

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	June 6, 2017	D E P O S E
David Burnside		
Ottawa, ON	20	

SAULTEAUX FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN 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 Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Saulteaux First Nation
As represented by Sheryl Manychief
Maurice Law Barristers & Solicitors
35 Wolf Drive
Redwood Meadows, Alberta T3Z 1A3
Phone: (403) 949-5606 ext. 784
Fax: (403) 266-2701
Email: smanychief@mauricelaw.com

AND

As represented by Ryan M. Lake
Maurice Law Barristers & Solicitors
300, 602-12th Ave. S.W.
Calgary, Alberta T2R 1J3
Phone: (403) 266-1201 ext.236
Fax: (403) 266-2701
Email: rlake@mauricelaw.com

1. This is the Crown's Amended Response to the Amended Declaration of Claim (the "Claim") filed by the Saulteaux First Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on ~~August 17, 2015~~ May 9, 2017 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim is comprised of the following two components: 1) an alleged breach of the Crown's legal obligation to include three parcels of land in Saulteaux Indian Reserve No. 159 ("Reserve No. 159") due to surveyor error; and 2) an alleged illegal alienation of land for roadway purposes from Reserve No. 159.

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

3. On September 5, 2012, 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 November 7, 2012.
4. On June 4, 2015, 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 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. 6. 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 fulfill a legal obligation to provide land under treaty;
 - b. breached a legal obligation of the Crown under the *Indian Act*;
 - c. breached a legal obligation arising from the Crown's provision or non-provision of reserve land;
 - d. illegally disposed of reserve land; or
 - e. failed to provide adequate compensation for reserve land allegedly taken.

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

6. 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: 24, 32, 36 and 37.
7. 8. The Crown accepts the facts in paragraphs 1, 2, 4, 6, 7, 10, 11, 13, 14, 15, 17, 18, 22, 23, 26, 27, 33, and 35, 36, 37, 38, 39 and 40.
8. 9. The Crown has no knowledge of the facts set out in paragraphs 5, 9, 31 and 34.
9. 10. With respect to paragraph 3 of the Claim, the Crown repeats the contents of paragraph 3 of this Response, as set out above, and for further clarification says the following: that the claim was submitted to the Minister on September 5, 2012, and after undergoing an early review to determine

whether it met the Minimum Standard, as required under the *Act*, was filed with the Minister on November 7, 2012.

40. 11. With respect to paragraph 8 of the Claim, the Crown agrees that the ancestors of the First Nation (the "Saulteaux") held out on adhering to Treaty 6. However, the Crown denies that they were favourably disposed to the Treaty and were unable to remain to confirm their adherence as a result of a pending buffalo hunt. Rather, the Crown says that the Saulteaux, led by a man named Yellow Sky, wished to remain independent and did not wish to adhere to treaty at that time.
41. 12. With respect to paragraph 12 of the Claim, the Crown agrees that in June 1906, J.D. McLean, Secretary of the Department of Indian Affairs ("DIA") wrote to P.G. Keyes, Secretary of the Department of the Interior ("DOI") but says that said letter demonstrates that the decision with respect to precisely what land would be set aside for the Saulteaux had not yet been made. In particular, J.D. McLean stated:
- I shall feel obliged if you will have reserved from sale or settlement a strip of land along the Northeast shore of Jackfish Lake, in Townships 47 and 48, Ranges 16 and 17, West of the 3rd Meridian, of such area as you may think desirable, *until this Department is in a position to state definitely what is required* (italics added).
42. 13. With respect to paragraph 16 of the Claim, Canada agrees that on June 4, 1908 J.D. McLean, Secretary of the DIA wrote to P.G. Keyes, Secretary of the DOI, but denies that in said letter J.D. McLean requested that certain parcels of land be reserved for the Saulteaux. Rather, Canada says that J.D. McLean was conveying to P.G. Keyes the information he had learned from Indian Agent J.P.G Day and Indian Commissioner D. Laird with respect to what land the Saulteaux wished to secure. J.D. McLean listed and enclosed a plan showing the land desired by the Saulteaux coloured purple. Section 30 was amongst several other parcels of land identified.

J.D. McLean noted that it would be in the public interest that the Saulteaux have a reserve set aside for them but the letter is not a request from the DIA to have specific land reserved for the Saulteaux.

43. 14. With respect to paragraphs 19 and 20 of the Claim, Canada agrees that the first edition of the Survey Plan of Township 47, Range 16, West of the 3rd Meridian, confirmed September 10, 1890 (the "1st Survey Plan") includes a notation in the southeast quarter of Section 30. However, the 1st Survey Plan is difficult to read and it is not clear the notation indicates 0.22 acres as alleged.
44. 15. With respect to paragraph 21 of the Claim, Canada agrees that the sixth edition of the Survey Plan of Township 47, Range 16, West of the 3rd Meridian, dated September 28, 1918 (the "6th Survey Plan") includes a notation of 0.6 acres in the southeastern quarter of Section 30. However, the 6th Survey Plan is difficult to read and it is not clear that the notations of 1.2 and 0.1 acres on the northwestern tip of Murray Lake are included in the eastern half of Section 30 as alleged.
45. 16. With respect to paragraph 25 of the Claim, Canada agrees with the facts set out but denies that Stewart forwarded Reid's survey plan "despite the above error in the survey plan".
46. 17. With respect to paragraph 28 of the Claim, Canada agrees that Reserve No. 159 was confirmed by Order in Council P.C. 2617 on December 22, 1922 and that said Order in Council referred to the 6th Survey Plan and did not refer to the survey conducted by Reid. Canada also agrees that the quote set out in paragraph 28 provides a *partial* description of Reserve No. 159; being the first of four paragraphs in the Order in Council that describe the lands set apart for Reserve No. 159.

17. 18. With respect to paragraph 29 of the Claim, the Crown repeats the contents of paragraph 14 of this Response. The Crown also says that the eastern half of Section 30 was one of various other pieces of land which were referred to and considered during the period of 1905 to 1910 for possible inclusion in Reserve No. 159.
18. 19. With respect to paragraph 30 of the Claim, Canada says that the Roadway Survey Plan, dated May 7, 1917, signed by Stewart Young (the "Roadway Survey Plan") and referred to in the Order in Council contains the notation "Indian Reserve No. 159 Area in Road = 4.62.ac." in the northeastern quarter of Section 30. Canada denies that this indicates that 2 small parcels of land on the northwest shore of Murray Lake and 1 small parcel of land on the southwest shore of Murray Lake were included in Reserve No. 159. Further, the Roadway Survey Plan is difficult to read and it is not clear whether it includes the notation "Mkd. I.R." as alleged.

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

a) Treaty 6

19. 20. Treaty 6 was entered into between the Crown and the Plain and Wood Cree Indians of central and northern Saskatchewan in August 1876.
20. 21. On September 14, 1877, M.G. Dickieson wrote to the Lieutenant Governor of the North West Territories reporting that he had met with the Saulteaux, who were led by a man named Yellow Sky. M.G. Dickieson indicated that the Saulteaux wished to remain independent and did not wish to adhere to Treaty at that time.

b) Reserve No. 159: Identifying Available Land (1905-1922)

21. 22. On December 22, 1905, J.A. Markle, Assistant Indian Commissioner, DIA, wrote to J.D. McLean, Secretary of the DIA, indicating that a number of Saulteaux Indians had petitioned him for a reserve.

- ~~22.~~ 23. On May 21, 1906, J.P.G. Day, Indian Agent, wrote to D. Laird, Indian Commissioner, regarding procuring a reserve for the Saulteaux Indians. He indicated they wished to have their reserve located on a strip along the northeast shore of Jackfish Lake where the land was not yet settled.
- ~~23.~~ 24. On June 7, 1906, D. Laird, Indian Commissioner, wrote to J.D. McLean, Secretary of the DIA, stating that if the Saulteaux, who had always been looked upon as independent and non-treaty Indian, were now desirous of settling down on a reserve, he thought the matter worthy of the Department's consideration. However, it would be necessary to call them together to determine the number of Saulteaux and how many were interested in a reserve.
- ~~24.~~ 25. On June 13, 1906, J.D. McLean, Secretary of the DIA wrote to P.G. Keys, Secretary of the DOI, explaining that a number of Saulteaux Indians living in the Battleford District were seeking a reserve. He asked that a strip of land along the northeast shore of Jackfish Lake, in Townships 47 and 48, Ranges 16 and 17, West of the 3rd Meridian be reserved from sale or settlement until the Department was in a position to state definitely what was required.
- ~~25.~~ 26. On July 11, 1906, N.O Coté, Chief Clerk of the DOI, wrote to W.W. Cory, Deputy Minister of the DOI, regarding settlement in the vicinity of Jackfish Lake. He attached a colour coded sketch showing how the land stood at the time. By letter of July 31, 1906, P.G. Keyes, Secretary of the DOI, forwarded said sketch to J.D. McLean Secretary of Indian Affairs. He noted that much of the land had been disposed of and asked that the DIA select sufficient unappropriated land for the reserve.
- ~~26.~~ 27. On August 28, 1906, D. Laird, Indian Commissioner, wrote to Indian Agent J.P.G Day advising that a large portion of the land near Jackfish Lake had already been disposed of. He attached the aforementioned

sketch and asked him to examine the land and select the best unappropriated farm land in the area for the reserve.

- ~~27.~~ 28. On May 21, 1908 Indian Agent J.P.G Day wrote to D. Laird, Indian Commissioner, stating that after several attempts he was able to gather the names and number of Saulteaux families who wished to have a reserve set aside for them, as well as a list of the land they wished to secure. The Saulteaux identified several parcels of land; one of which was Township 47, Range 16, West of the 3rd Meridian, the whole of section 30.
- ~~28.~~ 29. On May 29, 1908, D. Laird, Indian Commissioner, wrote to J.D. McLean, Secretary of the DIA, passing on the information provided to him by Indian Agent J.P.G Day in his letter of May 21, 1908. He noted that amongst the land were three school districts. Before proceeding further, he indicated it should be determined definitely which lands were available and to what extent the DOI would be prepared to reserve them for the Saulteaux Indians. By letter of June 4, 1908, this information was further passed on from J.D. McLean, Secretary of DIA to P.G. Keyes, Secretary of the DOI. The letter and the map included, amongst other land, the whole of Section 30, within Township 47, Range 16, West of the 3rd Meridian.
- ~~29.~~ 30. On July 14, 1908, N.O Coté, Chief Clerk of the DOI, wrote to J.W. Greenway, Commissioner, Dominion Lands of the DOI, enclosing the colour coded plan of J.D. McLean. N.O. Coté indicated that some parcels of the lands desired were already disposed of. Amongst the list of such land were the northwest and southwest portions of Section 30, as they were already occupied by settlers. The east half of Section 30 was marked as vacant.
- ~~30.~~ 31. On February 25, 1909, Indian Agent J.P.G Day, reported by letter to D. Laird, Indian Commissioner, that despite having been to the Saulteaux camp four or five times, it was only on his last trip that he was able to ascertain definitely the wishes, intentions and numbers of the Saulteaux.

He conveyed their concern that the land was being taken up by settlers and their desire to have the land as home but not to adhere to treaty. He requested on their behalf that the land be surveyed in the spring.

- ~~31.~~ 32. On March 5, 1909, J.D. McLean, Secretary of the DIA, wrote to P.G. Keyes, Secretary of the DOI, indicating that "the final location of the proposed reserve at Jackfish Lake for certain Saulteaux Indians has not been finally decided upon".
- ~~32.~~ 33. On March 8, 1909, S. Bray, Chief Surveyor of the DOI, wrote to the Deputy Minister of the DIA indicating that since the land for the Saulteaux Indian reserve had been temporarily reserved, the Moosomin Band had decided to surrender their reserve and were now seeking a new reserve. The land the Moosomin Band sought included a portion of the land temporarily reserved for the Saulteaux. He suggested that as soon as the weather permitted, surveyor Reid should complete his work with respect to the Thunderchild and Moosomin reserves. Reid would lay out the Moosomin reserve on the same land as temporarily reserved for the Saulteaux after which he "will and can then adjust the whole matter".
- ~~33.~~ 34. On March 12, 1909, J.D. McLean, Secretary of the DIA, wrote to Reid indicating that part of the land now desired by the Moosomin Band included the tract proposed to be given to the Saulteaux Indians. He instructed him to give preference to the Moosomin Band and to work with the Indian Agent J.P.G Day to lay out the land for the Saulteaux Indians in a manner that was satisfactory to the Indians concerned.
- ~~34.~~ 35. On March 16, 1909, P.G. Keyes, Secretary of the DOI wrote to J.D. McLean, Secretary of the DIA, indicating that the DIA needed to amend its selection of land for the Saulteaux reserve so that it constituted an unbroken block.

- ~~35.~~ 36. On April 26, 1909, J.D. McLean, Secretary of the DIA, wrote to Reid asking him to select a tract of land near Jackfish Lake for the Saulteaux. He noted that after the selection of the Moosomin reserve there may not be enough land to give the Saulteaux the full 640 acres per family of five. He instructed Reid that before making his selection of land, he should meet with the Band to explain the above and that they may instead take two portions of land if they wished; one near Jackfish Lake and the other North of Township 53, or they could take their entire reserve North of Township 53.
- ~~36.~~ 37. On June 18, 1909, P.G. Keyes, Secretary of the DOI wrote to J.D. McLean, Secretary of DIA, listing the land temporarily reserved for the Saulteaux. The east half of Section 30, Township 47, Range 16, West of the 3rd Meridian was one of many parcels of land listed. On June 22, 1909, J.D. McLean forwarded the above list to Reid, noting however that some of the lands were not in fact available as they had been reserved for the Moosomin Band.
- ~~37.~~ 38. On August 10, 1909, Reid wrote to J.D. McLean, Secretary of the DIA, attaching a tracing of the lands marked off for the Saulteaux Reserve. In Reid's tracing, as well as on the subsequent certified correct copy, dated January 10, 1910, Murray Lake covers all of the southeast quarter of Section 30, with the exception of a small parcel of land on the northeast shore of Murray Lake. In fact, Murray Lake extends into the southwest quarter of Section 30. The land selected for the Saulteaux Reserve included the northeast quarter of Section 30 as well as the abovementioned small parcel of land on the northeast shore of Murray Lake.
- ~~38.~~ 39. On January 18, 1910, S. Stewart, Assistant Secretary of the DIA, wrote to P.G. Keyes, Secretary of the DOI, enclosing plans for the new Saulteaux reserve. When describing the Saulteaux reserve he stated that it "is

composed of the *Fractional* East half of Section 30..." (Italics added). He asked that P.G. Keyes take the necessary action to have the reserved confirmed by Order in Council.

~~39.~~ 40. On October 22, 1914, S. Stewart, Assistant Secretary of the DIA, wrote to P.G. Keyes, Secretary of the DOI, enquiring as to what action had been taken with respect to the Saulteaux reserve. He also noted and enclosed a copy of a letter dated April 13, 1910, relating a request of the Deputy Minister of Public Works, Regina, "to have certain road deviations provided for in the lands set apart for the Saulteaux Band of Indians".

~~40.~~ 41. On December 11, 1916, N.O. Coté, Controller, DOI, wrote to W.W. Cory, Deputy Minister of the DOI, indicating the DIA had applied for a reserve for the Saulteaux. He attached a sketch of the land. He indicated all the land was available and recommended that said lands be set apart by Order in Council. The land marked as recommended to be set aside as reserve for the Saulteaux begins north of Murray Lake in the northeast quarter of Section 30 and includes a small portion of land on the northeast shore of Murray Lake in the southeast quarter of Section 30.

~~41.~~ 42. On December 1, 1922, N.O. Coté, Controller, DOI, wrote to J.D. McLean, Secretary of the DIA, indicating that the application to have the Saulteaux reserve confirmed by Order in Council had been referred to the Deputy Minister on December 11, 1916 and no further action been taken. He enquired as to whether these lands are still required for the Saulteaux.

c) Order in Council P.C. 2617- Setting Aside Reserve No. 159

~~42.~~ 43. On December 9, 1922, N.O. Coté, DOI, wrote to W.W. Cory, Deputy Minister of the DOI, submitting for his signature a Memorandum to Council recommending confirmation of Saulteaux Indian Reserve No. 159.

~~43.~~ 44. On December 22, 1922, Saulteaux Indian Reserve 159 was set apart by Order in Council P.C. 2617. The Order in Council describes the lands

set apart in four paragraphs. The first is relevant for the purpose of this claim and is as follows:

All that portion of township forty-seven, range 16, west of third meridian, which is contained within the limits of Saulteaux Indian Reserve No. 159, *as shown upon a map or plan of survey of the said township approved and confirmed at Ottawa on the 28th day of September, A.D. 1918, by Edouard Deville, Surveyor General of Dominion Lands* and of record in the Department of the Interior, and containing by admeasurement seven hundred and ninety and forty-eight hundredths acres more or less; *saving and excepting thereout for a roadway a strip of land one chain in width crossing the said land, as shown upon a plan of survey of the said roadway, signed by Steward Young, Dominion Land Surveyor, on the 7th day of May, A.D. 1917, and of record in the Department of the Interior, under Number 26292, a duplicate whereof is on file in the Land Titles Office for the West Saskatchewan Land Registration District under No. P. 3183, containing by admeasurement four and sixty-two hundredth acres more or less.*

44. 45. The survey by Edouard Deville referred to in the Order in Council is the sixth edition of the Survey Plan of Township 47, Range 16, West of the 3rd Meridian, dated September 28, 1918 (the "6th Survey Plan"). The 6th Survey Plan includes notations of 0.6 acres in the southeastern quarter of Section 30 and 1.2 and 0.1 acres on the northwestern tip of Murray Lake. It is difficult to determine from the survey whether the 1.2 and 0.1 acres are in the eastern half of Section 30. The survey demarcates the land set aside as Reserve No. 159 as starting on the north side of Murray Lake in the northeastern quarter of Section 30 and small portion of the southeastern quarter of Section 30 on the northeast shore of Murray Lake.
45. 46. The Roadway Survey Plan referred to in the Order in Council depicts the land excluded from reserve for roadway purposes. It indicates a road

that passes through the northeastern quarter of Section 30 with an area of 4.62 acres being in Reserve No. 159.

- ~~46.~~ 47. Although the above mentioned road was excluded from Reserve No. 159, it should be noted that the First Nation were nonetheless compensated. Prior to the Order in Council, on October 22, 1918, the Rural Municipality of Meota paid \$10.00 per acre for a 4.62 acre road through the northeast quarter of Section 30. On October 31, 1918, an amount of \$46.20 was deposited in the Saulteaux Trust Account as payment for a road allowance.

V. Relief (R. 42(f))

- ~~47.~~ 48. The Crown seeks to have the Claim dismissed in its entirety;
- ~~48.~~ 49. Costs; and
- ~~49.~~ 50. Such further relief as this Honourable Tribunal deems just and may allow.

VI. Communication (R. 42(g))

- ~~50.~~ 51. 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 and Jody Barber

- ~~51.~~ 52. Facsimile number address for service: (306) 975-5013.

- ~~52.~~ 53. Email address for the service of documents:

saskSCT-5001-15-sault@justice.gc.ca


Dated this "14th" day of October, 2015.

"Lauri M. Miller"
Lauri M. Miller,
Counsel for the Respondent

"Lauri M. Miller for Jody Barber"
Jody Barber,
Counsel for the Respondent

~~WILLIAM F. PENTNEY
Deputy Attorney General
Per: Lauri M. Miller and Jody Barber
Department of Justice
Prairie Region (Saskatoon)
123-2nd Avenue South, 10th Floor
Saskatoon, SK S7K 7E6
Tel: (306) 975-6305 / (306) 975-6070
Fax: (306) 975-5013
E-mail address: saskSCT-5001-15-sault@justice.gc.ca~~

Amended this 15 day of June, 2017.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Prairie Region, Saskatoon Office
123-2nd Avenue South, 10th Floor
Saskatoon, SK S7K 7E6
Fax: (306) 975-5013

Per: David Culleton
Tel: (306) 975-6305
E-mail: saskSCT-5001-15-sault@justice.gc.ca

Counsel for the Respondent.