

SPECIFIC CLAIMS TRIBUNAL		
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November 25, 2020		
Dragisa Adzic		
Ottawa, ON	80	

SCT File No.: SCT-6001-16

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

PAUL FIRST NATION

Claimant

v.

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

Respondent

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

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

TO: PAUL FIRST NATION  
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## Overview

1. The Respondent, Her Majesty the Queen in right of Canada (“Canada”), is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada acknowledges these principles as it attempts to assist the Specific Claims Tribunal (“Tribunal”) in adjudicating matters before it.
- 2.1. Canada acknowledges that Paul First Nation is an adherent to Treaty No. 6, is a band within the meaning of the *Indian Act*, and is a First Nation within the meaning of the *Specific Claims Tribunal Act*.
- 3.2. Pursuant to Treaty No. 6, Canada set aside approximately 32.7 square miles or 20,928 acres of land for Paul First Nation as Indian Reserve 133A (“IR 133A”) and Indian Reserve 133B (“IR 133B”).
- 4.3. This claim seeks compensation for the surrender of IR 133B taken on September 11, 1906 or, in the alternative, compensation for the sale of the surrendered lands.
- 5.4. Canada admits a post-surrender breach of fiduciary duty to Paul First Nation from the transfer by Canada of the streets and lanes in the village of Kapasiwin to the Province of Alberta in 1932 (the “Beach Lands”), lands which were part of the surrendered lands. The Beach Lands claim has been accepted for negotiation.
- 6.5. ~~In all other respects, Canada complied with all statutory and fiduciary duties and obligations regarding the surrender and with its post-surrender fiduciary duties, and obligations in the sales of the surrendered lands.~~ In all other respects, Canada complied with all statutory and fiduciary duties regarding the surrender of IR 133B, both pre and post surrender.
- 7.6. Canada favours resolving claims made by Indigenous Peoples through negotiation and settlement. Canada continues to pursue all appropriate forms of resolution as this claim proceeds, and endeavors to be constructive in assisting the Tribunal in its task of adjudicating this matter.

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

~~8.7.1.~~ ~~The Respondent, Her Majesty the Queen in Right of~~ Canada (“Canada”) admits that ~~the~~ Paul First Nation (“PFN”) is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (~~the~~ “Act”) as pleaded in paragraph 1 of the Amended Amended Amended Declaration of Claim~~(the~~ “Declaration”).

~~9.8.2.~~ ~~The Claimant~~ Paul First Nation has filed the following specific claims alleging breaches of Canada’s lawful obligations in connection with the surrender of Indian Reserve IR 133B:

- a. a specific claim received on July 12, 1996 regarding the Crown’s management of the sales of the lands surrendered in 1906, “1996 Mismanagement of Sales”. The Minister notified Paul First Nation, in writing, on March 3, 2009 of his decision to negotiate the claim in part. The Minister agreed that a lawful obligation arose from the transfer by Canada of the Beach Lands—streets and lanes in the village of Kapasiwin to the Province of Alberta in 1932—(the Beach Lands); and
  - b. a specific claim received on June 5, 2000 and a further specific claim received on January 27, 2012. Both submissions address the same claim, the validity of the 1906 surrender of Indian Reserve IR 133B. The Minister notified Paul First Nation in writing on October 29, 2013, of his decision not to accept this claim for negotiation. regarding the 1906 surrender of Indian Reserve 133B; and
  - c. ~~a further specific claim received on January 27, 2012 regarding the 1906 surrender of Indian Reserve 133B.~~
- ~~3.~~ ~~In reply to paragraphs 3 to 6 of the Declaration, Canada denies that the claim before the Tribunal is the alleged mismanagement of sales of surrendered lands. Canada states that the claim before the Tribunal is the specific claim regarding the~~

~~1906 surrender of Indian Reserve 133B, which was submitted on June 5, 2000 and resubmitted on January 27, 2012 (the “Claim”).~~

~~10.9.4.~~ The Minister notified the Claimant in writing on October 29, 2013 of his decision not to accept the Claim for negotiation. Canada admits, in response to paragraph 2 of the Amended Amended Amended Declaration of Claim, that the ~~C~~claim meets the conditions precedent, as set out in paragraphs 16(1)(a) and (d) of the *Act*.

~~10. Paragraphs 20, 22, and 23 contain new allegations that were not contained in the specific claims filed with the Minister.~~

5. In reply to paragraph 8 of the Declaration, Canada submits that the statutory ground for this claim is limited to ss. 14(1)(b) and 14(1)(c) of the *Act*.

## II. Validity (R. 42(b) and (c))

~~11.10.11.~~ Canada admits a breach of fiduciary duty to Paul First Nation from the transfer by Canada of the Beach Lands in the village of Kapasiwin to the Province of Alberta in 1932. Canada states that s. 20 (1) (e) of the *Act* may provide the basis for the Tribunal to award compensation.

~~12.11.12.6.~~ Canada ~~denies~~ does not accept the validity of the remaining claims on ~~all~~ any of the grounds in the Amended Amended Amended Declaration of Claim, and in particular denies:

- a. that the surrender of IR 133B was contrary to the provisions of the ~~1906~~ 1886 *Indian Act*;
- b. that there was any failure to obtain fair market value for the sale of the surrendered lands;
- ~~c.~~b. any breach of the *Indian Act* or obligations arising from Canada’s fiduciary or trust duties;

~~d.e.~~ that there are any consequential losses or damages;

~~e.d. that employees or agents of Canada committed any fraudulent acts in obtaining the 1906 surrender or in the subsequent sales of the surrendered lands.~~

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

13. In response to the whole of the Amended Amended Amended Declaration of Claim, and to paragraphs 8 to 74 in particular, Canada states that Paul First Nation has pleaded evidence contrary to Rule 39 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Despite this, Canada has attempted to respond to the Declaration of Claim in a substantive manner.

~~14.12.13.8.~~ Canada admits the facts set out in the following paragraphs 13, 15, 16, 18, and 22 of the Amended Amended Amended Declaration of Claim that:

a. On September 4, 1901, Clifford Sifton, Superintendent General of Indian Affairs recommended that, under the provisions of the *Indian Act*, Chief Paul be deposed and declared ineligible to hold office for three years. Chief Paul was removed from office by Order-in-Council PC 1762, dated September 12, 1901 (paragraph 16).

b. The Department of Indian Affairs (the “DIA”) did not develop the marl deposit that was surrendered on June 20, 1906 (paragraph 24).

~~a.c.~~ that eOn or about July 31, 1906, Secretary McLean wrote to Indian Agent Gibbons to advise an application had been made for part of IR 133B, and asked him to speak to Paul First Nation to determine their wishes (paragraph 13 36).

d. On August 29, 1906, a description of land for surrender was provided by Samuel Bray, Chief Surveyor (paragraph 39).

- e. On September 1, 1906, Frank Pedley, Deputy Superintendent General of Indian Affairs authorized Indian Agent Gibbons to submit a surrender document to Paul First Nation with regard to a disposition of a portion of Paul First Nation Reserve (paragraph 40).
- f. On September 1, 1906, J.D. McLean sent a telegram to Secretary to J.K. McLean (paragraph 41).
- b.g. ~~that~~ ~~o~~On or about September 6, 1906, Surveyor McLean wrote to Secretary McLean confirming that he had completed his re-survey of the boundaries of IR 133A and 133B and reported that he had not begun dividing the proposed surrender lands into lots because “some of the Indians are opposed” (paragraph ~~15~~ 42).
- e. ~~that the surrender of IR 133B was obtained on September 11, 1906. Six members of Paul First Nation signed the surrender by placing a mark beside their names and three signed with their signatures (paragraph 16).~~
- h. On September 13, 1906, Indian Agent Gibbons forwarded two copies of the executed surrender documents to Secretary McLean. The Superintendent General of Indian Affairs forwarded the surrender in duplicate to the Governor General in Council on September 20, 1906 (paragraph 45).
- d.i. ~~that~~ ~~t~~The recording of the annuities paid to Paul First Nation members on July 20, 1906 indicates that 35 men were paid annuities as heads of families or as individuals (paragraph ~~18~~ 47).
- j. Surveyor McLean further reported that “it was decided at the meeting with the Indians when the surrender was given to reserve the Beach from being sold, a width of about 150 feet, along the lake including a street to be reserved from sale by the Department. Such width or widths to be decided by myself when making the survey.” (paragraph 54).

- k. J.K. McLean, Surveyor reported to J.D. McLean, Secretary on September 17, 1906 about a small burial ground located on a portion of the surrendered land that had not been mentioned to Paul First Nation at the surrender meeting as its existence may not have been known to Agent Gibbons (paragraphs 53 and 55).
- l. The surrender of IR 133B, consisting of 635 acres, was approved on September 27, 1906 by Order-in Council PC 1939 (paragraphs 45 and 56).
- m. On October 12, 1906, Surveyor McLean informed J.D. McLean, Secretary, that the survey of the town lots at White Whale Lake was completed (paragraph 57).
- e.n. ~~that~~ It was an oral term of the surrender that a beach separating the surrendered lands from Lake Wabamun was to be excluded from the sale (the Beach Lands) (paragraph 28 62).
- f.o. ~~that~~ Canada transferred administration and control of the Beach Lands to Alberta in 1932 (paragraph 28 62).
9. — ~~Canada denies the facts in paragraphs 17 and 19 of the Declaration.~~
15. In response to paragraph 8 of the Amended Amended Amended Declaration of Claim, Canada admits that the Northwest Rebellion took place in 1885. Canada denies the remaining allegations.
16. In response to paragraph 9 of the Amended Amended Amended Declaration of Claim, Canada states that, during the years 1896 to 1911, immigration into the West expanded resulting in an increased interest in opening lands to agricultural settlers. Canada admits that between the years 1896 to 1911, it accepted surrenders in the western provinces and states the requirements for process surrenders are governed by the *Indian Act*.

17. In response to paragraphs 10 and 43 of the Amended Amended Amended Declaration of Claim, Canada states:

a. During the years 1896 to 1911, the Department of Indian Affairs was the responsibility of the Minister of the Interior who also held the position of Superintendent General of Indian Affairs.

b. In 1913, the Conservative Government under Sir Robert Borden commissioned a Winnipeg lawyer, Mr. Thomas Roberts Ferguson (“Ferguson”), to inquire into the administration of the public domain since the beginning of Laurier’s Liberal Government in 1896 (“Ferguson Inquiry”). The scope of the Ferguson Inquiry required Ferguson to report on all matters connected with the disposition of Dominion Lands; timber, mineral and water lands and rights; and “Indian lands and Indian reserves”.

c. The Ferguson Inquiry conducted investigations during a two-year period from 1913 to 1914.

d. The reports from the Ferguson Inquiry (“Ferguson Reports”) were considered by the House of Common on April 14, 1915.

e. Unfortunately, the Ferguson Reports were destroyed by fire in 1916.

f. The Ferguson Inquiry did not investigate Paul First Nation’s 1906 Surrender and the sales of those surrendered lands.

18. In response to paragraph 11 of the Amended Amended Amended Declaration of Claim, Canada admits:

a. In August and September 1876, at or near Fort Carlton, Fort Pitt and Battle River, Canada entered into Treaty No. 6 with certain “Plain and Wood Cree and the other Tribes of Indians” in what is now central Saskatchewan and Alberta.

- b. Approximately one year later, in or about August 1877, Chief Alexis of the Alexis First Nation signed an adhesion to Treaty No. 6.
- c. When Chief Alexis adhered to Treaty No. 6, the ancestors of Paul First Nation were viewed as members of Alexis First Nation.
- d. Consequently, Canada admits that Paul First Nation has adhered to Treaty No. 6.

19. In response to paragraph 12 of the Amended Amended Amended Declaration of Claim, Canada admits:

- a. At or around the time of the adhesion to Treaty No. 6, Ironhead was a Headman of the Alexis First Nation.
- b. By 1880, Headman Ironhead and his followers resided at, or near, White Whale Lake (now known as Wabamun Lake). By contrast, Chief Alexis and his followers resided at, or near, Lake St. Anne.
- c. After Headman Ironhead passed away in or about 1886 or 1887, his followers became followers of Paul, who was a Headman under Chief Alexis. At some point, this group became known as “Paul’s Band” (now Paul First Nation).

~~13.14.10. In reply to paragraph 9, Canada admits that Indian Reserves (“IR”) IR 133A and IR 133B were surveyed and set apart pursuant to the terms of Treaty No. 6. Canada denies that IR 133A and 133B were surveyed and set apart in 1877 and, For clarity, Canada states that IR 133A and 133B were set apart by Order in Council PC 1633 dated June 16, 1892.~~

~~14.15.11. In reply to paragraph 10, Canada admits that two reserves were surveyed for PFN Paul First Nation at White Whale Lake: IR 133A and IR 133B, with IR 133B having been set aside for a fishing station, having access to White Whale Lake, and being the much smaller of the two reserves. Canada has no knowledge of~~

~~whether IR 133B was the PFN Paul First Nation's primary fishing station and whether IR 133B had access to Moonlight Bay.~~

20. In response to paragraphs 13 and 14 of the Amended Amended Amended Declaration of Claim, Canada admits that IR 133A and IR 133B were surveyed pursuant to the terms of Treaty No. 6. Canada states:

a. In November and December 1891, John C. Nelson, a Dominion Land Surveyor, surveyed a reserve and a fishing station at, or near, White Whale Lake for the members of Chief Alexis's First Nation to whom a reserve had not yet been allotted. By this point, the members were followers of Paul, one of Chief Alexis's Headmen.

b. By Order in Council P.C. No. 1633 dated June 16, 1892, these lands, which amounted to 32.7 square miles (or 20,928 acres), more or less, were withdrawn from the operation of The Dominion Lands Act, RSC 1886, 49 Victoria, c 54.

c. At that time, these lands became known as IR 133A, consisting of 20,293 acres, more or less, and IR 133B, consisting of 635 acres, more or less.

d. IR 133B was set aside as a fishing station, having access to White Whale Lake.

Canada is not aware if IR 133B was the Band's primary fishing station and if IR 133B had access to Moonlight Bay.

~~15.16.12. In reply to paragraph 11, Canada admits that Chief Paul remained as Chief until 1901 and that the PFN Paul First Nation remained without a Chief until 1906. Canada denies that Chief Paul was deposed by the Department of Indian Affairs ("DIA") and, For clarity, Canada states that Chief Paul was removed from office by Order in Council PC 1762 dated September 12, 1901 for conduct that included killing cattle without authority and encouraging the sale of alcohol on the reserve. David Bird was appointed Chief in 1906.~~

~~16.17.13. In reply to paragraph 12, Canada admits that in late 1905, the Canadian Northern Railway (“CNR”) was approaching from Edmonton and would likely pass through IR 133A. There was no mention of IR 133B at this time. Canada has no knowledge of the remaining allegations of fact in paragraph 12, but states that, in the summer of 1906, White Whale (now Wabamun) Lake, with its proximity to Edmonton, was attracting attention as a prospective summer resort.~~

21. In response to paragraph 15 of the Amended Amended Amended Declaration of Claim, Canada states that on August 5, 1901, W.G. Blewett, Farming Instructor, wrote to Indian Agent Gibbons alleging that:

- a. Chief Paul killed cattle without authority.
- b. Chief Paul used impudent language and failed to respect Blewett’s “superior officer”.

Canada admits that W.G. Blewett also wrote “[w]ere I permitted to offer an opinion I would say break him and appoint no other.”

22. In response to paragraph 17 of the Amended Amended Amended Declaration of Claim, Canada states that on September 12, 1905, Indian Commissioner David Laird responded to J.D. McLean, Secretary, Department of Indian Affairs, with an update on the status of Paul First Nation’s Council. In particular, Indian Commissioner Laird:

- a. Confirmed he was authorized to appoint two Headman if he concurred with Agent Gibbon’s recommendation.
- b. Advised that he approved the appointment of one Headman, David Yellowhead, No. 28.

23. In response to paragraph 18 of the Amended Amended Amended Declaration of Claim, Canada admits that Inspector J.A. Markle issued a report to the Indian Commissioner in November 1905. On November 4, 1905, J.A. Markle reported that:

- a. There was a very rich marl deposit on Paul Band No. 133A and an abundance of good clean sand on the land shore and good clay near the marl.
  - b. The Canadian Northern Railway (“CNR”) was grading a line between the reserve and Edmonton, and it was likely to pass very near the marl deposit.
- 24. In response to paragraph 19 of the Amended Amended Amended Declaration of Claim, Canada admits that the CNR’s projected line to the west led to an increased interest in that area and, with respect to Paul First Nation, H.B. Round expressed interest in the potential deposits of marl on IR 133A.
- 25. In response to paragraph 20 of the Amended Amended Amended Declaration of Claim, Canada states that on April 17, 1906, the Secretary of Indian Affairs wrote to Inspector J.A. Markle and, on April 21, 1906, Inspector J.A. Markle provided his opinion that:
  - a. “these Indians will not agree to either a sale or a lease without they receive (sic) some immediate benefits.”
  - b. Inspector Markle be authorized to meet their wishes regarding the appointment of Chiefs and for the expenditure of all accrued interest belonging to Paul First Nation for the tools and implements they require.
- 26. In response to paragraph 21 of the Amended Amended Amended Declaration of Claim, Canada states that on May 10, 1906, J.D. McLean, Secretary, authorized David Bird’s appointment as Chief of the “White Whale Lake Band” for an indefinite period. David Bird was also known as and described as David Yellowhead and, on May 25, 1906, he was appointed Chief of what is described as both the “Pauls Band of Indians” and the “Paul’s Band of Indians”.

27. In response to paragraphs 22 and 25 of the Amended Amended Amended Declaration of Claim, Canada admits that on June 5, 1906, J.D. Markle, Inspector, wrote to the Secretary, Department of Indian Affairs about:

- a. The possible surrender of a portion of the “Indian Reserve on the White Whale lake (Paul’s)...”.
- b. Mr. Round’s associates’ reduced interest in securing this property compared to about nine months ago.
- c. The best course of action, which was to advise the “Indians” to agree to a surrender with conditions previously advanced by Paul First Nation and, if they agree, execute a surrender to the Department.
- d. The development of a marl deposit on the Paul First Nation reserve “if capitalists can be found to undertake it”.

28. In response to paragraph 23 of the Amended Amended Amended Declaration of Claim, Canada states that on June 20, 1906, Paul First Nation surrendered to Canada the mines, deposits, beds, veins and seams of marl and sand lying under and on the surface of Paul First Nation reserve which lied on the eastern shore of the White Whale Lake. The surrender was:

- a. Subject to terms and conditions as Canada may deem most conducive to Paul First Nation’s welfare.
- b. Approved pursuant to a Paul First Nation Resolution in Council, dated June 20, 1906.

Canada admits that the corresponding affidavit was dated June 21, 1906 and that:

- c. It was signed by J.A. Markle.
- d. It bears the mark of David Bird, and was sworn before a Justice of the Peace for the Province of Alberta.

Canada further states that the Paul First Nation surrender of June 20, 1906 was approved by Order in Council 1460 on July 19, 1906.

29. In response to paragraphs 26 and 34 of the Amended Amended Amended Declaration of Claim, Canada admits that on January 8, 1908, the Governor General in Council issued Order in Council P.C. No. 36 authorizing the disposition of lands to the Grand Trunk Pacific Railway Company for the right-of-way on IR 133A and IR 133B and for station grounds on IR 133A. Paragraphs 26 and 34 also relate to the subject matter in another Specific Claim, SCT-6004-19, and, specifically, the issue about a taking of lands from either IR 133A or IR 133B.
30. In response to paragraphs 27 to 33 of the Amended Amended Amended Declaration of Claim, Canada states that:
- a. Paragraphs 27 to 33 relate to the CNR and its proposal in or about 1906 for a right-of-way through IR 133A or IR 133B.
  - b. Ultimately, the CNR did not proceed with its proposal for a right-of-way through IR 133A or IR 133B.
  - c. As a result, the CNR did not take any lands from either IR133A or 133B.
31. In further response to paragraph 33, Canada states that the Grand Trunk Pacific Railway applied for a right of way on December 21, 1906.
32. In response to paragraphs 35 and 37 of the Amended Amended Amended Declaration of Claim, Canada states that on July 23, 1906, J.K. McLean reported to J.D. McLean, Secretary of Indian Affairs about re-running the outlines of the Paul First Nation Reserve pursuant to one of the conditions made by Inspector Markle with the Paul First Nation. Canada further states that on August 2, 1906, Secretary McLean requested Surveyor McLean proceed to the Paul First Nation Indian Reserve, No. 133A, and 133B to retrace its boundaries.

~~17.18.14. In reply to paragraph 14, Canada admits that Indian Agent Gibbons met with the PFN Paul First Nation on August 14, 1906 to discuss the surrender of IR 133B. Canada has no knowledge of whether this discussion was for the purpose of establishing a railway townsite or resort community.~~

33. In response to paragraph 38 of the Amended Amended Amended Declaration of Claim, Canada admits that Indian Agent Gibbons met with Paul First Nation on August 14, 1906 to discuss the surrender of IR 133B.

34. In response to paragraph 44 of the Amended Amended Amended Declaration of Claim, Canada admits a surrender document dated September 11, 1906 contains the marks of six Paul First Nation members and the signatures of three Paul members (all male) which surrendered IR 133B. Canada states that an affidavit, dated September 13, 1906, was signed by James Gibbons and bears the mark of David Bird. It was sworn before a Justice of the Peace for the Province of Alberta. John Foley signed as a witness, and he is known to be a translator used within the Edmonton Agency.

~~35.18.19.15. In reply response to paragraph 17 46, Canada admits that there are 10 names of PFN Paul First Nation members listed in the surrender; nine marked their names or signed the document and one did not. Canada has no knowledge of whether one PFN member was opposed.~~

36.19.20.16. In reply response to paragraph ~~19~~ 48, Canada admits that two of PFN Paul First Nation members who signed the surrender document were not described as heads of families or individuals in the PFN Paul First Nation payroll prepared for the purpose of paying annuities as required by Treaty No. 6. Paylist records do not determine the number of band members who are eligible to vote at a surrender meeting. ~~Canada has no knowledge of the number of persons who were eligible to participate in the surrender vote or the exact number of adult males in the PFN population at the time of the surrender~~ states that the affidavit sworn on September 13, 1906 before a Justice of the Peace attests that a majority of the eligible voters then present assented to the surrender. Canada further states that

¶The reference in the last sentence to “the time of survey” should be to “the time of *surrender*”.

~~20, 21.~~ ~~In reply to paragraphs 20, 21, 22, and 23, Canada admits that Chief David Bird and Indian Agent Gibbons executed an affidavit on September 12, 1906 before a Justice of the Peace. Mr. John Foley signed the affidavit as a witness and is known to be a translator used within the Edmonton Agency. Canada does not agree with the other statements made in these paragraphs, which constitute legal interpretation or argument rather than fact.~~

37. In response to paragraphs 49 to 52 of the Amended Amended Amended Declaration of Claim, Canada states that the September 13, 1906 affidavit certified that:

- a. The 1906 Surrender was assented to by Chief Bird and a majority of the male members of Paul First Nation of the full age of 21 years present at the meeting.
- b. The assent was given at a meeting of Paul First Nation summoned for the purpose of the 1906 Surrender and according to Paul First Nation’s rules.
- c. Those present and voting at the meeting were members of Paul First Nation that habitually resided on the Reserve and had interest in the land mentioned in the 1906 Surrender.

~~21, 22, 17.~~ ~~Canada admits the facts in paragraph 20 24 and, for clarity, states that the burial ground on IR 133B was small and that those who had used this small ground were present at the meeting and signed the surrender, excepting one named Reindeer. Canada further states that the Department of Indian Affairs (the “DIA”) the DIA took steps to ensure that the bodies in the burial ground would be carefully moved and that the members of the PFN Paul First Nation could be exclusively employed in this work if they wished.~~

38. In response to paragraph 53 of the Amended Amended Amended Declaration of Claim, Canada admits that on September 17, 1906, J.K. McLean, Surveyor, reported to J.D. McLean, Secretary that the surrender was not completed until September 11th and, in the meantime, he “ran outside streets”.

39. In response to paragraph 58 of the Amended Amended Amended Declaration of Claim, Canada admits that on October 24, 1906, James Gibbons, Indian Agent advised J.A. Markle that the surveyor plotted a town-site on the surrendered fractional sections of Paul’s reserve that jutted north beyond the general boundary of the reserve.

~~40.22.23-18.~~ In reply response to paragraph ~~24~~ 25 59, Canada admits that selected lots of the surrendered lands were sold by public auction in May 1910 and again in June 1912. Canada states that it obtained fair market value for the lots sold. Canada has ~~no~~ incomplete knowledge of the precise numbers of lots sold on these dates. Individual lots were sold after that time until the 1950s.

~~41.23.24.~~ In reply response to paragraph ~~26~~ 60, Canada admits most of the surrender lands were not sold. Two parcels of land were returned to reserve status as reconstituted IR 133B; 420 acres in 1936 and 23.6 acres in 1953.

~~42.24.25-19.~~ In reply response to paragraph ~~23~~ 27 61, Canada admits that Canada and ~~the~~ PFN Paul First Nation signed a Memorandum of Intent (~~the~~ “Memorandum”) outlining a plan for certain unsold lots that were part of the IR 133B surrender to be returned to reserve status. Canada admits that these unsold lots have not yet been returned to reserve status, but, for clarity, states that the Memorandum is not binding on the parties until such time as the final agreement is reached. Canada has no knowledge of the exact number of lots or acres that the Memorandum contemplates being returned to reserve status, but states that the lots to be returned to reserve status are the unsold lots within the townplot of Wabamun, Alberta lying within the areas outlined in red in Schedule “C” of the Memorandum. ~~Canada denies that the Memorandum was signed in 1995 and, f~~For clarity, Canada states that the Memorandum was signed by Canada, the Government of

Alberta, ~~the PFN~~ Paul First Nation, and the County of Parkland on January 17, 1996.

**1906 Surrender**

43. In response to paragraphs 63(a), 64 to 66 of the Amended Amended Amended Declaration of Claim, Sections 38 and 39 of the 1886 *Indian Act* were in force at the time of the 1906 Surrender and set out the requirements governing surrenders of reserve lands. Canada states that it complied with the requirements of the 1886 *Indian Act* and that the 1906 Surrender is valid and legal.
44. In further response to paragraphs 63(a), 64 to 66 of the Amended Amended Amended Declaration of Claim, Canada restates paragraph 37 of its Amended Amended Amended Response.

**Pre and Post Surrender Fiduciary and Trust Duties**

45. In response to paragraph 63(b) and paragraphs 67 to 74 of the Amended Amended Amended Declaration of Claim, Canada denies that it breached both its pre-surrender and post surrender fiduciary and trust duties as:
- a. Canada informed Paul First Nation of the terms and conditions of the 1906 Surrender prior to its execution.
  - b. Canada was not required to withhold its consent to the 1906 Surrender as the terms of the 1906 Surrender were not foolish or improvident, and did not amount to exploitation.
  - c. Canada did not engage in tainted conduct.
46. In further response to paragraph 63(b) and paragraphs 67 to 74 of the Amended Amended Amended Declaration of Claim, Canada states that:

- a. On August 15, 1906, Indian Agent Gibbons reported on his meeting with Paul First Nation, held on August 14, 1906, that the majority were willing to surrender the land in question on a condition.
  - b. Paul First Nation's condition was "that so much thereof as borders on the Lake and is suitable for a townsite or resort should be plotted and put up for sale in, say, 1 acre lots, and the remainder disposed of to the best advantage for them".
  - c. Agent Gibbons recommended, if the Department were to accede to the proposal of Paul First Nation, that the surrender forms be sent as soon as possible and Surveyor McLean be instructed to make the necessary surveys.
47. In further response to paragraph 63(b) and paragraphs 67 to 74 of the Amended Amended Declaration of Claim, Canada states that:
- a. On September 1, 1906, Deputy Superintendent General Pedley sent blank surrender forms to Indian Agent Gibbons to be submitted to Paul First Nation.
  - b. If the surrender was granted, Surveyor McLean was to survey the surrendered tract so that "the property may be disposed of, as desired by the Indians."
  - c. Surveyor McLean attended the surrender meeting and on the following day, September 12, 1906, he reported that it was decided at the meeting with Paul First Nation that "when surrender was given to reserve the beach from being sold, a width of about 150 feet along the Lake including a street to be reserved from sale by the Department, such width or widths to be decided by myself when making the survey".
  - d. Canada restates paragraph 37 of its Amended Amended Amended Response.

48. In further response to paragraph 63(b) and paragraphs 67 to 74 of the Amended Amended Declaration of Claim, Canada states that:

a. The CNR applied for a right of way through IR 133A and 133B on October 13, 1906.

b. By July 31, 1911, the DIA became aware that the CNR abandoned their line through IR 133A and 133B. This was confirmed by the CNR on August 18, 1911.

49. In further response to paragraph 63(b) and paragraphs 67 to 74 of the Amended Amended Declaration of Claim, Canada refers to paragraphs 74-77 below.

~~50.25.26-7.~~ Unless expressly admitted, Canada denies each and every remaining allegation of fact or law in the claim.

#### **IV. Statement of Facts (R. 42(e))**

~~51.26.27-20.~~ In addition to the foregoing, Canada pleads the following facts.

~~52.27.28-21.~~ The ancestors of ~~the~~ Paul First Nation entered into Treaty No. 6 through an adhesion dated August 21, 1877.

~~53.28.29-22.~~ By Order in Council PC 1633 dated June 16, 1892, IR 133A and 133B, containing approximately 20,928 acres or 32.7 square miles of land, were set aside for ~~the~~ PFN Paul First Nation.

~~54.29.30-23.~~ On May 10, 1906, David Bird was approved as Chief of ~~the~~ PFN Paul First Nation and was appointed for an indefinite term.

~~55.30.31-24.~~ By June, 1906, the CNR had surveyed a projected line through IR 133A and 133B but this line had not yet been approved.

- ~~56.31.32.25.~~ On June 3, 1906, Indian Agent Gibbons wrote to the DIA that the new railway line of the CNR was rapidly approaching IR 133A and 133B and estimated the railway would traverse approximately 9 miles of the reserve.
- ~~57.32.33.26.~~ In a letter of June 26, 1906 to Secretary McLean, Inspector Markle noted that he had been asked by ~~the PFN~~ Paul First Nation for his opinion on whether it would be wise for them to surrender the part of the reserve north of the projected line of the railway, including the part in township 53, provided that the railway was built on the projected survey. Markle declined to give a definitive answer to ~~the PFN~~ Paul First Nation.
27. — ~~Also in the summer of 1906, White Whale (Wabamun) Lake, with its proximity to Edmonton, was attracting attention as a prospective summer resort.~~
- ~~58.33.34.28.~~ By letter dated July 5, 1906, Mr. Taylor of The W.S. Weeks & Co, an Edmonton real estate firm, wrote to the DIA referring to a meeting he had with ~~the PFN~~ Paul First Nation. Taylor advised that ~~the PFN~~ Paul First Nation would consent to a sale of a portion of the reserve north of the proposed railway and that they were “anxious to find out if such an agreement would meet with the approval of your department.”
- ~~59.34.35.29.~~ Secretary McLean replied to Mr. Taylor on July 16, 1906 stating that the DIA was not yet in a position to deal with the matter as the CNR had not filed its plan yet.
- ~~60.35.36.30.~~ On July 31, 1906, Secretary McLean wrote to Indian Agent Gibbons that an application had been made for a portion of IR 133A and 133B and asked Agent Gibbons to report whether the land was occupied, what improvements were located on it, and if the band would be willing to surrender the land for sale.
- ~~61.36.37.31.~~ By letter dated August 15, 1906, Indian Agent Gibbons reported on his meeting with ~~the PFN~~ Paul First Nation, which was held on August 14, 1906. He reported that “the majority were willing to surrender the land in question on condition that so much thereof as borders on the Lake and is suitable for a townsite or resort should be plotted and put up for sale in, say, 1 acre lots, and the remainder

disposed of to the best advantage for them.” and He added that IR 133B could be considered unoccupied and unimproved, ~~except for~~ as the two or three ~~Indians~~ living ~~in shacks on it~~ there make no claim for compensation. Surveyor McLean was expected to arrive to re-survey IR 133A and 133B to clearly mark the boundaries and Agent Gibbons recommended if the Department were to accede to the proposal of ~~the PFN~~ Paul First Nation, that the surrender forms be sent as soon as possible and Surveyor McLean be instructed to make the necessary surveys.

62.37.38.32. On September 1, 1906, Deputy Superintendent General Pedley sent blank surrender forms to Indian Agent Gibbons and authorized him to submit them to ~~the PFN~~ Paul First Nation. If the surrender was granted, Surveyor McLean was to be instructed to survey the surrendered tract so that “the property may be disposed of, as desired by the Indians.”

63.38.39.33. Surveyor McLean was instructed to retrace the boundaries of IR 133A and 133B on August 2, 1906 and he completed this task on September 6, 1906. This retracing arose from ~~the PFN~~ Paul First Nation’s request for these boundaries to be re-surveyed because the reserve limits were no longer clearly distinguishable.

64.39.40.34. The surrender of IR 133B, comprising 635 acres, was taken on September 11, 1906.

65.40.41.35. Surveyor McLean attended the surrender meeting and on the following day, September 12, 1906, he reported:

It was decided at the meeting with the Indians when surrender was given to reserve the beach from being sold, a width of about 150 feet along the Lake including a street to be reserved from sale by the Department, such width or widths to be decided by myself when making the survey.

66.41.42.36. The Surrender Affidavit was sworn by Chief Bird and Indian Agent Gibbons and witnessed by John Foley, on September 13, 1906 before a Justice of the Peace of Alberta. The surrender was approved on September 27, 1906 by Order-in-Council PC 1939.

## **No Railway Station is Built**

~~67.42.43~~<sup>37</sup>. The CNR applied for a right of way through IR 133A and 133B on October 13, 1906 and the Grand Trunk Pacific Railway (“GTPR”) applied for its right of way on December 21, 1906.

~~68.43.44~~<sup>38</sup>. On December 31, 1906, the CNR made a proposal to the DIA, with terms very favourable to the CNR and without a commitment to build a station on the surrendered lands. This proposal was not accepted by the DIA.

~~69.44.45~~<sup>39</sup>. GTPR’s route was approved first and Order-in-Council PC 36 dated January 8, 1908 approved the sale of land in IR 133A and 133B for the railway right of way.

~~70.45.46~~<sup>40</sup>. In 1908, in response to a query by Secretary McLean as to the CNR’s intention to put a station on the surrendered lands, the CNR advised that the approved GTPR rail line crossed the CNR line at several points and therefore officials from the two railways would have to meet to discuss adjustments to the line.

~~71.46.47~~<sup>41</sup>. By September 1, 1908, the GTPR informed the DIA that it would not build a station on the surrendered lands because it was practically impossible to put a station on the surrendered lands due to the steep gradients. Despite this, the GTPR built a railway across the lands in and around 1909, and a railway stop in and around 1911, on a portion of the surrendered land.

~~72.47.48~~<sup>42</sup>. By June 28, 1909, the CNR had received approval for the route of their rail line. In response to a query from Secretary McLean as to whether the CNR would locate a station on the surrendered lands, the CNR responded on August 23, 1909 stating that construction work had been postponed.

~~73.48.49~~<sup>43</sup>. By July 31, 1911, the DIA became aware that the CNR abandoned their line through IR 133A and 133B. This was confirmed by the CNR on August 18, 1911.

## Sales of Surrendered Land

- ~~74.49.50.~~ Canada had numerous and ongoing negotiations, prior to selling the surrendered lands, in respect of rights-of-way for pending railway lines as well as the establishment of a station(s) on the surrendered lands.
- ~~75.50.51.~~ Portions of the surrendered lands were sold at auction in 1910 and 1912. Both auctions were advertised broadly to the general public.
- ~~76.51.52.~~ Upset prices were assigned to lots put up for sale at these auctions and the lots sold at both auctions realized their upset prices at a minimum.
- ~~77.52.53.~~ Several valuations of the surrendered lands determined the market value of the lots, both before and after the auction sales.
- ~~78.53.54.~~ Approximately 420 acres were reinstated to Paul First Nation and became a reconstituted IR 133B in 1936 as the land was no longer required for the townplot of Wabamun, and additional land was required by Paul First Nation for agricultural purposes. A further 23.63 acres was reinstated to IR 133B in 1953.
- ~~79.54.55.~~ The remaining unsold surrendered lands cannot be reinstated to reserve status until certain jurisdictional and administrative issues can be resolved with Paul First Nation, Canada, the Province of Alberta, and the County of Parkland.

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

- ~~80.55.56.44.~~ Canada ~~seeks~~ denies the entitlement of the relief sought and seeks to have the claim dismissed in its entirety dismissal of the claims set out in the ~~Amended~~ Amended Amended Declaration of Claim except for the post-surrender breach of fiduciary duty from the transfer of the Beach Lands.
- ~~81.56.57.45.~~ Canada seeks its costs in the proceedings.

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

~~82.57.58.46~~. Email address for the service of documents:

~~ursula.tauscher@justice.gc.ca~~ ~~shaun.mellen@justice.gc.ca~~ /  
~~bryan.wigger@justice.gc.ca~~

Dated this 4<sup>th</sup> ~~9<sup>th</sup> day of August, 2019~~ ~~November, 2016~~ ~~day of December 2019~~  
~~25th day of November, 2020.~~

*Bryan Wigger* “Digitally signed”

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