

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
October 10, 2019		
Isabelle Bourassa		
Ottawa, ON	63	

SCT File No.: SCT - 6001-16

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

PAUL FIRST NATION

Claimant

v.

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

Respondent

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**AMENDED AMENDED DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

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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~~ ~~June 10, 2019~~ October 11, 2019

Isabelle Bourassa

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(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building  
234 Wellington Street, East Tower  
Ottawa, Ontario K1A 0H8  
Fax: (613) 954-1920

### **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.

(d) three years have elapsed after the day on which the Minister has notified the First Nation in writing of the Minister’s decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

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

~~(f) fraud by employees or agents of the Crown in connection with the acquisition, leasing or disposition of reserve lands.~~

#### **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 1892-1877.
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. Despite requests by Paul members for the appointment of a new Chief, the ~~The~~ Band remained without a Chief until 1906, when David Bird was appointed Chief.
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. He reported that he had not begun dividing the proposed surrender lands into lots because “some of the Indians are opposed.”
16. A document dated September 11, 1906 and bearing the marks of six Paul members and the signatures of three Paul members ~~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.~~ The small number of votes cast regarding the surrender is consistent with the documented phenomenon that among First Nations, opposition was typically expressed through absence.
- ~~21.~~ 20. There is no other document that sets out the number of Paul members that attended the surrender meeting or the number of members in favour of the surrender.
21. In addition to the surrender document itself, Chief David Bird and Indian Agent Gibbons executed an affidavit stating that the surrender was assented to by “a majority of the male members” of PFN who were “of the full age of twenty-one years then present.”
22. Of the two signatories to the affidavit, Chief Bird could not read or write English and James Gibbons was not a reliable or credible affiant. Gibbons was not competent to carry out his duties as Indian Agent, and he had been appointed for partisan political purposes against the advice of the Indian Commissioner.
23. The haste with which the surrender was conducted, the lack of detail regarding the surrender vote, and the failure to address documented evidence of opposition are consistent with widespread examples of fraudulent surrenders of reserve land for sale during the respective tenures of Clifford Sifton and Frank Oliver as Superintendent General of Indian Affairs, Frank Pedley as Deputy Superintendent General, and James Gibbons as Indian Agent for the Edmonton Agency.
- ~~20.~~ 24. 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.~~ 25. Despite the haste with which the surrender was obtained, Canada did not conduct a sale of surrendered lands until ~~in~~ May 1910. Canada sold only 42 lots of the 169 available lots in the surrendered lands, and these were sold for lower prices than those anticipated before the sale. ~~and~~ In June 1912, ~~the year the railway connection with Edmonton became operational,~~ only another 49 additional lots out of the 357 lots in the surrendered lands were sold.

~~22.~~ 26. Canada failed to sell most of the surrendered lands. 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.~~ 27. 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.

~~24.~~ 28. Despite it being decided at the surrender meeting that a beach separating the surrendered lands from Lake Wabamun was to be excluded from the lands surrendered for sale, Canada transferred administration, control, and ownership of the beach to Alberta in or before 1935.

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

~~25.~~ 29. 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].

~~26.~~ 30. Section 39 of the *Indian Act*, R.C.S., 1886 c.43, as amended, required that at least 18 or 19 ~~of the 35~~ eligible voters attended the meeting and that at least 10 supported the surrender. Since only nine votes (three of which were questionable) were cast in favour of the surrender, the statutory requirement was not met.

~~27.~~ 31. 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.

~~28.~~ 32. 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-headmen, and there was a possible relationship between the appointment of David Bird as Chief and the successful surrender vote.

33. Further or in the alternative, the Crown breached its post-surrender fiduciary obligations to PFN by failing to obtain market value for the surrendered lands and by failing to protect the beach from disposition.

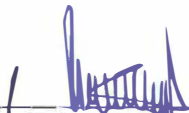
#### **VI. Relief Requested:**

~~29.~~ 34. PFN seeks monetary compensation for:


- a. the current, unimproved value of the lands value of the land included in the surrender and the Nation's loss of use therein, calculated in accordance with legal principles and principles of compensation applied by the courts
- b. damages suffered by PFN as a result of the loss of use of the lands, permanently or for a period of years; and

- c. in the alternative, the failure to obtain adequate income from the sale of surrendered lands and the failure to protect the beach from disposition; and
- d. such other damages or compensation as this Honorable Tribunal deems just.

Dated ~~September 8, 2016~~ ~~June 10, 2019~~ October 9, 2019

  
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~~Neil Reddekopp~~ John Kuorinko  
Solicitor for the Claimant

Ackroyd LLP  
1500, 10665 Jasper Avenue  
Edmonton, AB T5J 3S9  
(Tel): 780-423-8905  
(Fax): 780-4293-8946

  
\_\_\_\_\_  
~~Anita Thompson~~ Eric Pentland  
Solicitor for the Claimant

Ackroyd LLP  
1500, 10665 Jasper Avenue  
Edmonton, AB T5J 3S9  
(Tel): 780-423-8905  
(Fax): 780-4293-8946