

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	August 19, 2014	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	1	

B E T W E E N:

COTE 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*.

August 19, 2014

Date

Guillaume Phaneuf

Registry Officer

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

1. The Claimant, the Cote 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. 4 (hereafter “Treaty 4”). The First Nation lies east of the Assiniboine River in southeastern 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 July 8, 2009, respecting breach of fiduciary duties by Canada in relation to the unlawful expropriation of land from the Cote Indian Reserve No. 64 (“IR 64”) in 1903 by the Canadian Northern Railway (“CNR”) for a railway right-of-way (hereinafter referred to as the “Claim”).
4. The Specific Claims Branch notified the First Nation in writing on June 26, 2012, 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;

...

(e) 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. Cote Indian Reserve No. 64 was surveyed and set apart pursuant to the terms of Treaty 4 in 1877 for the Cote people. As originally constituted, IR 64 contained 36,160 acres of land and is situated on the east side of the Assiniboine River in southeastern Saskatchewan.
8. On August 13, 1902, Indian Agent Fisher, of the Pelly Agency, reported to the Secretary of Indian Affairs that a team of CNR engineers were surveying land for the location of a proposed rail line which would likely pass through IR 64. The Department of Indian Affairs responded by informing Fisher that the CNR had the right under its charter to conduct a survey, but that no actual construction should proceed until proper arrangements had been made.
9. A map dated April 7, 1903, depicts the final CNR survey plan showing that the proposed rail line will pass through the Cote Reserve.
10. The railway line proposed by the CNR was to pass through the Cote Reserve, thereby cutting off the Band's access to a portion of its Reserve land that was not subject to the taking, as well as its access to the Assiniboine River.
11. On May 30, 1903, McKenzie, Mann & Co., CNR's construction subsidiary, entered upon Cote Reserve. The new Indian Agent, Carruthers, warns the Company not to begin construction until they obtain authorization.

12. On May 31, 1903, McKenzie, Mann & Co. begins construction of the railway on Cote IR 64 without proper authorization.
13. Deputy Superintendent General, Pedley, telegraphed McKenzie, Mann & Co. on June 1, 1903, informing them that their contractors had begun working on IR 64 without the proper authorization.
14. On June 3, 1903, Pedley refers to the June 1st telegram and informs CNR that a plan and the requisite deposit of money was required to be sent to the Department before they could begin work on the right-of-way through the Cote Reserve lands.
15. Construction of the railway continued prompting Pedley to inform McKenzie, Mann & Co. on June 12, 1903, that its workers were trespassing on the Cote Reserve.
16. On June 13, 1903, law firm, Munson & Allan, forwarded the \$250 deposit, on behalf of McKenzie, Mann & Co., to McLean, Secretary of Indian Affairs, and advised that the plans of the rail line were sent on the 12th. On this same day, perhaps because of miscommunication, McKenzie, Mann & Co. also sent a \$250 deposit to the Deputy Superintendent General in Ottawa.
17. On June 29, 1903, Indian Affairs Secretary McLean sent the plan of the right-of-way to Indian Agent Carruthers and requested a valuation as to what constitutes adequate compensation for the land and damages, including damages for severance and damages to improvements.
18. On July 14, 1903, an Order-in-Council authorized the sale of 44.56 acres of Cote Reserve land to CNR for the railway right-of-way.
19. On August 13, 1903, Indian Agent Carruthers responded to the Secretary's request for valuation with his view of the amount of compensation owing. Carruthers assessed the land's value at \$8 per acre for the 44.56 acres and damages to personal property at \$205.

20. The Department of Indian Affairs accepts the valuation amount without question and requests that CNR pay the balance owing. It was not until September 22, 1903, that Munson & Allan forwarded the balance of compensation owed by CNR for the right-of-way to the Department of Indian Affairs.
21. By November 18, 1903, the issue of compensation owed to the Cote Band members whose property was damaged was still being discussed, but had not yet been paid to those members.
22. On April 12, 1905, Letters Patent were issued to the CNR for the 44.56 acres for the railway right-of-way.

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

23. The Cote First Nation's Claim is brought on the grounds that the Respondent breached its statutory and fiduciary duties to the Cote First Nation in the context of this taking for the railway right-of-way by:
 - a. failing to follow the expropriation procedures set out by the *Indian Act* and the *Railway Act* when it expropriated Cote Reserve land for the railway right-of-way;
 - b. failing to advise the Cote First Nation regarding the valuation of the land to be taken and the its statutory right to seek arbitration if it was not satisfied with the compensation for the lands taken;
 - c. failing to ensure that the Cote First Nation's use and enjoyment of its Reserve land was minimally impaired by purporting to grant fee simple title to the right-of-way lands to the CNR when it required only a limited interest in the nature of a statutory easement with a reversionary right in favour of the Cote First Nation when the lands were no longer required for railway purposes; and

- d. failing to withhold its consent to the taking of Cote Reserve land as the transaction was foolish, improvident and exploitative.

VII. Relief Sought

- 24. In light of the foregoing, the Cote First Nation seeks the following relief:
 - a. compensation for the fair market value and loss of use of the Claim lands;
 - b. compensation for damages for injurious affection;
 - c. an order that the records be rectified to reflect that any interest conveyed to the CNR in 1903 was limited to a statutory easement, and such interest must revert to the Crown on behalf of the First Nation when the lands are no longer required for railway purposes, and that the underlying mineral rights remained vested in the Crown on behalf of the Cote First Nation; and
 - d. an award of solicitor-client costs pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, section 110(2) in relation to the specific claim and this proceeding; and
 - e. such other relief as this Honourable Tribunal deems just.

Dated this 19th day of August, 2014 at the City of Calgary, in the Province of Alberta.

MAURICE LAW



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