

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

GAMBLER FIRST NATION
also known as GAMBLERS FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDICTIONS PARTICULIÈRES August 15, 2016 David Burnside	D E P O S E
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: August 15, 2016

David Burnside

(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

...

(d) three years have elapsed after the day on which the Minister has notified the First Nation 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. This claim relates to the mismanagement by the Respondent of leasing revenues from Indian Reserve No. 63. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on July 15, 2010.

4. The Claimant was advised on August 8, 2013 by the Respondent that it was the decision of the Minister to accept part of the claim for negotiations.

5. As of August 8, 2016, the claim has not been resolved by a final settlement agreement.

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

6. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

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

7. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

(b) a 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 or of a colony of Great Britain of which at least some portion now forms part of Canada;

(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))

8. On September 21, 1874, the Fort Ellice Band, later known as the Waywayseecappo Band adhered to Treaty No. 4. The Gambler was part of the Fort Ellice Band at the time. Treaty 4 was approved by Order in Council P.C. No. 1332/1874, dated November 4, 1874.

9. 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.

10. 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.

11. In 1881, a surrender of land was obtained from the Waywayseecappo Reserve, and land was subsequently 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.

12. In 1957, a surrender of the oil and gas leases on Indian Reserve No. 63 lands was taken. The surrender provided that moneys received from the leases would be placed to the credit of the Claimant.

13. Beginning in 1906, the Respondent granted agricultural leases, including both fixed cash rent and crop sharing leases, on Indian Reserve No. 63. The Respondent continued to grant agricultural leases on Indian Reserve No. 63 until 1977.

14. Between 1906 and 1977, revenue was or should have been received from agricultural leasing of Indian Reserve No. 63 lands, including both fixed cash rent and crop sharing leases; however, only a portion of the revenue that was or should have been received was credited to the Claimant.

15. Beginning in 1951, the Respondent granted oil and gas leases on Indian Reserve No. 63. The Respondent continued to grant oil and gas leases on Indian Reserve No. 63 until 1977.

16. Between 1951 and 1977, revenue was or should have been received from oil and gas leases of Indian Reserve No. 63 lands; however, only a portion of the revenue that was or should have been received was credited to the Claimant.

17. The balance of revenue that was received or should have been received from agricultural leases, including both fixed cash rent and crop sharing leases, and oil and gas leases, of Indian Reserve No. 63 lands was mismanaged by the Respondent.

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

18. The various *Indian Acts* in place from time to time required that the proceeds arising from the sale or lease of Indian lands were to be paid to the Minister of Finance to the credit of the Indian fund. The Claimant claims that the Respondent breached the terms of the various *Indian Acts* in place from time to time by failing to deposit the revenues received from the leasing of land on Indian Reserve No. 63 to

the credit of the Claimant and/or by virtue of failing to expend these revenues for the benefit of the Claimant.

19. The Respondent further owed fiduciary or trust-like obligations to the Claimant to deal with the leasing revenues in the best interests of the Claimant. The Claimant claims that the Respondent breached its fiduciary or trust-like obligations to the Claimant, particulars of which include:

- (a) Failing to deposit the revenues received from the leasing of land on Indian Reserve No. 63 to the credit of the Claimant;
- (b) Failing to expend the revenues received from the leasing of land on Indian Reserve No. 63 for the benefit of the Claimant;
- (c) Failing to collect all of the revenue under the various leases of Indian Reserve No. 63; and
- (d) Failing to act in the best interests of the Claimant.

20. The terms of the 1957 Surrender Document provided, in part, that all moneys received from the leasing of petroleum and natural gas and mining rights shall be placed to the credit of the Claimant and interest paid thereon. The Claimant claims that the Respondent breached the terms of the 1957 Surrender Document by failing to place all revenues generated from oil and gas leases on Indian Reserve No. 63 to the credit of the Claimant.

VII. Relief Sought

21. The Claimant requests that this Honourable Tribunal determine the amount of compensation owed to the Claimant.

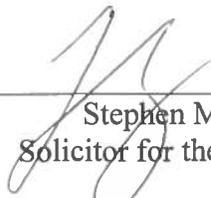
22. The Claimant seeks the following:

- (a) Compensation for losses suffered as a result of the Respondent's breach of its fiduciary or trust-like obligations, breach of the terms of the 1957 Surrender Document, and breach of the terms of the various *Indian Acts* in

place from time to time, in an amount to be determined by this Honourable Tribunal;

- (b) Equitable compensation and/or interest;
- (c) Costs in relation to these proceedings; and
- (d) Such other damages, compensation or costs as this Honourable Tribunal may award.

Dated this 15th day of August, 2016.



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