SCT File No.: SCT-7002-14

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SISKA INDIAN BAND

Claimant

v.

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

Respondent

# DECLARATION OF CLAIM

## Pursuant to Rule 41 of the

## *Specific Claims Tribunal Rules of Practice and Procedure*

This Declaration of Claim is filed under the provision of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

Date: May 1, 2014

Nicholas Young

(Registry Officer)

TO: HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax number: (613) 954-1920

## I. Claimant

1. The Claimant, Siska Indian Band (the "Band") confirms that it is a First Nation within the meaning of s. 2 of the *Specific Claim Tribunal Act* ("Act") by being a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended in the Province of British Columbia.

## II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the Act, have been fulfilled:

> 16. (1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minster and
>
> (a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

3. In or about 1991, the Band filed two specific claims in respect to the taking of reserve lands within Zacht Indian Reserve No. 5 ("I.R. No. 5") and Nahamanak Indian Reserve No. 7 ("I.R. No. 7") for a right-of-way for the Canadian Pacific Railway (together the "Claim") with the Specific Claims Branch of the Department of Indian Affairs and Northern Development Canada ("Canada").

4. The Claim was deemed filed with the Minister of Indian and Northern Affairs Canada on October 16, 2008.

5. By letter, dated May 11, 2011, Canada advised the Band of the partial acceptance of the Claim for negotiation.

6. By letter, dated February 17, 2012, the Band advised Canada that they were not willing to negotiate the partial acceptance of the Claim.

7. By letter, dated April 23, 2012, Canada advised Band that the status of the Claim within the Specific Claims Database would be "closed".

## III. **Claim Limit (Act, s. 20(1)(b))**

8. For the purpose of the claim, the Band does not seek compensation in excess of $150 million.

## IV. **Grounds (Act, s. 14(1))**

9. The following are the grounds for the specific claim, as provided for in s. 14 of the Act:

> (*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;
>
> (*d*) an illegal lease or disposition by the Crown of reserve lands; or
>
> (*e*) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

## V. **Allegations of Fact (R. 41(e))**

### **Zacht I.R. No. 5 and Nahamanak I.R. No. 7**

10. The Band is a part of the Nlaka'pamux / Nlhakápmx Nation with traditional use and occupancy throughout its shared traditional territory that encompasses both sides of the Fraser River, south of Lytton, British Columbia, among other areas.

11. The Siska Indian Band was allotted a number of reserves by Reserve Commissioner Sproat in 1878, including I.R. No. 5 and I.R. No. 7. These reserves were surveyed by

Dominion Land Surveyor Jemmett in 1886 and are within the Railway Belt. The survey notes the size of I.R. No. 5 to be 60 acres, and the size of I.R. No. 7 to be 362 acres. The railway tracks of the Canadian Pacific Railway ("CPR") under construction are drawn through the length of both reserves.

12. A Survey Plan, dated November 4, 1884, signed by G. Keefer, Engineer for CPR, (the "Original Plan") indicated that the CPR right-of-way through I.R. No. 7 is 89.60 acres. There is no reference to CPR right-of-way through I.R. No. 5. The Original Plan was deposited by CPR with the Lands Registry; however, Canada was not made aware that CPR required a right-of-way through I.R. Nos. 5 or 7.

13. In 1888, Canada became aware that it had not received notice from CPR that a right-of-way had been built across I.R. No.7 and that CPR had not paid compensation for this right-of-way. In order to clarify the location of the CPR route through I.R. No. 7, Canada suggested a special survey. This suggestion was rejected by the Department of Railways and Canals, and Canada instead accepted that the right-of-way through I.R. No. 7 comprised 89.6 acres. In 1890, Canada gave a land value of $89.60 for the 89.60 acres taken for the CPR right-of-way, representing a valuation of $1.00 per acre. No value was provided for improvements on I.R. No. 7. No land appraisal of either I.R. No. 5 or 7 was carried out by Canada.

14. By Order in Council PC 2006, dated August 25, 1891, the Governor in Council approved the recommendation of the Minister of Railways and Canals that authority be given for the purchase of 89.6 acres of I.R. No. 7, and that upon deposit of the purchase money of $89.60, the lands be transferred to Railways and Canals in order to transfer them to CPR. The sum of $89.60 was not credited to the Band's trust account managed by Canada until 1892.

15. The Original Plan was inadequate to accurately define the lands to be conveyed to CPR. In 1903, James Garden, a CPR surveyor commissioned by the Government, re-surveyed the CPR right-of-way through the reserves (the "Garden Plan"). It is at this time, for the first time, lands within I.R. No. 5 are shown on any document as being used by CPR.

The Garden Plan showed the CPR right-of-way through I.R. Nos. 5 and 7 as containing .08 and 89.51 acres respectively. The Garden Plan was certified by Railways and Canals and deposited in the Kamloops Land Title Office in 1905. This was the first deposit of a plan showing lands for the CPR right-of-way through Siska I.R. No. 5. Apparently, Canada did not obtain a copy of the Garden Plan until 1923.

16. In 1912, CPR raised the question of obtaining a conveyance of lands within I.R. No. 5. Canada noted that the lands had not been paid for and requested that Indian Agent Graham undertake a valuation. The valuation for .08 acres was determined to be $1.60, based upon a valuation of $20 per acre. Unlike other valuations of lands taken for the CPR right-of-way, the valuation was never approved by an Order in Council. The Department of Railways and Canals forwarded this amount to Canada in July, 1925. The sum of $1.60 was credited to the Band's trust account managed by Canada in 1925.

17. Letters Patent for .08 acres of I.R. No. 5 were issued by Canada on December 11, 1925 and then cancelled and reissued on July 20, 1927. The stated authority for the Letters Patent was said to be Orders in Council PC 53 (January, 1886) and PC 379 (March, 1886). Neither of these Orders in Council refers to I.R. No. 5.

18. By PC 953 dated April 19, 1912, the Governor in Council authorized Letters Patent for 89.51 acres be issued to CPR for right of way through I.R. No. 7. Letters Patent were issued on July 5, 1912. These Letters Patent were signed by Canada. New Letters Patent referring to the Garden Plan were issued on April 10, 1928. These Letters Patent signed by Canada authorized a CPR right-of-way of 89.51 acres of land within I.R. No. 7.

## VI. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation

19. This claim is based on the Crown’s breach of its common law fiduciary duty and legal obligation under the *Indian Act* for authorizing an excessive right-of-way through I.R. Nos. 5 and 7 to CPR, failing to ensure fair market compensation was paid by CPR and

failing to ensure compensation was paid by CPR at the time of taking. The Crown had an obligation to protect the Band's interest in I.R. Nos. 5 and 7 and to deal with the lands in the best interests of the Band. As a fiduciary, the Crown was obligated to ensure it did not let the public interest in the building of the railway to supersede the Band's interest in their reserve lands.

20. The Crown breached the legal obligations owed to the Band as it:

a. failed to investigate, inquire or ascertain whether the land requested by CPR was in excess of what was required for railway purposes;

b. failed to properly value the land taken by CPR;

c. failed to ensure the Band received adequate compensation from CPR for the railway right-of-way;

d. failed to consult with and obtain the consent of the Band regarding the amount of compensation paid by CPR;

e. failed to ensure compensation was paid by CPR to the Band upon the existence of the CPR right-of-way through I.R. Nos. 5 and 7 in 1885;

f. failed to ensure the Band received payment from CPR in a timely manner;

g. failed to distinguish between improved and unimproved land in carrying out the valuation; and

h. failed to ensure interest was paid by CPR on the payments received in 1892 in respect to the CPR right-of-way through I.R. No. 7 and received in 1925 in respect to the CPR right-of-way through I.R. No. 5.

## VII. **Relief Requested**

21. The Band seeks:

a. compensation from the Crown for failure to uphold its legal obligations to the Band arising from the Crown's administration of I.R. Nos. 5 and 7 by the disposition of the CPR right-of-way through I.R. Nos. 5 and 7;

b. interest on compensation;

c. costs of this claim; and

d. such other relief or compensation as this Honourable Tribunal deems just.

Dated this 1st day of May 2014.

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Signature of Solicitor
**Darwin Hanna**
Callison & Hanna
Barristers & Solicitors
2784 Alamein Avenue
Vancouver, BC V6L 1S2
Tel: (604) 222-2374
Fax: (604) 222-2974
darwin@chlaw.ca