

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	May 15, 2015	D É P O S É
Nicholas Young		
Ottawa, ON	16	

BETWEEN:

COTE 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

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*.

Original filed: October 22, 2014

Amended: May 15, 2015

TO: As represented by Ron S. Maurice, of
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File: 108.08

1. This is the Crown's Response to the Declaration of Claim (the "Claim") filed by the Cote First Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on August 19, 2014 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim relates to the lawfulness of a taking of a portion of the Cote Indian Reserve No. 64 (the "Reserve") in southeastern Saskatchewan for a railway right-of-way for the Canadian Northern Railway (the "CNoR").

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

3. On June 23, 2009, the First Nation submitted its claim to the Minister of Indian and Northern Affairs Canada (the "Minister"). The claim was filed with the Minister on July 8, 2009.
4. On June 26, 2012, 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. 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 it:
 - a. failed to follow the expropriation procedures set out by the *Indian Act* and the *Railway Act* when it expropriated reserve land for the railway right-of-way;
 - b. failed to advise the First Nation regarding the valuation of the land to be taken and its statutory right to seek arbitration if it was not satisfied with the compensation for the lands taken;
 - c. failed to ensure that the First Nation's use and enjoyment of its reserve land was minimally impaired by purporting to grant fee simple title to the right-of-way lands to the CNoR when it required only a limited interest in the nature of a

statutory easement with a reversionary right in favour of the First Nation when the lands were no longer required for railway purposes; ~~and~~

d. failed to withhold its consent to the taking of reserve land as the transaction was foolish, improvident and exploitative; and

e. failed to obtain adequate compensation for the taking of reserve land.

6. The Crown further denies that the First Nation had a statutory right to seek arbitration with respect to compensation, that the CNoR was granted fee simple title to the right of way lands and that the taking of the land for railway purposes was a foolish, improvident or exploitative transaction.

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

7. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the 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 contained in the following paragraphs of the Claim: 21, 23 and 24.

8. The Crown admits the facts in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 22.

9. The Crown has no knowledge of the facts set out in paragraphs 5 and 10.

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

10. Treaty 4 was entered into between the Crown and the First Nation on September 15, 1874. Under the terms of the Treaty reserve land was to be set aside for the use and benefit of the First Nation.

11. The Reserve was surveyed in 1877 and confirmed by Order in Council P. C. 1151 in 1889. The Reserve consisted of 36,160 acres on the east side of the Assiniboine River in what is now southeastern Saskatchewan.
12. On August 13, 1902, Acting Indian Agent Frederick Fischer informed the Department of Indian Affairs (the "DIA") that CNoR engineers were about to survey a line through the Reserve. The DIA responded that the CNoR had a right under its charter to conduct a survey, but that construction could not proceed until the company had made proper arrangements to obtain a right-of-way.
13. By May 30, 1903, contractors for the CNoR's construction subsidiary, McKenzie, Mann & Co., had entered and camped on the reserve. Indian Agent Carruthers warned the contractors not to begin construction until they obtained authorization. Despite the warning, on May 31, 1903, the contractors began construction of the railway through the Reserve.
14. On June 1, 1903, Carruthers informed both the Indian Commissioner in Winnipeg and the DIA in Ottawa that the contractors had begun work and sought instructions on how to proceed. The DIA immediately sent a telegram to McKenzie, Mann & Co. stating that contractors could not work on the Reserve until the usual arrangements had been made. The DIA also sent the company an official letter on June 3, 1903, advising that they were required to file a plan of the required lands with the DIA and deposit \$250 before any construction could take place.
15. On June 12, 1903, the DIA warned McKenzie, Mann & Co. that if the deposit was not paid immediately, the DIA would take action to stop the trespass. Solicitors on behalf of the CNoR immediately sent a \$250 deposit cheque and a plan of the proposed right-of-way to the DIA. Apparently unaware that this had occurred; McKenzie, Mann & Co. sent a second cheque for \$250 to the DIA on June 13, 1903. These cheques were deposited in the First Nation's trust account on June 17 and June 25, 1903.

16. On June 18, 1903, the DIA sent plans of the right-of-way to the Department of Railways and Canals with a request that their Chief Engineer certify that the land is required for railway purposes and that the CNoR should be allowed to acquire the land under S. 35 of the Indian Act.
17. On June 22, 1903, the Secretary of Railways and Canals returned the plans to the DIA, certified by the Chief Engineer, as requested.
18. On June 29, 1903, the DIA sent the plan of the right-of-way to Carruthers instructing him to examine the plan and value the required lands and damages.
19. On July 14, 1903, Order in Council #1173 authorized the sale of 44.56 acres of the Reserve to the CNoR for a 99 foot railway right of way.
20. On August 13, 1903, Carruthers submitted his valuation of the land and damages to the DIA. The land was valued at \$8 per acre, for a total of \$356.48. Damage to the property of three individual band members was assessed at \$205, for a total of \$561.48.
21. On September 22, 1903, The CNoR submitted a cheque to the DIA for the balance owing for the right of way. The cheque was for \$61.73; although it appears the correct amount owing was \$61.48 (\$561.48 less the \$500 deposit). This cheque was deposited in the First Nation's trust account on September 30, 1903.
22. Compensation to individuals for loss of improvements was settled in November 1903. One of the parties, Peter Fiddler, had settled directly with the CNoR for \$40 (the valuation had been for \$50). The \$50 intended for Mr. Fiddler was supposed to be returned to the CNoR. Payments to Thomas Singuish (\$80) and Baldhead (\$75) were made on November 25, 1903. It does not appear that the \$50 was returned to the CNoR.

23. Letters patent for the 44.56 acres were issued to the CNoR on April 12, 1905.

24. The original CNoR line through the Reserve remains an active railway line of the Canadian National Railway.

V. Relief (R. 42(f))

25. The Crown seeks to have the claim dismissed in its entirety;

26. Costs; and,

27. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

28. 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: David Culleton

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

30. E-mail address for service: saskSCT-5003-14-cote@justice.gc.ca


Original Response filed on:

Dated: October "22", 2014

Amended Response filed May 15 2015.

for. 

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