

Affaires indiennes et du Nord Canada Indian and Northern Affairs Canada

Sous-ministre adjoint principal Senior Assistant Deputy Minister

Ottawa, Canada  
K1A 0H4

WITHOUT PREJUDICE

**MAY 30 2011**

Chief Orville Smoke  
Dakota Plains First Nation  
BOX 1246  
PORTAGE LA PRAIRIE MB R1N 3J9

Chief Cornell Pashe  
Dakota Tipi First Nation  
2020 Dakota Drive  
DAKOTA TIPI MB R1N 3X6

Dear Chief Smoke and Chief Pashe:

I wish to inform you that, based on the analysis of evidence documented by the Dakota Plains First Nation and the Dakota Tipi First Nation and by the Specific Claims Branch, and pursuant to the Specific Claims Policy (the Policy) as set out in *The Specific Claims Policy and Process Guide*, it is the decision of the Minister of Aboriginal Affairs and Northern Development not to accept for negotiation the Alienation of Lot 99 in the Parish of Portage la Prairie specific claim. Although a breach of a legal obligation on the part of the Government of Canada has been identified, it is Canada's position that there is no compensable loss nor that the First Nation suffered damages resulting from the breach.

In the Alienation of Lot 99 specific claim, the First Nations allege that Canada permitted and proceeded with alienations of the Special Reserve at Lot 99 without first obtaining a valid and informed surrender from the Portage la Prairie Sioux Band as a whole, as required by provisions of the *Indian Act*; and Canada, by removing the Band from Lot 99, by alienating Lot 99, and by obtaining inadequate compensation for Lot 99, acted in a manner which failed to protect the interests of the Band in respect of its Special Reserve, in breach of Canada's obligations and duties to the Band, statutory, fiduciary, or otherwise.

It is the Government of Canada's position that this claim discloses a breach of a legal obligation on the part of the Government of Canada for the reasons stated below.

Canada is of the view that when Lot 99 was sold in 1967, it constituted an ordinary reserve as defined by section 2(1)(o) of the 1951 *Indian Act*. Canada was required to obtain a surrender pursuant to the provisions of the *Indian Act* prior to the sale of

.../2

Canada

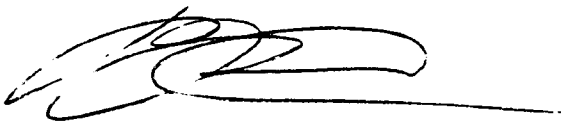
Lot 99. In this case, the evidence indicates that Canada did not comply with its statutory obligations as set out in sections 39 and 40 of the 1951 *Act*. Therefore, Canada breached an obligation owed to the First Nations and there has been an illegal disposition of Indian land.

Notwithstanding that Canada has found that the Alienation of Lot 99 in the Parish of Portage la Prairie specific claim disclose a breach of a legal obligation, Canada is unable to quantify any compensable loss. It is Canada's position that the First Nations have been compensated for the alienated lands as follows:

- the setting aside of Long Plains IR 6A in 1945 (in excess of 1000 acres);
- in 1967, the Long Plains Sioux First Nation, which is the predecessor Band of the Dakota Tipi and Dakota Plains First Nations, received \$2,350 from the proceeds of the sale of Lot 99 which sum represented a value in excess of the upset value of the lands at appraisal prior to sale; and
- the setting aside of the Dakota Tipi Indian Reserve No. 1 in 1973 (31.5 acres).

Please be advised that this letter is written on a 'without prejudice' basis and should not be considered an admission of fact or liability by the Crown. In the event this claim becomes the subject of litigation, the government reserves the right to plead all defences available to it including technical defences such as limitation periods, strict rules of evidence or the doctrine of laches. Further, you should be aware that Government of Canada files are subject to the *Access to Information Act* and the *Privacy Act*.

Sincerely,



Patrick Borbey  
Senior Assistant Deputy Minister  
Treaties and Aboriginal Government