additional research were to reveal discrepancies in the First Nation's outstanding land entitlement of 3815 acres, it was unlikely that such discrepancies would be sufficient to

nullify the claim entirely. Accordingly, the Commissioners emphasized that it was premature, and would result in a waste of time and money, to conduct additional research in the absence of a substantive response from Canada on whether it was prepared to accept the principles outlined by the Commission in its report.

A further letter was addressed to Minister Irwin from Mr. Maurice, proposing a meeting between the parties in early July. At the request of the Commission and the Fort McKay First Nation, the Deputy Minister of Indian Affairs, Mr. Scott Serson, agreed to discuss the report. The meeting was held on July 31, 1996, with representatives from the Indian Claims Commission, the Fort McKay First Nation, the Specific Claims Branch of DIAND, and the Department of Justice. Mr. Slavik made a detailed presentation to Deputy Minister Serson. Chief Jim Boucher also stated that he supported the general principles and recommendations enunciated by the Commission in the report but that the exact amount of land still owed to the band was a matter of negotiation. Mr. Serson advised that Canada would require more time to complete its internal review of the report and the implications it has for Canada's TLE policy. At the end of the meeting, the parties agreed to convene a conference call for late August to determine whether Canada was prepared to accept the claim for negotiation under the Specific Claims Policy. The First Nation also informed Canada that it would actively pursue litigation into this claim if Canada did not agree to enter into negotiations or if Canada did not respond to the merits of the claim by September 1, 1996. At the time this update was written, the Commission had not been informed of any further developments.