

SPECIFIC CLAIMS TRIBUNAL

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDIGATIONS PARTICULIÈRES	D É P O S É
July 22, 2013		
Guillaume Phaneuf		
Ottawa, ON	3	

BETWEEN:

KAWACATOOSE FIRST NATION, PASQUA FIRST NATION,
PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION,
GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION,
AND
DAY STAR FIRST NATION

Claimants

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(as represented by the Minister of Indian 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: The Claimants
As represented by David Knoll, of
Knoll & Co. Law Corp.
201 – 1678 128th Street.
Surrey, BC V4A 3V3
Tel: (604) 538-9893
Fax: (604) 538-9848
Email: dknoll@knollandco.com

1. This is the Crown's Response to the Declaration of Claim filed by Kawacatoose First Nation, Pasqua First Nation, Piapot First Nation, Muscowpetung First Nation, George Gordon First Nation, Muskowekwan First Nation and Day Star First Nation (collectively "Claimants") with the Specific Claim Tribunal ("Tribunal") on June 20, 2013 pursuant to the *Specific Claims Tribunal Act* ("Act"). The Claimants served the Crown with the Declaration of Claim on June 24, 2013.
2. The Declaration of Claim relates to the 1918 surrender of Last Mountain Indian Reserve No. 80A ("IR 80A") and the subsequent disposition of some of the surrendered lands.

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

3. The Minister decided not to negotiate the claim, in whole or in part, on December 8, 2011.
4. With respect to paragraphs 2 to 10, inclusive, and 12 of the Declaration of Claim, the Crown says that all details of the communications between Canada and First Nations were made on a without prejudice basis and are subject to settlement privilege.

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

5. The Crown does not accept and specifically denies the validity of all of the allegations and claims set out in the Declaration of Claim; without limiting the generality of the foregoing, the Crown denies paragraphs 55 to 58 of the Declaration of Claim that allege:
 - a. The 1918 surrender of IR 80A was not obtained in compliance with the surrender provisions of the 1906 *Indian Act*;
 - b. The surrender was not obtained in compliance with Treaty #4;
 - c. Canada breached its fiduciary obligation by obtaining the 1918 surrender of IR 80A; and
 - d. Canada breached its fiduciary obligation by entering into leases of some of the surrendered lands with third parties.

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

6. The Crown denies the validity of the claim.

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

7. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Declaration of Claim and puts the Claimants to the strict proof thereof.
8. The Crown has no knowledge of the facts set out in paragraphs 11, 14 and 29 of the Declaration of Claim.
9. The Crown admits the facts set out in the following paragraphs of the Declaration of Claim: 15 to 25, 32 to 43, 45, 46, and 48 to 54.
10. The Crown admits the facts set out in paragraph 26 of the Declaration of Claim subject to the correction of the date of Order in Council P.C. 1813 as July 20, 1918.
11. The Crown admits the facts set out in paragraph 27 of the Declaration of Claim subject to the correction of the sale of lots to be 51 and all of Block 9 in July 1919 and 19 lots in August 1919.
12. The Crown admits the facts set out in paragraph 28 of the Declaration of Claim subject to the correction of the date of lease to the Village of Regina Beach to April 7, 1922.
13. The Crown admits the facts set out in paragraph 30 of the Declaration of Claim subject to the correction of the date Commissioner Graham wrote to Deputy Superintendent General Scott to June 30, 1924.
14. With respect to paragraph 31 of the Declaration of Claim, the Crown says that the contents of the letter have been incorrectly paraphrased and refers to the letter dated July 12, 1924.
15. With respect to paragraph 44 of the Declaration of Claim, the Crown says that the contents of the letter have been incorrectly paraphrased and refers to the letter dated February 11, 1958. The Crown also says that the letter was from E.S. Jones, Regional Supervisor of Indian Agencies, to Colonel Jones, Director, Department of Citizenship and Immigration.
16. With respect to paragraph 47 of the Declaration of Claim, the Crown says there is no reference in Mr. Jones' August 15, 1958 letter to "similar arguments raised by Piapot", and is not clear from the letter whether Pat Cappo was from Muscowpetung or Pasqua.

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

Surrender of IR 80A

17. John C. Nelson surveyed IR 80A as a fishing station for the Touchwood Hills and Qu'Appelle Valley Indians in 1885.
18. Order in Council PC 1151 dated May 17, 1889 confirmed the Indian reserves that had been set aside pursuant to Treaty No. 4, including IR 80A. The plan attached to the

Order in Council listed IR 80A as a "Fishing Ground" with an area of 2.23 square miles that was set aside for the use of the Touchwood Hills and Qu'Appelle Valley Indians.

19. By 1885, the identity of the bands that would have an interest in the fishing station that was ultimately set aside as IR 80A were documented as Day Star, Muskowekwan, Kawacatoose and George Gordon (Touchwood Hills Agency) and Piapot, Muscowpetung, Pasqua and Standing Buffalo (Qu'Appelle Valley Agency).
20. Neither the survey nor the Order in Council identified the individual bands that had an interest in the reserve.
21. On May 4, 1907 Inspector of Indian Agencies Graham responded to a letter written on April 29, 1907 by Deputy Superintendent General of Indian Affairs Frank Pedley and identified what he believed to be the bands who had an interest in IR 80A, that being Piapot, Muscowpetung, Pasqua, "and I presume the Sioux" of the Qu'Appelle Agency and Gordon's, Muskowekwan, Day Star and Poorman of the Touchwood Agency.
22. On December 27, 1913 in a letter to Secretary McLean, Indian Agent Murison discussed which bands had an interest in IR 80A. He stated that there were old Indians within the Touchwood Agency who were of the opinion that the Indians of the Qu'Appelle Valley Agency had no interest, but the Peepeekesis band in the File Hills Agency was originally a Touchwood Agency band and originally would have had an interest in IR 80A. The band had later decided not to take a reserve within the Touchwood Agency.
23. On July 20, 1918, Order in Council 1813 authorized the surrender of IR 80A containing 1408 acres. The Order in Council was approved noting that it was executed and attested to in the manner required by Section 49 of the *Indian Act* and that Muscowpetung, Pasqua, Piapot, Poorman, Day Star, George Gordon and Muskowekwan Bands had agreed to the surrender.
24. The surrender document dated March 23, 1918 was signed by the seven chiefs who represented the seven bands noted in the Order in Council.
25. Two affidavits in support of the surrender were sworn. They were signed by the Indian Agents and the chiefs of the Touchwood and Qu'Appelle Agencies. The Affidavits attest to the fact that the surrender was assented to by a majority of the members of the bands, that there was a meeting or council, that the terms were interpreted to the Indians by an interpreter and that other conditions were followed.
26. The documents accompanying the surrender included two undated documents provided by Indian Agents Christianson and Murison that listed the names of the bands in their respective agencies who had an interest in the lands to be surrendered, the number of eligible voters, those voters present at the surrender meeting and those who voted on the surrender. Murison's document certified that the meetings at which the surrender was agreed to were called in accordance with the regulations.

27. On February 9, 1954 the Chief and Councillors of the Piapot Band of Indians in the Qu'Appelle Agency asked the Minister of the Department of Citizenship and Immigration (who was also Superintendent General of Indian Affairs) to investigate the surrender of IR 80A. The Piapot Band of Indians again wrote to the Minister on May 21, 1954 challenging the surrender.
28. Correspondence dated May 25, 1954 and June 17, 1954, indicates that there is no documentation to substantiate that the surrender was not given in accordance with the provisions of the 1906 *Indian Act*.
29. Correspondence from L.L. Brown, Superintendent, Reserves & Trusts, to E.S. Jones, Regional Supervisor of Indian Agencies, dated December 1, 1954 indicated that, although Chief Ball of Piapot alleged that Chief Musqua did not sign the surrender, his mark was on the surrender, and his name and mark were in a declaration made before a Commissioner for Oaths at Fort Qu'Appelle on May 9, 1918.
30. On February 21, 1966, the Administrator of Lands reported that there had been a number of enquiries from chiefs of various bands regarding the status of the reserve. The Administrator noted that the surrender document complies with the provisions of the 1906 *Indian Act* and there was no evidence that it was not properly taken.

Sale of Surrendered Lands

31. IR 80A was divided into small lots known as the Lakeview Subdivision (subdivision).
32. Approximately 200 of the 1408 surrendered acres of IR 80A were sold at public auction between 1918 and 1922.
33. In 1922, 9 acres of unsold land was leased to the Village of Regina Beach for a term of 21 years with a renewal option of an additional 21 years.
34. In 1934 it was reported that 460 lots had been sold and 83 lots remained unsold. In January of 1938, the number of unsold lots was 58. Further, 30 sold lots were being re-sold due to tax arrears by original purchasers. As a result, the Department of Indian Affairs (DIA) decided that a further subdivision of the lands was not warranted as there were a number of available lots for sale.
35. By 1954 a parcel of 3.78 acres, known as Parcel B, had been surveyed and sold.

Leases of Unsold Surrendered Lands

36. In 1923 the DIA leased the northeast quarter of section 16-21-22 to the Regina Beach Golf and Country Club.
37. The Regina Beach Golf and Country Club assigned the lease to the Village of Regina Beach.

38. On June 16, 1928 the DIA entered a five year grazing lease with Florence Josephine Dufree for 160 acres of land of the northwest part of section 16 of the reserve. The lease was for \$16 per annum and provided for a possible renewal of a further five year term. On September 24, 1935 the lease was cancelled and a new lease was issued to the Village of Regina Beach on the understanding that the Village would in turn sublet the lands to Mrs. Dufree.
39. On October 10, 1930 the DIA entered into a five year grazing lease with F. Wollatt for parts of sections 17, 18 and 19, Township 21, containing 450 acres. The lease was for \$65 per annum. After five years, the lease was cancelled for rental arrears and the lands were leased to the Village of Regina Beach.
40. On or about May 22, 1935 the DIA entered into a lease with the Village of Regina Beach for a term of 20 years for the north half of section 16, the south half and the south half of the north half of section 17, all fractional section 18 and all fractional section 19, excepting lands taken up by the CPR right of way. The total area leased amounted to 1207.5 acres. The lease ran from June 1, 1955 and the annual fee was \$120.75.
41. In 1955 the DIA sought a valuation of the property and met with delegates from several of the First Nations. For 1957 the rental was \$600. The lease was thereafter renewed for two successive periods of one year at a rental of \$1,000 per annum.
42. The Village of Regina Beach lease was renewed to 1968 and thereafter renewed for one more year at the rate of \$1,000.
43. A lease dated August 10, 1973 between the DIA and the Kinookimaw Beach Association, comprised of Poorman, Day Star, Gordon, Muskowekwan, Muscowpetung, Piapot and Pasqua First Nations to lease the unsold portion of IR 80A for the period of July 1, 1973 to June 30, 2023. The First Nations Band Councils had passed Resolutions that the surrender of IR 80A be amended to permit the DIA to lease the unsold portion of the reserve to the Kinookimaw Beach Association.

VI. Relief (R. 42(f))

44. The Crown seeks dismissal of the Declaration of Claim in its entirety;
45. Costs; and,
46. Such further relief as this Honourable Tribunal deems just and may allow.

VII. Communication (R. 42(g))

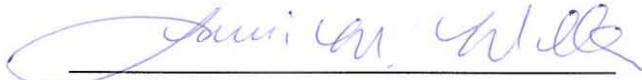
47. Respondent's address for service of documents:
Department of Justice (Canada)
Prairies Regional Office (Saskatoon)

10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Lauri M. Miller
Phone : (306) 975-6070

48. Facsimile number address for service: (306) 975-5013

49. E-mail address for service: saskSCT-5001-13-kawaca@justice.gc.ca

Dated this 22nd day of July, 2013.



Lauri M. Miller,
Counsel for the Respondent

WILLIAM F. PENTNEY,
Deputy Attorney General
Per: Lauri Miller
Department of Justice
Prairie Region (Saskatoon)
123 – 2nd Avenue South, 10th Floor
Saskatoon, SK. S7K 7E6
Tel: (306) 975-6070
Fax: (306) 975-5013
E-mail address: saskSCT-5001-13-kawaca@justice.gc.ca