

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 2, 2016	D E P O S É
Amy Clark		
Ottawa, ON	4	

BETWEEN:

KEESEEKOOSE FIRST 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: Keeseekoose First Nation
As represented by Ron S. Maurice, Steven W. Carey and Amy Barrington
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1. This is the Attorney General of Canada's response on behalf of the Crown in right of Canada to the Declaration of Claim (the "Claim") filed by Keeseekoose First Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on September 30, 2016 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim relates to alleged outstanding obligations that arose from a surrender on Indian Reserve 66 (the "Reserve") that took place in 1909 (the "1909 Surrender").

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

3. The requirements in s. 16 of the *Act* to file a specific claim are satisfied, in that more than three years elapsed from the day on which the Minister of Indian Affairs and Northern Development (the "Minister") notified the First Nation of the decision to negotiate and the specific claim has not been resolved by a final settlement agreement.
4. The Claim was originally submitted to the Minister in September 1999.
5. The Minister first notified the First Nation on October 2, 2007 of Canada's decision to negotiate the Claim in part. By letter dated January 5, 2009 from Specific Claims Branch Director General Ralph Brant to Keeseekoose Chief Philip Quewezance, the effective date of Canada's acceptance was deemed to be October 16, 2008. The First Nation did not accept the Minister's offer to negotiate part of the Claim. The Department of Indian Affairs and Northern Development closed its file in relation to the Claim on May 27, 2014.

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

6. The Attorney General must respond to this Claim in accordance with the rules of practice applicable to pleadings in a matter of this nature and consistent with the duties and functions of that office in the conduct of litigation for or against the Crown

in right of Canada. The Government of Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, co-operation and partnership. The Attorney General and the Government of Canada must work in other contexts beyond pleadings to achieve the fulfilment of those commitments.

7. The Crown does not accept and specifically denies the validity of all of the allegations put forth in the Claim. Without limiting the generality of the foregoing, the Crown denies that:
 - a. the 1909 Surrender was contrary to the provisions of the 1906 *Indian Act*;¹
 - b. the Crown breached its fiduciary duty to the First Nation prior to the 1909 Surrender;
 - c. the Crown committed fraud in relation to the acquisition or disposition of the Claim Lands; and
 - d. the Crown breached any fiduciary or trust duties owed to the First Nation following the 1909 Surrender.

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

8. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the First Nation to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts in the following paragraphs of the Claim: 13, 33, 44, 61, 63, 67-82.
9. The Crown admits the facts set out in the following paragraphs of the Claim: 1, 3-6, 8-12, 18, 19, 22, 24, 29-31, 34-38, 41, 47, 48, 53, 65.

¹ *Indian Act*, RSC 1906, c 81.

10. The Crown has no knowledge of the facts in paragraphs 2, 7, 16, 17, 45, 55-60, 64 of the Claim and puts the First Nation to the proof thereof.
11. In response to paragraph 14, the Crown admits only that Order in Council P.C. 1109 of May 10, 1913 appointed Thomas Roberts Ferguson of Winnipeg, Manitoba a Royal Commissioner under the *Inquiries Act* R.S.C. 1906 to investigate and report upon all matters connected with the sale, lease, grant, exchange or disposition since 1896 of Dominion Lands, Timber and Mineral lands and mining rights and privileges and Water powers and rights. On June 27, 1913 Order in Council P.C. 1589 enlarged Mr. Ferguson's powers to include Indian Lands and Indian Reserves. Mr. Ferguson tabled a series of reports in the House of Commons beginning in April 1915. The reports were destroyed in the fire in Parliament in February 1916 and no copies are known to exist. Information on the findings of the Ferguson Commission exists only in newspaper reports and House of Commons debates and is limited to certain specific transactions and specific Indian lands, and does not include the First Nation and the Reserve.
12. In response to paragraph 15, the Crown admits only that Order in Council P.C. 574 of March 1, 1893 set aside hay lands for the benefit of the Indian of the Fort Pelly District.
13. In response to paragraphs 20 and 21, the Crown admits only that on January 21, 1909, Inspector of Indian Agencies W.M. Graham wrote to Deputy Superintendent General of Indian Affairs Frank Pedley, reporting that a large congregation of Keeseekoose Band members had met with him and expressed a desire to sell 6,000 acres of reserve land, at \$15.00 per acre, with a down payment of \$6.00 per acre. Graham reported that the Indians eventually agreed to sell 8,000 acres at a down payment of \$85.00 per person.
14. In response to paragraph 23, the Crown admits only that on February 1, 1909, Samuel Bray produced a "Description for Surrender", describing the portion of the Keeseekoose Reserve that had an approximate area of 7,600 acres that it was proposed should be surrendered.

15. In response to paragraph 25, the Crown admits only that on February 8, 1909, eight members of the Keeseekoose Band, including Headman Kekekaway, wrote to Indian Commissioner David Laird, stating that they, and other Band members, did not want to surrender "all the good land that there is on the Reserve, as is proposed." Laird replied on February 10, 1909, that he was not aware that any portion of the Reserve was to be sold. He added that before the Government could dispose of Indian land a majority of the voting members of the Band had to surrender the land of their own free will.
16. In response to paragraph 26, the Crown admits only that on February 25, 1909, Kekekaway sent Laird a letter, containing an additional 10 names of Band members opposed to the surrender, and claiming that this represented a majority of the voting Band members. He stated that, "[w]e do not object to selling some of the best and some in another part of it at any time....[W]e would be glad to sell some of it in order to be able to buy necessary power + implements to farm the land."
17. In response to paragraph 27, the Crown says that on February 26, 1909, Inspector Graham wrote to Pedley acknowledging receipt of the surrender forms and requesting \$11,475 to pay the Indians at the time of signing.
18. In response to paragraph 28, the Crown admits only that on February 27, 1909, Laird wrote to Kekekaway, confirming that reserve lands could only be surrendered with a vote of the majority of the male members of the Band over 21 years of age, and suggesting that the Band approach the local Indian Agent or Inspector Graham if they wished to surrender reserve land.
19. In response to paragraph 32, the Crown admits only that on May 13, 1909, Graham arrived at the Pelly Agency. On May 21, 1909 Graham reported that upon arrival he immediately arranged a surrender meeting with the Keeseekoose Band for May 15, 1909. Graham also reported that, at the meeting, "nearly every member of the Band was present," and the vote in favour of the surrender was unanimous. The forms were filled out, and he paid out \$85 each to the 134 Indians present, an amount of money totaling \$11,390.

20. In response to paragraph 33, the Crown says that the May 15, 1909 surrender meeting was conducted in accordance with Section 49 of the 1906 *Indian Act*.
21. In response to paragraph 39, the Crown admits only that the May 1910 valuations of the surrendered land by Surveyor Reid ranged from \$5.00 to \$10.75 per acre.
22. In response to paragraph 40, the Crown admits only that by letter dated September 29, 1910, Bray submitted a blue print copy of the plan of the surrendered land and Reid's field notes and valuations to the Assistant Deputy Minister and indicated the land was ready for sale. On October 5, 1910 W.A. Orr reported to the Assistant Deputy Minister that 6,853 acres of land surrendered from the Keeseekoose Indian Reserve were subdivided into quarter sections and the surrender provided the land was to be sold by public auction. Orr recommended a public auction be held at Kamsack, Saskatchewan on November 16, 1910.
23. In response to paragraph 42, the Crown admits only that on October 31, 1910 Graham wrote to the Secretary requesting a blue print and a list of upset prices in connection with the Pelly land sale be sent to eight persons.
24. In response to paragraph 43, the Crown admits only that by letter dated December 6, 1910 Graham reported the auction took place December 1, 1910 in Kamsack and 103 or 143 pieces were sold. The terms of the sale, as set out in the advertisement, provided that purchasers pay cash or one-tenth cash or cheque at the time of the sale and nine equal annual installments with interest at five percent.
25. In response to paragraph 44, the Crown admits only that Graham presided over a public auction on December 1, 1910, which included the sale of land from both the Keeseekoose IR 66 as well as land from IR 65.
26. In response to paragraph 46, the Crown admits only that by letter dated June 28, 1911, the Indian Agent wrote to Secretary McLean that the Chiefs and Headmen of the Key and Keeseekoose Bands were asking when they would get their interest money from the sale of their lands. McLean replied on August 11, 1911 that there

would be no interest money available until the purchasers made their second payments which were due December 1911.

27. In response to paragraph 49, the Crown admits only that 6,390 acres of surrendered land were sold at a public auction on December 1, 1910. Of the total land surrendered, 131.34 acres of land covered by ponds were withheld from auction, 964.23 acres were unsold at the auction and 160 acres were road allowances. On July 19, 1916, Order in Council P.C. 1718 approved the exchange of 401 acres of land from the northern half of the Keeseekoose Reserve for a strip of land along the eastern boundary of the Reserve, measuring 348.1 acres.
28. In response to paragraph 50, the Crown admits only that Crescent Realty Company of Yorkton, Saskatchewan bought five quarter sections.
29. In response to paragraph 51, the Crown admits only that M.F. Steinberg of Canora, Saskatchewan bought two quarter sections and John Madison of Pelly, Saskatchewan purchased three quarter sections at the auction.
30. In response to paragraph 52, the Crown admits only that J.R. Dixon of Kamsack, Saskatchewan, bought four quarter sections at the December 1, 1910 auction.
31. In response to paragraph 54, the Crown admits only that some of the purchases were assigned and some were cancelled.
32. In response to paragraph 62, the Crown admits only that Band members regularly received annual land sales interest payments between 1911 and at least 1949. The average per capita interest distribution between 1911 and 1949 was \$6.91. In 1948-49 the interest distribution was \$10.00 per person. The amount of interest distributed to Band members in these years was \$46,245.
33. In response to paragraph 66, the Crown admits only that on July 19, 1916 by Order in Council P.C. 1718 the Keeseekoose Band was allowed to exchange 401 acres of the unsold surrendered lands for a 348.10 acre strip of land along the eastern boundary of the Reserve.

34. In response to paragraph 70, the Crown says that at all relevant times prior to the 1909 surrender, Laird served as an Indian Commissioner, not a Superintendent General of Indian Affairs.
35. In response to paragraph 71, the Crown says that on January 21, 1909, Inspector of Indian Agencies W.M. Graham wrote to Deputy Superintendent General of Indian Affairs Frank Pedley, reporting that he had met with, “a large deputation of Indians from Keeseekoose Reserve ... who wished to discuss the matter of surrendering a portion of their Reserve.” On February 25, 1909, Kekekaway sent Laird a letter claiming support of a majority of the Band and stating, “[w]e do not object to selling some of the best and some in another part of it at any time.” Graham later reported that almost all of the Keeseekoose Band members were present at the surrender meeting, and that the vote in favour of the surrender was unanimous.

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

36. In September 1875, Chief Keeseekoose adhered to Treaty 4.
37. In January 1884, Indian Reserve 66 was surveyed for the First Nation by John Nelson. The Reserve was 28.6 square miles and was confirmed by Order in Council P.C. 1151 in 1889.
38. On January 21, 1909, the First Nation indicated that they wanted to surrender and sell 6000 acres of reserve land at \$15.00 per acre, with a down payment of \$6.00 per acre at the time of surrender. The First Nation agreed to sell 8,000 acres with a down payment of \$85.00 per person.
39. On May 13, 1909, a surrender meeting was arranged with the Keeseekoose Band.
40. On May 15, 1909, a meeting was held for the purpose of surrendering 7,600 acres of Reserve land. The meeting was attended by the majority of Band members and the surrender vote was unanimous.

41. On June 25, 1909, the surrender was submitted for the acceptance of the Governor General in Council. Order in Council P.C. 1524 was issued on July 6, 1909, authorizing the surrender of 7,600 acres of the Keeseekoose Reserve.
42. In May 1910, Surveyor J.L. Reid surveyed the surrendered land.
43. An auction was held in Kamsack on December 1, 1910 and 6,390 acres of the surrendered land were sold for a total purchase price of \$69,314.
44. On July 19, 1916, Order in Council P.C. 1718 approved the exchange of 401 acres of unsold surrendered land for 348.1 acres of Dominion land along the eastern boundary of the Reserve.

V. Relief (R. 42(f))

45. The Crown seeks the following relief:
 - a. to have the claim dismissed in its entirety;
 - b. costs; and
 - c. such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

46. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
10th Floor, 123-2nd Avenue S
Saskatoon, SK S7K 7E6
Attention: Donna Harris

47. Facsimile number for service is (306) 975-5013.

48. Email address for service is saskSCT-5001-16-keeseekoose@justice.gc.ca

Dated this 2nd day of December, 2016.


ATTORNEY GENERAL OF CANADA

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