

SPECIFIC CLAIMS TRIBUNAL	
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July 26, 2021	
Susie Thorsley	
Ottawa, ON	14

SCT File No.: SCT - 7005 - 20
SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SNAW-NAW-AS NATION

CLAIMANT

v.

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

RESPONDENT

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

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

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

1. The Snaw-naw-as Nation (“Snaw-naw-as”) submitted a claim to the Minister of Crown-Indigenous Relations (the “Minister”) on October 16, 2008 alleging, among other things, that the federal Crown (“Canada”) breached fiduciary obligations and obligations under the 1854 Douglas Treaty with the Saalequun (the “Saalequun Treaty”) by failing to set aside an area at the head of Nanoose Bay as a reserve.
2. The Minister notified Snaw-naw-as in writing on December 3, 2010 of his decision not to accept the claim for negotiation.

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

3. Canada does not accept the validity of any of the claims of Snaw-naw-as in the Declaration of Claim. ~~In particular, evidence suggests that Snaw-naw-as were not successors of the Saalequun Tribe that signed the Saalequun Treaty of December 23, 1854. Canada also denies the alleged failure on its part to fulfil a legal obligation to provide lands or other assets under a treaty or other agreement between to Snaw-naw-as and Canada. Canada has maintained that the Snaw-naw-as are not successors under the Saalequun Treaty and Snaw-naw-as has chosen not to pursue allegations that Canada breached obligations to them under the Saalequun Treaty in this claim before the Tribunal.~~

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

4. Canada admits the following paragraphs as set out in Part V of the Declaration of Claim: 5, 6, 7, 10, 12, 13, 14, ~~16~~, 29, 31, and 35.
5. In reply to paragraph 8 of the Declaration of Claim, Canada:
 - a. admits that the Spanish recognized British sovereignty over Vancouver Island in or about 1794; and
 - b. has no knowledge of whether the Indigenous peoples of Vancouver Island recognized or agreed to the British assertion of sovereignty.
6. Canada has no knowledge of the following paragraphs as set out in Part V of the Declaration of Claim: 9, 11, 17, 21, and 34.
- ~~7. In reply to paragraph 15 of the Declaration of Claim, Canada does not agree that Snaw-naw-as “was part of the Saalequun Tribe,” the group that signed the Saalequun Treaty in 1854.~~
8. In reply to paragraph 18 of the Declaration of Claim, Canada:
 - a. admits that *The Land Proclamation*, Colony of Vancouver Island, SBC 1861, c 27, and *The Land Proclamation*, Colony of Vancouver Island, SBC 1862, c 9 (collectively, the “*Land Proclamations*”), passed by James Douglas, then

Governor of the Colony of Vancouver Island (“Governor Douglas”), opened lands on Vancouver Island for pre-emption; and

- a. denies that the *Land Proclamations* use the words “specific” or “protection” in relation to “Indian villages and settlements.” The wording of the *Land Proclamations* is that lands, “except for Indian villages and settlements” were open for pre-emption, and there is no further mention of villages or settlements.
9. In reply to paragraph 19 of the Declaration of Claim, Canada:
 - a. denies that the “Government of the Colony of Vancouver Island” identified a reserve for Snaw-naw-as at the head of Nanoose Bay; and
 - b. denies that the Surveyor-General communicated the acreage of the claimed Original Reserve when he reported to the legislature in 1863.
 10. In reply to paragraph 20 of the Declaration of Claim, Canada has no knowledge of the existence of the claimed Original Reserve; and subparagraphs a, b, c, and d consist of legal argument and not fact.
 11. In reply to paragraph 22 of the Declaration of Claim, Canada:
 - a. admits that Robert Brown headed the Vancouver Island Exploring Expedition in 1864, visiting Nanoose Harbour, that he heard Indigenous peoples shooting for game, and that he observed potato fields and the presence of a log shanty; and
 - b. asserts Snaw-naw-as’ claim that Robert Brown observed evidence of “continued occupation” of the head of Nanoose Bay or the site of the claimed Original Reserve is legal argument and not fact.
 12. In reply to paragraphs 23, 26, 32, and 36 of the Declaration of Claim, Canada has no knowledge of the existence of the claimed Original Reserve.
 13. In reply to paragraphs 24, 26, and 27 of the Declaration of Claim, Canada says that the colonies of Vancouver Island and British Columbia united in 1866, forming the “Colony of British Columbia,” rather than the “United Colonies of Vancouver Island and British Columbia.”
 14. In reply to paragraph 25 of the Declaration of Claim, Canada denies the existence of any legislation in effect at the time requiring consultation with Indigenous people respecting reserve creation.
 15. In reply to paragraph 28, Canada admits that British Columbia published a return of Government Reserves in 1873 listing a “reserve” at “Nanoose Harbour,” 3470 acres in size, but has no knowledge of the purpose of that reserve or the date of reservation.
 16. In reply to paragraph 30 of the Declaration of Claim, Canada:
 - a. admits that the Joint Indian Reserve Commission visited Nanoose Bay in 1876;

- b. has no knowledge of whether the Commission possessed particular documents during their visit or made inquiries concerning any previously created reserves; and
- c. has no knowledge of the existence of the claimed Original Reserve.

17. In reply to paragraph 33 of the Declaration of Claim, Canada:

- a. admits that members of the Joint Indian Reserve Commission met with Snaw-naw-as in Nanaimo after they sketched out their village; and
- b. has no knowledge of the existence of the claimed Original Reserve.

IV. Statements of Fact (R. 42(a))

~~18. Between 1850 and 1854, Governor Douglas made a series of agreements with Indigenous peoples on Vancouver Island, which came to be known as the Douglas Treaties.~~

~~19. On December 23, 1854, the Saalequun Treaty being the fourteenth and last of the Douglas Treaties was signed at Nanaimo. The document consists of a six page list of 159 names under the heading "Sarlequun Tribe" and to the right of each name is the notation "his X mark." At the end of the list are the words:~~

~~Done at Fort Nanaimo or Colville Town this 23rd day of December in the year of our Lord 1854 in the presence of us who in the presence of each other have hereunto affixed our names.~~

~~20. In correspondence dated December 26th, 1854 Governor Douglas provided additional information regarding the terms of the Saalequun Treaty:~~

~~"I concluded a negotiation on the 23rd Instr. with the Nanaimo Indians for the purchase of the District claimed as their hereditary possession of that Tribe....The District thus acquired extends from Dodds narrows in the Canal de Arro to a head land eight miles north of Colville Town, which is included with all Islands on the coast in the purchase. The coast line may in a rough estimate be given as 20 miles in length by 10 miles in breadth forming about 200 square miles of country, less a small reserve for village sites and cultivated fields which remain for the use of the Indians. The deed of sale was signed by every male adult member of the Tribe, chiefs, as well as the common class of people and they all appeared to be perfectly satisfied with this arrangement."~~

~~21. The traditional territory of the Saalequun extended from Dodd Narrows in the south to a prominent headland, Neck Point, in the northwest; the distance between these two points is approximately 20 miles measured along the coast. Neck Point is approximately eight miles from Colville Town measured along the coast.~~

~~22. It is uncertain whether the Snaw naw as are descendants of the Saalequun or Sarlequun Tribe.~~

- ~~23. In an 1856 census of Vancouver Island's Indigenous population, Douglas recorded the populations of various groups. The survey lists the Nanaimo Tribe and is broken down by "family." A place of habitation is provided for each "family" along with sex and age categories. According to the census, the Nanaimo Tribe consisted of five "families" described as follows:~~
- ~~a. "Soulequun" inhabiting the "Nanaimo District" consisting of 159 "men with beards," 160 women, 300 boys, and 324 girls for a total population of 943;~~
 - ~~b. "Nono oss" inhabiting "Nono oss Bay" consisting of 20 "men with beards," 23 women, 28 boys, and 32 girls;~~
 - ~~c. "Saathlum" inhabiting "Valdez Inlet" consisting of 12 "men with beards," 15 women, 17 boys and 19 girls;~~
 - ~~d. "Comox" inhabiting "Point Holmes" consisting of 85 "men with beards," 93 women, 150 boys and 165 girls; and~~
 - ~~e. "Puntlach" inhabiting "Puntlach River" consisting of 10 "men with beards," 13 women, 14 boys and 16 girls.~~
- ~~24. Multiple censuses, the academic scholarship, and various reserve commissions differentiate between the Snaw naw as and the Saalequun.~~
- ~~25. When the Hudson's Bay Company concluded the Saalequun Treaty on December 23, 1854, one hundred fifty nine individuals, "every male adult member" of the Saalequun Tribe, marked the document.~~
- ~~26. The 1856 Census lists the "Soulequun" of the Nanaimo District as having 159 "men with beards."~~
- ~~27. The Snaw naw as, or the Nono oss, were not signatories to the Saalequun Treaty.~~
28. In 1861 and 1863 the Colony of Vancouver Island passed the *Land Proclamations*, stating that all lands "except Indian villages and settlements" on Vancouver Island were open for pre-emption.
29. On December 2nd, 1863, B.W. Pearse, Acting Surveyor General, testified to the Crown Lands Committee of the Legislative Assembly of Vancouver Island (the "Committee"). The Committee asked Pearse to "describe the reserves on the plan." The "plan" or map Pearse was describing during his testimony to the Committee is unclear. Pearse testified that there was a reserve "at Noonas" but did not explain why the claimed reserve was created, when it was created, its precise boundaries, or its size.
30. A schedule of surveyed Indian Reserves prepared by Pearse in 1871 did not list the claimed Original Reserve.
31. In 1873, Robert Beaven, Chief Commissioner of Lands and Works for British Columbia ("BC"), prepared a document listing "government reserves" in BC, a term encompassing any area of land that was not to be taken up by settlers. "Reserves" included both Indian

reserves and Government reserves, the latter of which were used for public purposes, including for military, settlement, and lighthouse purposes.

32. In 1876, Gilbert Malcolm Sproat, one of three commissioners representing the Dominion during the Joint Reserve Commission, reported to the Federal Minister of Justice on December 20, 1876, detailing his visit with the Snaw-naw-as.
33. When Commissioner Sproat's party arrived, the Snaw-naw-as were away fishing for winter salmon in Nanaimo. The Commissioner's party sketched out a proposed reserve, which included the Snaw-naw-as' village, cultivated patches, and burial grounds.
34. Commissioner Sproat's party then travelled to Nanaimo to meet the Snaw-naw-as, whereupon the Snaw-naw-as confirmed their satisfaction with the proposed reserve. The Commission did not return to Nanoose Bay following their conversation with the Snaw-naw-as at Nanaimo, as the Snaw-naw-as confirmed they were satisfied with the proposed reserve laid out in the sketch.
35. On January 11, 1909, the Secretary of the Department of Indian Affairs wrote to Indian Superintendent Vowell in Victoria with a request for "a list of the Indian Reserves in BC set aside by the Imperial Government," but the resulting list sent in response by Powell did not contain a colonial-era reserve at the location of the claimed Original Reserve.
36. The Royal Commission on Indian Affairs (the "RCIA") was appointed in 1912 to settle all outstanding differences between the federal and provincial governments respecting Indian lands and Indian affairs generally in BC. The RCIA visited Nanoose and held hearings there in 1913, but did not reference the claimed Original Reserve, only the New Reserve.

V. Relief (R. 42(f))

37. Canada denies the entitlement of relief sought and seeks to have the claim dismissed in its entirety.
38. If Canada is liable, which is not admitted but denied, the Province contributed to the acts or omissions and any losses arising therefrom as set out in subparagraph 20(1)(i) of the *Specific Claims Tribunal Act*.
39. If Canada is liable, which is not admitted but denied, Canada denies that Snaw-naw-as suffered a loss as a result and further denies that it owes Snaw-naw-as compensation and/or damages, as claimed at paragraph 49 of the Declaration of Claim or at all.
40. If Canada is liable, which is not admitted but denied, the Tribunal should deduct from the amount of any compensation calculated under paragraph 20(1) of the *Act* the value of any benefit received by Snaw-naw-as in relation to the subject matter of the claim as set out in paragraph 20(3) of the *Act*.

41. Canada seeks its costs of the proceedings.

VI. Communication (R. 42(g))

Dated: ~~April 9~~ July 26, 2021



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