

SPECIFIC CLAIMS TRIBUNAL		
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F I L E D	May 4, 2017	D É P O S É
David Burnside		
Ottawa, ON	38	

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

SAGKEENG FIRST NATION

Claimant

v.

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

Respondent

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

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

TO: Sagkeeng First Nation
As represented by Ron S. Maurice, of
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1. This is the Crown's Amended Response to the Declaration of Claim (the "Claim") filed by the Sagkeeng First Nation (the "First Nation"), formerly known as the Fort Alexander Band, with the Specific Claims Tribunal (the "Tribunal") on 24 July 2014, pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Declaration of Claim relates to an alleged shortfall in treaty land entitlement.

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

3. In 2000, the First Nation submitted its claim to the Minister of Indian and Northern Affairs Canada (the "Minister"). A supplementary submission was filed on 17 August 2010.
4. On 20 September 2013, the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

5.i. The Attorney General must respond to this claim according to the rules of practice applicable to pleadings in a matter of this nature and consistent with her duties and functions in the conduct of litigation for or against the Crown in right of Canada. Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, co-operation and partnership. The Attorney General and the Government of Canada seek to work in other contexts beyond pleadings to achieve the fulfilment of those commitments.

5.ii. The Crown accepts the validity of paragraph 12 of the Declaration of Claim.

5.iii. The Crown denies the validity of all remaining allegations.

~~5. The Crown does not accept and specifically denies the validity of all allegations and claims set out in the Claim. Without limiting the generality of the foregoing, the Crown denies: the allegations contained in paragraphs 18 through 29 of the Declaration of Claim that:~~

- ~~a. The Crown breached its Treaty or fiduciary obligations by failing to provide the First Nation with its full Treaty land entitlement ("TLE");~~
- ~~b. There was an oral term of Treaty 1 committing the Crown to exclude river lots that were privately held by members of the First Nation from the TLE allocation;~~
- ~~c. There was a mutual intention to exclude said river lots from the TLE allocation;~~
- ~~d. That Chief Kakekapenais possessed the authority to allocate individually held lots;~~
- ~~e. b. There has been any breach of the Honour of the Crown; and~~
- ~~e. There was any breach of the oral or written terms of Treaty 1.~~

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

- 6. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the Claimant to the strict proof thereof.
- 7. The Crown admits the facts in paragraphs ~~8 and 11~~ 8 to 13.
- 8. The Crown admits paragraph 9, noting that Treaty 1 states:

...and for the use of the Indians of which Ka-ke-ka-penais is the Chief, so much land on the Winnipeg River above Fort Alexander as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families, beginning at a distance of a mile or thereabout above the Fort...

IV. Statements of Fact (R. 42(a))

9. Treaty 1 makes no reference to whether lands held individually by Indians would be included as part of, or in addition to, a First Nation's TLE.
- ~~10. No promises were made to Chief Kakekopenais that lands held individually by members of the First Nation would be included in addition to the First Nations's TLE.~~
- ~~11.~~ 10. The First Nation was advised that individually occupied lands inside the boundaries of the Reserve would form part of the Reserve. The First Nation was further advised that individually held lands outside the Reserve would be treated as that of an ordinary settler. This interpretation was accepted by the First Nation.
- ~~12.~~ 11. Where lands were held individually, there was generally very little acreage that had been improved or cultivated.

Outside Promises

- ~~13.~~ 12. The "Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd day of August, A.D. 1871" (the "Memorandum") consisted of a list of items promised during treaty negotiations, but not included in the text of the treaty. These items are referred to as the "outside promises". The Memorandum made no mention of lands individually occupied by Indians.
- ~~14.~~ 13. An OIC issued on 30 April 1875 (the "1875 OIC") recognized the "very unsatisfactory state of affairs arising out of the so called 'outside promises'", and gave formal recognition to the Memorandum as constituting part of Treaty 1.
- ~~15.~~ 14. The 1875 OIC instructed the Indian Commissioner to inform the Indians that while the Government could not entertain their claims "to anything not mentioned in the treaty or in the memorandum", it recognised that "there had

been some misunderstanding" between the Crown and the Indians in Treaties 1 and 2. As "a matter of benevolence" it proposed, among other incentives, payment of increased annuities to chiefs and members of bands. Such increases were to be provided:

...on the express understanding however, that each Chief or other Indian who shall receive such increased annuity or annual payment shall be held to abandon all claim whatever against the Government in connection with the so called "outside promises" other than those contained in the memorandum attached to the treaty.

~~46.~~ 15. The Commissioners explained the Memorandum and the 1875 OIC to bands in Treaties 1 and 2, and the bands accepted the terms of the Memorandum. The Acceptance was signed "near Fort Alexander, on the Indian reserve" on 23 August 1875 by Chief Kakekapenais and witnessed by J.A.N. Provencher, Indian Commissioner.

1874 Survey of Reserve

~~47.~~ 16. Treaty 1 stipulated that the First Nation's reserve would be located "on the Winnipeg River above Fort Alexander". In August 1873, the First Nation requested that the location of the reserve be changed. In a letter dated 23 August 1873 to the Minister of Interior, Provencher relayed the request, noting that there was little suitable farmland in the original location of the Reserve.

~~48.~~ 17. On 4 September 1873, J. S. Dennis, Acting Deputy to the Minister of the Interior replied that he had no objection to the request, provided that:

1st If the Band formally express their desire to change the limits of their Reserve.

2nd They must surrender their present Reserve and accept the new one, such surrender and acceptance to be signed by their Head men.

3rd The proposed new Reserve must be carefully described and should (as set forth in the Treaty) be restricted to as much land, commencing at Catfish Creek and extending upwards on both sides, as will furnish 160 acres for each family of 5 or in that

proportion for larger or smaller families as the case may be, such description to be finally subject to approval by the Surveyor General of Dominion Lands. In the selection of a Reserve it must be borne in mind that the Land rights of all settlers, Whites or Halfbreeds and also of the Hudson Bay Co must be protected.

49. 18. The location of the Reserve had been indicated in Treaty 1; however, it had not been surveyed or set aside. Therefore, there was no surrender as the term is presently understood.

20. 19. These conditions were accepted and a Reserve of 17,500 acres was surveyed. The survey was completed in February of 1874. At 32 acres per person, this Reserve would have allotted sufficient TLE for 546.875 people; more than the population of the First Nation at the time. The adjusted date of first survey calculation shows 508 members.

24. 20. Additional lands were added to the Reserve in 1905, 1957, and 1970. Total Reserve lands presently stand at 22,385.4 acres.

~~22. In the correspondence relating to the creation of the new Reserve, there is no mention, by the Chief or by Crown officials, of effecting the change in location so as to create a reserve comprised of the lands individually occupied by Indians in addition to TLE.~~

V. Relief (R. 42(f))

23. 21. The Crown seeks to have:

- a. The Claim dismissed in its entirety;
- b. Costs; and
- c. Such further relief as this Honourable Tribunal deems just and may allow.

VI. Communication (R. 42(g))

24.22. Respondent's address for service of documents:

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~~Attention: Scott D. MacDonald~~
Attention: Lauri M. Miller

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

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Dated: September 17, 2014.

"Scott D. MacDonald"
Scott D. MacDonald, Crown Counsel

~~WILLIAM F. PENTNEY
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Amended this 4th day of May, 2017.


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