

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

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

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
July 21, 2015	
Nicholas Young	
Ottawa, ON	1

Claimant

v.

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

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

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

Date: July 21, 2015

Nicholas Young
(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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I. Claimant (R. 41(a))

1. The Claimant, Gambler First Nation, confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*. The Claimant is located in the Province of Manitoba.

II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:

16. (1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

...

3. This claim relates to the taking of land by the Respondent from the Gambler Indian Reserve No. 63 in 1892. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on February 10, 2012.

4. The Claimant was advised on November 25, 2014 by the Respondent that it was the decision of the Minister not to accept the claim for negotiation on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

III. Claim Limit (Act, s. 20(1)(b))

5. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (Act, s. 14(1))

6. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

- (b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;
- (c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;
- (d) an illegal lease or disposition by the Crown of reserve lands;

V. Allegations of Fact (R. 41(e))

7. Treaty 4 was approved by Order in Council P.C. No. 1332/1874, dated November 4, 1874. Chief Way-wa-se-ca-pow adhered to Treaty 4 at Fort Ellice on September 21, 1874 on behalf of the Waywayseecappo Band.

8. Waywayseecappo Reserve IR 62 was surveyed in 1877 and confirmed as Indian Reserve No. 62 for the Waywayseecappo Band by Order in Council P.C. 1151 on May 17, 1889.

9. In 1880, members of the Waywayseecappo Band, led by the Gambler, expressed their desire to move from the Waywayseecappo Reserve, and requested their own reserve of approximately six by five square miles. The Respondent agreed to this request.

10. In 1881, a surrender of land was obtained from the Waywayseecappo Reserve. As required by the terms of the 1881 surrender, land was taken from the Waywayseecappo Reserve and land was surveyed and set aside at Silver Creek for the Claimant in 1883.

11. When the Gambler IR 63 was surveyed a number of Gambler’s followers resided at Valley River and had been doing so for a number of years. These members had never resided on the Gambler IR 63.

12. In July of 1887, the Gambler and a number of his followers returned to Waywayseecappo Reserve. A number of other members of the Claimant also left the Gambler IR 63 to join those who were residing at Valley River.

13. In May of 1889, the Gambler IR 63 was confirmed as a reserve for the Claimant as part of Order in Council P.C. 1151.

14. In December of 1889, Indian Commissioner Hayter Reed suggested that a surrender be taken of land from the Gambler IR 63 in exchange for land at Valley River, as those residing at Valley River had no interest in moving to the Gambler IR 63. It was recommended retaining 14.5 square miles of the Gambler IR 63 for the members of the Claimant residing at Valley River.

15. At around the same time, pressure from the residents of the local communities and a number of Federal, Provincial and local politicians, was put on the Respondent to open up the Gambler IR 63 for settlement and homesteading purposes. The local communities claimed that the presence of the Gambler IR 63 was hindering the development of the local communities, particularly the Town of Binscarth, which was located within a few miles of the Gambler IR 63.

16. On August 4, 1892, Acting Deputy Superintendent General of Indian Affairs Sinclair sent a letter to Indian Agent Markle authorizing him to negotiate and to take the surrender from the Gambler First Nation.

17. On August 23, 1892, Indian Agent Markle reported to the Deputy Superintendent General of Indian Affairs that he had shown John Tanner, a member of the Claimant who habitually resided on the Gambler IR 63, a rough diagram of the lands to be surrendered with a view of getting his opinion as to whether many objections would be raised as to the sections of land proposed to be taken from the Gambler IR 63. Indian Agent Markle described John Tanner's response as follows:

...I beg to report that it was his opinion that less objections would be taken if Section 2, that portion of Section 3 east of the Assiniboine River and the south

halves of sections 11 and 12 together with that portion of section 10 S.E. ¼ East of said River be retained [Margin note: "Tp. 19 Rg. 29"] and in lieu surrender sections 20 and 29 in Tp 8 Range 28.

There are no improvements in Sec 20 and only a few acres of land ploughed on section 29 with little or no hay land on either, whereas on the sections in Tp 19 Range 29 above referred to there is considerable hay land and it is now much used by their cattle for pasture ground.

This was the first time the matter of the surrender and the land to be taken from the Gambler IR 63 was addressed with the Claimant by the Respondent.

18. On September 3, 1892, the Department of Indian Affairs provided instructions to Agent Markle to present the surrender as proposed, as "It may happen that the opinion expressed by John Tanner is not shared generally by the Band and that the surrender as now drafted may pass."

19. On September 15, 1892, the Respondent obtained a surrender for exchange from the Gambler IR 63, signed by six men, all of whom resided at Valley River.

20. On October 5, 1892, the surrender was re-acknowledged by the six men, as well as signed by four additional men, all of whom also resided at Valley River.

21. No meetings were called or conducted on September 15th or October 5th, 1892 "according to the rules of the Band".

22. A majority of the eligible voters of the Claimant, or at least those members of the Claimant residing on the Gambler IR 63, were not provided with notice of any meetings to consider or vote on the proposed surrender. Furthermore, a majority of the eligible voters of the Claimant were not present at any meetings or councils held to vote on the proposed surrender, nor did a majority of the eligible voters of the Claimant vote on the surrender, if a vote was even conducted.

23. No members of the Claimant who habitually resided on or near and were interested in the Gambler IR 63 voted on the surrender.

24. Order in Council P.C. 2929 was passed on November 10, 1893, approving the 1892 surrender for exchange from the Gambler IR 63.

25. The survey of the land at Valley River was completed in September of 1894. Order in Council P.C. 3844 confirmed Indian Reserve No. 63A for the Claimant in 1896.

26. Indian Reserve 63a is recorded in the Canada Lands Survey System and INAC's Indian Lands Registry as belonging solely to the Tootinaowaziibeeng First Nation (formerly the Valley River Band).

27. The Claimant has never surrendered its interest in the Indian Reserve No. 63A.

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

28. Treaty No. 4 specifically required the consent of all of the Indians interested in a reserve to be given before any land could be taken from a reserve. The Claimant claims that the Respondent breached the terms of Treaty No. 4 by failing to obtain the consent of all of the members of the Claimant prior to the land being taken from the Gambler IR 63 in 1892.

29. The 1886 *Indian Act* provided that no surrender of a reserve was valid unless the surrender was assented to by a majority of the male members of the band, of the full age of 21 years, who habitually resided on or near the reserve, at a meeting held according to the rules of the band. The Claimant claims that the Respondent breached the terms of the 1886 *Indian Act*, particulars of which include:

- (a) Failing to ensure that a majority of the male members of the band, of the full age of 21 years, who habitually resided on or near the reserve, voted to approve the surrender prior to the land being taken from the Gambler IR 63 in 1892;
- (b) Failing to ensure that only the male members of the band, of the full age of 21 years, who habitually resided on or near the Gambler IR 63 voted on the surrender; and

- (c) Failing to conduct a meeting “according to the rules of the Band” prior to the land being taken from the Gambler IR 63 in 1892;

30. The Respondent owed fiduciary or trust-like obligations to the Claimant to deal with the Gambler IR 63 in the best interests of the Claimant. The Claimant claims that the Respondent breached its fiduciary or trust-like obligations to the Claimant, particulars of which include:

- (a) Failing to consult with all members of the Claimant regarding the taking, the terms of, and the consequences of, the surrender to the members prior to the land being taken from the Gambler IR 63 in 1892;
- (b) Failing to ensure that the Claimant adequately understood the surrender and the consequences of the surrender to the Claimant;
- (c) Allowing the Claimant to adnegate its decision-making authority to the Respondent;
- (d) Failing to act in the best interests of the Claimant;
- (e) Failing to withhold its consent to the surrender which was so foolish a decision that it amounted to exploitation; and
- (f) The conduct of the Respondent which tainted the dealings in a manner which made it unsafe to rely on the Claimant’s consent.

31. The Claimant also claims that the Respondent illegally disposed of Indian Reserve No. 63A which was never surrendered by the Claimant.

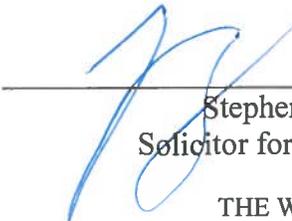
VII. Relief Sought

32. The Claimant seeks compensation for the following:

- (a) Compensation equal to the current, unimproved market value of the lands taken from the Gambler Indian Reserve No. 63 in 1892;

- (b) Compensation equal to the value of the loss of use of the lands taken from the Gambler Indian Reserve No. 63 in 1892;
- (c) Compensation for losses suffered as a result of the Respondent's breach of its fiduciary or trust-like obligations, breach of the terms of Treaty No. 4, and breach of the terms of the 1886 *Indian Act*;
- (d) Compensation for the illegal disposition of Indian Reserve No. 63A;
- (e) Equitable compensation and/or interest;
- (f) Costs in relation to these proceedings; and
- (g) Such other damages, compensation or costs as this Honourable Tribunal may award.

Dated this 20th day of July, 2015.



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Solicitor for the Claimant

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