

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	February 26, 2016	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	5	

CARRY THE KETTLE BAND #378

Claimant

v.

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

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: Carry the Kettle Band #378
As represented by Ron S. Maurice,
Maurice Law
Barristers & Solicitors
300, 602 – 12th Avenue SW
Calgary, Alberta T2R 1J3
Phone: (403) 266-1201
Fax: (403) 266-2701
Email: rmaurice@mauricelaw.com

1. This is the Crown's response to the Declaration of Claim (the "Claim") filed by Carry the Kettle Band # 378 (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on November 26, 2015 pursuant to the *Specific Claims Tribunal Act* (the "Act").

2. The Claim relates to alleged outstanding obligations that arose from a surrender on Indian Reserve 76 (the "Reserve") that took place in 1905 (the "1905 Surrender").

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

3. The Claim was originally submitted to the Minister of Indian Affairs and Northern Development (the "Minister") on December 16, 1988, and the Specific Claims Branch received the Claim on January 5, 1989.

4. In May 1994, the First Nation was advised that the Claim was not being accepted for negotiation.

5. In December 1994, upon request of the First Nation, the Indian Claims Commission (the "ICC") agreed to conduct an inquiry into the Claim. At the request of the First Nation, this inquiry was put into abeyance until November 2004. In January 2009, the ICC issued its final report on the Claim, recommending that it not be accepted for negotiation.

6. On or about May 28, 2009, the Minister notified the First Nation in writing of his decision to negotiate the claim, in part.

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

7. The Crown does not accept and specifically denies the validity of all of the allegations put forth in the Claim. Without limiting the generality of the foregoing, the Crown denies that:

- a. the 1905 Surrender was contrary to the provisions of the 1886 *Indian Act*;¹
- b. the Crown breached its fiduciary duty to the First Nation prior to the 1905 Surrender; and
- c. the Crown breached any fiduciary or trust duties owed to the First Nation following the 1905 Surrender.

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

8. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the First Nation to strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts in the following paragraphs of the Claim: 11, 19, 20, 36 and 51-67.
9. The Crown admits the facts set out in the following paragraphs of the Claim: 1-6, 9, 12-17, 21, 25, 40 and 41.
10. The Crown has no knowledge of the facts in the following paragraphs of the Claim: 10, 22, 23, 27-31 and 45.
11. In response to paragraphs 7 and 8 of the Claim, the Crown says that all details of the communications between the Crown and the First Nation were made on a without prejudice basis, and are thus subject to settlement privilege.
12. In response to paragraph 18, the Crown admits only that Indian Head is north of Indian Reserve 76, and that the settlement of Montmartre was established in 1893.
13. In response to paragraph 24, the Crown admits only that the suggestion to surrender the southern part of the Reserve was forwarded to James A. Smart, Deputy Superintendent General of Indian Affairs, who was of the opinion that the First Nation would “decidedly object” to the suggestion. On February 12, 1901, Secretary

¹ *Indian Act*, RSC 1886, c 43.

J.D. McLean wrote to Aspdin, requesting his opinion as to “[W]hether you believe the Indians would be willing to sell either the timber applied for, or any part of their Reserve.”

14. In response to paragraph 26 of the Claim, the Crown admits only that Indian Agent Aspdin agreed with the First Nation’s decision not to surrender the land, and that Aspdin refuted the reasons cited by McLean as justification for a surrender.
15. In response to paragraph 32 of the Claim, the Crown says that on December 16, 1904, Aspdin reported to McLean that the Chief, Headman and approximately 25 others requested that the Department sell the nine southernmost sections of the Reserve so that “the [Department] do not press them for the money owing for the threshing outfit and also for the pasture made last summer but that these liabilities be paid out of the sale of these lands,” that the First Nation indicated it wished to use some of the proceeds from the sale to purchase a new engine for their thresher, and that “after all the land in question is sold and their liabilities squared off they would wish the money to form a fund and the interest spent every year for the benefit of the band not forgetting the claims of the aged and sick.”
16. In response to paragraph 33 of the Claim, the Crown says that Aspdin opined that a low estimate of the expected sale price was \$5.00 per acre, a projected railway line would likely increase the value and that the surrender would realize around \$30,000.00.
17. In response to paragraph 34 of the Claim, the Crown says that William H. Graham reported in March 1905 that he had met with members of the First Nation and that with only one or two exceptions, they were anxious to surrender and sell nine sections of the Reserve on the following conditions:

That the present [indebtedness] on the threshing outfit of about \$1200.00 be paid off at the earliest possible date, out of the proceeds of the sale.

That the Department be paid for the money advanced to purchase wire for the pasture fence, from the proceeds of the sale.

That lumber etc. be purchased to build a suitable shed to house the threshing machine and engine, out of the proceeds of the sale of land.

That the present engine, which was a second-hand one when purchased, be exchanged for a new engine and the difference be paid out of the proceeds of the sale of the land.

That Daniel Kennedy and one or two other Indians be paid compensation for any ploughing that should happen to be on the strip of land that it is proposed to surrender, out of the proceeds of the sale.

That the balance of the money be funded and managed by the Department as it sees fit.

18. In response to paragraph 35 of the Claim, the Crown says that Deputy Superintendent General of Indian Affairs Frank Pedley sent surrender forms to Inspector Graham, which were to be forwarded to Aspdin for the 1905 Surrender, and that Pedley indicated that Aspdin was authorized to take the surrender.
19. In response to paragraph 37 of the Claim, the Crown admits only that on April 26, 1905, a meeting was convened to discuss the 1905 Surrender, that Archie Thomson was hired to summon band members to attend the surrender meeting, that Daniel Kennedy was hired to act as an interpreter at that meeting and that on May 3, 1905, Indian Agent Aspdin reported that “[a]t the meeting there was a most decided majority in favour of the sale and there are a number of absentees whom it is known are favourable.”
20. In response to paragraph 38 of the Claim, the Crown admits only that by July 27, 1905, the Assistant Indian Commissioner and Indian Commissioner were aware of the 1905 Surrender.
21. In response to paragraph 39 of the Claim, the Crown admits only that the surrender document states that it was a surrender for sale of 5,760 acres from the Reserve, that the document was signed by Indian Agent Aspdin and had the marks of Chief Carry the Kettle and three Headmen identified as Broken Arm, Chas. Rider and The Saulteaux, and that the document set out the following conditions:

That the present indebtedness on the threshing outfit of about \$1200.00 be paid off at the earliest possible date, out of the proceeds of sale.

That the Department be paid for the money advanced to purchase wire for the pasture fence, from the proceeds of the sale.

That lumber etc., be purchased to build a suitable shed to house the threshing machine and engine, out of the proceeds of the sale of land.

That the present engine, which was a second hand one when purchased, be exchanged for a new engine and the difference be paid out of the proceeds of the sale of the land.

That Daniel Kennedy and one or two other Indians be paid compensation for any ploughing that should happen to be on the strip of land that it is proposed to surrender, out of the proceeds of the sale.

That the balance of the money be used for our benefit and managed by the Department of Indian Affairs as to it seems best in our interests.

22. In response to paragraph 42 of the Claim, the Crown admits only that Surveyor J. K. McLean recommended that the auction take place in November 1905 in Wolseley or Indian Head because local farmers had had a good crop and some were looking for more land, however the auction took place in February 1906 in Sintaluta.
23. In response to paragraph 43 of the Claim, the Crown admits only that on December 30, 1905, the King's Printer was instructed to publish a notice that the auction would take place on February 14, 1906 at 12:00 noon at Sintaluta, and that the Department of Indian Affairs received inquiries about the land from residents of Wolseley and Balgoinie, and from individuals James Smart in Montreal and James Kinkade in Missouri.
24. In response to paragraph 44 of the Claim, the Crown admits only that the auction was held at noon in Sintaluta on February 14, 1906, 34 quarter sections were sold at the auction for the total purchase price of \$35,345.26 and that \$7,069.09 was collected at the time of sale, as per the terms of the sale.
25. With respect to paragraph 46 of the Claim, the Crown says that W.A. Matheson, a grain dealer from Manitoba, purchased 8 quarter sections. However, 5 of those

quarter sections were for George Hastings, also a grain dealer from Manitoba. The two quarters not sold at the auction were sold in 1923.

26. With respect to paragraph 47 of the Claim, the Crown admits only that following the 1906 auction, \$6,680.34 was deposited to the First Nation's Capital Account and \$388.75 was deposited to its Interest Account. In total, \$47,965.16 was collected by the Department of Indian Affairs from the sale.
27. With respect to paragraph 48 of the Claim, the Crown says that \$1623.03 was debited from the First Nation's capital account for the purchase of a new engine and shed materials, \$1500.00 was spent on a new engine, \$76.73 was spent on material to construct a shed, \$64.00 was debited for freight on a thresher and three band members were paid \$388.75 for improving the land, with \$82.10 going to Joseph Jack, \$73.25 to The Saulteaux and \$233.40 to Daniel Kennedy.
28. In response to paragraph 49 of the Claim, the Crown admits only that between 1907 and 1917, the First Nation sent at least five petitions to the Department of Indian Affairs requesting annual, per capita payments from the First Nation's trust account, which were all denied or refused.
29. In response to paragraph 50 of the Claim, the Crown admits only that according to the terms of sale, consideration for all purchases was to have been paid in full by February 14, 1910.

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

30. In September 1877, Chief The-Man-Who-Took-The-Coat and Chief Long Lodge adhered to Treaty 4.
31. In March 1885, the bands of Chief Long Lodge and Chief-The-Man-Who-Took-The-Coat amalgamated. In 1889, Chief The-Man-Who-Took-The-Coat died and his Band took the name of his brother, Carry The Kettle.

32. In June 1885, Indian Reserve 76 was surveyed for the First Nation by John Nelson. The Reserve was 73.2 square miles and was confirmed by Order in Council P.C. 1151/1889 on May 17, 1889.
33. In December 1904, the First Nation indicated that they wanted to surrender and sell the nine southern-most sections of the Reserve.
34. On March 30, 1905, Inspector of Indian Agencies W.M. Graham held a meeting with the First Nation to discuss the surrender of the nine southern-most sections of the Reserve that the First Nation had proposed.
35. On April 26, 1905, a meeting was held for the purpose of surrendering the nine southern-most sections of the Reserve.
36. A valid surrender was obtained and approved by Order in Council P.C. 940 dated May 23, 1905.
37. In September 1905, Dominion Land Surveyor J.K. McLean surveyed the surrendered land.
38. An auction was held in Sintaluta on February 14, 1906 and 34 quarter sections of the surrendered land were sold for a total purchase price of \$35,345.26.
39. The two remaining quarter sections were sold in 1923.

V. Relief (R. 42(f))

40. The Crown seeks the following relief:
 - a. to have the claim dismissed in its entirety;
 - b. costs; and
 - c. such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

41. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
10th Floor, 123-2nd Avenue S
Saskatoon, SK S7K 7E6
Attention: Donna Harris & Jenilee Guebert

42. Facsimile number for service is (306) 975-5013.

43. Email address for service is saskSCT-5002-15-carrythekettle@justice.gc.ca.

Dated this 26th day of February, 2016.



Donna Harris,
Counsel for the Respondent

WILLIAM F. PENTNEY, Q.C.
Deputy Attorney General of Canada
Per: Donna Harris and Jenilee Guebert
Department of Justice
Prairie Region (Saskatoon)
123 – 2nd Avenue South, 10th Floor
Saskatoon, SK S7K 7E6
Tel: (306) 975-6455 / (306) 975-6741
Fax: (306) 975-5013
E-mail address: saskSCT-5002-15-carrythekettle@justice.gc.ca