

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

GAMBLER FIRST NATION
also known as **GAMBLERS FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D É P O S É
July 21, 2015	
Nicholas Young	
Ottawa, ON	1

Claimant

v.

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

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*.

Date: July 21, 2015

Nicholas Young
(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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I. Claimant (R. 41(a))

1. The Claimant, Gambler First Nation, confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*. The Claimant is located in the Province of Manitoba.

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. This claim relates to the taking of land by the Respondent from the Gambler Indian Reserve No. 63 in 1898. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on February 10, 2012.

4. The Claimant was advised on June 30, 2014 by the Respondent that it was the decision of the Minister not to accept the claim for negotiation on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

III. Claim Limit (Act, s. 20(1)(b))

5. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (Act, s. 14(1))

6. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

- (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;

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

7. Treaty 4 was approved by Order in Council P.C. No. 1332/1874, dated November 4, 1874. Chief Way-wa-se-ca-pow adhered to Treaty 4 at Fort Ellice on September 21, 1874 on behalf of the Waywayseecappo Band.

8. Waywayseecappo Reserve IR 62 was surveyed in 1877 and confirmed as Indian Reserve No. 62 for the Waywayseecappo Band by Order in Council P.C. 1151 on May 17, 1889.

9. In 1880, members of the Waywayseecappo Band, led by the Gambler, expressed their desire to move from the Waywayseecappo Reserve, and requested their own reserve of approximately six by five square miles. The Respondent agreed to this request.

10. In 1881, a surrender of land was obtained from the Waywayseecappo Reserve. As required by the terms of the 1881 surrender, land was taken from the Waywayseecappo Reserve and land was surveyed and set aside at Silver Creek for the Claimant in 1883. The land was confirmed as Indian Reserve No. 63 for the Claimant by Order in Council P.C. 1151 on May 17, 1889.

11. Pressure from the residents of the local communities and a number of Federal, Provincial and local politicians, was put on the Respondent to open up the Gambler

IR 63 for settlement and homesteading purposes. The local communities claimed that the presence of the Gambler IR 63 was hindering the development of the local communities, particularly the Town of Binscarth, which was located within a few miles of the Gambler IR 63.

12. On September 15, 1892, the Respondent obtained a surrender for exchange from the Gambler IR 63, signed by six men, all of whom resided at Valley River. On October 5, 1892, the surrender was re-acknowledged by these six men, as well as signed by four additional men, all of whom also resided at Valley River. No members of the Claimant who habitually resided on or near and were interested in the Gambler IR 63 voted on the surrender (Note: the issues surrounding this taking of land in 1892 are the subject of a separate claim).

13. Order in Council P.C. 2929 was passed on November 10, 1893, approving the 1892 surrender for exchange from the Gambler IR 63.

14. Following the 1892 surrender, the external pressure to have the remainder of the Gambler IR 63 opened up for settlement and homesteading purposes continued to be placed on the Department from the local communities, aided by the various politicians.

15. Beginning in April of 1894, communications began between Indian Agent Markle and the Department of Indian Affairs regarding the taking of the remainder of the Gambler IR 63.

16. In June of 1897, Indian Agent Markle provided information to the Indian Commissioner regarding the members of the Claimant. He advised that John Tanner and his family were the only ones remaining on the Gambler IR 63.

17. On July 31, 1897, Indian Agent Markle reported to the Indian Commissioner that he “had an interview with John Tanner this week relative to surrendering the reserve on which he is located.” He reported that John Tanner offered to either accept payment for his improvements on the reserve in the amount of \$400.00 along with the

right to join another band, or retain three sections of land within the Gambler IR 63 in exchange for a surrender.

18. Indian Agent Markle further reported that he believed there were three eligible voters, namely, "Otterskin", "Wa ya kee ase", and "John Tanner". He also indicated that if "Wa ya kee ase" and "Otterskin" would "agree to surrender their claim, and no doubt both will be glad to do so, they represent a majority of the band and I am persuaded if they did the Department would only be bound to leave John Tanner with the land that was agree [*sic*] upon under treaty. His family consists of self, wife and three children, or five in all and which I presume will entitle him to one section of land and not three sections."

19. In October of 1897, S. Bray of the Department of Indian Affairs acknowledged Indian Agent Markle's report, which indicated there were three persons who had a right to vote. Bray further advised that the Indian Commissioner should be instructed to obtain a surrender from the other two members of the First Nation as well as John Tanner.

20. In December of 1897, surrender forms were provided to Indian Agent Markle, with instructions to obtain the surrender "from the Indians interested in this Reserve". Indian Agent Markle replied that John Tanner had selected several sections of land, but he managed to get him to agree that he would execute the surrender on the promise of a reduced amount of land.

21. On January 14, 1898, a surrender was obtained for the remainder of the land on the Gambler IR 63, excepting approximately 800 acres of land which were to be retained for John Tanner and his family's sole and exclusive use.

22. The land taken represented over 90% of the Claimant's land base, and if the land retained for John Tanner and his family's sole and exclusive use is considered to have been taken from the Claimant, then 100% of the Claimant's land base was taken.

23. This surrender was approved and signed by only John Tanner.

24. There were four other members of the Claimant who were 21 years of age or older and were residing near enough to the Gambler IR to be eligible to vote on the 1898 surrender. There were also other members of the Claimant, including those residing at the Valley River, who had an interest in the Gambler IR 63. There were also members of the Claimant residing at the Waywayseecappo reserve and other nearby reserves who had not been formally transferred to these other bands, all of who were eligible to vote on the 1898 surrender.

25. At no time were the members of the Claimant, other than John Tanner, consulted regarding the taking of the lands from the Gambler IR 63 or the consequences to them of the surrender, nor did any of the other eligible voters of the Claimant vote on the surrender, or otherwise consent to the surrender.

26. The surrender was approved by the Crown by Order in Council P.C. No. 684, dated March 28, 1898.

27. A subdivision survey of Gambler lands was completed in July of 1900, with lands placed on the market later that year. As a result of an error on the 1900 subdivision plan, two unsurrendered parcels of land on the Gambler IR 63 were inadvertently sold and patented. In an attempt to correct this error, in 1958 the Department obtained a Band Council Resolution from the Waywayseecappo Band Council and later a surrender of 240 acres of land from the Waywayseecappo Band members in exchange for other unsold land on the Gambler IR 63.

28. The Claimant has never surrendered its interest in the 240 acres of land.

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

29. Treaty No. 4 specifically required the consent of all of the Indians interested in a reserve to be given before any land could be taken from a reserve. The Claimant claims that the Respondent breached the terms of Treaty No. 4 by failing to obtain the consent of all of the members of the Claimant prior to the land being taken from the Gambler IR 63 in 1898.

30. The 1886 *Indian Act* provided that no surrender of a reserve was valid unless the surrender was assented to by a majority of the male members of the band, of the full age of 21 years, who habitually resided on or near the reserve. The Claimant claims that the Respondent breached the terms of the 1886 *Indian Act* by failing to ensure that a majority of the male members of the band, of the full age of 21 years, who habitually resided on or near the reserve voted to approve the surrender prior to the land being taken from the Gambler IR 63 in 1898.

31. The Respondent owed fiduciary or trust-like obligations to the Claimant to deal with the Gambler IR 63 in the best interests of the Claimant. The Claimant claims that the Respondent breached its fiduciary or trust-like obligations to the Claimant, particulars of which include:

- (a) Failing to consult with all members of the Claimant regarding the taking, the terms of, and the consequences of, the surrender to the members prior to the land being taken from the Gambler IR 63 in 1898;
- (b) Failing to ensure that the Claimant adequately understood the surrender and the consequences of the surrender to the Claimant;
- (c) Allowing the Claimant to adnegate its decision-making authority to the Respondent;
- (d) Failing to act in the best interests of the Claimant;
- (e) Failing to withhold its consent to the surrender which was so foolish a decision that it amounted to exploitation; and
- (f) The conduct of the Respondent which tainted the dealings in a manner which made it unsafe to rely on the Claimant's consent.

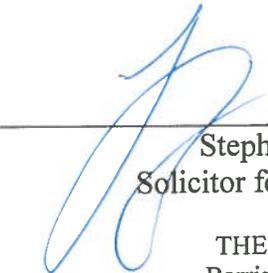
32. The Claimant also claims that the Respondent illegally disposed of 240 acres of land from the Gambler IR 63 that was never surrendered by the Claimant.

VII. Relief Sought

33. The Claimant seeks the following:

- (a) Compensation equal to the current, unimproved market value of the lands taken from the Gambler Indian Reserve No. 63 in 1898;
- (b) Compensation equal to the value of the loss of use of the lands taken from the Gambler Indian Reserve No. 63 in 1898;
- (c) Compensation for losses suffered as a result of the Respondent's breach of its fiduciary or trust-like obligations, breach of the terms of Treaty No. 4, and breach of the terms of the 1886 *Indian Act*;
- (d) Compensation for the illegal disposition of 240 acres of land;
- (e) Equitable compensation and/or interest; and
- (f) Costs in relation to these proceedings;
- (g) Such other damages, compensation or costs as this Honourable Tribunal may award.

Dated this 20th day of July, 2015.



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