

Ministre des Affaires indiennes et  
du Nord canadien et interlocuteur fédéral  
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and  
Northern Development and Federal Interlocutor  
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

**WITHOUT PREJUDICE**

JUN 13 2006

Ms. Renée Dupuis  
Chief Commissioner  
Indian Specific Claims Commission  
PO Box 1750, Station B  
OTTAWA ON K1P 1A2

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Dear Ms. Dupuis:

I am writing to inform you that the review of the Indian Specific Claims Commission's May 28, 2004, report entitled "Peepeekisis First Nation Report on: File Hills Colony Claim" is completed. I would like to acknowledge the hard work that went into this very detailed report. After careful consideration, however, I must advise you that I am unable to accept the recommendation to accept this claim for negotiation under the Specific Claims Policy.

As you know, the Peepeekisis First Nation argued that Canada's decision to create the colony scheme and its actions in implementing it, constituted breaches of lawful obligation to the First Nation. In response, Canada raised the defence of *res judicata*, arguing that the matter had already been decided in 1956 by Judge McFadden after a trial on the membership issues and could therefore not be re-examined by the Indian Specific Claims Commission.

The Indian Specific Claims Commission agreed that the Band membership issue and the validity of the 1911 Fifty Pupil Agreement were *res judicata*, but it found that Canada's decision to undertake the colonization scheme at Peepeekisis, the method of implementing the scheme, the allocation of land to the graduates, and Inspector Graham's conduct in procuring the Band memberships of the graduates in the Peepeekisis Band, breached Treaty 4, the *Indian Act* and/or Canada's fiduciary obligations. The Indian Specific Claims Commission found that the doctrine of *res judicata* did not apply to the aforementioned breaches. As a result, it recommended that the claim be accepted for negotiation under the Specific Claims Policy.

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Canada has thoroughly reviewed the findings of the Commission in this claim and remains of the view that all of the issues raised in this claim are *res judicata*, and that *res judicata* applies to both the validity of the memberships and to the alleged breaches of Treaty 4, the *Indian Act* and the fiduciary obligations. Canada's view is that the Treaty and the *Indian Act* issues, as well as the manner in which Canada handled its obligations towards the First Nation, were all thoroughly examined during several years of inquiries and hearings into this claim, culminating in the December 13, 1956, decision by Judge McFadden. Canada further submits that a substantial body of case law supports its view that a judgement such as the 1956 decision by Judge McFadden covers not only the direct issue of the Band membership, but all other matters which may be collaterally in question.

Canada therefore remains of the view that this claim does not disclose an outstanding lawful obligation under the Specific Claims Policy; *Outstanding Business - A Native Claims Policy*.

Again, thank you for your report and for your patience in waiting for Canada's response.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

The Honourable Jim Prentice, PC, QC, MP

c.c.: Mr. John B. Edmond