
RESPONSES

Re: Lax Kw'alaams Indian Band Inquiry
Robert D. Nault, Minister of Indian Affairs
and Northern Development, to
Phil Fontaine, Indian Claims Commission,
December 31, 2001
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Re: Friends of the Michel Society 1958 Enfranchisement Inquiry
Robert D. Nault, Minister of Indian Affairs
and Northern Development, to
Phil Fontaine, Indian Claims Commission,
October 2, 2002
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Re: Roseau River Anishinabe First Nation Medical Aid Inquiry
Robert D. Nault, Minister of Indian Affairs
and Northern Development, to
Renée Dupuis, Indian Claims Commission,
September 17, 2003
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Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

2001 JUN 29

Mr. Phil Fontaine
High Commissioner
Indian Claims Commission
PO Box 1750, Station B
OTTAWA ON K1P 1A2

Dear Mr. Fontaine:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) June 29, 1994, report, *Inquiry into the Claim of the Lax Kw'alaams Indian Band*. The ISCC's 1994 report raised a number of complex and fundamental legal and policy issues relevant to Canada's specific claims policy, *Outstanding Business*, and, therefore, required a thorough review by representatives of the Specific Claims Branch (SCB) and the Department of Justice Canada (DOJ). I regret that this process was so time-consuming, and hope you will accept my sincere apology for Canada's delay in responding to the Commission's report.

The issue canvassed by the ISCC in its 1994 report was whether it was reasonable for Canada to demand an absolute surrender of all the Lax Kw'alaams First Nation's rights and interests, including Aboriginal title, over lands forming the subject of its specific claim relating to the 1888 division of Tsimpsean Indian Reserve. No. 2.

In its report, the ISCC noted that the form of surrender required by Canada (a surrender under section 38 of the *Indian Act*) could not have been contemplated by the Lax Kw'alaams First Nation during the negotiations phase of this claim because the value of the alleged Aboriginal interest never formed a part of the negotiations. Moreover, while the ISCC agreed Canada's insistence on a section 38 surrender was justified, it found the form of surrender required went "beyond the effect of an absolute surrender under the *Indian Act*." The ISCC confirmed that a surrender under section 38 of the *Indian Act* would be the only effective means of removing the reserve interest from the land and ensuring certainty in the final settlement of the claim. However, the ISCC recommended the surrender in question be limited by excluding the Aboriginal interest in the subject lands, and by adding clauses respecting release, indemnity and set-off to satisfy Canada's concerns regarding potential over-compensation.

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As you may be aware, a thorough legal and policy review of the ISCC's recommendations with respect to Canada's section 38 surrender requirement took place within the SCB and the DOJ throughout 1998-1999. (This process was facilitated, in part, by former Commission counsel, Mr. Ron Maurice.) I understand representatives of the SCB and the DOJ met with ISCC counsel and members of the Lax Kw'alaams First Nation on several occasions, and explored a number of options for resolution of this impasse. Nonetheless, after careful consideration of the Commission's report, I regret that I am unable to accept the ISCC's recommendation with respect to modification of the form of surrender required by Canada for settlement of this claim.

With respect to the first of the ISCC's findings outlined above, it is Canada's view that since Aboriginal interests were never excluded from any of the appraisals considered during the negotiations stage of this claim, they cannot be considered to have been excluded from the discussions.

As regard to the form of surrender required for settlement of this claim, *Outstanding Business* requires that settlement of claims represent final redress of a First Nation's grievance. A formal release must be sought from a First Nation so that negotiations on the same claim cannot be reopened. Given this, Canada's position remains that a surrender under section 38 of the *Indian Act* is a legal requirement emanating from the terms of *Outstanding Business*. Moreover, Canada is of the view that it is legally impossible to exempt Aboriginal interests from the scope of a section 38 surrender without jeopardizing the legal effect of the surrender (i.e. without affecting the certainty Canada requires).

Although I recognize Canada's response to the issue canvassed in your report may not be satisfactory to the Lax Kw'alaams First Nation, we are, nonetheless, hoping to move towards settlement of this specific claim on the basis of a revised mandate. I would like to thank the ISCC and its counsel for their efforts to assist Canada and the First Nation to resolve this dispute.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: Chief Garry Reece
Ratcliff & Company

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

Mr. Phil Fontaine
Chief Commissioner
Indian Specific Claims Commission
PO Box 1750, Station B
OTTAWA ON K1P 1A2

Dear Mr. Fontaine:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) December 1998 report, *Friends of Michel Society Inquiry - 1958 Enfranchisement Claim*, dealing with the Friends of Michel Society's request for status to advance specific claims. I appreciate the careful and detailed consideration that the Commission brought to the issues.

In its report, the ISCC examined the following issue:

"Do the 1985 amendments to the *Indian Act*, when coupled with the other provisions of the *Indian Act*, impose upon Canada a statutory obligation to reconstitute the Michel Band as a Band under the *Indian Act*, providing it with standing to bring a claim under the Specific Claims Policy?"

The Commission concluded that Canada is under no statutory obligation to recognize or reconstitute the Michel Band, and that the Friends of Michel Society has no standing to bring a claim under the Specific Claims Policy. The Commission recommended, though, that Canada:

"...grant special standing to the duly authorized representatives of the Friends of Michel Society to submit specific claims in relation to alleged invalid surrenders of reserve land for consideration of their merits under the Specific Claims Policy."

After a careful review, Canada has declined to accept the ISCC's recommendation to grant the Friends of Michel Society special standing to advance specific claims. Canada's rejection of this recommendation is based on its continued view that specific

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claims, as defined in the Specific Claims Policy, can only be advanced by Indian Bands or groups of Indian Bands recognized under the *Indian Act*.

I would like to thank the Indian Specific Claims Commission for its consideration of this claim.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Robert D. Nault".

Robert D. Nault, PC, MP

c.c.: Ms. Rosalind Callihoo

[Translation]

Minister of Indian Affairs
and Northern Development
Ottawa, Canada
K1A 0H4

September 17, 2003

Ms. Renée Dupuis
Chief Commissioner
Indian Claims Commission
Box 1750, Station "B"
Ottawa, ON K1P 1A2

Dear Ms. Dupuis:

As you are aware, I have received a copy of the Indian Claims Commission's February 2001 report on the specific claim of the Roseau River Anishinabe First Nation: *Roseau River Anishinabe First Nation Inquiry - Medical Aid Claim*. I was impressed with the thoroughness of the Commission's examination into this matter.

After having reviewed the matter carefully, Canada has decided to reject the Commission's recommendation that it negotiate compensation for medical aid payments with the First Nation. Furthermore, Canada will not be undertaking a review of medical aid to Indians, as the Commission also recommended in its report. I have consulted with my Cabinet colleague, the Honourable Anne McLellan, Minister of Health Canada, and she supports my decision. Let me assure you that the Government of Canada has always been, and continues to be, firmly committed to ensuring the welfare of Canada's native peoples.

I thank the Indian Claims Commission for having conducted the inquiry into this claim.

Yours sincerely,

(signed)

Robert D. Nault, P.C., M.P.
c.c.: Mr. Daniel Bellegarde
Mr. Terrance Nelson