

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

HUU-AY-AYT FIRST NATIONS

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	February 19, 2014	D É P O S É
Amy Clark		
Ottawa, ON	5	

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: HUU-AY-AHT FIRST NATIONS (as per Declaration of Claim)

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I Claimant and Respondent

1. The Respondent, Her Majesty the Queen in right of Canada (Canada) admits that the Claimant, Huu-ay-aht First Nations (HFN) is a First Nation within the meaning of s. 2 of the *Specific Claims Tribunal Act*.

II Conditions Precedent

2. In response to the allegations of fact in paragraph 2 of the Declaration of Claim, Canada admits that the claims as set out in the Declaration of Claim have been previously filed with the Minister of Indian Affairs and Northern Development (Minister), with two exceptions.
3. The HFN's claim set out in paragraphs 27-28, 36, 39, 40-42, 44-45, 64 (b), 74(b), 74 (c), 74 (d), and 75 (a) of the Declaration of Claim alleging that Canada failed to charge adequate compensation for MacMillan and Bloedel (Alberni) Ltd, and its successor company MacMillan Bloedel Limited, to construct and use certain roads in Numukamis Indian Reserve Number 1 (Reserve) to haul timber, whether harvested inside or outside the Reserve, (Inadequate Compensation for Timber Hauling Claim) is a new claim involving new factual allegations that is not a claim that has been previously filed with the Minister. This Tribunal does not have jurisdiction over the Inadequate Compensation for Timber Hauling Claim. The Inadequate Compensation for Timber Hauling Claim should be withdrawn, or struck, from the Declaration of Claim pursuant to ss. 16 (1) and 17 (b) of the *Specific Claims Tribunal Act*. MacMillan and Bloedel (Alberni) Ltd, its predecessor company, Bloedel, Stewart and Welch Limited, and its successor company, MacMillan Bloedel Limited, are hereinafter referred to as Logging Co.
4. The HFN's claim set out in part of paragraph 17, and paragraphs 46, 48-49, part of 64 (a), part of 64 (b), and part of 74 (a) of the Declaration of Claim that Canada breached a fiduciary duty by purporting to allow Logging Co to construct and use certain branch logging roads in trespass from 1947 to April 30, 1969 (Branch Roads Trespass Claim) is

a new claim involving new factual allegations that is not a claim that has been previously filed with the Minister. This Tribunal does not have jurisdiction over the Branch Roads Trespass Claim. The Branch Roads Trespass Claim should be withdrawn, or struck, from the Declaration of Claim pursuant to ss. 16 (1) and 17 (b) of the *Specific Claims Tribunal Act*.

5. In response to the allegations of fact in paragraphs 3 to 6 of the Declaration of Claim:
 - a) Canada admits that the HFN submitted a claim submission, concerning the construction and operation of a mainline and certain branch logging roads on the Reserve, to the Department of Indian Affairs and Northern Development on May 11, 2004, and not on June 11, 2004 as pleaded by the HFN;
 - b) Canada admits that the Minister notified the HFN in writing by letter dated June 23, 2008 of the Minister's decision to negotiate the submitted claim in part;
 - c) Canada says that the Minister notified the HFN in writing by letter dated January 5, 2009 that the date of the Minister's decision to negotiate the submitted claim is deemed to be October 16, 2008;
 - d) Canada admits that more than three years have elapsed from October 16, 2008 to the date the Declaration of Claim was filed in this proceeding; and
 - e) Canada admits the allegations of fact in paragraph 6 and in the opening paragraph of paragraph 4.
6. In further response to the remaining allegations of fact in paragraphs 4 to 5 of the Declaration of Claim, Canada either denies the other allegations or states that they are subject to settlement privilege.

III The Claims Are Not Valid Claims

7. Canada's position is that the claims in the Declaration of Claim are not valid claims. Canada denies the validity of the claims based on each of the grounds set out in the Declaration of Claim at paragraph 8:
- (b) a breach of 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; and
 - (d) an illegal lease or disposition by the Crown of reserve lands.
8. The HFN's particularized claims in the Declaration of Claim are as follows:
- a) the Inadequate Compensation for Timber Hauling Claim (see paragraph 3 above). Canada's overall response is that:
 - i) the Tribunal does not have jurisdiction over this claim. This claim is not a claim that has been previously filed with the Minister; and
 - ii) in addition, Canada denies the validity of this claim. The HFN consented to the consideration set out in the mainline and branch logging road leases and permits and Canada denies that Canada breached any claimed duty in connection with the adequacy of compensation in the mainline and branch logging roads leases and permits;

- b) the HFN's claim set out in paragraphs 15, part of 17, 29-30, 34, part of 64 (a), part of 64 (b), and 74 (a) of the Declaration of Claim that Canada breached a fiduciary duty by purporting to allow Logging Co to construct and use the mainline road in trespass from 1947 to April 14, 1955 (Mainline Road Trespass Claim). Canada's overall response is that:
- i) Canada denies the validity of this claim. There was no trespass. Logging Co already had the right to haul timber harvested in the Reserve pursuant to a 1942 timber licence and successor licences granted under a 1938 timber surrender by the HFN of all the merchantable timber on the Reserve. Canada says that any timber harvested outside the Reserve and hauled through the Reserve on the mainline road was hauled under the mainline road leases set out in Part V below. In any event, Canada denies that Canada undertook any discretionary control of the lands that were to become the mainline road lands in relation to any trespass by Logging Co, and, in any event, Canada denies any breach of any such claimed duty;
- c) the Branch Roads Trespass Claim (from 1947 to April 30, 1969) (see paragraph 4 above). Canada's overall response is that:
- i) the Tribunal does not have jurisdiction over this claim. This claim is not a claim that has been previously filed with the Minister; and
 - ii) in addition, Canada denies the validity of this claim. There was no trespass. Logging Co already had the right to haul timber harvested in the Reserve pursuant to the 1942 timber licence and successor licences granted under the 1938 timber surrender by the HFN of all the merchantable timber on the Reserve. Canada says that any timber harvested outside the Reserve and hauled through the Reserve on the branch roads was hauled under the branch roads permits set out in Part VI below. In any event, Canada denies that Canada undertook any discretionary control of the

lands that were to become the branch roads lands in relation to any trespass by Logging Co, and, in any event, Canada denies any breach of any such claimed duty;

- d) the HFN's claim set out in paragraphs 64 (c), 74 (f) and 75 (e) of the Declaration of Claim alleging that Canada failed to ensure that the leases and permits required the Logging Co to pay the HFN for the value of timber harvested in the Reserve and removed during construction of the mainline road and branch roads (Mainline Road and Branch Roads Timber Harvesting Claim). Canada's overall response is that:
- i) Canada denies the validity of this claim. Canada had no legal rationale to require Logging Co to pay a second time under the Mainline Road and Branch Roads leases and permits for some of the same timber when the Logging Co had already been required to pay for that timber pursuant to the 1942 sale of the timber on IR 1, as recorded and given effect to in the 1942 Timber Licence, the 1942 Timber Licence and successor licences, all of which were in turn granted by Canada pursuant to the 1938 Timber Surrender by HFN of all the merchantable timber on the Reserve; and
 - ii) insofar as the HFN intends to make a claim for compensation for failure of Logging Co to pay what was required to be paid in connection with the harvesting and removal of timber for the construction of the mainline road and branch roads, then such a claim in this proceeding would be duplicative of part of a claim in another proceeding brought by the HFN before the Tribunal. Such a claim in this proceeding would be an abuse of process or otherwise frivolous or vexatious and should be withdrawn, struck or stayed in this proceeding;
- e) the HFN's claim set out in paragraphs 65-67, part of 68, 69, part of 70, part of 71, 74 (d), 74 (e), 74 (g), 74 (h), part of 74 (i), 75 (b), 75 (c) and 75 (d) of the

Declaration of Claim that Canada failed to ensure that the Logging Co adhered to contemporary industry practices and standards in placing, constructing, maintaining, decommissioning and reforesting the mainline and branch roads or otherwise failed to ensure that Logging Co protected the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, from environmental damage and degradation caused by the mainline road and branch roads (Environmental Standards and Practices Claim). Canada's overall response is that:

- i) this claim lacks proper particulars to allow a proper response; and
 - ii) in addition, Canada denies the validity of this claim. Canada denies that Logging Co committed the acts and omissions complained of and, in any event, denies that Logging Co caused any claimed damages. Canada denies that Canada was aware of the Logging Co's acts or omissions complained of or of the claimed damages caused by Logging Co. The HFN was in possession of the Reserve at all relevant times and used the mainline road and branch roads for its own purposes and the purposes of its members. Canada denies that the HFN informed Canada of Logging Co's claimed acts or omissions or of the claimed damages allegedly caused by those acts or omissions. The HFN consented to the mainline road and branch roads leases and permits and Canada denies that Canada breached any claimed duty in connection with this claim and the granting of the mainline road and branch roads leases and permits; and
- f) the HFN's claim set out in parts of paragraphs 68, 70 and 71, and in paragraphs 74 (i), and 75 (d) of the Declaration of Claim that Canada failed to properly maintain or decommission and reforest the mainline road and branch roads (Claimed Obligation on Canada to Maintain, Decommission and Reforest the Mainline Road and Branch Roads). Canada's overall response is that:

- i) Canada denies the validity of this claim. Canada denies that at any relevant time Canada was aware of the claimed condition of the mainline road and branch roads or that the HFN wished to have these roads decommissioned and reforested. The HFN was in possession of the Reserve at all relevant times and Canada denies that the HFN informed Canada at any relevant time of the claimed condition of these roads or that the HFN wished to have these roads decommissioned and reforested. Canada denies that Canada undertook any discretionary control in this context and, in any event, Canada denies any breach of any such claimed duty.
9. While the HFN use general language in the opening to paragraph 74, paragraphs 74 (d), part of 74 (e), the opening to paragraph 75 (a), and in other parts of the Declaration of Claim, that language does not set out any other particular claim than the ones set out in the paragraph immediately above. Canada cannot properly respond to any other claim, if the HFN intends to make any, without particulars of the claim.

IV Numukamis Indian Reserve Number 1

10. In response to the allegations of fact in paragraphs 9 to 12 of the Declaration of Claim, Canada admits that:
 - a) Indian Reserve Commissioner Peter O'Reilly allotted the Reserve to the Ohiet Band of Indians;
 - b) as of 1882, the Reserve had some spruce, fir, cedar and hemlock timber;
 - c) in 1938, the Reserve was a lawfully established Indian reserve set apart for the use and benefit of the Ohiet Band of Indians and with an area of approximately 1100 acres, located on the west coast of Vancouver Island on either side of the outlet of Sarita River into Numukamis Bay;

- d) in 1938, the HFN surrendered (1938 Timber Surrender) all the merchantable timber then on the Reserve to Canada for sale;
 - e) the Ohiet Band of Indians is now legally known as the HFN;
 - f) Canada denies the allegations of fact in paragraph 11; and
 - g) Canada admits the allegations of fact in paragraph 12.
11. In further response to the allegations of fact in paragraphs 9 to 10 of the Declaration of Claim, Canada is not presently aware of the additional allegations of fact.

V Surrender, Lease, Construction and Use of the Mainline Road

12. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 13-14, 18-20 and 35 of the Declaration of Claim. In particular:
- a) Canada admits the allegation of fact in paragraph 13 of the Declaration of Claim that in 1942 Logging Co was granted a licence (1942 Timber Licence), # 269, to harvest timber on the Reserve. The 1942 Timber Licence gave Logging Co licence to harvest all the merchantable timber on the Reserve. Canada granted Logging Co the 1942 Timber Licence and successor licences under the 1938 Timber Surrender by the HFN of all the merchantable timber on the Reserve;
 - b) Canada denies that Logging Co was required, under the 1942 Timber Licence, and successor licences, to gain approval from the Minister of Mines and Resources for the making of, and use of, roads for the purpose of harvesting the timber in the Reserve and hauling that timber from the Reserve. Logging Co had, and necessarily had, the right to construct and use roads for that purpose pursuant to the 1942 Timber Licence and successor licences, granted by Canada to Logging Co under the 1938 Timber Surrender by the HFN of all the merchantable timber on the Reserve. Canada denies that the clause of the 1942 Timber Licence that

the HFN cites in paragraph 13 of the Declaration of Claim is a clause that limited the licensee's right to construct and use roads for the harvesting of timber from the Reserve and the hauling of that timber from the Reserve;

- c) parts of the mainline road existed before Logging Co's involvement on the Reserve;
- d) Logging Co commenced whatever additional construction it needed of the mainline road and used the renovated mainline road (Mainline Road) to haul timber, whether harvested inside or outside the Reserve, in or after June 1948;
- e) in the alternative, Canada, the HFN and Logging Co, agreed that the construction and use of the Mainline Road to haul timber, whether harvested inside or outside the Reserve, effectively commenced in or after June 1948;
- f) Canada admits that the Mainline Road crosses the width of the Reserve, close to the southern boundary of the Reserve, running from the southwest corner of the Reserve to the coastline of the Reserve and then close to the southern bank of Sarita River to a point near the southeast corner of the Reserve, and then leaving the riverbank and going closer to the southeast corner of the Reserve;
- g) Canada admits that the Mainline Road right of way is approximately 100 feet wide;
- h) Canada denies that the Mainline Road includes a causeway built across the Sarita River; and
- i) Canada admits the allegations of fact in the first sentence of paragraph 18, and in paragraphs 19-20 of the Declaration of Claim. Canada does not presently know about the allegation of fact in the second sentence of paragraph 18.

13. Canada admits the allegation of fact in paragraph 33 of the Declaration of Claim that on January 26, 1955 the HFN surrendered (1955 Mainline Road Surrender) 24.6 acres of land in the Reserve for the purpose of leasing the Mainline Road right of way to Logging Co.
14. On March 18, 1955, the Governor General in Council accepted the 1955 Mainline Road Surrender.
15. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 21-26, 31-32 and 37 of the Declaration of Claim. In particular:
 - a) the HFN and Logging Co had negotiated at some length from in or about November 1948 to October 1951, through Canada as intermediary, on the terms of a lease of the Mainline Road right of way to Logging Co. The HFN initially wanted a yearly rental of \$1,000 with the lease retroactive to June 1, 1948 and for a term of 5 years. The Logging Co initially wanted yearly rental of \$625 without any retroactivity and for an indefinite term, or at least for 42 years;
 - b) the HFN and Logging Co finally reached agreement on the terms of the lease (1948 Mainline Road Lease) of the Mainline Road right of way in September or October 1951 for a term of 21 years from June 1, 1948 at an annual rent of \$625 and with a right of renewal for a further 21 years “at such rental as may then be agreed upon”. The HFN agreed to this by a band council resolution dated September 4, 1951; and
 - c) Logging Co then prepared a survey of the Mainline Road right of way which was accepted by the surveyor general in or about November 1953 allowing the 1955 Mainline Road Surrender to be drawn up.
16. Canada admits the allegations of fact in paragraph 38 of the Declaration of Claim. Canada granted the 1948 Mainline Road Lease further to the 1955 Mainline Road

Surrender, to the Logging Co on April 15, 1955 on the terms agreed to by the HFN, that is for a term of 21 years from June 1, 1948 at an annual rent of \$625 and with a right of renewal for a further 21 years “at such rental as may be agreed upon”.

17. Canada admits the allegations of fact in paragraph 43 of the Declaration of Claim. In the spring of 1969, the HFN and Logging Co negotiated, through Canada as intermediary, on the terms of the renewal of the 1948 Mainline Road Lease, which was due to expire on May 31, 1969. The HFN and Logging Co reached agreement on the annual rental for the renewal, under the terms of the 1948 Mainline Road Lease, for a further 21 years at an annual rental of \$1,200 for the first 5 years from June 1, 1969 to May 31, 1974, and with the annual rental to be reviewed every 5 years and in the event of a dispute the matter to be submitted to the Exchequer Court. The HFN agreed to this by a band council resolution dated April 11, 1969.
18. Canada granted a renewal (1969 Mainline Road Lease) of the 1948 Mainline Road Lease in 1969, under the terms of the 1948 Mainline Road Lease, for a further 21 years from June 1, 1969 and on the annual rental terms agreed to by the HFN, that is annual rental of \$1,200 for the first 5 years from June 1, 1969 to May 31, 1974, and with the annual rental to be reviewed every 5 years and in the event of a dispute the matter to be submitted to the Exchequer Court of Canada.
19. The 1948 and 1969 Mainline Road Leases allowed the Logging Co to use the Mainline Road for the purpose of hauling timber through the Reserve that was harvested outside the Reserve.
20. In 1974, the HFN and Logging Co reviewed the annual rental under the terms of the 1969 Mainline Road Lease and reached agreement on an annual rental of \$12,000 for the 1969 Mainline Road Lease for the 5-year period from June 1, 1974 to May 31, 1979.
21. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 55-59 and 60-62 of the Declaration of Claim. In or about 1978, Logging Co

stopped using the Mainline Road. The HFN and Logging Co negotiated from time to time from the fall of 1980 to August 1983, through Canada as intermediary, on the terms of a surrender of the 1969 Mainline Road Lease. In June of 1981 the HFN advised Canada that Logging Co had blocked access to the south end of Mainline Road. The Logging Co made all payments for the 5-year period from June 1, 1974 to May 31, 1979. The HFN and Logging Co reached agreement in 1983 on the Logging Co paying an additional \$7,000 for the cancellation of the 1969 Mainline Road Lease. This was part of an overall agreement that also settled the annual rentals under the second renewal of the 1969 Branch Roads Permit (see Part VI below). The HFN agreed to this by a band council resolution dated August 10, 1983.

22. Logging Co surrendered its interest in the 1969 Mainline Road Lease on October 31, 1983. Canada accepted (Acceptance of Logging Co's Surrender of the 1969 Mainline Road Lease) Logging Co's surrender on the terms agreed to by the HFN, that is, on the payment by the Logging Co of \$7,000.

VI Permits for, and Construction and Use of, the Branch Roads

23. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 16 and 46 of the Declaration of Claim. Any branch roads constructed by Logging Co before May 1, 1969 were constructed and used for harvesting timber in the Reserve and hauling that timber from the Reserve. Logging Co had, and necessarily had, the right to construct and use any such branch roads for the harvesting of timber in the Reserve and the hauling of that timber from the Reserve pursuant to the 1942 Timber Licence and successor licences, granted by Canada to the Logging Co under the 1938 Timber Surrender by HFN of all the merchantable timber on the Reserve.
24. Canada denies that any such branch roads were constructed or used before May 1, 1969 for the hauling of timber harvested outside the Reserve. In any event Canada, the HFN and Logging Co agreed that the effective date of the commencement of any branch roads' construction or use for hauling timber harvested outside the Reserve was on or after May 1, 1969.

25. Canada admits the allegations of fact in paragraph 47 of the Declaration of Claim. In the spring of 1969, the HFN and Logging Co, with Canada as intermediary, agreed on a permit allowing the Logging Co to use certain branch roads (Branch Roads 640, 645, 101 and 103), with a total acreage of 22.2 acres, through the Reserve for the term of 5 years from May 1, 1969 at an annual rental of \$600, with three options to renew at “such rental as may be agreed upon”, and “in the event of disagreement the matter shall be referred to the Exchequer Court of Canada. The HFN agreed to this by a band council resolution dated in April or May 1969.
26. Canada granted Logging Co a permit (1969 Branch Roads Permit), dated May 14, 1969, to Logging Co for the use of certain branch roads (Branch Roads 640, 645, 101 and 103), with a total acreage of 22.2 acres, in the Reserve on the terms agreed to by the HFN as set out in the paragraph immediately above. The permit was granted pursuant to s 28 (2) of the *Indian Act*, RSC 1952, c 149.
27. In the spring of 1974, the HFN and Logging Co agreed, under the terms of the 1969 Branch Roads Permit, and without Canada as an intermediary, on a 5-year renewal from May 1, 1974 to April 30, 1979 (1974 Branch Roads Permit) of the 1969 Branch Roads Permit with the annual rental of \$3,000 and the applicable branch roads limited to Branch Roads 640 and 103. The HFN agreed to these terms by a band council resolution dated September 1, 1974.
28. Canada granted the 1974 Branch Roads Permit on January 30, 1976, under the terms of the 1969 Branch Roads Permit, for the term of 5 years from May 1, 1974 to April 30, 1979 and on the terms agreed to by the HFN, that is an annual rental of \$3,000 and the applicable branch roads limited to Branch Roads 640 and 103
29. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 50-53 of the Declaration of Claim. The HFN and Logging Co negotiated from time to time from March 1979 to August 1983, through Canada as intermediary, on

the terms of a second renewal of the 1969 Branch Roads Permit. In 1983, the HFN and the Logging Co reached agreement, under the terms of the 1969 Branch Roads Permit, on the terms of the second 5-year renewal, from May 1, 1979 to April 30, 1984, (1979 Branch Roads Permit) of the 1969 Branch Roads Permit with annual rental of \$1,500 and the applicable branch roads limited to Branch Roads 640 and 103. This was part of an overall agreement that included settlement on the amount to be paid by Logging Co for the 1983 Acceptance of the Logging Co's Surrender of the 1969 Mainline Road Lease. The HFN agreed to these terms by a band council resolution dated August 10, 1983.

30. Canada granted the 1979 Branch Roads Permit on or about October 31, 1983, under the terms of the 1969 Branch Roads Permit, for the term of 5 years from May 1, 1979 to April 30, 1984 and on the terms agreed to by the HFN, that is with annual rental of \$1,500 and the applicable branch roads limited to Branch Roads 640 and 103.
31. The 1969, 1974 and 1979 Branch Roads Permits allowed the Logging Co to use the Branch Roads for the purpose of hauling timber through the Reserve that was harvested outside the Reserve.
32. Canada admits the allegations of fact in the first sentence of paragraph 54 and in paragraph 63 of the Declaration of Claim. Except where otherwise expressly admitted, Canada denies the allegations of fact in the second sentence of paragraph 54 of the Declaration of Claim. By letter dated March 15, 1984, Logging Co advised that it would not seek to renew the 1979 Branch Roads Permit beyond the expiry date, April 30, 1984 as it would no longer require use of Branch Roads 640 and 103.

VII Inadequate Compensation for Timber Hauling Claim

33. The Inadequate Compensation for Timber Hauling Claim is set out in paragraphs 27-28, 36, 39, 40-42, 44-45, 64 (b), 74(b), 74 (c), 74 (d), and 75 (a) of the Declaration of Claim. This is a claim for compensation based on an allegation that Canada's leases and permits arrangements with the Logging Co for the construction and use of the Mainline and Branch Roads in the Reserve failed to charge adequate compensation for the Logging Co

to construct and use the roads to haul timber, whether harvested inside or outside the Reserve.

34. The Inadequate Compensation for Timber Hauling Claim is a new claim that is not a claim that has been previously filed with the Minister and involves new factual allegations of inadequate consideration. This Tribunal does not have jurisdiction over the Inadequate Compensation for Timber Hauling Claim. The Inadequate Compensation for Timber Hauling Claim should be withdrawn, or struck, from the Declaration of Claim pursuant to ss. 16 (1) and 17 (b) of the *Specific Claims Tribunal Act*.
35. In addition, Canada denies the validity of the Inadequate Compensation for Timber Hauling Claim. The HFN consented to the consideration set out in the Mainline Road and Branch Roads leases and permits and Canada denies that Canada breached any claimed duty in connection with the adequacy of consideration provided for in these leases and permits.
36. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 27-28, 36, 39, 41-42, 44-45, 64 (b), 74(b), 74 (c) and 74 (d) of the Declaration of Claim. Canada admits the allegations of fact in paragraph 40 of the Declaration of Claim.
37. This claim is inconsistent, in whole or in part, with the HFN's pleadings and submissions in another proceeding brought by the HFN before the Tribunal, Tribunal proceeding # SCT 7006-11 (HFN Logging Claim) and the claim in this proceeding, to the extent that it is inconsistent, constitutes an abuse of process or is otherwise frivolous or vexatious and should be withdrawn, struck or stayed in this proceeding.
38. In further response to the whole of the Declaration of Claim, Canada denies that it failed to act in accordance with any duty it may have had to act in the best interests of HFN, and Canada denies any undue influence on HFN, in connection with the adequacy of compensation for the Mainline Road and Branch Roads provided for in the leases and

permits and and the 1983 Acceptance of Logging Co's Surrender of the 1969 Mainline Road Lease. The HFN agreed to the 1955 Mainline Road Surrender, these leases and permits, and the 1983 Acceptance of Logging Co's Surrender of the 1969 Mainline Road Lease. Canada's role was not to make new decisions for the HFN. In particular:

- i) Canada reasonably believed that the HFN was capable of making the best decisions in its own interests;
- ii) the HFN was careful to negotiate at some length with the Logging Co and agreed to terms with the Logging Co that represented reasonable settlements;
- iii) the HFN was independently represented by legal counsel, for one or more of the negotiations;
- iv) it was reasonably possible that Logging Co could have chosen another logging road right of way outside the Reserve if it had been unable to secure the lands from the HFN at a price it considered acceptable;
- v) the HFN was reasonably aware of the prospective value of the potential logging road right of way; and
- vi) the annual rentals were, at the least, adequate rentals.

39. Canada denies that Canada undertook any discretionary control of the Mainline Road and Branch Roads lands in connection with the adequacy of compensation provided for in these leases and permits and the 1983 Acceptance of the Logging Co's Surrender of the 1969 Mainline Road Lease. In the alternative, Canada denies that it breached any fiduciary duty in connection with any such additional undertaking of discretionary control.

VIII Mainline Road Trespass Claim and Branch Roads Trespass Claim

40. The Mainline Road Trespass Claim is set out in paragraphs 15, part of 17, 29-30, 34, part of 64 (a), part of 64 (b), and 74 (a) of the Declaration of Claim. The Mainline Road Trespass Claim is a claim that Canada breached a fiduciary duty by purporting to allow Logging Co to construct and use the Mainline Road in trespass from 1947 to April 14, 1955.
41. Canada denies the validity of the Mainline Road Trespass Claim. There was no trespass. Logging Co already had the right to haul timber harvested in the Reserve pursuant to the 1942 Timber Licence and successor licences granted under the 1938 Timber Surrender by the HFN of all the merchantable timber on the Reserve. Canada says that any timber harvested outside the Reserve and hauled through the Reserve on the Mainline Road was hauled under the Mainline Road Leases.
42. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 15, the relevant part of 17, 29-30, 34, the relevant part of 64 (a), the relevant part of 64 (b), and 74 (a) of the Declaration of Claim.
43. The time period for this claim may be conveniently divided into two parts. The first part is the claim for the time period from 1947 to May 31, 1948. The second part is the claim for the time period from June 1, 1948 to April 14, 1955 during which time the 1955 Mainline Road Lease was in effect, retroactively.
44. Canada denies the validity of the claim for the time period from 1947 to May 31, 1948. Canada denies that the Mainland Road was constructed or used as a right of way by Logging Co to haul timber harvested outside the Reserve, before June 1, 1948. In any event, Canada, the HFN and Logging Co, agreed at the time that the Logging Co's construction and use of the Mainline Road to haul timber harvested outside the Reserve effectively commenced in or after June 1948.

45. Canada denies the validity of the claim for the time period from June 1, 1948 to April 14, 1955. The Logging Co was legally obliged to pay, and did pay, for use of the Mainline Road during this time period pursuant to the 1955 Mainline Road Lease which was retroactive to June 1, 1948.
46. The Branch Roads Trespass Claim is set out in part of paragraph 17, and paragraphs 46, 48-49, part of 64 (a), part of 64 (b), and part of 74 (a) of the Declaration of Claim. The Branch Roads Trespass Claim is a claim that Canada breached a fiduciary duty by purporting to allow Logging Co to construct and use the Branch Roads in trespass from 1947 to April 30, 1969.
47. The Branch Roads Trespass Claim is a new claim that is not a claim that has been previously filed with the Minister and involves new factual allegations of construction and use of the Branch Roads during that time period. This Tribunal does not have jurisdiction over the Branch Roads Trespass Claim. The Branch Roads Trespass Claim should be withdrawn, or struck, from the Declaration of Claim pursuant to ss. 16 (1) and 17 (b) of the *Specific Claims Tribunal Act*.
48. In addition, Canada denies the validity of the Branch Roads Trespass Claim. There was no such trespass. Logging Co already had the right to haul timber harvested in the Reserve. Canada says that any timber harvested outside the Reserve and hauled through the Reserve on the Branch Roads was hauled under the Branch Roads permits.
49. Except where otherwise expressly admitted, Canada denies the allegations of fact in the relevant part of paragraph 17, and paragraphs 46, 48-49, the relevant part of 64 (a), the relevant part of 64 (b), and the relevant part of 74 (a) of the Declaration of Claim.
50. Canada denies that the Branch Roads were constructed or used as a right of way before May 1, 1969 by Logging Co to haul timber harvested outside the Reserve. In any event, Canada, the HFN and Logging Co, agreed at the time that the construction and use of the

Branch Roads to haul timber harvested outside the Reserve effectively commenced in or after May 1969.

51. In the alternative that Logging Co did trespass on the Mainline Road lands or the Branch Roads lands, Canada denies that it was aware of, or required to attend the Reserve to make itself aware of, any trespass by Logging Co on the lands that were to become the Mainline Road lands or the Branch Roads lands. Canada was aware that the HFN was in possession of the Reserve and Canada was entitled to rely upon the HFN to inform it of any issues arising with regard to any trespass by Logging Co on the lands that were to become the Mainline Road lands and Branch Roads lands, and that required Canada's attention.
52. Canada denies that the HFN informed Canada at any relevant time before the effective dates of the leases and permits that the roads were used for hauling timber harvested outside the Reserve or of any issues arising with regard to any trespass by Logging Co on the lands that were to become the Mainline Road lands or the Branch Roads lands.
53. Canada denies that Canada undertook any discretionary control of the lands that were to become the Mainline Road lands or Branch Roads lands in relation to any claimed trespass by Logging Co. In the alternative, Canada denies that it breached any fiduciary duty in connection with any such undertaking of discretionary control.
54. In the event that Canada breached the alleged duty in connection with the Mainline Road Trespass Claim or the Branch Roads Trespass Claim, then the HFN acquiesced in and/or consented to the breach.
55. In the event that Canada is found liable for any damages in the Mainline Road Trespass Claim or Branch Roads Trespass Claim, then the HFN was also at fault for causing the damages and Canada pleads and relies on ss. 1 and 2 of the *Negligence Act*, R.S.B.C. 1996, c. 333, as amended. Particulars of the HFN's contributory negligence include:

- i) failing to give notice to Canada under paragraph 52 above;
- ii) agreeing to the 1955 Mainline Road Lease with effective date of June 1, 1948; and
- iii) agreeing to the 1969 Branch Roads Permit with effective date of May 1, 1969.

IX Mainline Road and Branch Roads Timber Harvesting Claim

56. The Mainline Road and Branch Roads Timber Harvesting Claim is set out in paragraphs 64 (c), 74 (f) and 75 (e) of the Declaration of Claim. The Mainline Road and Branch Roads Timber Harvesting Claim is a claim for compensation based on an allegation that Canada failed to ensure that the Mainline Road and Branch Roads leases and permits for the Reserve required the Logging Co to pay the HFN for the value of timber harvested in the Reserve and removed during construction of the Mainline Road and Branch Roads.
57. The Mainline Road and Branch Roads Timber Harvesting Claim is not a valid claim. Canada had no legal rationale to require Logging Co to pay a second time under the Mainline Road and Branch Roads leases and permits for some of the same timber when the Logging Co had already been required to pay for that timber pursuant to the 1942 sale of the timber on IR 1, as recorded and given effect to in the 1942 Timber Licence, the 1942 Timber Licence, and successor licences, all of which were in turn granted by Canada pursuant to the 1938 Timber Surrender by HFN of all the merchantable timber on the Reserve.
58. Insofar as the HFN intends to make a claim for compensation for failure of Logging Co to pay what was required to be paid in connection with the harvesting and removal of timber for the construction of the Mainline Road and Branch Roads, then such a claim in this proceeding would be duplicative of part of the claim in the HFN Logging Claim. Such a claim in this proceeding would be an abuse of process or otherwise frivolous or vexatious and should be withdrawn, struck or stayed in this proceeding under the *Specific*

Claims Tribunal Act, ss 15(3)(a), 17 (c) and 35 (a); Specific Claims Tribunal Rules 2, 4(1), and 5; and Federal Courts Rule 221 (1).

59. In any event, insofar as the HFN intends to make a claim for compensation for failure of Logging Co to pay what was required to be paid under the 1942 Timber Licence and successor licences for timber harvested in the construction of the Mainline Road and Branch Road, then Canada denies that any compensation is owed.
60. In the further alternative, Canada refers to the defences in the HFN Logging Claim proceeding and advises that Canada may seek leave, if and when necessary, to amend or supplement this response in the future, taking into account the general approach of adjudicating claims in accordance with law and in a just and timely manner.

X Environmental Standards and Practices Claim

61. The Environmental Standards and Practices Claim is set out in paragraphs 65-67, part of 68, 69, part of 70, part of 71, 74 (d), 74 (e), 74 (g), 74 (h), part of 74 (i), 75 (b), 75 (c) and 75 (d) of the Declaration of Claim. The Environmental Standards and Practices Claim is a claim that Canada failed to ensure that the Logging Co adhered to contemporary industry practices and standards in placing, constructing, maintaining, decommissioning and reforesting the Mainline and Branch Roads or otherwise failed to ensure that Logging Co protected the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, from environmental damage and degradation caused by the Mainline Road and Branch Roads.
62. The HFN has not provided proper particulars of any failure or failures by Logging Co to meet any contemporary industry standards and practices in the placement, construction, maintenance, decommission and reforesting of logging roads. Canada cannot provide a full response without those particulars. The HFN has not provided proper particulars of any failure or failures by Logging Co to protect the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, from environmental damage and degradation

caused by the Mainline Road and Branch Roads. Canada cannot provide a full response without those particulars.

63. In any event the Environmental Standards and Practices Claim is not a valid claim. Except where otherwise expressly admitted, Canada denies the allegations of fact in paragraphs 65-67, the relevant part of 68, 69, the relevant part of 70, the relevant part of 71, 74 (d), 74 (e), 74 (g), 74 (h), the relevant part of 74 (i), 75 (b), 75 (c) and 75 (d) of the Declaration of Claim.
64. This claim is inconsistent, in whole or in part, with the HFN's pleadings and submissions in the HFN Logging Claim and the claim in this proceeding, to the extent that it is inconsistent, constitutes an abuse of process or is otherwise frivolous or vexatious and should be withdrawn, struck or stayed in this proceeding.
65. Canada denies that Logging Co failed to meet any contemporary environmental standards and practices, if any, in the placement, construction, maintenance, decommission and reforestation of logging roads or otherwise failed to protect the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, from environmental damage and degradation caused by the Mainline Road and Branch Roads and, in any event, denies that any such failure caused any damages or detrimental effects on the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve. Under s 15 (1) (f) of the *Specific Claims Tribunal Act*, the HFN may not file a claim before the Tribunal that is based on a claim of, or alleges, an aboriginal right to fish.
66. Canada denies that it was aware of, or required to attend the Reserve to make itself aware of, any problems with the placement, construction, maintenance, decommission and reforestation of the Mainline Road and the Branch Roads or other environmental damage or degradation to the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, caused by the Mainline Road and Branch Roads. Canada was aware that the HFN was in possession of the Reserve and was using the Mainline Road and Branch Roads and Canada was entitled to rely upon the HFN to inform it of any issues arising

with the placement, construction, maintenance, decommission and reforestation of the Mainline Road and the Branch Roads or other environmental damage or degradation to the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, caused by the Mainline Road and Branch Roads, and that required Canada's attention.

67. Canada denies that the HFN informed Canada at any relevant time of any issues arising with the placement, construction, maintenance, decommission and reforestation of the Mainline Road and the Branch Roads or other environmental damage or degradation to the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, caused by the Logging Co's construction and use of the Mainline Road and Branch Roads.
68. Canada denies that the HFN informed Canada at any relevant time that the HFN was concerned about the Logging Co's practices and standards in placing, constructing, maintaining, decommissioning or reforestation of the Mainline and Branch Roads or otherwise protecting the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve, from environmental damage and degradation caused by the Mainline Road and Branch Road, to allow the question of an express term addressing this concern to be negotiated with Logging Co and placed in the Mainline Road and Branch Roads leases and permits or in the Acceptance of Logging Co's Surrender of the 1969 Mainline Road Lease.
69. In further response to the whole of the Declaration of Claim, Canada denies that it failed to act in accordance with any duty it may have had to act in the best interests of HFN, and Canada denies any undue influence on HFN, in connection with this claim and the terms of these leases and permits and the 1983 Acceptance of the Logging Co's Surrender of the 1969 Mainline Road Lease. The HFN agreed to the terms of these leases and permits and the 1983 Acceptance of the Logging Co's Surrender of the 1969 Mainline Road Lease. Canada's role was not to make new decisions for the HFN.

70. Canada denies that Canada undertook any discretionary control of the Mainline Road and Branch Roads lands in relation to the placement, construction, maintenance, decommission and reforestation of the Mainline Road and the Branch Roads or in relation to the protection of the Reserve lands, including any riparian and fishing rights appurtenant to the Reserve, from environmental damage and degradation caused by the Mainline Road and Branch Roads at any relevant time before or during the effective times of the Mainline Road and Branch Roads leases and permits. In the alternative, Canada denies that it breached any fiduciary duty in connection with any such undertaking of discretionary control.
71. In the event that Canada breached the alleged duty in connection with the Environmental Standards and Practices Claim, then the HFN acquiesced in and/or consented to the breach.
72. In the alternative that Canada is liable for the Environmental Standards and Practices Claim then, in the event that Canada is found liable for any damages in the Environmental Standards and Practices Claim, the HFN was also at fault for causing the damages and Canada pleads and relies on ss. 1 and 2 of the *Negligence Act*, R.S.B.C. 1996, c. 333, as amended. Particulars of the HFN's contributory negligence include:
- a) allowing its members to use the Mainline Road and Branch Roads before, during and after the Mainland Road Leases and Branch Roads Permits, and to injure the Mainline Road and Branch Roads lands and the Reserve lands, including any riparian or fishing rights appurtenant to the Reserve;
 - b) failing to give notice to Canada under paragraphs 67-68 above; and
 - c) agreeing to the Mainline and Branch Roads leases and permits and to the 1983 Acceptance of Logging Co's Surrender of the 1969 Mainline Road Lease.

XI Claimed Obligation on Canada to Maintain, Decommission and Reforest the Mainline Road and Branch Roads

73. The Claimed Obligation on Canada to Maintain, Decommission and Reforest the Mainline Road and Branch Roads is a claim in part of paragraph 68, part of 70, part of 71, and paragraphs 74 (i), and 75 (d) of the Declaration of Claim that Canada failed to properly maintain or decommission and reforest the Mainline Road and Branch Roads.
74. Canada denies the validity of this claim. Except where otherwise expressly admitted, Canada denies the allegations of fact in the relevant part of paragraph 68, the relevant part of 70, the relevant part of 71 and paragraph 74 (i) of the Declaration of Claim.
75. This claim is inconsistent, in whole or in part, with the HFN's pleadings and submissions in the HFN Logging Claim and the claim in this proceeding, to the extent that it is inconsistent, constitutes an abuse of process or is otherwise frivolous or vexatious and should be withdrawn, struck or stayed in this proceeding.
76. Canada denies that it was aware of, or required to attend the Reserve to make itself aware of, any problems with the maintenance, decommission or reforesting of the Mainline Road and the Branch Roads. Following the end of the Logging Co's use of the Mainline Road and Branch Roads under the 1969 Mainline Road Lease and the 1979 Branch Roads Permit, the HFN had the sole use and possession of the Mainline Road and Branch Roads lands. Canada was aware that the HFN was in possession of the Reserve and was using the Mainline Road and Branch Roads and Canada was entitled to rely upon the HFN to inform it of any issues arising with the maintenance, decommission and reforesting of the Mainline Road and Branch Roads, and that required Canada's attention.
77. Canada denies that the HFN informed Canada at any relevant time of any issues arising with the maintenance, decommission and reforesting of the Mainline Road and the Branch Roads, including that the HFN wished to have the Mainline Road and the Branch Roads maintained, decommissioned or reforested.

78. Canada denies that Canada undertook any discretionary control of the Mainline Road and Branch Roads lands in relation to the maintenance, decommission or reforestation of the Mainline Road and the Branch Roads at any relevant time. In the alternative, Canada denies that it breached any fiduciary duty in connection with any such undertaking of discretionary control.
79. The HFN may not rely, in this proceeding, on any events, whether acts or omissions, that occurred after May 11, 1989, that is within the 15 years immediately preceding the date, May 11, 2004, on which the claim was filed with the Minister, pursuant to s 15 (1) (a) of the *Specific Claims Tribunal Act*.
80. In the event that Canada breached the alleged duty in connection with the Claimed Obligation on Canada to Maintain, Decommission and Reforest the Mainline Road and Branch Roads, then the HFN acquiesced in and/or consented to the breach.
81. In the event that Canada is found liable for any damages in the Claimed Obligation on Canada to Maintain, Decommission and Reforest the Mainline Road and Branch Roads, then the HFN was also at fault for causing the damages and Canada pleads and relies on ss. 1 and 2 of the *Negligence Act*, R.S.B.C. 1996, c. 333, as amended. Particulars of the HFN's contributory negligence include failing to give notice to Canada under paragraph 77 above.

XII Response to Any Other Factual Allegation

82. Except as expressly admitted above, and except as Canada states above that Canada is not aware of or not presently aware of a factual allegation, Canada denies every allegation of fact in the Declaration of Claim.

XIII No Damages

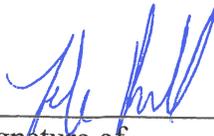
83. In the event that Canada breached any alleged duty then Canada denies that any breach of that duty caused any damage to the HFN.

84. In the event that Canada breached any alleged duty then Canada pleads and relies on s 20 (1) (i) of the *Specific Claims Tribunal Act*.
85. Canada denies the allegations of fact in paragraphs 75 (f) and (g) of the Declaration of Claim.
86. The Crown pleads and relies on section 20 of the *Specific Claims Tribunal Act*.
87. In the event that that Canada breached any alleged duty causing damages to the HFN then Canada says that the HFN failed to mitigate those damages.

XIV Relief

88. Canada seeks to have the claim dismissed in its entirety with costs.

Dated: February 19, 2014



Signature of

Respondent lawyer for Respondent

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