

**SPECIFIC CLAIMS TRIBUNAL**

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
	November 18, 2013	
	Amy Clark	
Ottawa, ON		6

BETWEEN:

GAMBLERS FIRST NATION

Claimant

v.

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

Respondent

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**RESPONSE TO AMENDED DECLARATION OF CLAIM**  
**Pursuant to Rule 42 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

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

**TO: Gamblers First Nation**  
As represented by  
Stephen M. Pillipow  
The W Law Group  
Barristers and Solicitors  
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## **I. Status of Claim (R. 42(a))**

1. A specific claim from the Gamblers First Nation (the “Claimant”), was filed with the Minister of Indian Affairs and Northern Development (“the Minister”) on January 12, 2011. The Claim alleged that the Crown breached fiduciary and trust-like obligations by not providing, to the Claimant, reserve land of a sufficient quantity and quality in accordance with the requests and needs of the Claimant; the terms of Treaty 4; an agreement with the Claimant; and the terms of an 1881 surrender for exchange by the Waywayseecappo band.

2. By letter dated August 23, 2013, Gina Wilson, Senior Assistant Deputy Minister, Aboriginal Affairs and Northern Development Canada, notified the Claimant that its Specific Claim had not been accepted for negotiation.

3. The Claim remains unresolved.

## **II. Validity (R. 42(b))**

4. The Crown denies the validity of the Claimant’s Specific Claim and that the Claimant has suffered any losses or damages resulting from any failure or breach of obligation by the Crown. Specifically the Crown denies:

- a. any agreement or obligation to provide reserve land to the Claimant, as alleged or at all;
- b. any breach of Treaty, the *Indian Act* or obligations arising from the Crown’s fiduciary duties; and
- 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))**

5. Unless expressly admitted, the Crown denies each and every allegation of fact or law in the Claim and puts the Claimant to the strict proof thereof.

6. The Crown admits the facts set out in paragraphs 1, 2, 4, and 7 of the Claim.
7. The Crown denies the allegations in paragraphs 6, 12, 13, 14, 15, 16 and 17, of the Claim.
8. In response to paragraph 3, the Crown admits that the claim was filed with the Minister on January 12, 2011 and that the claim is in relation to the Claimant's allegations of entitlement to reserve lands of a certain quantity and quality. But the Crown denies that lands were set apart for the Claimant under the terms of the 1881 surrender of a portion of IR 62 by the Waywayseecappo band (the "1881 surrender"), and that the Crown was obligated to set apart lands of any certain quantity or quality for the Claimant in connection with the 1881 surrender.
9. In response to paragraph 5, the Crown acknowledges that the Claimant is not seeking compensation in excess of \$150 million and further says that sub-sections 20(4)(b) and 20(5) of the *Specific Claims Tribunal Act* apply to the claim limit.
10. The Crown admits paragraph 8 but would add that IR 62 was surveyed as 71.67 square miles in size in July 1877 and was confirmed for the benefit of the Waywayseecappo band, on May 17, 1889 by Order in Council P.C. 1151, at a size of 39 square miles.
11. In response to paragraph 9, the Crown admits that in 1880 some members of the Waywayseecappo band who were followers of "the Gambler" had requested a reserve of approximately six by five square miles, separate and apart from IR 62. The Crown denies that it entered into any agreement with the Claimant in relation to the request for a new reserve.
12. In response to paragraph 10, the Crown admits that in 1881 the Waywayseecappo band held a meeting at which it was decided that a portion of IR 62 would be surrendered in exchange for a new reserve which the Gambler and his followers could use. The Crown denies that the amount of land to be surrendered was intended to be 32 square miles.

13. In response to paragraph 11, the Crown admits that in 1881 the Waywayseecappo band agreed to surrender 30 square miles of IR 62 in exchange for an equal area of land to be set apart as a new reserve at Silver Creek, but the Crown denies that the new reserve at Silver Creek was to be set apart for the Claimant.

14. In response to paragraph 18, the Crown specifically denies that the Claimant is entitled to damages, compensation or equitable interest.

#### **IV. Statements of Fact (R. 42(e))**

15. On September 15, 1874 the Crown entered into Treaty No. 4 with the Cree and Saulteaux Tribes of Indians at Qu'Appelle Lakes. In exchange for lands surrendered to Her Majesty in Right of Canada, Treaty 4 provided for the setting aside of reserves for the signatory bands,

such reserves to be selected by officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families.

16. On September 21, 1874 at Fort Ellice, Manitoba, a group of Saulteaux Indians known as the Fort Ellice Group and comprised of five groups - Waywayseecappo, Gambler, Rattlesnake, Mosquito and South Quill - adhered to Treaty 4.

17. In July 1877 Lizard Point (IR 62) was surveyed and set aside for the Fort Ellice Groups, also known as Waywayseecappo's band. The reserve contained 45,869 acres (71.67 square miles).

18. The *1876 Indian Act* defines "reserve" as any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees wood, timber, soil, stone, minerals, metals or other valuables thereon or therein.

19. By mid 1880 a portion of the members of the Waywayseecappo band (followers of the Gambler) asked to have a reserve of their own away from the current reserve, and the Waywayseecappo band would agree to cede from the reserve a corresponding area.

20. By letter dated November 21, 1880 Indian Agent McDonald advised L. Vankoughnet, Deputy Superintendent General of Indian Affairs ("DSGIA") that about thirty families from the Waywayseecappo band had applied to be allowed to part from the band and take a reserve 6 miles by 5, sixty-five miles North of Ellice, East of the Assiniboine. There were no settlers on the land but the Gambler and his party had built six houses on it. Agent McDonald recommended the change.

21. Surveyor-General, Lindsay Russell, supported the proposed exchange as desirable to meet the wishes of the members of the Waywayseecappo band in this matter. He recommended that the seceding portion of the band be granted a reserve at Shell River.

22. On February 2, 1881, Indian Commissioner, E. Dewdney, recommended to the Minister of the Interior that Indian Agent McDonald be instructed to obtain, if possible, a surrender of the southern portion of the Waywayseecappo reserve.

23. By telegram on February 2, 1881 DSGIA, L. Vankoughnet, instructed Agent McDonald to obtain the surrender of 32 square miles and informed him of the approval of a "reserve of same area Shell River in Range."

24. On February 24, 1881 a Council of the Waywayseecappo band was convened by Chief Waywayseecappo on the reserve at Birdtail Creek. 23 male members over the full age of 21 years were present, including Chief Waywayseecappo and Headman Gambler. Peter Hourie, an interpreter, was also present at the Council.

25. Agent McDonald's February 28, 1881 report on proceedings of the Council indicates that Chief Waywayseecappo had invited him and whatever Councillors and Indians of the Waywayseecappo band were at Fort Ellice to attend the Council. Chief Waywayseecappo stated

that the object of the meeting was that he had heard that the Gambler and other members of the band desired to give up part of their reserve and wished to take another reserve.

26. Agent McDonald confirmed that at the request of the Gambler and others, he had applied to the authorities in Ottawa to allow them what they asked for, viz: the surrender of 32 square miles of the south end of their reserve and be allowed the same area on the east side of the Assiniboine River.

27. The Gambler did not dispute that he had made the request but raised his discontent with the shape and location selected for the current reserve and his and others' dissatisfaction with Chief Waywayseecappo. He confirmed that he had asked the Indian Agent about getting another reserve for himself and his followers. He expressed his willingness to give up to the government 32 square miles of the south end of the Waywayseecappo reserve.

28. Chief Waywayseecappo confirmed that the Gambler had raised those issues with him earlier and an August 23, 1877 report by Dominion Land Surveyor (DLS) Wagner to the Minister records soon after the Waywayseecappo boundary was surveyed in July 1877, the Gambler had asked for different reserve boundaries.

During this time, an Indian belonging to the Fort Ellice band - the Gambler - came to me and asked me to resurvey their reserve.... he wished it to be 4 miles x 18 miles and have the Reserve shifted 3 miles more east.

29. Agent McDonald's record of the proceeding of the surrender meeting shows that members voted against giving up the south end of the reserve by a majority of one. The Chief then proposed giving up three (3) miles on the west side from North to South but the Agent said he could not allow it because the Chief's proposal would destroy their reserve.

30. Agent McDonald then proposed that the band surrender:

(t)hat portion of the Reserve east (of?) Birdtail Creek from the south Boundary to within a mile or so of the Agency farm making the Creek the eastern Boundary of the Reserve (illegible word) of the Agency farm. Whatever (or whichever?) more is required to make

up (32?) square miles is to be taken from the north end of the Reserve but not farther south than the northern boundary of the Agency farm, and should there (be?) more required, then from the (south?) end.

31. According to Agent McDonald's record of the proceedings:

After some talk amongst themselves, the Chief rose and said, the whole thing was settled. He and all the band members surrender what I have proposed and that he and his Head man would sign the papers whenever required to do so.

32. The surrender document was signed on March 7, 1881 - by Agent McDonald, Chief Wawa-se-capow, Headman Oo-ta-ka-wenin, and Headman Sauvage and witnessed by Stipendiary Magistrate Hugh Richardson. It was first read over and interpreted in the Saulteaux language. Peter Hourie, the interpreter who was at the surrender meeting was present at signing.

33. The land to be surrendered was described as:

all that portion of the said reserve, as it now exists and is defined, lying to the eastward of the Birdtail Creek, extending from its southern boundary, northwards to a point from which a line is drawn east and west will intersect the southern boundary of school section eleven of township twenty, range twenty-five, west of the principal Meridian, and also so much of the northerly part of the said reserve, across the same as, with the portion thereof hereinbefore described, will when surveyed be surveyed and measured, contain in all thirty square miles.

34. The March 7, 1881 document indicates that in lieu of the lands surrendered, other lands of equal extent will be assigned to the Waywayseecappo band.

35. The affidavit requirements of section 37 of the *1880 Indian Act* were met on the same day that the surrender deed was signed. Stipendiary Magistrate Hugh Richardson swore an affidavit attesting to the fact Agent McDonald and Chief Waywayseecappo appeared before him and swore that the surrender had been assented to by the band as set out in the said surrender. Agent McDonald and Chief Waywayseecappo also signed the document.

36. The Minister's April 21, 1881 report to the Privy Council on the surrender notes that the Chief and members of the Waywayseecappo Band had surrendered 30 sections of their reserve on Birdtail Creek in consideration of another reserve of equal area to be assigned them at a more suitable point.

37. The Governor in Council accepted the surrender by Order-In-Council P.C 654 dated April 27, 1881.

38. A Treaty Annuity Paylist for the Waywayseecappo band on August 3, 1881 indicates that 95 people received treaty annuity payments. The Gambler is not included on this list. A Treaty Annuity Paylist on August 4, 1881 indicates that 106 people received treaty annuity payments at "Gamblers".

39. In June 1883, DLS, A.W. Ponton surveyed IR 63. The reserve contained 30 square miles located on the east side of the Assiniboine River at Silver Creek, nine miles north of Fort Ellice. On July 13, 1883 DLS A.W. Ponton reported he had completed the resurvey of the Waywayseecappo reserve.

40. Order in Council PC 1151, dated May 17, 1889 confirmed a number of reserves in Manitoba and the North West Territories, including the resurveyed IR 62 and the new IR 63. By this time, most of the residents of IR 63 had either returned to IR 62 with the Gambler or had moved to a new location known as Valley River.

41. Approximately 50 individuals remained interested in IR 63 in 1889. This number did not include members of the Waywayseecappo band, or the Gambler and his followers who had returned to IR 62.

42. Following 1889, the Gambler and his followers neither returned to IR 63 nor retained membership in Gamblers band.

**V. Relief (R 42(f))**

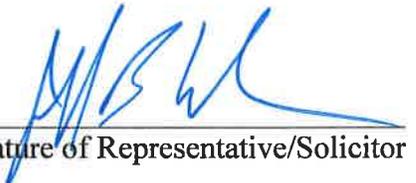
43. The Crown seeks dismissal of the claim.
44. The Crown seeks costs in these proceedings.
45. Such other relief as this Honourable Tribunal deems just.

**Communication (R. 42(g))**

The Respondent's address for service is:

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Dated: November 18, 2013



Signature of Representative/Solicitor

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