

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

PAUL FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
	November 4, 2016	
	Amy Clark	
Ottawa, ON		3

Claimant

v.

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

Respondent

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

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

TO: PAUL FIRST NATION
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I. Status of Claim (R. 42(a))

1. The Respondent, Her Majesty the Queen in Right of Canada (“Canada”) admits that the Paul First Nation (“PFN”) is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “*Act*”) as pleaded in paragraph 1 of the Declaration of Claim (the “Declaration”).
2. The Claimant has filed the following specific claims alleging breaches of Canada’s lawful obligations in connection with the surrender of Indian Reserve 133B:
 - a. a specific claim received on July 12, 1996 regarding the Crown’s management of the sales of the lands surrendered in 1906;
 - b. a specific claim received on June 5, 2000 regarding the 1906 surrender of Indian Reserve 133B; and
 - c. a further specific claim received on January 27, 2012 regarding the 1906 surrender of Indian Reserve 133B.
3. In reply to paragraphs 3 to 6 of the Declaration, Canada denies that the claim before the Tribunal is the alleged mismanagement of sales of surrendered lands. Canada states that the claim before the Tribunal is the specific claim regarding the 1906 surrender of Indian Reserve 133B, which was submitted on June 5, 2000 and resubmitted on January 27, 2012 (the “Claim”).
4. The Minister notified the Claimant in writing on October 29, 2013 of his decision not to accept the Claim for negotiation. Canada admits, in response to paragraph 2 of the Declaration, that the Claim meets the conditions precedent, as set out in paragraph 16(1)(a) of the *Act*.

5. In reply to paragraph 8 of the Declaration, Canada submits that the statutory ground for this claim is limited to ss. 14(1)(b) and 14(1)(c) of the *Act*.

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

6. Canada denies the validity of the Claim, and in particular denies:
 - a. that the surrender of IR 133B was contrary to the provisions of the 1906 *Indian Act*;
 - b. any breach of the *Indian Act* or obligations arising from Canada's fiduciary duties;
 - c. that there are any consequential losses or damages.

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

7. Unless expressly admitted, Canada denies each and every allegation of fact or law in the Declaration.
8. Canada admits the facts set out in paragraphs 13, 15, 16, 18, and 22 of the Declaration.
9. Canada denies the facts in paragraphs 17 and 19 of the Declaration.
10. In reply to paragraph 9, Canada admits that Indian Reserves (“IR”) 133A and 133B were surveyed and set apart pursuant to the terms of Treaty No. 6. Canada denies that IR 133A and 133B were surveyed and set apart in 1877 and, for clarity, states that IR 133A and 133B were set apart by Order-in-Council PC 1633 dated June 16, 1892.

11. In reply to paragraph 10, Canada admits that two reserves were surveyed for the PFN at White Whale Lake: IR 133A and IR 133B, with IR 133B having been set aside for a fishing station, having access to White Whale Lake, and being the much smaller of the two reserves. Canada has no knowledge of whether IR 133B was the PFN's primary fishing station and whether IR 133B had access to Moonlight Bay.
12. In reply to paragraph 11, Canada admits that Chief Paul remained as Chief until 1901 and that the PFN remained without a Chief until 1906. Canada denies that Chief Paul was deposed by the Department of Indian Affairs ("DIA") and, for clarity, states that Chief Paul was removed from office by Order-in-Council PC 1762 dated September 12, 1901 for conduct that included killing cattle without authority and encouraging the sale of alcohol on the reserve.
13. In reply to paragraph 12, Canada admits that in late 1905, the Canadian Northern Railway ("CNR") was approaching from Edmonton and would likely pass through IR 133A. There was no mention of IR 133B at this time. Canada has no knowledge of the remaining allegations of fact in paragraph 12.
14. In reply to paragraph 14, Canada admits that Indian Agent Gibbons met with the PFN on August 14, 1906 to discuss the surrender of IR 133B. Canada has no knowledge of whether this discussion was for the purpose of establishing a railway townsite or resort community.
15. In reply to paragraph 17, Canada admits that there are 10 names of PFN members listed in the surrender; nine marked their names or signed the document and one did not. Canada has no knowledge of whether one PFN member was opposed.
16. In reply to paragraph 19, Canada admits that two of the PFN members who signed the surrender document were not described as heads of families or individuals in the PFN payroll prepared for the purpose of paying annuities as required by Treaty

- No. 6. Paylist records do not determine the number of band members who are eligible to vote at a surrender meeting. Canada has no knowledge of the number of persons who were eligible to participate in the surrender vote or the exact number of adult males in the PFN population at the time of the surrender. Canada further states that the reference in the last sentence to “the time of survey” should be to “the time of *surrender*”.
17. Canada admits the facts in paragraph 20 and, for clarity, states that the burial ground on IR 133B was small and that those who had used this small ground were present at the meeting and signed the surrender, excepting one named Reindeer. Canada further states that the DIA took steps to ensure that the bodies in the burial ground would be carefully moved and that the members of the PFN could be exclusively employed in this work if they wished.
 18. In reply to paragraph 21, Canada admits that selected lots of the surrendered lands were sold by public auction in May 1910 and again in June 1912. Canada has no knowledge of the precise numbers of lots sold on these dates. Individual lots were sold after that time until the 1950s.
 19. In reply to paragraph 23, Canada admits that Canada and the PFN signed a Memorandum of Intent (the “Memorandum”) outlining a plan for certain unsold lots that were part of the IR 133B surrender to be returned to reserve status. Canada admits that these unsold lots have not yet been returned to reserve status, but, for clarity, states that the Memorandum is not binding on the parties until such time as the final agreement. Canada has no knowledge of the exact number of lots or acres that the Memorandum contemplates being returned to reserve status, but states that the lots to be returned to reserve status are the unsold lots within the townplot of Wabamun lying within the areas outlined in red in Schedule “C” of the Memorandum. Canada denies that the Memorandum was signed in 1995 and, for clarity, states that the Memorandum was signed by

Canada, the Government of Alberta, the PFN, and the County of Parkland on January 17, 1996.

IV. Statements of Facts (R. 42(e))

20. In addition to the foregoing, Canada pleads the following facts.
21. The ancestors of the Paul First Nation entered into Treaty No. 6 through an adhesion dated August 21, 1877.
22. By Order in Council PC 1633 dated June 16, 1892, IR 133A and 133B, containing approximately 20,928 acres or 32.7 square miles of land, were set aside for the PFN.
23. On May 10, 1906, David Bird was approved as Chief of the PFN and was appointed for an indefinite term.
24. By June, 1906, the CNR had surveyed a projected line through IR 133A and 133B but this line had not yet been approved.
25. On June 3, 1906, Indian Agent Gibbons wrote to the DIA that the new railway line of the CNR was rapidly approaching IR 133A and 133B and estimated the railway would traverse approximately 9 miles of the reserve.
26. In a letter of June 26, 1906 to Secretary McLean, Inspector Markle noted that he had been asked by the PFN for his opinion on whether it would be wise for them to surrender the part of the reserve north of the projected line of the railway, including the part in township 53, provided that the railway built on the projected survey. Markle declined to give a definitive answer to the PFN.

27. Also in the summer of 1906, White Whale (Wabamun) Lake, with its proximity to Edmonton, was attracting attention as a prospective summer resort.
28. By letter dated July 5, 1906, Mr. Taylor of The W.S. Weeks & Co, an Edmonton real estate firm, wrote to the DIA referring to a meeting he had with the PFN. Taylor advised that the PFN would consent to a sale of a portion of the reserve north of the proposed railway and that they were “anxious to find out if such an agreement would meet with the approval of your department.”
29. Secretary McLean replied to Mr. Taylor on July 16, 1906 stating that the DIA was not yet in a position to deal with the matter as the CNR had not filed its plan yet.
30. On July 31, 1906, Secretary McLean wrote to Indian Agent Gibbons that an application had been made for a portion of IR 133A and 133B and asked Agent Gibbons to report whether the land was occupied, what improvements were located on it, and if the band would be willing to surrender the land for sale.
31. By letter dated August 15, 1906, Indian Agent Gibbons reported on his meeting with the PFN, which was held on August 14, 1906. He reported that “the majority were willing to surrender the land in question on condition that so much thereof as borders on the Lake and is suitable for a townsite or resort should be plotted and put up for sale in, say, 1 acre lots, and the remainder disposed of to the best advantage for them.” and added that IR 133B could be considered unoccupied and unimproved, except for two or three Indians living in shacks on it. Surveyor McLean was expected to arrive to re-survey IR 133A and 133B to clearly mark the boundaries and Agent Gibbons recommended if the Department were to accede to the proposal of the PFN, that the surrender forms be sent as soon as possible and Surveyor McLean be instructed to make the necessary surveys.
32. On September 1, 1906, Deputy Superintendent General Pedley sent blank surrender forms to Indian Agent Gibbons and authorized him to submit them to

the PFN. If the surrender was granted, Surveyor McLean was to be instructed to survey the surrendered tract so that “the property may be disposed of, as desired by the Indians.”

33. Surveyor McLean was instructed to retrace the boundaries of IR 133A and 133B on August 2, 1906 and he completed this task on September 6, 1906. This retracing arose from the PFN’s request for these boundaries to be re-surveyed because the reserve limits were no longer clearly distinguishable.
34. The surrender of IR 133B, comprising 635 acres, was taken on September 11, 1906.
35. Surveyor McLean attended the surrender meeting and on the following day, September 12, 1906, he reported:

It was decided at the meeting with the Indians when surrender was given to reserve the Beach from being sold, a width of about 150 feet along the Lake including a street to be reserved from sale by the Department, such width or widths to be decided by myself when making the survey.

36. The Surrender Affidavit was sworn by Chief Bird and Indian Agent Gibbons on September 13, 1906 before a Justice of the Peace of Alberta. The surrender was approved on September 27, 1906 by Order-in-Council PC 1939.

No Railway Station is Built

37. The CNR applied for a right of way through IR 133A and 133B on October 13, 1906 and the Grand Trunk Pacific Railway (“GTPR”) applied for its right of way on December 21, 1906.

38. On December 31, 1906, the CNR made a proposal to the DIA, with terms very favourable to the CNR and without a commitment to build a station on the surrendered lands. This proposal was not accepted by the DIA.
39. GTPR's route was approved first and Order-in-Council PC 36 dated January 8, 1908 approved the sale of land in IR 133A and 133B for the railway right of way.
40. In 1908, in response to a query by Secretary McLean as to the CNR's intention to put a station on the surrendered lands, the CNR advised that the approved GTPR rail line crossed the CNR line at several points and therefore officials from the two railways would have to meet to discuss adjustments to the line.
41. By September 1, 1908, the GTPR informed the DIA that it would not build a station on the surrendered lands because it was practically impossible to put a station on the surrendered lands due to the steep gradients.
42. By June 28, 1909, the CNR had received approval for the route of their rail line. In response to a query from Secretary McLean as to whether the CNR would locate a station on the surrendered lands, the CNR responded on August 23, 1909 stating that construction work had been postponed.
43. By July 31, 1911, the DIA became aware that the CNR abandoned their line through IR 133A and 133B. This was confirmed by the CNR on August 18, 1911.

V. Relief (R. 42(f))

44. Canada denies the entitlement of the relief sought and seeks to have the claim dismissed in its entirety.
45. Canada seeks its costs in the proceedings.

VI. Communication (R. 42(g))

46. Email address for the service of documents:

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Dated this 4th day of November, 2016.

William F. Pentney
Deputy Attorney General of Canada



Signature of Representative/Solicitor

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