

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	June 30, 2014	D E P O S E
Guillaume Phaneuf		
Ottawa, ON	3	

KINISTIN SAULTEAUX NATION

Claimant

v.

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

Respondent

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*.

TO: Kinistin Saulteaux Nation
As represented by John R. Lojek
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1. This is the Crown's Response to the Declaration of Claim (the "Claim") filed by the Kinistin Saulteaux Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on May 21, 2014 pursuant to the *Specific Claims Tribunal Act* (the "Act").

2. The Claim relates to the lawfulness of the timber taking from the First Nation's lands, the operation of a sawmill thereon, and the provision of reserve land.

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

3. On July 13, 2004 the First Nation submitted its claim to the Minister of Indian and Northern Affairs Canada (the "Minister"). The claim was filed with the Minister on October 16, 2008.

4. On July 25, 2011, the Minister notified the First Nation in writing of his decision not to negotiate the claim, in part.

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

5. The Crown submits that the Tribunal does not have jurisdiction over the claim outlined in paragraphs 33 and 34 of the Claim. Section 15 of the *Specific Claims Tribunal Act* lists exceptions to the grounds of a specific claim, including claims based on or alleging aboriginal rights in subsection (f).

6. The Crown does not accept and specifically denies the validity of all allegations and claims set out in the Claim. Without limiting the generality of the foregoing, the Crown denies that it:

- a. failed to fulfill a legal obligation to provide lands to the First Nation under treaty without alienation or damage;
- b. breached any statutory or fiduciary obligation to the First Nation with respect to granting a license to Thomas Sanderson to cut trees on reserve lands, or to conduct logging, sawmill and store operations on reserve land; or
- c. failed to implement or cause Sanderson to comply with regulations governing licences and permits to cut timber on reserve lands.

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

7. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the Claimant to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the alleged facts in the following paragraphs of the Claim: 10, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40.
8. The Crown admits the facts in paragraphs 1, 2, 4, 5 (in part), 6, 7 (in part), 8, 9, 11, 17 (in part) and 20.
9. The Crown has no knowledge of the facts in paragraph 3.
10. With respect to paragraph 5 of the Claim, the Crown admits only that Treaty 4 was signed in 1874, and on August 24, 1876 Kinistin adhered to Treaty 4 as part of the Yellow Quill Band.
11. With respect to paragraph 6 of the Claim, the Crown states that two reserves were surveyed for Yellow Quill's Band: I.R. 89 located on the northwest side of Fishing Lake and I.R. 90 on the eastern side of Nut Lake. These reserves were confirmed by Order in Council 1151 dated May 17, 1889.

12. With respect to paragraph 7 of the Claim, the Crown states that a September 27, 1898 letter from the Secretary, Indian Affairs to the Secretary, Department of the Interior, indicated Indian Affairs Minister's approval of a reserve for Yellow Quill's Band of Indians "pending obtaining through our surveyor a more accurate definition of what may be acquired".
13. With respect to paragraph 17 of the Claim, the Crown admits only that regulations governing the grant of yearly licenses or permits to cut timber on Dominion lands in Manitoba and the Northwest Territories were issued on July 1, 1898.

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

14. On August 24, 1876 Yellow Quill's Band adhered to Treaty 4. The Kinistin people were thought to be members of that group.
15. Two reserves for the Yellow Quill Band, Fishing Lake Reserve No. 89 and Nut Lake Reserve No. 90, were surveyed in 1881 and confirmed by Order in Council 1151, dated May 17, 1889.
16. In July 1897 a former Hudson's Bay Company employee ("Beatty") petitioned the government for a reserve for the "Kinistino Band". He noted they had several acres under cultivation and seemed settled. He made another request in May 1898.
17. In June 1898 the Indian Commissioner asked the Indian Affairs Secretary to provide a report for the Minister along with a sketch identifying the position of the land suggested for reserve. The Commissioner recommended provision for "75 persons – 15 square miles. The location as nearly as it can be fixed is in Townships 41 and 42, Range 15, West 2nd P.M. [sic]".
18. The Minister advised the Department of the Interior of his decision to reserve some additional lands for the "Yellow Quill Band of Indians". He

indicated "an area of some fifteen square miles will be required which cannot at present be more accurately defined than as situated in Townships 41 and 42, Range 15, West 2nd..." and further indicated the decision was "pending obtaining through our surveyor a more accurate definition of what may be acquired".

19. The Department of Interior Secretary replied that as the area in question had not yet been surveyed, the location of the reserve could only be "noted in a general way".
20. Thomas Sanderson ("Sanderson") acquired the right to cut timber on Township 42, Range 16, W2M in June 1899. Subsequent permits were issued to Sanderson.
21. On July 17, 1899 Beatty wrote to the Indian Commissioner and suggested that "the supply of spruce timber adjoining their reserve which is at best a limited supply should be included when surveyed, the Indians particularly request this as they hope to place saw logs at our mill next winter and build better houses with shingle roofs." Marginalia on the letter notes "this will be considered when the survey is made".
22. J. Lestock Reid ("Reid") surveyed Kinistino Indian Reserve ("I.R. 91") during the months of June and July 1900. On July 2, 1900 Beatty informed the Indian Commissioner that he and "4 Indians" assisted in the survey, and that the Indians informed him of Sanderson's mill within the reserve. They had decided they would allow Sanderson to cut all dry timber but no more green logs at present. He noted that Sanderson employed some of the Indians and it would be "in the interest of the Indians to allow Mr. Sanderson to cut all dry timber from there [sic] Reserve and some outlying spruce...."

23. The plan of survey for I.R. 91 was filed with the Indian Commissioner on July 17, 1900. In his report, the Commissioner indicated "The Indians seem well satisfied with the location".
24. I.R. 91 was established for the "Kinistino Band" by Order in Council No. 1893/1901 on October 22, 1901.
25. The Department of Indian Affairs ("DIA") approved three transfers of Sanderson's timber limit to other operators in 1903, 1906 and 1911.
26. The DIA imposed dues at the tariff rates prescribed by applicable Regulations.
27. In 1905 the DIA began a complete investigation on timber operations, prohibiting cutting of timber in the meantime. In 1907, at the conclusion of the investigation, the DIA recovered unpaid dues on trees cut and credited the amount to the First Nation's account.
28. Timber operations ended in 1922, leaving a certain amount of merchantable timber on I.R. 91.

V. Relief (R. 42(f))

29. The Crown seeks to have the Claim dismissed in its entirety;
30. Costs; and
31. Such further relief as this Honourable Tribunal deems just and may allow.

VI. Communication (R. 42(g))

32. Respondent's address for service of documents:

Department of Justice (Canada)
Prairies Regional Office (Saskatoon)
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Lauri Miller

33. Facsimile number address for service: (306) 975-5013
34. Email address for the service of documents: saskSCT-5002-14-Kinistin@justice.gc.ca

Dated this 30th day of June, 2014.



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