

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	September 9, 2019	D É P O S É
Isabelle Bourassa		
Ottawa, ON	9	

PELICAN LAKE FIRST NATION

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: Pelican Lake First Nation
as represented by
Sheryl Manychief and Ryan Lake
Maurice Law
Barristers and Solicitors
35 Wolf Drive
Redwood Meadows AB T3Z 1A3
Phone: (306) 244-2242/(403) 266-1201 ext 236
Direct Line : (403) 949-5606 ext 784/(403) 266-2701
Fax: (403) 266-2701
Email: smanychief@mauricelaw.com & rlake@mauricelaw.com

Overview

1. Canada acknowledges that Pelican Lake First Nation (Pelican Lake) 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 (SCTA)*.
2. Pursuant to Treaty 6, Canada set aside 8630.40 acres of land for Pelican Lake as Chitek Lake IR No. 191 (Chitek Lake Reserve). Canada acknowledges Pelican Lake's Treaty rights, including its rights to Chitek Lake Reserve.
3. This claim seeks compensation for an historic railway taking by the Canadian Pacific Railway Ltd. (CPR) for a branch line that crossed Chitek Lake Reserve. Canada acknowledges that Chitek Lake Reserve was a reserve within the meaning of the *Indian Act* at the time of taking. The branch line provided rail service for the benefit of communities and First Nations along the route.
4. Canada consented to a taking of 26.57 acres from the Chitek Lake Reserve for a railway right of way. In accordance with its statutory and fiduciary obligations to Pelican Lake, Canada ensured that Pelican Lake received appropriate compensation in a timely manner for the taking.
5. However, Canada admits that it breached its fiduciary duty to Pelican Lake by failing to ensure that the taking of the expropriated land minimally impaired Pelican Lake's interest in the subject lands, and Canada admits the validity of that portion of the Declaration of Claim, as noted in paragraph 10 of this Response.
6. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership; and Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.

7. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this Tribunal claim proceeds through the Tribunal process.

I. Status of Claim

8. The requirements in section 16 of the *SCTA* are satisfied in that:
 - Pelican Lake’s specific claim was filed with the Minister of Indigenous and Northern Affairs Canada (Minister) within the meaning of the *SCTA* on February 17, 2016;
 - Over three years had elapsed since Pelican Lake filed its claim with the Minister; and
 - The Minister had not notified Pelican Lake in writing of a decision on whether to negotiate the claim when this claim was filed with the Tribunal.
 - On July 19, 2019, after the claim had been properly filed with the Tribunal pursuant to section 16(1)(b) of the *SCTA*, the Minister notified Pelican Lake in writing that it was prepared to negotiate the claim.

II. Canada’s position with respect to Validity of the Claim

9. Canada is committed to a continual and ongoing assessment of whether it complied with its statutory and fiduciary obligations in respect of the taking of reserve lands for a railway right of way on Chitek Lake Reserve.
10. Canada admits that it breached its fiduciary duty to Pelican Lake by failing to ensure that the taking of the expropriated land minimally impaired Pelican Lake’s interest in the subject lands. Canada admits paragraph 19(c) of the Declaration of Claim raises a valid claim under section 14(1)(c) of the *SCTA*.
11. Currently, Canada cannot agree that the facts establish a valid claim under the *SCTA* with respect to the allegations in paragraphs (a), (b), (d) and (e) of the Declaration of Claim.

III. Canada’s position with respect to Allegations of Facts

12. The material facts related to this claim are not in dispute. Where allegations of fact from the Declaration of Claim are not wholly admitted in the Response, it is based on a

characterization of the facts alleged, not on a denial. Canada intends to propose that the Parties develop an agreed statement of facts early in the process.

13. Canada admits that Pelican Lake is a Treaty 6 band within the meaning of the *Indian Act* and is a First Nation within the meaning of the *SCTA*, as pled in paragraph 1 of the Declaration of Claim.
14. Canada admits Pelican Lake is located in west-central Saskatchewan, as pled in paragraph 1 of the Declaration of Claim.
15. Canada admits that the conditions precedent set out in section 16(1) of the *SCTA* have been fulfilled, as pled in paragraphs 2, 3 and 4 of the Declaration of Claim.
16. Canada admits that Chitek Lake Reserve was confirmed by Order in Council P.C. 2509 on December 28, 1929 pursuant to the terms of Treaty 6; and admits that as originally constituted, the Chitek Lake Reserve contained 8630.40 acres of land situated approximately 230 kilometers northwest of Saskatoon, as pled in paragraph 6 of the Declaration of Claim. Canada also acknowledges that the Chitek Lake Reserve was registered in the records of the Department of the Interior in 1917.
17. Canada admits that in April 1930, the CPR informed Indian Affairs that a right of way for a branch line would affect the Chitek Lake Reserve. Canada also admits the CPR informed Indian Affairs that it intended to apply for a highway crossing through Chitek Lake Reserve, as pled in paragraph 7 of the Declaration of Claim.
18. In response to paragraph 8, Canada admits the Department of Indian Affairs (Indian Affairs) advised the CPR that an Order in Council would be required to transfer the railway right of way from Chitek Lake Reserve, and that it outlined the process involved. However, Canada says that the correspondence did not mention “an agreement on price.” Instead, Indian Affairs advised that “after a valuation has been made you will be advised upon what terms the Department will be willing to request the permission of His Excellency the Governor General in Council to transfer the lands required to your railway company.”
19. In response to paragraph 9, Canada admits that Indian Affairs received a response from the CPR agent dated May 9, 1930 confirming the CPR’s intention to take title to the right of

way according to its final survey plan. The correspondence addressed steps that needed to be taken, but did not appear to express dissatisfaction with the process, as alleged.

20. Canada admits that on May 16, 1930, the CPR asked Indian Affairs for permission to enter Chitek Lake Reserve for construction. Canada admits that the CPR undertook to pay a reasonable deposit and to provide compensation for the right of way pending an agreement on the price and a completion of the required survey. Canada also admits that the CPR asked that Indian Affairs respond at once with authorization, as pled in paragraph 10 of the Declaration of Claim.
21. Canada admits that Indian Affairs requested that the CPR provide a \$760.00 deposit prior to being allowed entry to Chitek Lake Reserve, and that Indian Affairs had instructed its Indian Agent to allow the CPR to begin construction upon payment of the deposit, as pled in paragraph 11 of the Declaration of Claim.
22. Canada admits that lawyers for the CPR disputed the amount of the deposit, noting that the CPR should not be required to make an unduly large deposit as it might prejudice the amount of the final settlement. Canada also admits the CPR requested permission to proceed with construction upon payment of a lower amount, as pled in paragraph 12 of the Declaration of Claim.
23. Canada admits that Indian Affairs responded that the deposit amount was not reflective of a final purchase price, but rather was the amount required to waive the usual procedure, and grant early entry to Chitek Lake Reserve prior to determination of compensation, as pled in paragraph 13 of the Declaration of Claim.
24. Canada admits that Indian Affairs instructed its Indian Agent to negotiate a purchase price satisfactory to all parties. Canada also admits that Indian Affairs advised the CPR that the required deposit had been reduced to \$250.00 based on the Indian Agent's interim report, as pled in paragraph 14 of the Declaration of Claim.
25. Canada admits that the \$250.00 deposit was paid shortly thereafter. Canada also admits that the Indian Agent forwarded the deposit to Indian Affairs on June 9, 1930 and advised that he would permit the CPR to enter Chitek Lake Reserve to construct the right of way, as pled in paragraph 15 of the Declaration of Claim.

26. In response to paragraph 16, Canada admits an Order in Council P.C. was passed on April 22, 1932 authorizing the transfer to the CPR of 26.57 acres of Chitek Lake Reserve pursuant to Section 48 of the 1927 *Indian Act*. Canada also admits that the plan provided with the Order in Council was Plan RR 2497, which was certified by the Board of Railway Commissioners in September 1931 and was registered at the Battleford Registry Office in October 1931. Although Plan RR 2497 was entitled “Canadian Pacific Railway Co. Prince Albert - Lac La Biche Branch (Debden to Meadow Lake - Mile 37-52 to Mile 78-85), Plan of a Portion of a Branch Line ... Revised Location”, it has not been established whether the location of the railway on Chitek Lake Reserve was altered from “the original location of the rail line” as alleged.
27. Canada admits that in January 1932, Indian Affairs requested the outstanding balance owing on the Chitek Lake Reserve right of way, as pled in paragraph 17 of the Declaration of Claim.
28. In response to paragraph 18, Canada admits that letters patent were issued to the CPR on August 2, 1932. The letters patent stated that the consideration of \$265.70 was for the “absolute purchase” of the 26.57 acres. Those letters patent excepted out from the purchase “the free use, passage and enjoyment of, in, over and upon all navigable waters” in the 26.57 acres.

IV. Canada’s Statements of Fact

29. Chitek Lake Reserve was registered in the records of the Department of the Interior in 1917, and confirmed by Order in Council in 1929. Chitek Lake Reserve was a reserve within the meaning of the *Indian Act* at the time of the railway right of way taking.
30. On April 2, 1930, the CPR and the Board of Railway Commissioners of Canada (Railway Board) approved a map of a CPR branch line from Prince Albert to Lac La Biche. The map showed a proposed railway line crossing Chitek Lake Reserve.
31. Three weeks later, the CPR advised Indian Affairs that it would be constructing a branch line which would run through three reserves, including Chitek Lake Reserve. Shortly thereafter, the CPR sent Indian Affairs a print of the branch line. The CPR advised that it

was about to apply to the Railway Board for approval, and asked Indian Affairs to endorse and return the plan.

32. In early May 1930, Indian Affairs advised the CPR of the steps that needed to be completed in respect of the right of way on the Indian reserves affected. Indian Affairs stated that after a valuation was made it would advise of the terms by which it would be willing to request transfer of the right of way lands on the Indian reserves from the Governor General in Council. To expedite the valuation, it advised the CPR to send blueprints showing the location of the right of way, which would allow the Indian Agent to provide a valuation to Indian Affairs.
33. Indian Affairs sent a print of the proposed right of way through the Chitek Lake Reserve to the local Indian Agent, who was familiar with the local conditions, and asked for his opinion on valuation and on whether the right of way should be approved by Indian Affairs.
34. Less than two weeks later, the CPR sought authorization from Indian Affairs for its contractors to proceed with constructing grade across the three reserves.
35. Indian Affairs replied immediately by telegram stating that the CPR could enter Chitek Lake Reserve for construction by depositing \$760.00, pending final agreement on compensation.
36. The CPR objected to making a deposit of \$760.00 on the basis that it might prejudice its securing settlement at a satisfactory rate per acre, and noted that the rail line would improve the value of the Indian reserves serviced.
37. In response, Indian Affairs initially informed the CPR that the deposit was not an estimate of the final compensation, but was an amount required to waive the usual procedure and grant immediate entry prior to final determination of compensation.
38. In the meantime, Indian Affairs determined on the advice of its local Indian Agent that a fair valuation of the affected land was \$10.00 per acre. It also determined that it was appropriate to accept and approve the plan.
39. Based on the Indian Agent's valuation, Indian Affairs then reduced the deposit to \$250.00. Indian Affairs instructed that the CPR could enter Chitek Lake Reserve for construction

upon payment of the deposit, which was received on June 14, 1930 and which was credited to Pelican Lake's trust account shortly thereafter.

40. Indian Affairs informed the Railway Board that it intended to transfer land to the CPR for railway purposes in three reserves, including Chitek Lake Reserve. The Railway Board approved the construction of the CPR's Prince Albert to Lac La Biche Branch and allowed the tracks to be built at grade across the highways between listed mileages.
41. Plan RR 2497 was completed in October 1930, depicting the right of way through Chitek Lake Reserve. The Railway Board certified a copy of the plan in September, 1931.
42. In November 1930, Indian Affairs asked the CPR for the plan of survey of the right of way through the reserves, including Chitek Lake Reserve. The CPR responded, providing Indian Affairs with an extract of Plan RR 2497 in December 1931, and requested a final valuation.
43. In January 1932, Indian Affairs advised the CPR that the 26.57 acres in the Chitek Lake Reserve had been valued at \$10.00 per acre and that it had received the \$250.00 deposit. Indian Affairs then requested payment of the balance owing in respect of Chitek Lake Reserve.
44. In March 1932, the CPR paid Indian Affairs the balance owing of \$15.70 for the Chitek Lake Reserve railway right of way. Shortly thereafter, the CPR submitted Plan RR 2497 to Indian Affairs and requested letters patent for the right of way lands.
45. The Chief Surveyor informed Indian Affairs in April 1932 that it had requested an Order in Council to authorize the sale of 26.57 acres in the Chitek Lake Reserve. He provided a description of the land, referring to Plan RR 2497.
46. Later that month, the transfer to the CPR of 26.57 acres of Chitek Lake Reserve was authorized by Order in Council. It noted that the land had been paid for at the rate of \$10.00 per acre, in accordance with the valuation placed upon it by an officer of Indian Affairs.
47. In August 1932, the railway right of way in the Chitek Lake Reserve shown on Plan RR 2497 was transferred to the CPR by Letters Patent for the price of \$265.70.
48. The Capital Account for Pelican Lake Band was credited \$265.70 for the year 1932-33.

V. Relief

49. Canada seeks the following relief:

- a. dismissal of the Declaration of Claim;
- b. costs; and
- c. such further relief as this Honourable Tribunal deems just.

VI. Communication

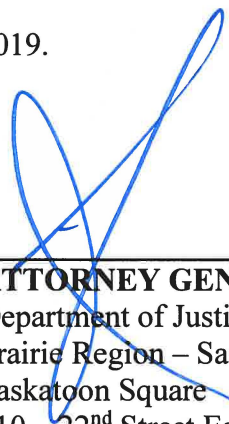
50. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
Saskatoon Square
410 – 22nd Street East, 4th floor, Suite 410
Saskatoon, Saskatchewan S7K 5T6
Attention: Von Agioritis

51. Facsimile number for service is (306) 975-4030.

52. Email address for service is sasSCT-5002-19-pelicanlake@justice.gc.ca

53. Dated this 9th day of September, 2019.



ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Region – Saskatoon Office
Saskatoon Square
410 – 22nd Street East, 4th floor, Suite 410
Saskatoon, Saskatchewan S7K 5T6
Fax: (306) 975-4030
Per: Von Agioritis
Tel: (306) 518-0741
Email: sasSCT-5002-19-pelicanlake@justice.gc.ca

Counsel for the Respondent