

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

LAC LA RONGE BAND
AND
MONTREAL LAKE CREE NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 8, 2011	D E P O S E
Guillaume Phaneuf		
Ottawa, ON	1	

Claimants

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
as represented by the Minister of Aboriginal Affairs and Northern Development Canada

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*.

December 8, 2011

Guillaume Phaneuf

(Registry Officer)

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I. Claimant (R. 41(a))

1. The Claimants, the Lac La Ronge Band and the Montreal Lake Cree Nation (the “First Nations”), confirm they are First Nations within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, located in the Province of Saskatchewan.

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) The First Nations have filed a claim with the Minister.
 - 16(1)(d) Three years have elapsed since the Minister notified the First Nations in writing of the Minister’s decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.
3. The First Nations submitted the Little Red Reserve 106A - 1904 Timber Surrender and Sale Claim (Timber Claim) in 2004 asserting that the surrender of the spruce timber on Little Red Reserve failed to comply with the surrender provisions of the *Indian Act*; that timber was taken in trespass; that there was mismanagement of the sale proceeds; and that the sale proceeds were used to acquire supplies which should have been provided under Treaty #6.
4. On December 15, 2006, Canada recognized it had an outstanding obligation as a result of Canada’s failure to comply with the surrender provisions under the 1886 *Indian Act*, resulting in the illegal sale of timber from the Little Red Reserve. Although Canada did not rule on the other allegations they, nevertheless, wanted a full, final and formal release on all aspects of the 1904 Timber Surrender Claim, with the exception of the assertion that sale proceeds were used to acquire supplies which should

have been provided under Treaty; this to be dealt with as a separate specific claim submission.

5. In February and March 2007 the First Nations agreed and in August 2007 all parties agreed to proceed with negotiations on the basis of the December 15, 2006 letter, on the understanding the settlement would address all allegations raised, with the exception of the allegation related to sale proceeds used to acquire supplies which should have been provided under Treaty.
6. From August 2007 to September 2010 research and negotiations on the quantum of timber harvested and compensation proceeded then appeared to reach an impasse. Two memos on the question of trespass were prepared by legal counsel for the First Nations in September 2010 and Justice concurred in November 2010 with negotiations proceeding on the basis of an unlawful harvesting of timber in trespass. The question of mismanagement of the sale proceeds was also discussed.
7. Negotiations proceeded through fall 2010 with the First Nations submitting a settlement proposal in February 2011 on the illegal harvesting of spruce timber without a valid surrender, as well as the illegal and unlawful harvesting of timber in trespass. The question of compensation for mismanagement was dealt with as an offset.
8. On September 21, 2011 the parties met to consider the First Nation's settlement proposal. It was evident the parties could not reach a consensus on the volume or compensation for the spruce timber unlawfully harvested. Furthermore, following further submission on Crown liability for third party trespass, Justice now took the position that Canada was not liable for any compensation related to the failure to pursue the penalty provisions under the *Indian Act* since the *Act* did not impose a fiduciary duty on the Crown to prosecute third parties for the unlawful harvesting of timber in trespass.

9. As a result of an impasse on the question of compensation for the illegal surrender of the timber and rejection of the argument for compensation arising from timber unlawfully taken in trespass, the parties agreed that negotiations were at an end and that the claim should proceed to the Tribunal for a determination.

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

10. Although the First Nations are uncertain of what the potential compensation might be and understand it could be over \$150 million, for the purposes of these proceedings the First Nations do not seek compensation in excess of \$150 million.

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

11. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:
 - (b) 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.
 - (c) breach of a legal obligation arising from the Crown’s administration of reserve lands, Indian moneys or other assets of the First Nations.

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

12. The survey of Little Red Reserve 106A (Little Red), amounting to 56.5 square miles for the Lac La Ronge and Montreal Lake Bands, took place in 1897 and the reserve was confirmed by Order in Council in 1900.

13. Based on interest expressed locally, concern about fallen timber, local timber men working the area and the reserve's proximity to the Red River and Prince Albert, Indian Agent Macarthur felt it was in the Indians' best interests to sell the spruce timber on Little Red, which he estimated to be about 2.5 million board feet.
14. A surrender of the merchantable spruce timber on Little Red was taken on January 16, 1904 but only from the few residents on Little Red and not from Chief and Council or members of the Lac La Ronge or Montreal Lake Bands, who were not consulted nor did they approve the surrender through a formal surrender vote.
15. The surrender of the merchantable spruce timber on the "Montreal Lake Reserve, No. 106A" (Little Red) was approved by Order in Council on February 4, 1904.
16. A tender was advertised in June 1904 for standing and fallen spruce timber nine inches in diameter at the stump with a deposit of 10% of the estimated value of the timber, "which will be forfeited in the event of the successful tenderer failing to carry out the undertaking."
17. The tender was to also state the bonus that would be paid in cash for the timber to be cut over a five year period, was subject to ground rent, renewal fee and Crown dues at tariff rate, and was payable under sworn returns made by a qualified culler, certified by the foreman and furnished to the Department.
18. On August 22, 1904 the Canada Territories Corp. was informed their tender had been accepted with the \$5,500 bonus and a cheque for the 10% of the estimated value of the timber and a license would be issued once the balance of payment had been received.
19. On March 3, 1905 Timber Inspector Chitty informed the Deputy Minister the Corporation had not paid the balance, having paid only \$550 of the \$5,500 bonus, noting that this, and the 10% deposit, could be forfeited

if the Corporation didn't fulfill its agreement. A reminder notice was sent to the Corporation.

20. On May 3, 1905, Chitty wrote to the Corporation that it had not responded to his notice and in a note asked the Lands Branch to ascertain whether any timber had been cut.
21. On May 5, 1905 a letter stamped by the Deputy Superintendent General Pedley was sent to the Corporation advising it the Department did not intend to proceed with forfeiture of the deposit but they would not permit any further delay.
22. On June 12, 1905 Inspector Chisholm stated that to his knowledge only about "20 sticks" had been cut and that he would inquire about timber cut in trespass when he was in the area in August.
23. On June 20, 1905 Timber Inspector Chitty informed Pedley the Corporation had not responded to his letter of May 5th.
24. On September 8, 1905 Chitty reported the Sturgeon Lake Lumber Company had cut six skids and a set of derrick sticks, amounting to 20 trees over the last two months.
25. On September 15, 1905, Chitty reported to Deputy Superintendent General Pedley that timber was being cut on Little Red without authority and asked whether the timber should be seized "which is the usual practice".
26. A marginal note on the memorandum advised the agent to make a demand on the corporation for immediate payment, inform them the Department is aware timber is being cut without authority and liable to seizure, with the Inspector to be advised no more timber is to be cut until instructed.
27. On September 18 the Indian Agent was ordered to stop the logging operations on Little Red immediately and prevent removal of the timber from the berth. A letter was sent to the corporation advising them what

they were doing was “quite irregular and contrary to the provisions of the Timber Regulations” and the timber was liable to seizure.

28. On February 9, 1906, Inspector Chitty reported that the outstanding money had still not been paid.
29. On May 26, 1906, Chitty again informed Pedley the Corporation had failed to respond to the letter dated February 12, 1906 requesting payment. Another letter was sent requesting payment by May 29, 1906 otherwise the corporation’s deposit would be forfeited.
30. Although on June 21, 1906 the Corporation forwarded the bulk of the balance owing, the Department advised it a license would not be issued until it had paid the required ground rent, license fee and bonds.
31. In July, 1906 the Canada Territories Corporation requested the license be issued to the Sturgeon Lake Lumber Co., but Secretary McLean replied on August 3rd that, before a license could be issued, sworn returns of the timber cut would have to be provided along with payment of the ground rent, license fees and dues on the timber cut.
32. On October 10, 1906 the return provided by the Sturgeon Lake Lumber Co., for the Canada Territories Corporation identified that, between August 22, 1904 and September 17, 1906, 6 pieces of pine and 48 saw logs of tamarack had been cut.
33. The Sturgeon Lake Lumber Company paid the dues on October 22nd and the Canada Territories Corporation paid the ground rent, license fee, renewal fee and transfer fee on October 28, 1906
34. On November 27, 1906, the Sturgeon Lake Lumber Co. submitted a surety bond for the timber on Little Red and asked to have the timber license issued. On December 3rd the company reported it was logging on Little Red.

35. Because the transfer from the Corporation to the Company had not been received, the Department advised the Company on December 4th the license could not be issued.
36. On February 1, 1907 the transfer was made and sometime in February 1907 Timber License No. 135 was issued to the Sturgeon Lake Lumber Co.
37. The culler's return for spruce timber harvested by the Sturgeon Lake Lumber Co. on Little Red in the 1906-1907 season was reported to be 45,265 pieces or 1,584,646 board feet.
38. The Company did not report any timber harvested during the 1907-1908 season due to commitments elsewhere but the culler's return for the 1908-1909 season, after the license expired on April 30, 1909, recorded 28,031 pieces or 815,081 board feet of spruce cut by the Company.
39. Although Bell, for the Company, earlier inquired why his license would expire when he estimated there was still a million board feet available, he reported that there were only a few scattered trees remaining after the license had expired.
40. Between 1904 and 1910, a total of \$9,024.81 was collected by the Department from the companies, of which \$8,626.82 was deposited into the Montreal Lake Account, along with 42,128.17 in interest by November 1914. Lac La Ronge was only credited with \$275 in 1904 representing half the initial payment by the Canada Territories Corporation as part of the tender.
41. It was only in September 1910 that the Department realized an error in distribution. A redistribution of timber revenues was executed beginning in November 1915 with a single lump sum payment, into the Lac La Ronge Account, of \$6,679.45 and \$1,825.33 in interest periodically withdrawn, on an annual basis, from the Montreal Lake Account until approximately 1925 when the full amount due was paid.

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

A. Breach of a legal obligation:

42. The *Indian Act*, R.S.C. 1886, c. 43; as amended S.C. 1890, c. 29, s.26 provided, in part, that a person, who, without a license from the Superintendent General, or someone deputed by him, cuts, carries away or removes from the reserve, any trees, saplings, timber, cordwood, shall, upon conviction before a stipendiary or police magistrate or any two justices of the peace or Indian agent, incur a penalty of \$20 per tree cut or removed; such penalties to be paid to the Minister of Finance and Receiver General to be disposed of for the use and benefit of the Band.
43. From August 22, 1904 to September 16, 1906, six pieces of pine and 48 saw logs of tamarack were cut illegally since the company had no authority by tender or license to harvest these. The culler's return for the 1906-1907 period reported 45,265 pieces or 1,584,646 board feet of spruce timber harvested, the bulk of which had been harvested prior to a license being issued.
44. From August, 1904 to February, 1907, when the license was finally issued, the Department was aware that Canada Territories Corporation/Sturgeon Lake Lumber Company was cutting timber illegally, without authority and operating in trespass but failed to initiate or proceed with any prosecution, seize the timber, pursue a forfeiture or enforce any penalties available to them, despite repeated threats to do so.
45. There is no evidence the First Nations were informed by the Department that the Company was logging without authorization. All correspondence concerning how the Department should address the

unlawful logging and what was expected of the Company was internal or communicated to the Company.

46. It is submitted, that under circumstances of trespass involving the illegal and unauthorized harvesting of timber on Little Red, the courts have been quite clear the Crown has an ongoing fiduciary duty to act with reasonable diligence, as well as in the best interests of the First Nations, to protect their proprietary interests by moving decisively and proactively to take advantage of the statutory authorities available to it, in this case, the penalty provisions under s.26 of the *Indian Act*. Failure to do so denied the First Nations the compensation they would have received under operation of s. 26. Furthermore, such action would have deterred additional unlawful takings.
47. The grounds for a breach of an outstanding legal obligation, in this claim, is consistent with the findings by Canada, in another Montreal Lake Cree Nation unlawful trespass claim, where the Government of Canada, on June 14, 2011, accepted the claim for negotiation as disclosing an outstanding lawful obligation under the Specific Claims Policy for, in part, failure to remove individual trespassers and for allowing unlawful occupancy prior to a permit being issued, contrary to provisions of the *Indian Act*.

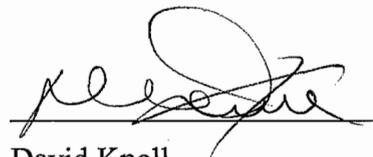
B. Compensation for the unlawful surrender of timber:

48. Negotiations reached an impasse over the question of the volume of spruce timber harvested. The First Nations submit the volume of spruce timber harvested on Little Red by the Canadian Territories Corporation/Sturgeon Lake Lumber Company was in excess of estimated volume of 2.5 million board feet or the reported volume of approximately 2,446,344 fbm of spruce timber harvested.

49. It is submitted there was considerable under-reporting of the spruce timber harvested when one takes into consideration:

- (a) what was reported as surveyed;
- (b) what was harvested in adjacent timber berths with similar vegetation cover types and land uses;
- (c) what was settled in an adjacent timber claim;
- (d) conclusions based on an analysis of timber production capability that took into account soil types, climate and topography of the eco-region, along with existing forest cover types and land uses, detailed timber cruising and reference to forest inventory maps;
- (e) the production capacity and what was produced by the Prince Albert mill during the time timber was harvested on Little Red;
- (f) audits which revealed under-reporting by the Sturgeon Lake Lumber Company; and
- (g) the ability of the timber companies to exploit the harvesting of available spruce from Little Red which was in close proximity to Prince Albert mill with easy access to transportation routes, relative to other timber berths.

Dated this 8th day of December, 2011.



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