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SPECIFIC CLAIMS TRIBUNAL		
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Ottawa, ON		5

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

TSLEIL-WAUTUTH NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

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: TSLEIL-WAUTUTH NATION
As represented by Stan H. Ashcroft of
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I. Status of Claim (Rule 42(a))

1. The Tsleil-Waututh Nation ("TWN") submitted a claim to the Minister of Indian Affairs and Northern Development Canada ("Minister") on or about June 8, 2000 with supplemental submissions submitted on or about June 27, 2000 ("Original Specific Claim").

2. The Original Specific Claim concerned the taking of 7.73 acres of land from TWN's Indian Reserve No. 3 ("I.R. No. 3") for the construction of the Dollarton Highway ("Highway").

3. By letter dated April 23, 2007, the Minister accepted the Original Specific Claim for negotiation. The basis of the Minister's decision to negotiate was that the taking was lawful, but that the Original Specific Claim disclosed an outstanding legal obligation related to failure to obtain adequate compensation. Pursuant to the *Specific Claims Tribunal Act* ("*Act*"), section 42(1), the Minister is deemed to have decided to negotiate the claim and to have notified TWN in writing of that decision, as the case may be, on the day on which the *Act* comes into force.

4. The Original Specific Claim has not been resolved.

II. (a) Validity (Rule 42 (b) and (c))

5. Her Majesty the Queen in Right of Canada ("Crown"), solely based on and limited to the facts in the within proceeding and pursuant to the *Act*, section 31, admits the validity of the TWN claim set out in the Declaration of Claim dated April 5, 2012 ("Declaration") only in so far as it is based on the ground set out in the Declaration, paragraph 8(e), that the Crown failed to provide adequate compensation for I.R. No. 3 lands taken under legal authority in or about 1931.

6. The Crown denies the validity of claims based on any other grounds set out in the Declaration, paragraph 8, particularly:

b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians - of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;

c) a breach of a legal obligation arising from the Crown's provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation; and

d) an illegal lease or disposition by the Crown of reserve lands.

7. In reply to the Declaration, paragraph 25(c), pursuant to the *Act*, section 20(1)(ii), the Crown denies the validity of the relief sought which relates to harm or loss not pecuniary in nature, which relief is outside the jurisdiction of the Specific Claims Tribunal ("Tribunal").

(b) Basis for the Tribunal to Award Compensation (Rule 42(c))

8. Paragraph 20(1)(e) of the *Act* may provide the basis for the Tribunal to award compensation.

III. Admissions, Denials or No Knowledge (Rule 42(d))

9. The Crown admits the facts in the Declaration, paragraphs 1, 2, 4, 10, 14, 16, 17, 18, 19 and 20.

10. In reply to the Declaration, paragraph 3, the Crown admits the facts in paragraph 3 except for the allegation that TWN's Original Specific Claim was in relation to 8.79 acres of land. In fact, the Original Specific Claim related to the taking of 7.73 acres.

Beyond these facts, the details of the negotiations of the Original Specific Claim are irrelevant and privileged.

11. In reply to the Declaration, paragraph 5, the Crown admits that the Minister accepted the Original Specific Claim for negotiation by letter dated April 23, 2007 ("Acceptance Letter"). Beyond this fact, the contents of the Acceptance Letter are irrelevant and privileged.

12. In reply to the Declaration, paragraph 6, the Crown admits that the Original Specific Claim has not been resolved. Beyond this fact, the details of the negotiations of the Original Specific Claim are irrelevant and privileged.

13. In reply to the Declaration, paragraph 9, the Crown admits the facts in paragraph 9 except for the allegation that I.R. No. 3 Reserve "was established" in September 1869. In fact, a portion of I.R. No. 3 Reserve was surveyed in September 1869.

14. In reply to the Declaration, paragraph 11, the Crown denies the facts in paragraph 11. In fact, Order in Council PC 1547, dated June 5, 1912, authorized the Department of Indian Affairs ("Department") to sell a 4.65 acre parcel ("Parcel") of I.R. No. 3 land to the District of North Vancouver ("District") pursuant to section 46 of the *Indian Act* and the Department transferred the Parcel to the District in 1925.

15. In reply to the Declaration, paragraph 12, the Crown admits the facts in paragraph 12, except for the allegation that the "Province made application to Indian Commissioner Ditchburn", which allegation the Crown specifically denies. In fact, British Columbia ("Province"), by letter dated October 18, 1930, forwarded a plan to Indian Commissioner Ditchburn and stated that it would not submit an application until a reply was received from him. The Province submitted an application for the Highway right-of-way in January 1931.

16. In reply to the Declaration, paragraph 13, the Crown admits the facts in paragraph 13, except for the alleged date of the letter from Indian Agent Ball to Indian Commissioner Ditchburn, which was dated, in fact, November 11, 1930.

17. In reply to the Declaration, paragraph 15, the Crown admits the facts in paragraph 15 except for the date of correspondence between Secretary MacKenzie and Indian Commissioner Ditchburn, which was, in fact, February 4, 1931.

18. In reply to the Declaration, paragraph 21, the Crown denies the facts in paragraph 21.

19. In reply to the Declaration, paragraph 22, the Crown admits that Indian Superintendent Anfield wrote a letter dated August 3, 1956 to the District. The Crown has no knowledge of the facts alleged in the last sentence of paragraph 22.

20. In reply to the Declaration, paragraph 23, the Crown has no knowledge of the facts in paragraph 23 and the facts are irrelevant.

21. In reply to the Declaration, paragraph 24, the Crown specifically denies that, at any material time, the Crown breached the *Indian Act* and Crown fiduciary obligations at common law relating to the improper taking of I.R. No. 3 lands.

IV. Statements of Fact (Rule 42(e))

22. In September 1869, I.R. No. 3 was surveyed and a public notice was posted on November 27, 1869 announcing that I.R. No. 3 was comprised of 111 acres of land.

23. Under Article 13 of the Terms of Union, pursuant to which the Province joined Confederation in 1871, the Crown assumed the charge of the Indians and the trusteeship and management of lands reserved for their use and benefit.

24. In June 1877, the I.R. No. 3 boundaries were confirmed and additional lands were allotted. On August 28, 1880 a survey determined that I.R. No. 3 contained 275 acres.

25. By Order in Council 1036 dated July 29, 1938, the Province formally transferred to the Crown the administration and control of reserve lands in the Province, including I.R. No. 3.

Taking of I.R. No. 3 Lands by the District of North Vancouver

26. In January 1912, the District submitted an application to the Crown for a right-of-way over I.R. No. 3 for the construction of a road ("Road").

27. On May 30, 1925, the Crown transferred a 4.65 acre parcel of I.R. No. 3 to the District for the purposes of the Road.

Taking of I.R. No. 3 Lands by the Province

28. On January 21, 1931, the Province formally applied to the Crown for transfer of 8.79 acres of I.R. No. 3 lands for the purpose of constructing the Highway.

29. On or about March 16, 1931, the Crown acknowledged receipt of compensation in the amount of $12,240 from the Province for damage to improvements to I.R. No. 3 as a result of the construction of the Highway.

30. By Order in Council P.C. 1036 dated May 8, 1931, the Crown transferred 8.79 acres of I.R. No. 3 land to the Province.

31. In or about 1964, the Crown became aware that the original road plan ("Plan 2428") for the Highway incorrectly included a 1.06 acre portion of the Road.

32. In or about 1965, a new plan ("Plan 51646") was recorded as the official plan for the Highway and defined the Highway as approximately 7.73 acres. Plan 51646 replaced Plan 2428.

V. Relief (Rule 42(f))

33. The Crown seeks the dismissal of all claims set out in the Declaration except for the claim based on the ground set out in the Declaration, paragraph 8(e), that the Crown failed to provide adequate compensation for I.R. No. 3 lands taken under legal authority in or about 1931.

VI. Communication (R. 42(g))

Respondent's address for service: Department of Justice Canada
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Attention: James M. Mackenzie

Fax number address for service: (604) 666-2710

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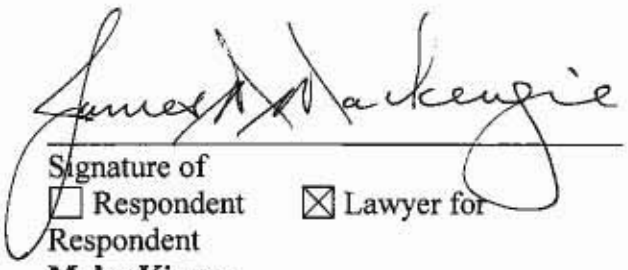
Dated: June 11, 2012



Signature of
☐ Respondent ☒ Lawyer for Respondent

Myles Kirvan
Deputy Attorney General
Per: James M. Mackenzie
Canada Department of Justice
British Columbia Regional Office