

SPECIFIC CLAIMS TRIBUNAL

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~~ Crown
Indigenous Relations

Respondent

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
January 6, 2019		
Isabelle Bourassa		
Ottawa, ON		65

AMENDED AMENDED RESPONSE
Pursuant to Rule 42 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Amended Amended Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: PAUL FIRST NATION
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Overview

1. Canada acknowledges that Paul First Nation is an adherent to Treaty 6, is a band within the meaning of the *Indian Act*, and is a First Nation within the meaning of the *Specific Claims Tribunal Act*.
 2. Pursuant to Treaty 6, Canada set aside approximately 32.7 square miles or 20,928 acres of land for Paul First Nation as Indian Reserve 133A (“IR 133A”) and Indian Reserve 133B (“IR 133B”).
 3. This claim seeks compensation for the surrender of IR 133B taken on September 11, 1906 or, in the alternative, compensation for the sale of the surrendered lands.
 4. Canada admits a post-surrender breach of fiduciary duty to Paul First Nation from the transfer by Canada of the streets and lanes in the village of Kapasiwin to the Province of Alberta in 1932 (the “Beach Lands”), lands which were part of the surrendered lands. The Beach Lands claim has been accepted for negotiation.
 5. In all other respects, Canada complied with all statutory and fiduciary duties and obligations regarding the surrender and with its post-surrender fiduciary duties and obligations in the sales of the surrendered lands.
 6. Canada favours resolving claims made by Indigenous Peoples through negotiation and settlement. Canada continues to pursue all appropriate forms of resolution as this claim proceeds, and endeavors to be constructive in assisting the Tribunal in its task of adjudicating this matter.
- I. Status of Claim (R. 42(a))**
7. The Respondent, Her Majesty the Queen in Right of Canada (“Canada”) admits that Paul First Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “Act”) as pleaded in paragraph 1 of the Amended Amended Declaration of Claim.

8. Paul First Nation has filed the following specific claims alleging breaches of Canada's lawful obligations in connection with the surrender of ~~Indian Reserve IR 133B~~:

- a. a specific claim received on July 12, 1996 regarding the Crown's management of the sales of the lands surrendered in 1906. The Minister notified Paul First Nation, in writing, on March 3, 2009 of his decision to negotiate the claim in part. The Minister agreed that a lawful obligation arose from the transfer by Canada of the ~~Beach Lands streets and lanes in the village of Kapasiwin~~ to the Province of Alberta in 1932 ~~(the Beach Lands)~~; and
- b. a specific claim received on June 5, 2000 and a further specific claim received on January 27, 2012. Both submissions address the same claim, the validity of the 1906 surrender of ~~Indian Reserve IR 133B~~. The Minister notified Paul First Nation in writing on October 29, 2013, of his decision not to accept this claim for negotiation.

9. Canada admits, in response to paragraph 2 of the Amended Amended Declaration of Claim, that the Claim meets the conditions precedent, as set out in paragraphs 16(1)(a) and (d) of the *Act*.

~~10. Paragraphs 20, 22, and 23 contain new allegations that were not contained in the specific claims filed with the Minister.~~

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

~~10.41~~ Canada admits a breach of fiduciary duty to Paul First Nation from the transfer by Canada of the Beach Lands in the village of Kapasiwin to the Province of Alberta in 1932. Canada states that s. 20 (1) (e) of the *Act* may provide the basis for the Tribunal to award compensation.

~~11.42~~ Canada does not accept the validity of the remaining claims on all grounds in the Amended Amended Declaration of Claim, and in particular denies:

- a. that the surrender of IR 133B was contrary to the provisions of the ~~1906~~ 1886 *Indian Act*;
- b. that there was any failure to obtain fair market value for the sale of the surrendered lands;
- c. any breach of the *Indian Act* or obligations arising from Canada's fiduciary duties;
- d. that there are any consequential losses or damages;

~~e.d. that employees or agents of Canada committed any fraudulent acts in obtaining the 1906 surrender or in the subsequent sales of the surrendered lands.~~

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

~~12.13.~~ Canada admits the facts set out in the following paragraphs of the Amended Amended Declaration of Claim:

- a. that on or about July 31, 1906, Secretary McLean wrote to Indian Agent Gibbons to advise an application had been made for part of IR 133B, and asked him to speak to Paul First Nation to determine their wishes (paragraph 13).
- b. that on or about September 6, 1906, Surveyor McLean wrote to Secretary McLean confirming that he had completed his re-survey of the boundaries of IR 133A and 133B and reported that he had not begun dividing the proposed surrender lands into lots because "some of the Indians are opposed" (paragraph 15).
- c. that the surrender of IR 133B was obtained on September 11, 1906. Six members of Paul First Nation signed the surrender by placing a mark beside their names and three signed with their signatures (paragraph 16).

- d. that the recording of the annuities paid to Paul First Nation members on July 20, 1906 indicates that 35 men were paid annuities as heads of families or as individuals (paragraph 18).
- e. that it was an oral term of the surrender that a beach separating the surrendered lands from Lake Wabamun was to be excluded from the sale (the Beach Lands) (paragraph 28).
- f. that Canada transferred administration and control of the Beach Lands to Alberta in 1932 (paragraph 28).

~~13.14.~~ In reply to paragraph 9, Canada admits that IR 133A and IR 133B were surveyed and set apart pursuant to the terms of Treaty No. 6. For clarity, Canada states that IR 133A and 133B were set apart by Order-in-Council PC 1633 dated June 16, 1892.

~~14.15.~~ In reply to paragraph 10, Canada admits that two reserves were surveyed for Paul First Nation at White Whale Lake: IR 133A and IR 133B, with IR 133B having been set aside for a fishing station, having access to White Whale Lake, and being the much smaller of the two reserves. Canada has no knowledge of whether IR 133B was Paul First Nation's primary fishing station and whether IR 133B had access to Moonlight Bay.

~~15.16.~~ In reply to paragraph 11, Canada admits that Chief Paul remained as Chief until 1901 and that Paul First Nation remained without a Chief until 1906. For clarity, Canada states that Chief Paul was removed from office by Order-in-Council PC 1762 dated September 12, 1901 for conduct that included killing cattle without authority and encouraging the sale of alcohol on the reserve. David Bird was appointed Chief in 1906.

~~16.17.~~ In reply to paragraph 12, Canada admits that in late 1905, the Canadian Northern Railway ("CNR") was approaching from Edmonton and would likely pass through IR 133A. There was no mention of IR 133B at this time. Canada has no knowledge of the remaining allegations of fact in paragraph 12, but states that, in

the summer of 1906, White Whale (now Wabamun) Lake, with its proximity to Edmonton, was attracting attention as a prospective summer resort.

~~17,18~~ In reply to paragraph 14, Canada admits that Indian Agent Gibbons met with Paul First Nation on August 14, 1906 to discuss the surrender of IR 133B. Canada has no knowledge of whether this discussion was for the purpose of establishing a railway townsite or resort community.

~~18,19~~ In reply to paragraph 17, Canada admits that there are 10 names of Paul First Nation members listed in the surrender; nine marked their names or signed the document and one did not.

~~19,20~~ In reply to paragraph 19, Canada admits that two of Paul First Nation members who signed the surrender document were not described as heads of families or individuals in the Paul First Nation payroll prepared for the purpose of paying annuities as required by Treaty No. 6. Payroll records do not determine the number of band members who are eligible to vote at a surrender meeting. Canada states that the affidavit sworn on September 13, 1906 before a Justice of the Peace attests that a majority of the eligible voters then present assented to the surrender. The reference in the last sentence to “the time of survey” should be to “the time of *surrender*”.

~~20,21~~ In reply to paragraphs 20, 21, 22, and 23, Canada admits that Chief David Bird and Indian Agent Gibbons executed an affidavit on September 12, 1906 before a Justice of the Peace. Mr. John Foley signed the affidavit as a witness and is known to be a translator used within the Edmonton Agency. ~~Canada does not agree with the other statements made in these paragraphs, which constitute legal interpretation or argument rather than fact.~~

~~21,22~~ Canada admits the facts in paragraph 24 and, for clarity, states that the burial ground on IR 133B was small and that those who had used this small ground were present at the meeting and signed the surrender, excepting one named Reindeer. Canada further states that the Department of Indian Affairs (~~the~~ “DIA”) took steps

to ensure that the bodies in the burial ground would be carefully moved and that the members of Paul First Nation could be exclusively employed in this work if they wished.

~~22,23.~~ In reply to paragraph 25, Canada admits that selected lots of the surrendered lands were sold by public auction in May 1910 and again in June 1912. Canada states that it obtained fair market value for the lots sold. Canada has incomplete knowledge of the precise numbers of lots sold on these dates. Individual lots were sold after that time until the 1950s.

~~23,24.~~ In reply to paragraph 26, Canada admits most of the surrender lands were not sold. Two parcels of land were returned to reserve status as reconstituted IR 133B; 420 acres in 1936 and 23.6 acres in 1953.

~~24,25.~~ In reply to paragraph 27, Canada admits that Canada and Paul First Nation signed a Memorandum of Intent (~~the~~ “Memorandum”) outlining a plan for certain unsold lots that were part of the IR 133B surrender to be returned to reserve status. Canada admits that these unsold lots have not yet been returned to reserve status, but, for clarity, states that the Memorandum is not binding on the parties until such time as the final agreement is reached. Canada has no knowledge of the exact number of lots or acres that the Memorandum contemplates being returned to reserve status, but states that the lots to be returned to reserve status are the unsold lots within the townplot of Wabamun, Alberta lying within the areas outlined in red in Schedule “C” of the Memorandum. For clarity, Canada states that the Memorandum was signed by Canada, the Government of Alberta, Paul First Nation, and the County of Parkland on January 17, 1996.

~~25,26.~~ Unless expressly admitted, Canada denies each and every allegation of fact or law in the claim.

IV. Statement of Facts (R. 42(e))

~~26,27.~~ In addition to the foregoing, Canada pleads the following facts.

- ~~27,28.~~ The ancestors of Paul First Nation entered into Treaty No. 6 through an adhesion dated August 21, 1877.
- ~~28,29.~~ By Order in Council PC 1633 dated June 16, 1892, IR 133A and 133B, containing approximately 20,928 acres or 32.7 square miles of land, were set aside for Paul First Nation.
- ~~29,30.~~ On May 10, 1906, David Bird was approved as Chief of Paul First Nation and was appointed for an indefinite term.
- ~~30,31.~~ By June, 1906, the CNR had surveyed a projected line through IR 133A and 133B but this line had not yet been approved.
- ~~31,32.~~ On June 3, 1906, Indian Agent Gibbons wrote to the DIA that the new railway line of the CNR was rapidly approaching IR 133A and 133B and estimated the railway would traverse approximately 9 miles of the reserve.
- ~~32,33.~~ In a letter of June 26, 1906 to Secretary McLean, Inspector Markle noted that he had been asked by Paul First Nation for his opinion on whether it would be wise for them to surrender the part of the reserve north of the projected line of the railway, including the part in township 53, provided that the railway was built on the projected survey. Markle declined to give a definitive answer to Paul First Nation.
- ~~33,34.~~ By letter dated July 5, 1906, Mr. Taylor of The W.S. Weeks & Co, an Edmonton real estate firm, wrote to the DIA referring to a meeting he had with Paul First Nation. Taylor advised that Paul First Nation would consent to a sale of a portion of the reserve north of the proposed railway and that they were “anxious to find out if such an agreement would meet with the approval of your department.”
- ~~34,35.~~ Secretary McLean replied to Mr. Taylor on July 16, 1906 stating that the DIA was not yet in a position to deal with the matter as the CNR had not filed its plan yet.
- ~~35,36.~~ On July 31, 1906, Secretary McLean wrote to Indian Agent Gibbons that an application had been made for a portion of IR 133A and 133B and asked Agent

Gibbons to report whether the land was occupied, what improvements were located on it, and if the band would be willing to surrender the land for sale.

~~36.37.~~ By letter dated August 15, 1906, Indian Agent Gibbons reported on his meeting with Paul First Nation, which was held on August 14, 1906. He reported that “the majority were willing to surrender the land in question on condition that so much thereof as borders on the Lake and is suitable for a townsite or resort should be plotted and put up for sale in, say, 1 acre lots, and the remainder disposed of to the best advantage for them.” and added that IR 133B could be considered unoccupied and unimproved, as the two or three living there make no claim for compensation. Surveyor McLean was expected to arrive to re-survey IR 133A and 133B to clearly mark the boundaries and Agent Gibbons recommended if the Department were to accede to the proposal of Paul First Nation, that the surrender forms be sent as soon as possible and Surveyor McLean be instructed to make the necessary surveys.

~~37.38.~~ On September 1, 1906, Deputy Superintendent General Pedley sent blank surrender forms to Indian Agent Gibbons and authorized him to submit them to Paul First Nation. If the surrender was granted, Surveyor McLean was to be instructed to survey the surrendered tract so that “the property may be disposed of, as desired by the Indians.”

~~38.39.~~ Surveyor McLean was instructed to retrace the boundaries of IR 133A and 133B on August 2, 1906 and he completed this task on September 6, 1906. This retracing arose from Paul First Nation’s request for these boundaries to be re-surveyed because the reserve limits were no longer clearly distinguishable.

~~39.40.~~ The surrender of IR 133B, comprising 635 acres, was taken on September 11, 1906.

~~40.41.~~ Surveyor McLean attended the surrender meeting and on the following day, September 12, 1906, he reported:

It was decided at the meeting with the Indians when surrender was given to reserve the beach from being sold, a width of about 150 feet along the Lake including a street to be reserved from sale by the Department, such width or widths to be decided by myself when making the survey.

~~41.42.~~ The Surrender Affidavit was sworn by Chief Bird and Indian Agent Gibbons and witnessed by John Foley, on September 13, 1906 before a Justice of the Peace of Alberta. The surrender was approved on September 27, 1906 by Order-in-Council PC 1939.

No Railway Station is Built

~~42.43.~~ The CNR applied for a right of way through IR 133A and 133B on October 13, 1906 and the Grand Trunk Pacific Railway ("GTPR") applied for its right of way on December 21, 1906.

~~43.44.~~ On December 31, 1906, the CNR made a proposal to the DIA, with terms very favourable to the CNR and without a commitment to build a station on the surrendered lands. This proposal was not accepted by the DIA.

~~44.45.~~ GTPR's route was approved first and Order-in-Council PC 36 dated January 8, 1908 approved the sale of land in IR 133A and 133B for the railway right of way.

~~45.46.~~ In 1908, in response to a query by Secretary McLean as to the CNR's intention to put a station on the surrendered lands, the CNR advised that the approved GTPR rail line crossed the CNR line at several points and therefore officials from the two railways would have to meet to discuss adjustments to the line.

~~46.47.~~ By September 1, 1908, the GTPR informed the DIA that it would not build a station on the surrendered lands because it was practically impossible to put a station on the surrendered lands due to the steep gradients. Despite this, the GTPR built a railway across the lands in and around 1909, and a railway stop in and around 1911, on a portion of the surrendered land.

~~47.48.~~ By June 28, 1909, the CNR had received approval for the route of their rail line. In response to a query from Secretary McLean as to whether the CNR would locate a station on the surrendered lands, the CNR responded on August 23, 1909 stating that construction work had been postponed.

~~48.49.~~ By July 31, 1911, the DIA became aware that the CNR abandoned their line through IR 133A and 133B. This was confirmed by the CNR on August 18, 1911.

Sales of Surrendered Land

~~49.50.~~ Canada had numerous and ongoing negotiations, prior to selling the surrendered lands, in respect of rights-of-way for pending railway lines as well as the establishment of a station(s) on the surrendered lands.

~~50.51.~~ Portions of the surrendered lands were sold at auction in 1910 and 1912. Both auctions were advertised broadly to the general public.

~~51.52.~~ Upset prices were assigned to lots put up for sale at these auctions and the lots sold at both auctions realized their upset prices at a minimum.

~~52.53.~~ Several valuations of the surrendered lands determined the market value of the lots, both before and after the auction sales.

~~53.54.~~ Approximately 420 acres were reinstated to Paul First Nation and became a reconstituted IR 133B in 1936 as the land was no longer required for the townplot of Wabamun, and additional land was required by Paul First Nation for agricultural purposes. A further 23.63 acres was reinstated to IR 133B in 1953.

~~54.55.~~ The remaining unsold surrendered lands cannot be reinstated to reserve status until certain jurisdictional and administrative issues can be resolved with Paul First Nation, Canada, the Province of Alberta, and the County of Parkland.

V. Relief (R. 42(f))

~~55,56.~~ Canada seeks dismissal of the claims set out in the Amended Amended Declaration of Claim except for the post-surrender breach of fiduciary duty from the transfer of the Beach Lands.

~~56,57.~~ Canada seeks its costs in the proceedings.

VI. Communication (R. 42(g))

~~57,58.~~ Email address for the service of documents:

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Dated this ~~9th day of August, 2019~~ day of January 2020.

ATTORNEY GENERAL OF CANADA

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