

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

LAC LA RONGE BAND
AND
MONTREAL LAKE CREE NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	February 15, 2012	D E P O S E
Guillaume Phaneuf		
Ottawa, ON	5	

Claimants

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
as represented by the Minister of Aboriginal Affairs and Northern Development
Canada

Respondent

RESPONSE
Pursuant to Rule 42 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Response is filed under the provisions of the *Specific Claims Tribunal Act* and
the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: LAC LA RONGE BAND and MONTREAL LAKE CREE NATION
As represented by David Knoll, of
Knoll & Co. Law Corp.
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1. This is the Crown's Response to the Declaration of Claim ("Claim") filed by the Lac La Ronge Band ("LLIB") and Montreal Lake Cree Nation ("MLCN") (collectively "the FN's") with the Specific Claim Tribunal ("Tribunal") on December 8, 2011 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim relates to a timber surrender on Little Red Reserve 106A ("IR 106A") in Saskatchewan, in 1904 and the subsequent administration of the sale proceeds.

I. Status of the Claim (R. 42(a))

3. On August 28, 2003 the FN's jointly submitted a claim (the "Original Claim") to the Minister of Indian Affairs and Northern Development (the "Minister") which was subsequently accepted in part into the negotiation process on December 15, 2006.
4. The Claim was in negotiations when the *Act* came into effect on October 16, 2008, which is therefore, the date the Claim is deemed to be filed with the Minister pursuant to s.16(1)(d) and s. 42(1) of the *Act*.
5. The Original Claim alleged that the Crown breached legal obligations owed to the FN's by asserting that the surrender of the spruce timber on Little Red Reserve failed to comply with the surrender provisions of the *Indian Act*; that timber was taken in trespass; that there was mismanagement of the sale proceeds; and that the sale proceeds were used to acquire supplies which would have been provided under Treaty #6.

II. Validity (R. 42(b) and (c))

6. The Crown accepts that the 1904 timber surrender failed to comply with the relevant statutory requirements contained in the 1886 *Indian Act*; however, there are no compensable losses owing to the Band arising from this non-compliance.
7. The Crown does not accept that the failure to obtain a valid surrender due to non-compliance with the statutory provisions of the 1886 *Indian Act* resulted in any financial loss to the claimant.
8. The Crown does not accept and specifically denies the validity of all of the remaining allegations and claims set out in the Declaration of Claim; without limiting the generality of the foregoing, the Crown denies that:
 - a. The 1886 *Indian Act* imposed a general fiduciary duty to prosecute third parties for trespass, or that any party was in fact acting in trespass;
 - b. There was mismanagement of the sale proceeds; or

- c. The sale proceeds were used to acquire supplies which would have been provided under Treaty 6;

III. Basis of the Tribunal to Award Compensation (R. 42(c))

9. The Crown denies that the Claimants have suffered any damages as a result of the Crown's failure to obtain a valid surrender of the timber in 1904. The Claimants have already been compensated in full for any timber that was cut following the surrender in 1904.
10. In the alternative, if the Claimants have suffered any damages in respect of the invalid timber surrender, none of paragraphs 20(1)(e) to (h) of the *Act* provide the basis for the Tribunal to award compensation. If a loss is established in respect of the invalid timber surrender, any compensation in respect of that aspect of the claim would be awarded pursuant to s. 20(1)(c).
11. Further, the Crown specifically pleads s. 20(3) of the *Act* and the application of set-off to allow for the deduction from any amount of compensation calculated under subsection 20(1) the value of any benefit received by the Claimants in relation to the payment of sale proceeds under the timber surrender on IR 106A in 1904.

IV. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))

12. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the Claimant FN's to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts contained in the following paragraphs of the Claim: 43, 44, 46, 47, and 49.
13. The Crown admits the facts set out in the following paragraphs of the Claim: 2, 3, 11, 12, 15, 16, 18, 32 and 37.
14. The Crown has no knowledge of the facts set out in the following paragraphs of the Claim: 10, 13, 14, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 40, 41, 45, and 48.
15. In response to paragraphs 4 and 5 of the Claim, the content of the acceptance letter of December 15, 2006 is privileged. Further, this information is not relevant to the breaches of legal duty alleged in the Claim.
16. In response to paragraphs 6, 7, 8 and 9 of the Claim, the content of any advice provided and/or discussions which took place during negotiations is privileged.

17. In response to paragraph 47 of the Claim, the contents of a lawful obligation opinion written in relation to a separate specific claim, is not relevant to the breaches of duty alleged in this Claim. Further, lawful obligation opinions are privileged documents.

V. Statement of Fact (R. 42(e))

18. Both FN's adhered to Treaty 6 in 1899.
19. IR 106A was surveyed in 1897 as a joint reserve for both FN's and set apart pursuant to Order in Council ("OIC") P.C. 2710 dated January 6, 1900 as an *Indian Act* reserve. In 1948 IR 106A was divided into two separate reserves, one for each FN.
20. Following a 1903 request from the Canada Territories Corporation to harvest standing and fallen timber on IR 106A, the Indian Agent inquired as to the supply of timber on the Reserve and the position of the FN's.
21. A surrender meeting was held on January 16, 1904, and a timber surrender was taken with respect to IR 106A. The surrender was approved by OIC P.C. 2449 on February 12, 1904.
22. The surrender document referred to spruce timber on the Reserve.
23. On August 22, 1904, the \$5,500 tender of the Canada Territories Corporation was accepted. The Company submitted the 10% of its bid (\$550), and was informed that upon receipt of the balance, the documents for the timber license would be sent.
24. The balance of \$4,950 was paid on June 21, 1906. \$458.38 in interest was paid on June 23, 1906.
25. On October 22, 1906, Sturgeon Lake Timber Company remitted a cheque for \$15.47 to pay the timber dues for 54 pieces of timber, totalling 5,240 feet that were removed between 1904 and 1906.
26. On October 28, 1906, the Canada Territories Corporation paid \$629.50 for the ground rent to April 27, 1907, the license fee, the renewal fee, and the transfer fee.
27. Timber License No. 135 was issued to Sturgeon Lake Lumber Company in February 1907.

28. The Department determined that there was an overpayment of \$142.47 for 1906-1907.
29. On October 30, 1908, the Company informed the Department that it had not operated on I.R. 106A in the winter of 1907-1908 as they were busy on another limit. At that time the Company remitted a cheque for \$28.53 and they further requested that the overpayment from September 1907 be applied to the ground rent for 1908-1909, for a total payment of \$170.50 for that period.
30. On November 15, 1909, the Company submitted a cheque for dues on timber for 1908-1909 in the amount of \$694.98. On March 30, 1910, the Company submitted a statement of additional dues for small logs and interest on all the 1908-1909 dues from December 1, 1909, totalling \$48.09.
31. According to the returns submitted by the Sturgeon Lake Lumber Company, a total of 490,437 cubic feet or 2,454,244 fbm of timber was removed from I.R. 106A between 1904 and 1910.
32. Between 1904 and 1910, a total of \$9,024.81 was collected from the Canada Territories Corporation and the Sturgeon Lake Lumber Company for the timber on I.R. 106A.
33. The distribution of total revenues derived from 1904 to 1915 from the surrender of the timber on I.R. 106A, including capital and interest, is: James Roberts Acct 189, \$5,045.93, Amos Charles Acct 190, \$3,503.87, and Montreal Lake Acct 226, \$2,868.90 for a total of \$11,418.70.

VI. Relief (R. 42(f))

34. The Crown seeks dismissal of the Claim in its entirety;
35. Costs; and,
36. Such further relief as this Honourable Tribunal deems just and may allow.

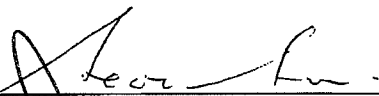
VII. Communication (R. 42(g))

37. Respondent's address for service of documents:
Department of Justice (Canada)
Prairies Regional Office (Saskatoon)
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Sean Sass

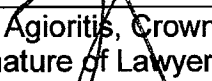
38. Facsimile number address for service: (306) 975-6780

39. E-mail address for service: saskSCT-5002-11,LLR@justice.gc.ca

Dated: February 15, 2012



Sean Sass, Crown Counsel
Signature of Lawyer for the Respondent



Von Agioritis, Crown Counsel
Signature of Lawyer for the Respondent

Myles Kirvan,
Deputy Attorney General
Per: Sean Sass and Von Agioritis
Department of Justice
Prairies Regional Office (Saskatoon)