

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

GAMBLER FIRST NATION
also known as GAMBLERS FIRST NATION

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
September 16, 2013	D É P O S É
Amy Clark	
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: September 16, 2013

Amy Clark

(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 quantity of land set apart for the Claimant and the quality of the land set apart for the Claimant under the terms of the 1881 surrender. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on January 12, 2011.

4. In a letter dated August 23, 2013, the Claimant was advised 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*:

(a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

...

(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.

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. A meeting of the Waywayseecappo Band was held in 1881, wherein the members of the Band and Council agreed to surrender 32 square miles of the Waywayseecappo Reserve in exchange for land for the Gambler and his followers.

11. In 1881, a surrender of land was obtained from the Waywayseecappo Reserve. The Waywayseecappo Band agreed to surrender 30 square miles of the Waywayseecappo Reserve, in exchange for an equal area of land to be set apart at Silver Creek for the Claimant.

12. 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. The land was confirmed as Indian Reserve No. 63 for the Gambler Band by Order in Council P.C. 1151 on May 17, 1889.

13. The area of land that was taken from the Waywayseecappo Reserve was greater than the area of land surveyed and set aside for the Claimant. If road allowances are included in the Gambler Reserve, the shortfall in the area of land provided to the Claimant was 127.1449 acres. If road allowances are not included in the Gambler Reserve, the shortfall in the area of land provided to the Claimant was 777.785 acres.

14. The quality of the land surveyed and set aside for the Claimant was also insufficient for the Claimant's needs. The ploughed land on the reserve was insufficient to produce as large a crop as the Claimant desired to have and the hay and timber supply on the reserve was insufficient for the Claimant.

15. The area of land set aside for the Claimant was also insufficient for the number of Gambler members when the Gambler Reserve was surveyed.

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

16. The Claimant claims that the Respondent breached its fiduciary or trust-like obligations to the Claimant for the following reasons:

- (a) By failing to ensure that the land required and requested by the Gambler and his followers was provided to them;


- (b) By failing to ensure that 32 square miles of land were provided to the Claimant as was agreed to by the Gambler and his followers and the members of the Waywayseecappo Band; and
- (c) By failing to provide the Claimant with the same amount of land that was taken from the Waywayseecappo Reserve.

17. The Claimant also claims that the Respondent breached the terms of the 1881 Surrender by failing to provide the Claimant with the same amount of land that was taken from the Waywayseecappo Reserve.

VII. Relief Sought

18. The Claimant seeks compensation for the following:
- (a) Damages for the current unimproved value of the area of land not provided;
 - (b) Damages for loss of use of the area of land not provided from 1883 – present;
 - (c) Damages for the Respondent’s breach of its fiduciary or trust-like obligations and breach of the terms of the 1881 surrender;
 - (d) Equitable compensation and/or interest; and
 - (e) Such other damages, compensation or costs as this Honourable Tribunal may award.

Dated this 16th day of September, 2013.



Stephen M. Pillipow
Solicitor for the Claimant

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Form 1

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