

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	July 5, 2024	D E P O S É
Dragisa Adzic		
Ottawa, ON	1	

SCT File No.: SCT- 5002-24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

OKANESE FIRST NATION

Claimant

v.

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

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*.

July 5, 2024

Date

Dragisa Adzic

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant (R. 41(a))

1. The Claimant, the Okanese First Nation (hereinafter also referred to as the “Okanese” or the “First Nation”) confirms that it is a First Nation within the meaning of a s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, and within the meaning of Treaty No. 4 (hereafter “Treaty 4”). The First Nation’s reserve is located in the File Hills near Fort Qu’Appelle, Saskatchewan.

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. The First Nation originally filed a Claim Submission with the Minister of Indian Affairs on February 1, 2021, respecting breach of treaty, fiduciary and honourable obligations in relation to the total alienation of Indian Reserve No. 58 (“IR 58”) by the Government of Canada (hereinafter referred to as the “Specific Claims”).
4. The Specific Claims Branch notified the First Nation in writing June 19, 2024 that Canada rejected the validity of the Specific Claims.

III. Claim Limit (R. 41(f))

5. The First Nation does not seek compensation in excess of \$150 million for each Specific Claim.
6. The following are the grounds for the Specific Claims, as provided for in s. 14(1) 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; and

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

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

Okanese Adhesion to Treaty 4

7. David Laird, Ministry of the Interior, Lieutenant Governor Morris of the Northwest Territories and WJ Christie, were appointed Treaty Commissioners by Order in Council PC 944 on July 23, 1874 for the purpose of making treaties with such of the Indian bands as they may find it expedient to deal with inhabiting the southern prairies.
8. Meetings and negotiations with the Indians commenced in September 1874 in Fort Qu'Appelle. On September 15, 1874, thirteen chiefs, not including the absent Chief Okanese, signed Treaty 4 covering what is now southern Saskatchewan and Alberta.
9. Indian Commissioner Christie was appointed July 9, 1875 by Order in Council to obtain adhesion of the Chiefs yet to sign Treaty 4. Following meetings with Indian Commissioner Christie, Chief Okanese signed adhesion to Treaty 4 on September 9, 1875, along with five other chiefs at Qu'Appelle Lakes.

Consultation and Selection of Reserve Lands by Chief Okanese

10. The July 9, 1875 OIC required Christie to confer with the bands in selecting reserves “where they shall be deemed most convenient and advantageous for the Indians” and to pay treaty annuities.
11. Shortly thereafter, on July 13, 1875, the Surveyor General of Canada outlined his suggestions for the “selection and survey of the several Indian reserves to be set apart under Treaty 4 reserves”. The suggestions by the Surveyor General stressed the surveying of lands as soon as possible following consultation with the Indians. The Surveyor General further stressed that the setting apart of the reserve should include river or lake frontage.
12. The suggestions of the Surveyor General were made at the request of the Deputy Minister of the Interior and were marked “approved” by David Laird the Minister of the Interior.
13. Chief Okanese and his band met and conferred with the Commissioners in 1885 but did not select reserve lands. Rather, they received ammunition and twine at the Qu’Appelle Lakes.
14. Indian Agent Angus MacKay was given instructions on June 28, 1876, to make Treaty annuity payments and confer with Dominion Land Surveyor William Wagner regarding the selection of reserves in Treaty 4.
15. From September 4 to 9, 1886, Crown agents, including Indian Agent MacKay and Surveyor Wagner, met with at least 20 Treaty 4 Chiefs, including Chief Okanese and his headman, to pay annuities and consult on location of reserves.
16. Indian Agent Angus Mackay reported on September 5, 1886 of his consultation with the Chiefs, including Chief Okanese, regrading reserve location and after an initial objection, Chief Okanese and the other chiefs each agreed to the reserve locations.

17. On October 14, 1876, Indian Agent MacKay reported to the Superintendent General of Indian Affairs on his meetings with the Indians and listed descriptions of the Bands he met with, the location and nature of the reserve land selected. 11th on the list is Chief Oo kee-nees or Little Rose Bud, which were also names for Chief Okanese. The report included the following description of his consultation with Chief Okanese and the 28 families that accompanied him:

This chief and his band are of the Cree tribe also. and number 28 families who have always followed the buffalo hunt for a living and never have attempted farming. None of this band are likely to go on their reserve for the next year or two-

Their reserve is on the Qu'appelle beginning at the western boundary of the Mosquito's reserve and extending up the river to the little Pheasant Hills. It is a very good reserve being moderately well worded with poplar near the river banks and dotted with groves of the same on the bluffs-- good grass meadows are there and fine farming land

1876 Survey of Reserve 58 for Okanese

18. Following consultation with the 20 Indian Bands of Treaty 4, Surveyor Wagner commenced surveying Indian Reserves in July 1876. On or about October 25, 1876, he surveyed a reserve for Okanese on the north side of the Qu'Appelle River, near Crooked Lake.
19. Surveyor Wagner recorded the survey as being “situated on the north side of the river Qu'Appelle west of the reserve surveyed for Mosquito and contains in all 21,830 acres”. He also noted the reserve had good agricultural land and some firewood. At some later time, the Department appeared to correct the size of the reserve to 21,529 acres, with no explanation provided why.
20. On October 31, 1876, Indian Agent Mckay reported to the Superintendent General of Indian Affairs the nature of the Okanese Band as Chief Oo kee-nees or Little Rose Bud accompanied with 28 families. He further confirmed:

Their reserve is on the Qu'Appelle beginning at the western boundary of Mosquito's reserve and extending up the river to the little Pheasant Hills. It is a very good reserve being moderately well worded with poplar near the river banks and dotted with groves of the same on the bluffs-- good grass meadows are there and fine farming land.

21. Although no Order in Council was ever made confirming Okanese's reserve, the Department of Indian Affairs acknowledged and accepted the status of the surveyed lands as reserve lands in multiple annual reports, including but not limited to:
- a. The Department of Interior annual report for the year ending October 31, 1876, where the reserve was listed at Schedule P;
 - b. The 1877 Schedule of Indian reserves of Manitoba, Keewatin and Northwest Territories printed by the Dominion Lands Branch of the Department of Interior under the authority of the Surveyor General for the information of the Minister of the Interior. In this report, Okanese's reserve was first described as IR 58; and
 - c. The 1880 report of Surveyor General Lindsay Russell, who responded to the May 19 1880, request of the Deputy Superintendent General of Indian Affairs for "a correct list of all surveys of Reserves completed also with the statement of the reserves which are being at present surveyed". The Surveyor General, in his 1880 report provided a "List of Indian Reserves" which included the description of the Okanese Reserve as " the "Oo-Ke-nese or Little Rosebud" "Qu'Appelle River Crooked Lake" reserve, "No.58"under "Treaty 4" surveyed by Wagner.

Okanese Occupation and acceptance of IR 58

22. On October 14, 1876, Indian Agent Mackay reported the surveying of Okanese's reserve but noted that the band was unlikely to take up farming for a year or two as they would continue to the follow the buffalo hunt.

23. At no time did Canada provide the farming implements to Okanese to assist in the transition to an agriculturally based livelihood, as promised under Treaty 4.
24. Although Chief Okanese and his band were not specifically named as having taken up farming on the reserve in the annual reports from 1877 to 1880, they accepted the location of the reserve and were living on it from time to time. They received treaty payments at Qu'Appelle and were living at the reserve or near its vicinity while trying to hunt buffalo.
25. However, Okanese, like all Indians in the Qu'Appelle Valley, could not survive from hunting buffalo from the late 1870s onwards and became highly dependent on government aid to survive. As a result, the Department advanced a new policy to insist that in order to obtain aid, the Indians would have to "settle and work" on their reserve.

1880 Survey of Indian Reserve 82 and forced relocation of Okanese

26. Despite having already surveyed and set aside a reserve for Okanese near Crooked Lake, Canada decided to instruct Dominion Land Surveyor A.P. Patrick to survey another reserve for Okanese in the File Hills. Canada did not consult with Okanese regarding the location of this second reserve, contrary to their explicit Treaty promise. Further, neither the instructions to Surveyor Patrick nor his field notes indicate the reason for a second survey of reserve for Okanese.
27. In August of 1880, Surveyor Patrick began surveying a reserve for Okanese that was adjacent to Starblanket First Nation in the File Hills. However, he did not complete surveying the boundaries of the reserves "owing to the large number of ponds" and concluded it would be easier to complete the survey in the winter when they were frozen. It took almost 10 years for Canada to complete the survey.
28. Dominion Land Surveyor Nelsson completed the survey in the late 1880s and the reserve was confirmed in 1889 by Order in Council PC 1151, the area of the reserve totaling 14,310 acres and was described as IR 82. These reserve lands were of poor quality and insufficient for purposes of farming or for harvesting timber or fishing and did not fulfill Canada's Treaty promise.

29. Following the implementation of this new policy of “settle and work”, Okanese was compelled to move to the File Hills, in or about September 1880, which Indian agent McDonald of the Fort Qu’Appelle Agency acknowledged was poor agricultural land. Okanese, who were already starving, were informed that unless they moved to IR 82, they would receive no government aid and would face further starvation.
30. The 1881 DIA Annual Report indicates that a total of 23 Indians were settled on IR 82, out of a total population of 40. These settled Indians had broken and planted land.

“Cancellation” of IR 58 in favour of issuing Letters Patent to CPR

31. Unusually, Canada’s records do not clearly indicate why IR 58 was “cancelled”, nor does Canada’s records indicate which instrument purportedly cancelled or surrendered IR 58. What is clear though is that there is no evidence of Okanese consenting to this action.
32. Although the reason is not explicitly stated, Canada’s decision to alienate IR 58 was, largely in part, to fulfill obligations to CPR even when it put them in conflict to their obligations to Okanese.
33. In October 1880, Canada entered into a contract with the CPR to build the railway. By the Canadian Pacific Railway Act of 1881, the contract was approved and ratified, and Canada was “authorized to perform and carry out the conditions”. CPR’s requirement for building the railway was the grant of 25 million acres of suitable agricultural land.
34. Section 3 of the 1881 Act authorized the grant of “twenty-five million acres of land, to be paid and conveyed to the Company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract”. The contract at clause 11 provided for the grant of land in alternate sections 24 miles deep on each side of the railway. The contract also provided:

“But should any of such sections consist in a material degree of land not fairly fit for settlement, the company shall not be obliged to receive them as part of such grant, and the deficiency thereby caused and any further deficiency which may arise from the insufficient quantity of land along the said portion of railway, to complete the said 25 million acres, or from

the prevalence of lakes or water ... shall be made up from other portions in the tract known as the fertile belt”.

35. This additional provision allowed CPR to pick and choose the best available acreage almost anywhere on the prairies.
36. The originally conceived route of CPR’s railway was further to the north and IR 58 would not have fallen within the 48 mile belt of land which CPR was permitted to acquire. However, in 1879 and 1880, CPR decided to take a more southerly route, which meant that IR 58 was located within CPR’s railway land entitlement.
37. IR 58 was located approximately 16 miles north of the CPR Railway which passes through Grenfell, Saskatchewan. As such it is within the 48 mile belt of land. However, as it was surveyed and set a part, Canada had no authority to transfer the land to CPR to fulfill Canada’s obligations to CPR.
38. Indian Commissioner Dewdney actively supported land transactions to satisfy, and in some cases, exceed the CPR’s entitlements. He was in a position of authority and his department could facilitate transactions to the benefit of CPR. Further, Indian Commissioner Dewdney was also actively involved in land speculation for his own benefit. As such, he often acted in conflict to the interests of First Nations and in particular Okanese regarding the cancelation of IR 58.
39. The Department of Indian Affairs worked in concert with the Department of the Interior, under a single Minister of Interior and Superintendent General of Indian Affairs, to pursue an aggressive policy of obtaining the surrender of Indian reserve lands. The Ferguson Commission of Inquiry in 1915 revealed evidence of widespread graft, corruption, and speculation in the sale of surrendered reserve lands by key government officials.
40. Canada did not secure a surrender from Okanese, nor did it pass by Order in Council any instrument to cancel IR 58. Rather, Canada began alienating IR 58 through the issuance of a number of separate and distinct Letters Patents to CPR, each of which alienated a

different part of IR 58. These letters of patents transferred both the surface and sub surface rights to IR 58 to CPR.

41. Following the initial issuance of Letters Patent to CPR, the remainder of IR 58 was permanently alienated through the issuance of further Letters Patent to other third parties and by transferring the remaining interests in IR58 to the Province of Saskatchewan, pursuant to the 1930 *Natural Resources Transfer Agreement* and the 1930 *Saskatchewan Natural Resources Act*.

Additional lands added to IR 82

42. Nearly a century later in 1969, Fractional Section 33, Township 22, Range 11 is set aside as an addition to IR 82 resulting in an area of 15,052 acres. An additional 480 acres was added to IR 82 in 1973. The Schedule of Indian Bands, Reserves and Settlements records of 1992 shows that the total area of IR 82 is 15,480 acres.

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

43. These Specific Claims are brought forward on the grounds that the Respondent breached its treaty, fiduciary and honourable duties to the Okanese by alienating IR 58 through a series of transactions.
44. IR 58 was created as a “reserve” under the 1876 *Indian Act*. No Order in Council is required for setting a part Okanese’ reserve. Following its consultation with Okanese, Canada completed the necessary steps by surveying the boundary of lands comprising IR 58 and notifying the Department of Interior of the survey in 1877. Therefore, Okanese’s interest in those lands “crystallized” as a “reserve” set apart for its exclusive use and benefit within the meaning of the 1876 *Indian Act*.
45. Okanese lived on and near IR 58 from time to time while they attempted to live a traditional lifestyle hunting the buffalo. Canada’s agents’ actions confirm Canada’s understanding IR 58 was a reserve set a part solely for the exclusive benefit of Okanese.

46. At no time did Okanese abandon IR 58 nor consent to an exchange of reserve lands to IR 82. They were forced by Canada, under threat of withholding essential government aid, to move to File Hills and settle on lands which comprising 6,049 acres less land and of much lower quality. IR 82 lands were of such poor quality that they were insufficient for purposes of farming or for harvesting timber or fishing and as such, did not fulfill Canada's Treaty promise.
47. Canada had statutory, fiduciary and honourable obligations to secure a valid surrender, pursuant to the terms *Indian Act*, for each Letters Patent issued over IR 58 and before transferring the remaining interests in IR 58 to Saskatchewan under the 1930 *National Resources Transfer Agreement*.
48. Further, Canada breached its obligations to Okanese by preferring the interests of CPR and the personal economic interests of Crown Agents who profited over the speculation of IR 58 over the interests of Okanese.
49. Moreover, although CPR was the primary beneficiary of the alienations of IR 58, none of these transactions were valid under any legislation in force at the time.
50. Had the Crown fulfilled its statutory, fiduciary and honourable obligations, Okanese would have retained its interest in IR 58, containing 21,529 acres.

VI. Relief Sought

51. In light of the foregoing Specific Claims, Okanese seeks compensation for:
 - a. Current unimproved value of IR 58, comprising 21,529 acres;
 - b. Loss of use of IR 58, comprising 21,529 acres;
 - c. Costs of this proceeding, and in the Specific Claims Process, on a substantial indemnity basis; and
 - d. such other damages or compensation as this Honorable Tribunal deems just.

52. In the alternative that Canada is entitled to set-off, which is not admitted, Okanese seeks compensation for:
- a. The current unimproved value of the shortfall of 6,049 acres of reserve lands;
 - b. Loss of use of the shortfall of 6,049 acres of reserve lands;
 - c. Costs of this proceeding, and in the Specific Claims Process, on a substantial indemnity basis; and
 - d. such other damages or compensation as this Honorable Tribunal deems just.

Dated this 3 day of July, 2024 at the City of Calgary in the Province of Alberta.

MAURICE LAW



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