

SPECIFIC CLAIMS TRIBUNAL	
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F I L E D	June 19, 2014
Nicholas Young	
Ottawa, ON	5

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

MOSQUITO GRIZZLY BEAR'S HEAD LEAN MAN FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Indian 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:

As represented by Ron S. Maurice, of
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File: 106.02

1. This is the Crown's response to the Declaration of Claim (the "Claim") filed by "Mosquito Grizzly Bear's Head Lean Man First Nation" (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on April 17, 2014 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Declaration of Claim relates to an alleged outstanding obligation in relation to the 1905 surrender of Indian Reserves 110 and 111 (IR 110/111).

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

3. This claim was originally submitted in 1995 under the Specific Claims Policy. Supplementary claim submissions were then filed in 1998, 2001 and 2009.
4. The Minister notified the First Nation in writing of his decision not to accept the claim for negotiation on September 13, 2011.

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

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 that:
 - a. The surrender of IR 110/111 was contrary to the provisions of the 1886 *Indian Act*;
 - b. The surrender of IR 110/111 was unlawful and that the Crown breached its pre-surrender fiduciary duties to the Bands;
 - c. The Crown committed fraud or equitable fraud against the Bands;

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

6. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Declaration of Claim and puts the Claimant to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts in

the following paragraphs of the Declaration of Claim: 9, 15, 16, 17, 22, 23, 24, 28, 29, 31, 32, 33(c), 33(e), 39(d), 43, 46, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65.

7. The Crown admits the facts set out in the following paragraphs of the Declaration of Claim: 1, 2, 3, 4, 5, 6, 8, 11, 12, 21, 25, 35, 41 and 45.
8. The Crown has no knowledge of the following paragraphs of the Declaration of Claim: 26, 40 and 49.
9. With respect to paragraph 6 of the Declaration of Claim, the correct spelling of the Senior Assistant Deputy Minister of the Department of Indian and Northern Affairs Canada is "Patrick Borbey".
10. In Response to paragraph 10 of the Declaration of Claim, Canada says that Chief Poor Man executed an adhesion to Treaty 4 on September 25, 1877. The Crown admits the rest of the paragraph.
11. In response to paragraph 13 of the Declaration of Claim, the Crown only admits that in the summer of 1884, Indian Affairs surveyed the Grizzly Bear's Head-Lean Man Indian Reserves 110 and 111 and that a total area of 36.2 sections (approximately 23,168 acres) was surveyed as a single, undivided block for the Grizzly Bear's Head Band and Lean Man Band.
12. In response to paragraph 14, the Crown admits only that, pursuant to the Crown's obligations under Treaties 4 and 6, reserves were surveyed for the Grizzly Bear's Head Band, the Lean Man Band, and the Mosquito Band.
13. In response to paragraph 18, the Crown admits only that, on May 19, 1905, approximately 14,400 acres, or 22.5 sections, of Indian Reserves 110/111 were purportedly surrendered by the "Stony Band" to the Crown.
14. In response to paragraph 19, the Crown only admits only that, on February 6, 1905, Indian Agent J.P.G. Day wrote to Indian Commissioner David Laird claiming that the "Indians of the three Stony Bands" had requested a surrender of 22.5 sections of land.

15. In response to paragraph 20, the Crown admits only that, on February 22, 1905, Assistant Surveyor J.K. McLean forwarded a plan of subdivision showing a proposed surrender of approximately the western two-thirds of IRs 110/III and that Indian Affairs officials had instructed Dominion Land Surveyor Lestock Reid to undertake a subdivision of IRs II 0/111 as early as 1903.
16. In response to paragraph 27, the Crown admits only that, members of all three Bands were present at the meeting, that they were all allowed to vote on the surrender and that the majority of the people present at the meeting were members of the Mosquito Band.
17. In response to paragraph 30, the Crown admits only that the majority of the members of the Grizzly Bear's Head Band and the Mosquito Band voted in favour of amalgamation on September 21, 1949.
18. In response to paragraph 33, the Crown denies that there "are also a number of irregularities with respect to the documentation which further calls into question the validity of the surrender."
19. In response to paragraph 33(a), the Crown admits only that the marks on the surrender document, except for the mark of Stenchiaco, were witnessed by Indian Agent Day, R. Jefferson (identified as farmer), M. Leffler (identified as teacher) and William Venne (identified as an interpreter).
20. In response to paragraph 33(b), the Crown admits only that Stenchiaco's mark was witnessed by Indian Agent Day, William Venne (identified as an interpreter), and C.J. Johnson (identified as a Clerk).
21. In response to paragraph 33(d), the Crown admits only that the oaths were rejected by Indian Commissioner David Laird, who returned them 11 days later and directed that a second oath was necessary.
22. In response to paragraph 33(f), the Crown admits only that Indian Agent Day made a third attempt to submit the oath on July 24, 1905, that this oath was accepted by the Department, and that the Indian Commissioner forwarded the surrender documents to the Secretary of Indian Affairs on August 4, 1905.

23. In response to paragraph 34, the Crown admits only that in a memorandum dated August 9, 1905, the Superintendent General of Indian Affairs Frank Oliver recommended that Cabinet accept the surrender by the "Stony Band of Indians" and that, by Order in Council OCPC 1920 dated November 3, 1905, Cabinet accepted and approved the surrender on the terms recommended by Oliver.
24. In response to paragraph 36, the Crown admits only that Deputy Superintendent General of Indian Affairs Frank Pedley directed the sale be done by public auctions.
25. In response to paragraph 37, the Crown admits only that M.J. Kane of Kane Land Co. wrote to Agent Day on April 19, 1906, offering \$7.00 per acre for all the Claim Lands in the surrendered tract.
26. In response to paragraph 38, the Crown admits only that S.S. Simpson of the real estate firm Champagne, Speers & Simpson was appointed as the auctioneer and that Agent Day did not receive instructions from Deputy Superintendent General of Indian Affairs Frank Pedley to conduct the sale and particulars of the auction until 10:00 a.m. on June 13, 1906.
27. In response to paragraph 39, the Crown admits that, on June 14, 1906, 59 quarter sections were sold to 15 purchasers for a total of \$38,240.42.
28. In response to paragraph 39(a), the Crown admits only that E.H. White purchased 18 quarter sections.
29. In response to paragraph 39(b), the Crown admits only that R.J. Speers purchased 12 quarter sections.
30. In response to paragraph 39(c), the Crown admits only that E. Bourassa purchased 8 quarter sections.
31. In response to paragraph 42, the Crown admits only that, on August 24, 1908, J.D. McLean advised Agent Day that the parcels would be sold in early November and directed Agent Day to prepare a valuation of each quarter section to be sold and that Crown also admits that Thomas Lecky of Battleford was appointed auctioneer.

32. In response to paragraph 44, the Crown admits only that A.M. Speers purchased two quarter sections of land.
33. In response to paragraph 47, the Crown admits only that in May it was decided to hold an auction in Battleford, that three or four people attended the sale and that none of them bid.
34. In response to paragraph 50, the Crown admits only that, of the 19 quarter sections available, it appears that six were purchased by E.H. White and nine by M.A. Simpson.

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

35. Assiniboine Chief Misketo signed an adhesion to Treaty No. 6 on August 9, 1879. Chief Wich-A-Wost-Taka, "The PoorMan" signed an adhesion to Treaty 4 at Fort Walsh in September 1877. Although the name Grizzly Bear's Head does not appear on Treaty 6, the Crown considered his band to be covered by Treaty 6.
36. Reserve No. 109 was surveyed for the Mosquito Band in July and August 1878 by Dominion Land Surveyor G.A. Simpson.
37. In July and August 1884, Reserves Nos. 110 and 111 were surveyed for Grizzly Bear's Head and Lean Man bands. These reserves contained 23,165 acres, or 36.2 square miles of land, and they were confirmed by Order in Council P.C. 1151/1889 on May 17, 1889.
38. Reserves Nos. 110 and 111 were contiguous to Reserve 109.
39. On May 19, 1905 a meeting was held for the purpose of surrendering 14,400 acres of Reserves Nos. 110 and 111.
40. A valid surrender was obtained and on November 3, 1905 Order in Council P.C. No. 1920/1905 was passed confirming the May 1905 surrender.
41. An auction was held in North Battleford on June 13, 1906 and 59 quarter sections of the surrendered land were sold.
42. Two more auctions of the surrendered land were held in North Battleford on November 4, 1908 and November 20, 1908.
43. A final auction was held on June 1, 1910.

V. Relief (R. 42(f))

- 44. The Crown seeks to have the claim dismissed in its entirety;
- 45. Costs; and,
- 46. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

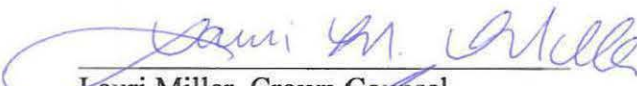
- 47. Respondent's address for service of documents:

Department of Justice (Canada)
Prairies Regional Office (Saskatoon)
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Lauri Miller

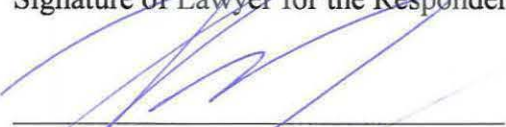
- 48. Facsimile number address for service: (306) 975-5013

- 49. E-mail address for service: saskSCT-5001-14-mosqgrizbear@justice.gc.ca

Dated: June 18, 2014



Lauri Miller, Crown Counsel
Signature of Lawyer for the Respondent



David J. Smith
Signature of Lawyer for the Respondent

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