

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	December 3, 2013	D E P O S É
Guillaume Phaneuf		
Ottawa, ON	1	

B E T W E E N:

SAULTEAUX FIRST NATION

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*.

December 3, 2013

Date

Guillaume Phaneuf

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building, 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

I. Claimant (R. 41(a))

1. The Claimant, the Saulteaux First Nation (hereinafter also referred to as the “First Nation”) confirms that it is a First Nation within the meaning of 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. 6 (hereafter “Treaty 6”). The First Nation is located in the vicinity of Jackfish Lake near Cochin, 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 with the Minister of Indian Affairs on December 10, 2008, respecting breach of fiduciary duties by Canada in relation to the surrender and exchange of land from the Saulteaux Indian Reserve No. 159 (“IR 159”) in 1960 for the establishment of the Battlefords Provincial Park located at Jackfish Lake (hereinafter referred to as the “Claim”).
4. The Specific Claims Branch notified the First Nation in writing on November 25, 2011, that the Claim was not accepted for negotiation on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

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

5. The First Nation does not seek compensation in excess of \$150 million for the Claim.

IV. Grounds (R. 41(d))

6. The following are the grounds for the specific Claim, 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) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

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

7. Sauteaux Indian Reserve No. 159 was surveyed and set apart pursuant to the terms of Treaty 6 in 1909 for the Sauteaux people and is situated in the vicinity of Jackfish Lake near Cochin, Saskatchewan.
8. As originally constituted, IR 159 contained 9,010 acres of land comprised of two small parcels of land abutting the shores of Jackfish Lake and a much larger area to the east.
9. Some Sauteaux people lived all year round on the Jackfish Lake lands, while most utilized the lands for either a summer or a winter camp. Their main vocation was fishing, both commercially and personally; fishing on the Lake in the summer and ice fishing in the winter. The Sauteaux people also used the land for spiritual ceremonies and burial grounds.
10. In the summer of 1947, the Saskatchewan provincial government wrote to the federal department of Mines and Resources offering to exchange all of the Sauteaux land at Jackfish Lake for an equal amount of land at Birch Lake. On August 12, 1947, the Saskatchewan government was informed that, *inter alia*, the First Nation had wood, hay and considerable commercial fishing and had no desire to move to Birch Lake. The First Nation made the decision not to entertain any thoughts of surrendering their reserve land at Jackfish Lake.

11. Due to a gradual increase in population in the province, the Saskatchewan government commissioned a study in 1952 to investigate the future use of land within the province for recreational purposes. The study identified two areas bordering Jackfish Lake deemed suitable for the establishment of a provincial park since there were good beaches, good fishing resources and the land was favourably situated in relation to various towns in the northwest area of Saskatchewan. Both of these parcels of land were those comprising part of Saulteaux IR 159.
12. In early March, 1958, the Saskatchewan government again made inquiries to the Department of Indian Affairs (“DIA”) concerning the possibility of obtaining the two areas of Saulteaux reserve land at Jackfish Lake as identified in the 1952 study. In the latter half of March, 1958, interdepartmental DIA correspondence stated that a meeting was held with the First Nation to discuss this matter resulting in a resounding objection by the First Nation to the disposal of their reserve lands.
13. Despite this objection, the same line of interdepartmental correspondence and reporting repeatedly made reference to the possibility of proposing to the First Nation to lease those parcels of land.
14. On March 26, 1958, the DIA informed the province of the First Nation’s objection, but suggested that the First Nation may be induced to alter their decision if they were assured of continued access to their fishing grounds and an acceptable compensation arrangement.
15. In response, the province confirmed that they would give the First Nation unrestricted right of access to these lands if they could gain “sufficient control of the lands abutting the shores of Jackfish Lake to provide the public with free access to the water”.
16. Further meetings ensued with the First Nation and federal and provincial representatives, with the latter two persuading the First Nation to dispose of their lands at Jackfish Lake. At these meetings, a common concern of the Saulteaux

people was the loss of their fishing grounds. Consequently, *inter alia*, the Saulteaux were promised free access to fishing grounds if they agreed to sell the land.

17. These meetings culminated in a proposal, on October 29, 1959, from the provincial government to the First Nation to purchase the Jackfish Lake lands in exchange for lands in the Birch Lake area, including mineral rights, as well as monetary compensation.
18. The DIA took the position that the proposed exchange of land would be of great benefit to the First Nation citing its potential for raising livestock and abundance of wild game and fur bearing animals. With an admittedly inadequate basis in which to advise, a federal official also concluded that the “640 acres of mineral rights in the Birch Lake area...is more attractive than the 207 acres in the Jackfish Lake area”.
19. However, the position of the First Nation on the sale of Jackfish Lake land was far from clear. As late as December of 1959, DIA correspondence to provincial officials stated that the First Nation wished to lease, not surrender, the land at issue for summer resort purposes. In fact, the DIA stated that a meeting of the First Nation revealed that most voting members favoured leasing the land.
20. However, the DIA inexplicably dismissed the assertions of the First Nation and proceeded with the process of surrendering the Saulteaux lands at Jackfish Lake.
21. On January 25, 1960, a meeting of the First Nation was held approving the surrender of the two parcels of IR 159 abutting Jackfish Lake.

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

22. The 1960 Saulteaux Claim is brought on the grounds that the Respondent breached its statutory and fiduciary duties to the Saulteaux First Nation in the context of the 1960 surrender by:

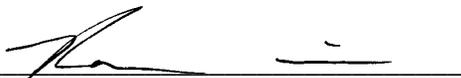
- a. failing to provide the Saulteaux members with legal or technical advice or to conduct the surrender meeting in accordance with the intent of the *Indian Act* so that members of the First Nation would be afforded an opportunity to provide free, full and informed consent to the surrender proposal;
- b. failing to take steps to ensure that the First Nation understood the surrender;
- c. failing to minimize the taking of Saulteaux reserve land by reserving mines and minerals, considering the leasing option and failing to include certain Saulteaux terms regarding enduring rights to the Jackfish Lake area; and
- d. failing to withhold its consent to a transaction that was clearly foolish, improvident and exploitative.

VII. Relief Sought

23. In light of the foregoing, the Saulteaux First Nation seeks compensation for:
 - a. the current, unimproved value of the lands in lieu of restoring the Claim lands as reserve minus the current, unimproved value of the lands received in exchange as set off;
 - b. damages suffered by the First Nation as a result of the net loss of use of the surrendered lands during the period from 1960 to the date of settlement; and
 - c. such other damages or compensation as this Honourable Tribunal deems just.

Dated this 3rd day of December, 2013 at the City of Calgary in the Province of Alberta.

MAURICE LAW



Ron S. Maurice
Counsel for the Claimant

Maurice Law Barristers & Solicitors

800, 550-11th Ave SW

Calgary, Alberta T2R 1M7

Phone: (403) 266-1201

Fax: (403) 266-2701

Email: rmaurice@mauricelaw.com

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