

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**GAMBLER FIRST NATION**  
also known as **GAMBLERS FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDIATIONS PARTICULIÈRES		
F I L E D	October 31, 2016	D E P O S É
Amy Clark		
Ottawa, ON	4	

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**

**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: Gambler First Nation  
As represented by:  
Stephen M. Pillipow  
The W Law Group  
Barristers and Solicitors  
300 - 110, 21<sup>st</sup> Street East  
Saskatoon, SK S7K 0B6  
Telephone: (306) 244-2242  
Facsimile: (306) 652-0332  
E-mail: [spillipow@wlawgroup.com](mailto:spillipow@wlawgroup.com)

## Overview

1. The Gambler First Nation, also known as the Gamblers First Nation (the “Claimant”) alleges that the Crown mismanaged revenue from a number of agricultural and oil and gas leases from Indian Reserve No. 63 (“IR 63”). Some of the allegedly mismanaged funds were credited to Waywayseecappo First Nation (“Waywayseecappo”). At that time, the Crown considered the Claimant and Waywayseecappo to share an interest in their respective reserves. This claim follows from the series of contested surrenders that occurred between 1881 and 1898. Those surrenders arise in a context of the movement of interrelated or overlapping groups of Treaty 4 signatories between several reserve locations in this period. In respect of the leases directly in issue in the present claim, the Claimant says that the Crown incurred a discreet legal, fiduciary, or trust-like obligation to manage revenue of leases related to IR 63 for their sole benefit. The Claimant alleges that the Crown breached those obligations by misallocating the revenues of those leases. It follows, in the Claimant’s theory that Canada must now compensate the Claimant for those funds. The Crown denies any outstanding lawful obligation is owed to the Claimant. The Crown says that in assessing the claim, the Tribunal will have to consider whether at the material time, the Claimant should be considered to be part of Waywayseecappo, or regarded as a separate band, so that payment to the latter satisfied any obligation to the former.
2. This is the Response of Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development Canada (the “Crown”) to the Declaration of Claim filed by the Claimant with the Specific Claims Tribunal (the “Tribunal”) on August 15, 2016 (the “Claim”) pursuant to the *Specific Claims Tribunal Act* (the “Act”).
3. The Claim relates to the Crown management of revenues from agricultural leases and oil and gas leases issued on IR 63 lands and on land surrendered from IR 63 in 1898 that remained unsold. It is alleged that the Crown mismanaged these revenues.

**I. Status of Claim (R. 42(a))**

4. A Specific Claim from the Claimant, was submitted to the Minister of Indian Affairs and Northern Development (the “Minister”) on July 13, 2010 (the “Leasing Specific Claim”). The Leasing Specific Claim was filed with the Minister on September 1, 2010.
5. By letter dated August 8, 2013, Gina Wilson, Senior Assistant Deputy Minister, Aboriginal Affairs and Northern Development Canada, notified the Claimant that part of the Leasing Specific Claim had been accepted for negotiation.
6. The Leasing Specific Claim has not been resolved.

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

7. The Crown denies the validity of the Claim, as set out in the Declaration of Claim, and denies that the Claimant has suffered any losses or damages resulting from any failure or breach of obligation by the Crown as alleged or at all. Specifically, the Crown denies:
  - a. the alleged 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; and
  - b. the alleged 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 Claimant.
8. Alternatively, the Crown says if the Tribunal finds the Claim valid, pursuant to Section 20(3) of the *Act*, the Crown is entitled to an off set for any benefits the Claimant received through revenues generated from leases on the Waywayseecappo Reserve, IR 62.

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

9. 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.
10. The Crown admits the facts set out in paragraphs 2, 4, 5, 8, and 9 of the Claim.
11. The Crown denies the allegations in paragraphs 3, 14, 16, 17, 18, 19, and 20 of the Claim.
12. In response to the style of cause and paragraph 1, the Crown denies that “Gambler First Nation” is the name of a Band within the meaning of the *Indian Act* as recorded with the Department of Indian Affairs and Northern Development Canada. The Crown says that “Gamblers” is the recorded name of a Band within the meaning of the *Indian Act* and if this is a claim of “Gamblers” it should be pled using that name and in accordance with Rule 41(a) of the *Specific Claims Tribunal Rules of Practice and Procedure* and paragraph (a) of the definition of “First Nation” in the *Act*.
13. In response to paragraph 6, the Crown acknowledges that the Claimant is not seeking compensation in excess of \$150 million.
14. In response to paragraph 7, the Crown denies that any of the grounds set out in s. 14 of the *Act* apply.
15. In response to paragraph 10, 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 Waywayseecappo Reserve IR 62 (“IR 62”). The Crown denies that it entered into any agreement with the Claimant in relation to the request for a new reserve.

16. In response to paragraph 11, the Crown admits that a surrender of IR 62 land was obtained in 1881. In effect, land was taken from IR 62 and new land was surveyed and set apart, in 1883, as IR 63. The Crown denies that it was a term of the 1881 surrender that the new IR 63 was to be set apart for the Claimant, saying rather that it was set aside for the benefit of Waywayseecappo. In other words, the followers of the Gambler were not, at the material time, regarded as forming a band separate from Waywayseecappo. Further, the Crown admits that on May 17, 1889 Order in Council P.C. 1151 confirmed IR 63. The Crown denies that it was confirmed as a reserve for the Claimant as a separate band, as opposed to Waywayseecappo.
17. In response to paragraph 12, the Crown says that in 1957 a surrender of “the Petroleum and Natural Gas and related hydro-carbons and the mining rights in connection therewith” on IR 63 lands was taken. The surrender was given by the “Electors of the Gambler Band of Indians” and provided that all moneys received from the leasing of the petroleum and natural gas and mineral rights would be placed to “our credit”.
18. In response to paragraph 13, the Crown says that between 1906 and 1980 it granted agricultural leases, including both fixed cash and crop sharing leases on IR 63. The Crown further says that within that time period agricultural leases were also granted on land surrendered from IR 63 in 1898 that remained unsold (“Surrendered Land”).
19. In response to paragraph 14, the Crown says that between 1906 and 1977, revenue was or should have been received from agricultural leases on IR 63 lands and Surrendered Land. The Crown says that only a portion of those revenues were credited directly to the trust account in the Claimant’s own name.
20. In response to paragraph 15, the Crown says that it granted oil and gas leases between 1951 and 1969 on IR 63 and on Surrendered Land.

21. In response to paragraph 16, the Crown says that between 1951 and 1977, revenue was or should have been received from oil and gas leases on IR 63 lands and on Surrendered Land. The Crown says that only a portion of those revenues were credited directly to the trust account in the Claimant's own name.
22. In response to paragraph 18 and 19, the first sentence of both paragraphs 18 and 19 are conclusions of law that the Crown is not required either to admit or deny. The Crown denies the rest of paragraphs 18 and 19.
23. In response to paragraph 22, the Crown specifically denies that the Claimant is entitled to damages, compensation, equitable interest, or costs.

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

##### Formation of IR 63

24. On September 15, 1874, the Crown entered into Treaty 4 with the Cree and Saulteaux Tribes of Indians at Qu'Appelle Lakes. On September 21, 1874 at Fort Ellice, Manitoba, a group of Saulteaux Indians known as the Fort Ellice Group adhered to Treaty 4 by the signatures of Way-wa-se-ca-pow and Ota-ma-koo-ewin.
25. In July, 1877, Lizard Point (IR 62) was surveyed and set aside for the Fort Ellice Group, also known as Waywayseecappo's Band.
26. 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 agreed to cede from the reserve a corresponding area.
27. In March, 1881, a surrender was signed by Waywayseecappo Band, surrendering 30 square miles of IR 62 in exchange for "other lands of equal extent assigned to the said Band."

28. 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.
29. During the mid-1880s, the Gambler and others resided upon the IR 63. In July 1887 Agent Markle reported that the Gambler and some others had returned to IR 62.
30. Order in Council P.C. 1151, dated May 17, 1889 confirmed the new IR 63, identifying the Chief as “The Gambler” and confirmed the re-surveyed IR 62, identifying the Chief as “Way-way-see-cappo”.
31. In 1892, a surrender was signed, surrendering 15 square miles of IR 63 in exchange for “other lands of at least equal extent and value shall be secured as a reserve”. The Governor in Council accepted the surrender by Order-in-Council P.C. 2929, dated November 10, 1893.
32. In 1898, a surrender was signed, surrendering the rest of IR 63, with the exception of:

all that portion of section 33 east of the Assiniboine River, that portion of the West ½ of Section 34 East of the Assiniboine River in Township 18 Range 29, the East ½ of Section 1 Township 19 Range 29, the South East 1/8 of Section 7 and the South West 1/8 of Section 8 in Township 19 Range 28, all west of the first Principal Meridian.

The Governor in Council accepted the surrender by Order-in-Council P.C. 684 dated March 28, 1898.

### Leasing Activity

33. Between 1906 and 1980, the Crown granted agricultural leases on IR 63 and Surrendered Land (“Agricultural Leases”). This included both fixed cash rent and crop sharing leases.
34. Between 1951 and 1969, the Crown granted several leases for petroleum and natural gas on IR 63 and on Surrendered Land (“Oil and Gas Leases”). By the end of 1977, all of the Oil and Gas Leases had been relinquished.

### Revenues from Leasing

35. In 1906, revenue from the first of the Agricultural Leases was deposited into the Gamblers trust account. In 1907, that same revenue was transferred to John Tanner’s Indian Savings Account.
36. John Tanner received the revenues, directly or through the transfer of funds, of some of the other Agricultural Leases during his lifetime.
37. In 1910 the Gamblers Trust account was closed and the balance was transferred to Waywayseecappo Trust Account.
38. At least by the 1920s, some Crown officials considered that those resident on IR 62 and IR 63 had an undivided interest in the two Reserves. As such, residents on IR 63 were seen to have a right to share in revenues from leases on IR 62, and residents on IR 62 a right to share in revenues from leases on IR 63.
39. Revenues from some of the Agricultural Leases were deposited into the Waywayseecappo Trust Account.

40. Between 1951 and 1974 the revenues from the Oil and Gas Leases were largely deposited into the Waywayseecappo Trust Account.
41. In 1972 a trust account was opened for the Claimant.
42. Beginning in 1974, revenues from the Oil and Gas Leases were deposited into the Gamblers Trust Account.
43. For some Agriculture Leases and Oil and Gas Leases there is insufficient information to determine where the lease was located, if all the proper revenues were received for any given lease and/or where the revenues were deposited.

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

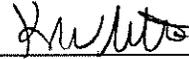
44. The Crown seeks dismissal of the claim.
45. Alternatively, the Crown says if the Tribunal finds the Claim valid, pursuant to Section 20(3) of the *Act*, the Crown is entitled to an off set for any benefits the Claimant received through revenues generated from leases on the Waywayseecappo Reserve.
46. The Crown seeks costs in these proceedings.
47. Such other relief as this Honourable Tribunal deems just.

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

The Respondent's address for service is:

paul.anderson@justice.gc.ca / kristine.whittaker@justice.gc.ca  
Department of Justice  
Suite 301, 310 Broadway  
Winnipeg, MB R3C 0S6  
Tel: (204) 983-0873  
Fax: (204) 984-5910

Dated: October 31, 2016



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Signature of Representative/Solicitor

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Prairie Region (WRO)/Aboriginal Law Services  
Suite 301, 310 Broadway  
Winnipeg, MB R3C 0S6  
Fax: (204) 984-5910

**Per: Paul R. Anderson / Kristine Whittaker**

Tel: (204) 983-0873 / (204) 984-7579

E-mail: paul.anderson@justice.gc.ca / kristine.whittaker@justice.gc.ca

Solicitors for the Respondent