

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	September 8, 2016	D É P O S É
Amy Clark		
Ottawa, ON	1	

BETWEEN:

PAUL FIRST NATION

Claimant

v.

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

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 provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

September 8, 2016

Amy Clark

(Registry Officer)

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I. Claimant (R. 41(a))

1. The Claimant, Paul First Nation (“PFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

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

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal 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 Minister 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. On June 4, 1996, PFN submitted this claim to the Department of Indian Affairs and Northern Development alleging mismanagement of the sales of surrendered lands.
4. On July 10, 1998, the claim was partly validated and accepted for negotiation.
5. Negotiations on that part of the claim that was accepted for negotiation reached an impasse in 2012.
6. This claim relates to that part of the 1996 claim that was not accepted for negotiation.

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

7. PFN does not seek compensation in excess of \$150 million dollars in relation to its claim.

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

8. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

14 (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

....
(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;

(e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; or...

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

9. PFN Indian Reserve (IR) 133 was surveyed and set apart pursuant to the terms of Treaty 6 in 1877.

10. Two reserves were surveyed for PFN on the shores of White Whale Lake: IR 133A and IR 133(B). IR 133B, which was the much smaller of the two, was the Band's primary fishing station, with access to both White Whale Lake and Moonlight Bay.

11. Chief Paul remained as Chief until 1901, when he was deposed by the Department of Indian Affairs. The Band remained without a Chief until 1906.

12. In late 1905, the Canadian Northern Railway (CNR) was approaching from Edmonton and would likely pass through the PFN Reserves. There was also interest in IR 133B from local real estate companies because of the fine sand beaches.

13. On or about July 31, 1906, the Secretary of Indian Affairs, J.D. McLean, wrote to Indian Agent Gibbons informing him that an application had been made for a part of the PFN reserve, and asked him to speak with PFN to determine their wishes.

14. On or about August 14, 1906, Indian Agent Gibbons, met with PFN to discuss the surrender of IR 133B for the purpose of establishing a railway townsite or a resort community.
15. On or about September 6, 1906, five days before the Surrender, the Surveyor ,J.K. McLean wrote to the Assistant Deputy and Secretary of the Department of Indian Affairs, J.D. McLean, in Ottawa to inform him that he had completed the re-survey of the boundaries of the White Whale Lake Indian Reserve.
16. On September 11, 1906, PFN voted to surrender IR 133B.
17. On the surrender document, there are 10 names; nine voted in favour of the surrender, with one opposed.
18. The recording of the annuities paid to PFN members on July 20, 1906 indicates that 35 men were paid annuities as heads of families or individuals.
19. Of the 10 PFN members named on the surrender document, two were not described as heads of families or individual adults on the 1906 payroll. If these two persons were eligible to participate in the surrender vote, the number of adult males in the PFN population at the time of survey was 37.
20. On or about September 17, 1906 the Surveyor, J.K. McLean wrote again to J.D. McLean in Ottawa to inform him that there was a burial ground of the site and that this had not been discussed with PFN at the surrender meeting as he and Agent Gibbons were not aware of it at the time.
21. In May 1910, Canada sold 42 lots of the surrendered lands and in June 1912, the year the railway connection with Edmonton became operational, another 49 lots of the surrendered lands were sold.

22. Two parcels of land have been returned to reserve status. The first, amounting to 420 acres, almost two-thirds of the land surrendered, became part of the reconstituted IR 133B in 1936. An additional 23.6 acres were added to IR 133B in 1953.
23. Canada and PFN signed a Memorandum of Intent in 1995 outlining a plan for the return of the remaining 143 lots (approximately 86 acres) to reserve status, but this did not occur.

VI. The Basis in Law on which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

24. Canada breached its statutory and fiduciary duties to PFN by failing to comply with section 39 of the *Indian Act*, R.C.S., 1886 c.43, as amended, which states in part:

39. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, except on the following conditions:

(a) **The release or surrender shall be assented to by a majority of the male members of the band, of the full age of twenty-one years, at a meeting or council** thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General...

[Emphasis added].

25. Section 39 of the *Indian Act*, R.C.S., 1886 c.43, as amended, requires that at least 18 out of the 35 eligible voters attended the meeting and that at least 10 supported the surrender. Since only nine votes were cast in favour of the surrender, the statutory requirement was not met.
26. Further or in the alternative, the Crown breached its fiduciary obligation to PFN by failing to ensure that PFN adequately understood the terms and consequences

of the surrender as they were not fully informed of the boundaries of their reserve and because of the short time period in which the Agent Gibbons had to inform PFN of the consequences of the Surrender.

27. Further or in the alternative, the Crown breached its fiduciary obligation to PFN by failing to take extra caution in light of PFN having ceded or abnegated its decision-making powers as Chief Paul had been deposed and the Nation did not have its fully complement of headman.

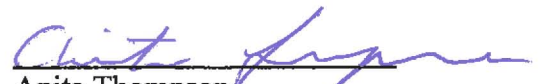
VI. Relief Requested:

28. PFN seeks monetary compensation for:

- a. the current, unimproved value of the lands;
- b. damages suffered by PFN as a result of the loss of use of the lands;
and
- c. such other damages or compensation as this Honorable Tribunal deems just.

Dated: September 8, 2016

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