

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDIGATIONS PARTICULIERES	
December 13, 2024	
Dragisa Adzic	
Ottawa, ON	139

**SCT File No.:** SCT - 7005 - 20

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SNAW-NAW-AS NATION

CLAIMANT

v.

HIS MAJESTY THE KING IN RIGHT OF CANADA  
As represented by the Minister of Crown-Indigenous Relations

RESPONDENT

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SECOND FURTHER AMENDED RESPONSE

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

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

TO: Snaw-naw-as Nation  
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**I.** Status of Claim (R. 42(a))

1. The Snaw-naw-as Nation (“Snaw-naw-as”) submitted a claim to the Minister of Crown-Indigenous Relations (the “Minister”) on October 16, 2008 alleging, among other things, that the federal Crown (“Canada”) breached fiduciary obligations and obligations under the 1854 Douglas Treaty with the Saalequun (the “Saalequun Treaty”) by failing to set aside an area at the head of Nanoose Bay as a reserve.
2. The Minister notified Snaw-naw-as in writing on December 3, 2010 of his decision not to accept the claim for negotiation.

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

3. Canada does not accept the validity of any of the claims of Snaw-naw-as in the Declaration of Claim. Canada denies the alleged failure on its part to fulfil any legal obligation asserted in the Declaration of Claim. Canada has maintained that the Snaw-naw-as are not successors under the Saalequun Treaty and Snaw-naw-as has chosen not to pursue allegations that Canada breached obligations to them under the Saalequun Treaty in this claim before the Tribunal.

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

4. Canada admits the following paragraphs as set out in Part V of the Second Further Amended Declaration of Claim: 5, ~~6~~, 7, 8, 10, 11, ~~12, 13~~, 14, 15, 16, 18, 30, ~~29, 31~~ 32, and 36 ~~35~~.

5. In reply to paragraph 6 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that Snaw-naw-as has a connection with Nanoose Bay and the Original Reserve lands, though the exact nature and cognizability of this connection is to be determined by the Tribunal; and
- b. denies that the Snaw-naw-as had “villages” or “settlements” at all material times within the Original Reserve lands; and
- c. denies the Crown was ever made aware of any villages, settlements, cultivations or other continuously used sites within the Original Reserve area.

6. In reply to paragraph 9 8 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that the Spanish recognized British sovereignty over Vancouver Island in or about 1794; and
- b. has no knowledge of whether the Indigenous peoples of Vancouver Island recognized or agreed to the British assertion of sovereignty.

7. Canada has no knowledge of the following paragraphs as set out in Part V of the Second Further Amended Declaration of Claim: 10 and 9, 11, 17, 21, and 34.

8. In reply to paragraph 12 of the Second Further Amended Declaration of Claim, Canada:

- a. denies that the Snaw-naw-as had “villages” or “settlements” at all material times prior to Confederation within the Original Reserve lands; and
- b. denies the Crown was ever made aware of any villages, settlements, cultivations, or other continuously used sites within the Original Reserve area prior to Confederation.

9. In reply to paragraph 13 of the Second Further Amended Declaration of Claim, Canada:

- a. has no knowledge when Hudson’s Bay Company officials first became aware that the Snaw-naw-as were situated in Nanoose Bay, and
- b. denies that Hudson’s Bay Company officials were ever aware that the Snaw-naw-as’ primary village site was situated at the head of Nanoose Bay.

10. In reply to paragraph 17 of the Second Further Amended Declaration of Claim, Canada:

- a. has no knowledge of if or when W. Colquhoun Grant undertook an expedition to explore south-eastern Vancouver Island; and
- b. admits that a report, publishing Grant’s “Description of Vancouver Island” and a map of Vancouver Island, were published in 1857; and
- c. denies that the 1857 map situated the “Noonoa Indians” at the head of Nanoose Bay.

11. In reply to paragraph 18 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that *The Land Proclamation*, Colony of Vancouver Island, SBC 1861, c 27 (the “1861 Proclamation”), and *The Land Proclamation*, Colony of Vancouver Island, SBC 1862, c 9 (the “1862 Proclamation”), passed by James Douglas, then Governor of the Colony of Vancouver Island (“Governor Douglas”), set out the terms under which persons could acquire lands on Vancouver Island through pre-emption; and
- b. denies that the 1861 Proclamation and the 1862 Proclamation provided “specific protection for “Indian villages and settlements,” but rather, prohibited the pre-emption of “Indian Reserve or Settlement” lands. use the words “specific” or “protection” or the phrase “Indian villages and settlements.” at any point.

12. In reply to paragraph 19 of the Second Further Amended Declaration of Claim, Canada:

- a. denies that the “Government of the Colony of Vancouver Island” identified a reserve for Snaw-naw-as at the head of Nanoose Bay; and
- b. denies that the Surveyor-General communicated the acreage of the claimed Original Reserve when he reported to the legislature in 1863.

13. In reply to paragraph 20 of the Second Further Amended Declaration of Claim, Canada:

- a. admits there are no presently known records describing how the Original Reserve was identified, and accordingly, has no knowledge of why the Original Reserve was marked on the December 2, 1863, map titled “Indian & Government Reserves”; and
- b. says that whether this marked area constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact.  
~~has no knowledge of the existence of the claimed Original Reserve; and subparagraphs a, b, c, and d consist of legal argument and not fact.~~

14. In reply to paragraph 22 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that Robert Brown headed the Vancouver Island Exploring Expedition in 1864, visiting Nanoose Harbour, and that in his journal, he wrote that he “heard the shots of a few Indians shooting,” and that he observed potato patches fields and the presence of a log shanty; and
- b. asserts Snaw-naw-as’ claim that Robert Brown observed evidence of “continued occupation” of the head of Nanoose Bay or the site of the claimed Original Reserve is legal argument and not fact.

15. In reply to paragraph 23 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that the Colony of Vancouver Island did not take any steps to survey or demarcate the Original Reserve, and further clarifies that no steps were taken to survey or demarcate any reserve at Nanoose Bay until the Joint Indian Reserve Commission visited Nanoose Bay in December of 1876; and
- b. says that whether the area marked on the 1863 map titled “Indian and Government Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact.

~~9. 11. In reply to paragraphs 23, 26, 32, and 36 of the Declaration of Claim, Canada has no knowledge of the existence of the claimed Original Reserve.~~

16. In reply to paragraphs 24 , 26, and 27 of the Second Further Amended Declaration of Claim, Canada says that the colonies of Vancouver Island and British Columbia united in 1866, forming the “Colony of British Columbia,” rather than the “United Colonies of Vancouver Island and British Columbia.”

17. In reply to paragraph 25 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that legislation in effect in the Colony of Vancouver Island prohibited the pre-emption of lands “being an Indian Reserve or Settlement” from February 19, 1861, until June 6, 1870; and
- b. denies the existence of any legislation in effect at the time requiring consultation with Indigenous people respecting reserve creation or outlining any other obligations of the Crown regarding “Indian...Settlement[s]”.

18. In reply to paragraph 26 of the Second Further Amended Declaration of Claim, Canada:

- a. says that whether the area marked on the 1863 map titled “Indian and Government Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact; and
- b. admits that neither the newly united Colony of British Columbia, nor the Province of British Columbia, took any steps to survey or demarcate the Original Reserve or any reserve in Nanoose Bay until the Joint Indian Reserve Commission’s visit to Nanoose Bay in December of 1876; and
- c. says that the colonies of Vancouver Island and British Columbia united in 1866, forming the “Colony of British Columbia,” rather than the “United Colonies of Vancouver Island and British Columbia.”

19. In reply to paragraph 27 of the Second Further Amended Declaration of Claim, Canada:

- a. says that the colonies of Vancouver Island and British Columbia united in 1866, forming the “Colony of British Columbia,” rather than the “United Colonies of Vancouver Island and British Columbia;” and
- b. admits that the Province of British Columbia joined Confederation in 1871.

20. In reply to paragraph 28 of the Second Further Amended Declaration of Claim, Canada

- a. denies that the Snaw-naw-as had “villages” or “settlements” at all material times after Confederation within the Original Reserve lands; and
- b. has no knowledge, other than the witnesses from the oral evidence hearings for this proceeding, regarding the Snaw-naw-as’ use of lands within the Original Reserve after Confederation; and
- c. denies the Crown was made aware of Snaw-naw-as villages, cultivated fields, or other continuously and intensively used sites within the Original Reserve area after Confederation, including throughout the reserve creation process.

21. In reply to paragraph 29 28 of the Second Further Amended Declaration of Claim, Canada admits that British Columbia published a return of Government Reserves in 1873 listing a “reserve” at “Nanoose Harbour,” 3470 acres in size, but has no knowledge of the purpose of that reserve or the date of reservation.

22. In reply to paragraph 31 30 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that the Joint Indian Reserve Commission visited Nanoose Bay in 1876; and
- b. has no knowledge of whether the Commission possessed particular documents during their visit or made inquiries concerning any previously created reserves; and
- c. says that whether the area marked on the 1863 map titled “Indian and Government

Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact. has no knowledge of the existence of the claimed Original Reserve.

23. In reply to paragraph 33 of the Second Further Amended Declaration of Claim, Canada:

- a. says that whether the area marked on the 1863 map titled “Indian and Government Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact; and
- b. admits that the present-day reserve of the Snaw-naw-as was set aside in 1876 and does not coincide with the area marked on the 1863 map.

24. In reply to paragraph 34 33 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that members of the Joint Indian Reserve Commission met with Snaw-naw-as in Nanaimo after they sketched out the present-day Snaw-naw-as reserve while visiting Nanoose Bay; and
- b. has no knowledge as to whether the Joint Indian Reserve Commission discussed the Original Reserve with the Snaw-naw-as; and
- c. admits that the discussion of the size and boundaries of the reserve occurred in Nanaimo, after which the Joint Indian Reserve Commission wrote that the Snaw-naw-as “went off satisfied;” and
- d. says that whether the area marked on the 1863 map titled “Indian and Government Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact.
- e. ~~has no knowledge of the existence of the claimed Original Reserve.~~

25. In reply to paragraph 35 of the Second Further Amended Declaration of Claim, Canada:

- a. admits that the Snaw-naw-as expressed concerns about encroachment by settlers when they met with the Joint Indian Reserve Commission; and
- b. admits that the Commission did not return to Nanoose Bay after its meeting with the Snaw-naw-as in Nanaimo; and
- c. denies that the Joint Indian Reserve Commission did not inquire further or minimized the Snaw-naw-as’ concerns.

26. In reply to paragraph 37 of the Second Further Amended Declaration of Claim, Canada:

- a. says that whether the area marked on the 1863 map titled “Indian and Government Reserves” constituted a provisional or finalized reserve, for the use and benefit of the Snaw-naw-as, is a question of law and not fact; and
- b. admits that Canada did not take any steps to investigate, survey, or establish the Original Reserve subsequent to the Joint Indian Reserve Commissioner’s visit in December 1876; and
- c. admits that the lands comprising the Original Reserve are not Indian reserve lands.

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

27. In August of 1852, Joseph McKay, a Hudson’s Bay Company employee stationed in Nanaimo, wrote that some Indigenous peoples arrived from “Noo-noo-as,” a bay he stated was 10 miles northwest of Nanaimo, reporting coal in their country.

28. Canada says that Hudson’s Bay Company officials became aware that the Snaw-naw-as’ primary village site was situated on the south shore of Nanoose Bay by 1853. On March 26, 1853, JD Pemberton sent a letter to Archibald Barclay with an accompanying map of Vancouver Island. The map places a dot on the south shore of Nanoose Bay with the words “Noonooa Indians” to the left of the dot.

29. In 1857, four years after W. Colquhoun Grant left Vancouver Island for the last time, Grant’s “Description of Vancouver Island” was published, along with a map of Vancouver Island. The map of Vancouver Island contains a small circle on the south shore of Nanoose Bay with the label “Noonooa Ind<sup>s</sup>.” to the left of the circle.

30. When Robert Brown visited Nanoose Harbour on August 17, 1864, he kept a journal, in which he wrote that Nanoose Harbour was once the headquarters of the Nanoose Indians but that they had “nearly all [been] killed off by disease or war and stay with the Nanaimos.” According to Brown, the Nanoose only visited Nanoose Harbour for clamming or fishing. Brown wrote that he “heard the shots of a few Indians shooting,” but did not write that he saw such activity firsthand.

31. The Colony of Vancouver Island passed the 1861 Proclamation, which stated, “British Subjects...may preempt unsold Crown Lands...(not being an Indian Reserve or Settlement).” The following year, the Colony of Vancouver Island passed the 1862 Proclamation, which stated, “British Subjects...may acquire the right to hold and purchase fee simple, unsold, unoccupied, and unreserved Crown Lands...not being the site of...an Indian Reserve or Settlement.” Of the pre-emptions in the Claim Area between 1863 and 1872, no pre-emptions were rejected due to being located on “an Indian Reserve or Settlement.”

32. On August 12, 1863, Pemberton reported to the Colonial Secretary that a pre-emptor, WA

Scott, proposed to take possession of an Indian Village containing 15 or 16 dwellings “in direct opposition to clause IV of the last Proclamation.”

33. On December 2<sup>nd</sup>, 1863, B.W. Pearse, Acting Surveyor General, testified to the Crown Lands Committee of the Legislative Assembly of Vancouver Island (the “Committee”). The Committee asked Pearse to “describe the reserves on the plan.” It is unclear what “plan” or map Pearse was describing during his testimony to the Committee. Pearse testified that there was a reserve “at Noonas” but did not explain why the claimed reserve was created, when it was created, its precise boundaries, or its size.
34. In a November 10, 1868, public notice, Joseph Trutch states that the “present Government Reserve at Nanoose Harbour” was reserved until further notice, and otherwise did not indicate the purpose of the reserve.
35. A schedule of surveyed Pearse prepared a “Return of all Indian Reserves (surveyed) in the Province of British Columbia” prepared by Pearse in on October 16, 1871, but did not list the claimed Original Reserve.
36. ~~In~~ On January 14, 1873, Robert Beaven, Chief Commissioner of Lands and Works for British Columbia (“BC”), prepared a document listing “government reserves” in BC, a term encompassing any area of land that was not to be taken up by settlers. “Reserves” included both Indian reserves and Government reserves, the latter of which were used for public purposes, including for military, settlement, and lighthouse purposes. The document, titled “Return of Government Reserves,” contains multiple columns. One column, titled, “From Admiralty Charts,” lists a reserve at Nanoose Harbour comprising of 3470 acres. Another heading, titled “Purpose,” does not contain a description regarding the reserve. Under the heading, “Remarks,” the return denotes “East Coast of Vancouver Island” for the reserve at Nanoose Harbour, and denotes “Yaculta village” in relation to a reserve at Cape Mudge.
37. A day earlier, on January 13, 1873, Beaven published a document titled “Return to an Address of the Legislative Assembly, for a Return of Indian Reserves,” containing a schedule of surveyed Indian reserves in the Province of BC, which did not list a reserve at Nanoose Bay.
38. In a pre-emption application filed on June 14, 1871, Joseph Lawless included a map with the label “Indian camp” with three dots on the south shore of Nanoose Bay. The map does not label a reserve or Snaw-naw-as settlement at the head of Nanoose Bay.
39. In May of 1873, IW Powell, Canada’s first Indian Affairs official in British Columbia, met with the Nanoose in Nanaimo, stating that the Nanoose group was then composed of three of four families.
40. In 1876, Gilbert Malcolm Sproat, one of three commissioners representing the Dominion during the Joint Reserve Commission, reported to the Federal Minister of Justice on December 20, 1876, detailing his visit with the Snaw-naw-as.

41. When Commissioner Sproat's party arrived, the Snaw-naw-as were away fishing for winter salmon in Nanaimo. The Commissioner's party sketched and "laid off" out a proposed reserve while in Nanaimo, with Sproat writing that it which included the Snaw-naw-as' village, comprised of four structures and additional house frameworks, cultivated patches, and burial grounds. In describing the proposed reserve land, Sproat stated that the "land between the stream and shore, and between the mouth of the creek and the village, is open land, gravelly, with a thin surface soil, bearing a coarse grass which the cattle seem to like."
42. Commissioner Sproat's party then travelled to Nanaimo to meet the Snaw-naw-as, whereupon the Snaw-naw-as confirmed their satisfaction with the proposed reserve. The Commission did not return to Nanoose Bay following their conversation with the Snaw-naw-as at Nanaimo, as the Snaw-naw-as confirmed they were satisfied with the proposed reserve laid out in the sketch. According to Sproat's notes, there is no record of the Snaw-naw-as requesting that a reserve be laid out at the head of the bay or record of the Snaw-naw-as stating that they inhabited a settlement at the head of the bay.
43. The Snaw-naw-as expressed apprehensions regarding the encroachment of white settlers during the meeting at Nanaimo. Sproat stated that he learned the basis for this concern – cattle grazing near the shore of their village on the south side of Nanoose Bay.
44. The Minutes of Decision for the present-day Snaw-naw-as reserve, dated December 15, 1876, contain a map depicting three rectangles in a row along the shore of Nanoose Bay, with a fourth rectangle behind the row of three rectangles. The map depicts a creek east of the rectangles, and on the western edge of the reserve along the shore there is a notation reading "Cedar marked."
45. In November of 1878, Ashdown Green surveyed the reserve sketched by the Joint Indian Reserve Commission on the south shore of Nanoose Bay.
46. On January 11, 1909, the Secretary of the Department of Indian Affairs wrote to Indian Superintendent Vowell in Victoria with a request for "a list of the Indian Reserves in BC set aside by the Imperial Government," but the resulting list sent in response by Vowell did not contain a colonial-era reserve at the location of the claimed Original Reserve.
47. The Royal Commission on Indian Affairs (the "RCIA") was appointed in 1912 to settle all outstanding differences between the federal and provincial governments respecting Indian lands and Indian affairs generally in BC. The RCIA visited Nanoose and held hearings there in 1913, but neither the RCIA officials, nor the Snaw-naw-as ~~did not~~ referenced the claimed Original Reserve, only the New Reserve.
48. The RCIA wrote that the Snaw-naw-as did not express any grievances with their reserve or request more reserve lands, at the head of the bay or otherwise. According to the RCIA's account, there is no record of the Snaw-naw-as indicating that they inhabited a settlement at the head of the bay.

V. Relief (R. 42(f))

49. Canada denies the entitlement of relief sought and seeks to have the claim dismissed in its entirety.

50. If Canada is liable, which is not admitted but denied, the Province contributed to the acts or omissions and any losses arising therefrom as set out in subparagraph 20(1)(i) of the *Specific Claims Tribunal Act*.

51. If Canada is liable, which is not admitted but denied, Canada denies that Snaw-naw-as suffered a loss as a result and further denies that it owes Snaw-naw-as compensation and/or damages, as claimed at paragraph 59 54 of the Declaration of Claim or at all.

52. If Canada is liable, which is not admitted but denied, the Tribunal should deduct from the amount of any compensation calculated under paragraph 20(1) of the *Act* the value of any benefit received by Snaw-naw-as in relation to the subject matter of the claim as set out in paragraph 20(3) of the *Act*.

53. Canada may decide not to seek costs upon the final determination of the action but reserves the right to do so.

VI. Communication (R. 42(g))

Dated: December 13, 2024 ~~December 15, 2023~~



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ATTORNEY GENERAL OF CANADA

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