

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

BRIDGE RIVER INDIAN BAND

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| F I L E D | SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES | D E P O S É |
| | July 17, 2020 | |
| | Guillaume Phaneuf | |
| Ottawa, ON | | 1 |

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

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 17, 2020

Guillaume Phaneuf
(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building
234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax number: (613) 954-1920

I. Claimant (R. 41(a))

1. The claimant, the Bridge River Indian Band (“the Band”), is a First Nation within the meaning of paragraph 2(a) of the *Specific Claims Tribunal Act*.
2. The Band’s reserves are all located in the Province of British Columbia.

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

3. The conditions precedent as set out in paragraph 16(1)(a) of the *Specific Claims Tribunal Act* have been fulfilled:
 - (a) On or about March 4, 2003, the Band filed the Moha Highway Specific Claim (the “Claim”) with the Specific Claims Branch (the “SCB”).
 - (b) On September 13, 2011, the Minister advised the Band that it had rejected the Claim for negotiation.

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

4. For the purposes of the Claim, the Band does not seek compensation from Canada in excess of \$150 million.

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

5. The grounds of the Claim are that the Crown breached legal obligations within the meaning of paragraph 14(c) of the *Specific Claims Tribunal Act*.

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

Allotment of the Reserve

6. The Band, also known as Xwísten, is an Indigenous group that is part of the St’át’imc Nation.
7. Bridge River Indian Reserve No. 1 (the “Reserve”) is located within the traditional territory of the St’át’imc Nation.

8. Indian Reserve Commissioner Peter O'Reilly ("Commissioner O'Reilly") allotted the Reserve to the Band by way of a Minute of Decision on September 1, 1881.
9. The Reserve, as allotted, is long and narrow, extending approximately thirteen and a half miles along both sides of the Bridge River to the base of the mountains on either side, with an average width of three-quarters of one mile.
10. The sketch attached to Commissioner O'Reilly's 1881 Minute of Decision showed a dashed line, representing a trail (the "St'át'imc Trail"), extending from the mouth of the Bridge River along the left (north) bank of the river through the Reserve.
11. Commissioner O'Reilly submitted his Minute of Decision and sketch for the Reserve to the Superintendent General of Indian Affairs on February 23, 1882, and to the Chief Commissioner of Lands and Works for the Province of British Columbia (the "CCLW") on March 28, 1882.
12. On May 1, 1886, the CCLW and Commissioner O'Reilly approved Plan No. BC 147, a survey map of the Reserve. Plan No. BC 147 shows a dashed line, representing the St'át'imc Trail, within the boundaries of the Reserve following the left (north) bank of the Bridge River in approximately the same location as the dashed line in Commissioner O'Reilly's sketch attached to the Minute of Decision. Plan No. BC 147 recorded the Reserve's acreage as 9,621 acres.
13. Since about 1886, Canada has administered the Reserve as a "reserve" of the Band within the meaning of the *Indian Act*.
14. In 1916, the Final Report of Royal Commission on Indian Affairs for the Province of British Columbia (the "Royal Commission") confirmed the size (9,621 acres) and location of the Reserve.

15. The Reserve was listed in the schedules attached to British Columbia Order-in-Council 911 (1923) and federal Order-in-Council 1265 (1924), confirming and approving the final report of the Royal Commission as amended by the Ditchburn-Clark Review. Both orders-in-council confirmed the Reserve and listed it as 9,621 acres in size.

Order in Council 1036

16. On July 29, 1938, the Province passed Order-in-Council 1036 (“OIC 1036”), under which the Province conveyed administration and control of the lands within the Reserve to Canada.
17. Under the terms of OIC 1036, the Province purported to (1) except from the transfer of the Reserve “all travelled streets, roads, trails, and other highways” within the Reserve, and (2) reserve the right to resume for public purposes up to 1/20th of the lands transferred except “any lands on which any buildings have been erected, or which may be in use in gardens or otherwise for the more convenient occupation of any such buildings.”
18. The Reserve is listed in the schedule to OIC 1036 with its acreage given as 9,621 acres, as surveyed and shown on Plan No. BC 147.

Construction of the North Fork Trail

19. In the late 1880s and 1890s, gold was discovered in the St’át’imc Nation’s territory and claims were staked at Pioneer and Bralorne gold mines, located west of the Reserve.
20. In about 1899, the Government of the Province of British Columbia (the “Province”) constructed a trail through the Reserve (the “North Fork Trail”) approximately along the alignment of the St’át’imc Trail, in order to provide miners with access from about the confluence of the Bridge River and the Fraser River to the gold mines to the west.

21. The Province did not seek or obtain the consent or approval of Canada or the Band to construct the North Fork Trail through the Reserve.

Construction of the North Fork Road

22. In about 1914 and 1915, the Province constructed a wagon road averaging about eight feet wide through the Reserve approximately along the alignment of the North Fork Trail (the “North Fork Road”), in order to improve access to the new settlement of North Fork (now known as Moha) to the west of the Reserve, and east of the mines.
23. The Province did not seek or obtain the consent or approval of Canada or the Band to construct the North Fork Road through the Reserve.

Construction of the Moha Road

24. In about 1954 or 1955, the Province began work on a plan to widen the North Fork Road and extend it to the settlements of Pioneer Mines and Bralorne, at about which time the North Fork Road became known as the “Moha Road” or the “Moha Highway”.
25. On May 10, 1956, the Province sought approval from the Department of Indian Affairs (the “Department”) to acquire 0.64 acres of improved land within the Reserve occupied by Band members for the purpose of widening the Moha Road.
26. Upon receiving the application of the Province, the Department did not inquire about the extent of the Province’s planned road work through the Reserve in order to assess what impact, if any, it would have on the Band and their use of the lands, and to consult with the Band and obtain their views.
27. On June 6, 1956, the council of the Band passed a resolution approving the purchase of 0.64 acres of the Reserve by the Province for \$185.00.

28. In September 1960, the Province provided the Department with a survey plan identified as "Plan 50252" depicting the portion of the right-of-way of the Moha Road located within the Reserve, which was identified as containing a total of 85.38 acres of land (the "Right-of-Way").
29. On December 19, 1960, the Province informed the Department that, for the purpose of constructing the Moha Road, the Province required an additional 2.678 acres of unimproved land and 0.37 acres of improved land within the Reserve occupied by Band members. The Province offered to pay compensation for the benefit of the Band at a rate of \$200.00 per acre for the 0.37 acres of improved land, or \$74.00, and indicated that it intended to resume the 2.678 unimproved acres without compensation under the terms of OIC 1036.
30. On January 24, 1961, on the advice and recommendation of the Department, the council of the Band passed a resolution under which the council approved the transfer of the lands shown on Plan 50252 to the Province with compensation at a rate of \$200.00 per acre to be paid for 0.64 acres of improved land.
31. By Order-in-Council 1961-210 dated February 16, 1961 ("OCPC 1961-210"), the Governor in Council consented to the taking of the Right-of-Way by the Province pursuant to section 35 of the *Indian Act*, RSC 1952, c 149, and to transfer administration and control of the Right-of-Way to the Province.
32. Of the 85.38 acres of land within the Reserve taken with the consent of the Governor in Council under OCPC 1961-210, 84.37 acres were taken without any compensation to the Band.
33. On May 31, 1961, on the advice and recommendation of the Department, the council of the Band passed a resolution under which the council approved the acceptance of \$74.00 in exchange for the taking by the Province of the additional 0.37 acres of improved land within the Right-of-

Way and approved the Province's application to take the additional 2.678 acres of unimproved land without compensation.

VI. Legal Basis for the Claim

34. At all times material to this claim, Canada owed fiduciary obligations to the Band.
35. Prior to the passage of OIC 1036 in 1938, Canada owed the Band fiduciary obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the Band.
36. Following the passage of OIC 1036, Canada's fiduciary obligations expanded to include the protection and preservation of the Band's quasi-proprietary interest in the reserve from exploitation.
37. Between about 1899 and 1915, Canada breached its fiduciary obligations to the Band, including by:
 - (a) failing to provide full disclosure by failing to advise the Band of its rights and options in relation to the Province's conduct in establishing the North Fork Trail, the North Fork Road or both, consult with the Band and seek instructions from the Band as to how to proceed;
 - (b) failing to act as a person of ordinary prudence managing their own affairs by failing to take reasonable steps to protect the Band's interest in the Reserve, including by preventing the Province from constructing the North Fork Trail, the North Fork Road or both, or negotiating terms regarding the Province's work in that regard; and
 - (c) failing to ensure that the Band received adequate, or any, compensation for the Province's use and occupation of the Reserve

for the purpose of the construction and operation of the North Fork Trail, the North Fork Road or both.

38. Between about 1938 and 1961, Canada breached its fiduciary obligations to the Band, including by:
- (a) failing to act as a person of ordinary prudence managing their own affairs by failing to take reasonable steps to prevent the Province from unlawfully using or occupying the Right-of-Way prior to the passing of OCPC 1961-210;
 - (b) failing to act as a person of ordinary prudence managing their own affairs by failing to take reasonable steps to ascertain the Province's intentions in relation to the Province's use and occupation of the Right-of-Way, and assess what impact, if any, it would have on the Band and their use of the lands;
 - (c) failing to provide full disclosure by failing to advise the Band of the Province's intentions in relation to the use and occupation of the Right-of-Way and any impacts of the Right-of-Way on the Band's use of the adjacent lands, consult with the Band, and seek instructions from the Band as to how to proceed;
 - (d) failing to take reasonable steps to minimize impacts of the Right-of-Way on the Band and their use of the lands; and,
 - (e) failing to ensure that the Band obtained adequate, or any, compensation for the Right-of-Way, including for damage caused to Reserve lands as a result of the Moha Road and injurious affection.
39. As a consequence of Canada's failure to discharge its fiduciary obligations to the Band, the construction of the Moha Road has caused damage to the Reserve and improvements on the Reserve for which the Band has not received compensation. In particular, the Moha Road:

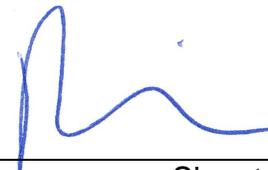
- (a) Partially or completely buried a dwelling house located within or adjacent to the Right-of-Way south of the mouth of the Bridge River, forcing the occupant to evacuate;
- (b) Has caused gravel and/or aggregate to repeatedly migrate into irrigation ditches and pipes on the Reserve, blocking the irrigation ditches and damaging irrigation pipes;
- (c) Encroached upon a dwelling house located within or adjacent to the Right-of-Way, causing damage to the structure and interfering with the use and occupation of the dwelling house;
- (d) Disturbed at least one burial site and several archeological sites on the Reserve; and,
- (e) Has interfered with the use and occupation of portions of the Reserve in locations where the Province has undertaken works to support the Moha Road outside of the boundaries of the Right-of-Way.

VII. Relief Sought

40. The Band seeks:

- (a) Equitable compensation from Canada to compensate the Band for the Crown's breaches of its lawful obligations to the Band; and,
- (b) Costs of this proceeding.

Dated this 16th day of July, 2020



Signature of Solicitor

Peter Millerd
Mandell Pinder LLP
Barristers and Solicitors
422 - 1080 Mainland Street
Vancouver, BC V6B 2T4
Tel: 604.681.4146 Fax: 604.681.0959
peter@mandellpinder.com