

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

COTE FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	May 4, 2016	D E P O S E
David Burnside		
Ottawa, ON	8	

Claimant

v.

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

Respondent

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

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

Original Filed: November 7, 2014

Amended: May 4, 2016

TO: Cote First Nation, as represented by:

Sheryl A. Manychief,
Maurice Law Barristers and Solicitors
35 Wolf Drive
Redwood Meadows, Alberta T3Z 1A3
Phone: (403) 949-5606 ext. 784
Fax: (403) 266-2701
Email: smanychief@mauricelaw.com

Ryan Lake,
Maurice Law Barristers and Solicitors
300, 602 – 12th Ave S.W.
Calgary, Alberta T2R 1J3
Phone: (403) 266-1201 ext. 236
Fax: (403) 266-2701
Email: rlake@mauricelaw.com

1. This is the Crown's Response to the Declaration of Claim (the Claim) filed by the Cote First Nation (the First Nation) with the Specific Claims Tribunal (the Tribunal) on 4 September 2014 pursuant to the *Specific Claims Tribunal Act* (the Act).
2. The Claim relates to the lawfulness of a surrender of a portion of the Cote Indian Reserve No. 64 (the Reserve) in southeastern Saskatchewan for station grounds and a townsite.

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

3. On 23 June 2009, 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 8 July 2009.
4. On 26 June 2012, the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

5. The Crown does not accept and specifically denies the claims and the validity of all allegations and claims set out in the Claim or that the Claimant has suffered any damages. Without limiting the generality of the foregoing, the Crown denies that it:
 - a. failed to summon the surrender meeting in accordance with the rules of the Band or, in the absence of evidence regarding such rules, failed to provide reasonable and adequate notice of the meeting to discuss the proposed surrender;
 - b. failed to provide the members of the Band with legal or technical advice or to conduct the surrender meeting in accordance with the spirit and intent of the *Indian Act* so that the members of the Band would be afforded an opportunity to provide informed consent to the surrender proposal;

- c. failed to prepare a voter's list and to properly oversee the voting procedures to ensure that eligible voters could participate in the vote and that accurate records were kept;
- d. failed to ensure and document in each case that a quorum of voters participated (to validate the surrender meeting), and that a majority of the eligible voters actually voted in favour of the surrender (to validate the surrender);
- e. failed to take steps to ensure that the Band understood the surrender;
- f. took active steps and withheld information to ensure that the surrender would be executed, despite being contrary to the best interests of the Band;
- g. failed to minimize the taking by expressly reserving mines and minerals, considering the leasing options, or simply taking less than the acreage actually surrendered and sold; ~~and~~
- h. failed to withhold its consent to the taking of Cote Reserve land as the transaction was foolish, improvident and exploitative; and
- i. failed to obtain adequate compensation for the taking of Cote Reserve lands.

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

- 6. 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 facts contained in the following paragraphs of the Claim: 15(e) and 28.
- 7. The Crown admits the facts in paragraphs 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 15(a), 15(b), 15(c), 15(d), 17, 18, 19, 20, 22, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39.
- 8. The Crown has no knowledge of the facts set out in paragraphs 5 and 6.

9. The Crown says that paragraph 27 of the Claim is a statement of law which it is not required to admit or deny.
10. In response to paragraphs 8 and 9 of the Claim, the Crown says that the issue of compensation owed to the Cote Band members whose property was damaged in the building of the right-of-way was settled in November 1903. The Crown admits the rest of paragraphs 8 and 9.
11. In response to paragraph 16 of the Claim, the Crown admits only that the Canadian Northern Railway Company (CNoR) made a counter-proposal on 11 December 1903; that Indian Agent Carruthers (IA Carruthers) was instructed by the Indian Commissioner's office to present the counter-proposal to the First Nation, to draw to the First Nation's attention that CNoR was asking for the station grounds free of charge, and to remind the First Nation that under the *Railway Act*, CNoR could obtain the station grounds through expropriation, in which case the rate paid for the right-of-way would likely be applied (the right-of-way was sold for \$8 per acre).
12. In response to paragraph 21 of the Claim, the Crown admits only that Assistant Indian Commissioner McKenna (McKenna) wrote to the Department of Indian Affairs (DIA) headquarters advocating the surrender and that he considered CNoR's offer to be fair.
13. In response to paragraph 23 of the Claim, the Crown admits only that the Superintendent General of Indian Affairs (SGIA) approved the sale of 272 acres upon the condition that the surrender was unconditional and that CNoR was to pay cash at a rate of \$10.00 per acre for 272 acres; that when CNoR had received \$5000.00 from the sale of the townsite property, the First Nation was to share equally with CNoR in the proceeds of sale of the townsite property; and that forms of surrender and letter of instruction authorizing IA Carruthers to seek the surrender were sent to Indian Commissioner Laird (Laird) in Winnipeg in June 1904.
14. In response to paragraph 24 of the Claim, the Crown admits only that a surrender meeting took place on 21 June 1904 and that the surrender document was signed by Chief Joseph Cote and thirteen Cote Band members, including headmen Singuish and

Charles Kesick, and witnessed by IA Carruthers and Fred Fisher, the clerk and interpreter.

15. In response to paragraph 25 of the Claim, the Crown says that the surrender document released, remised, surrendered, quit claimed and yielded to the King, two tracts of land situated in Reserve. The Crown admits the rest of paragraph 25.
16. In response to paragraph 29 of the Claim, the Crown admits only that IA Carruthers transmitted the surrender document to Laird and that the affidavit attesting to the surrender was signed by Chief Joseph Cote, IA Carruthers, Fred Fischer, and J. C. Murray at the Cote Indian Office on 29 June 1904. The Crown says that the surrender was dated 21 June 1904 and that the typed affidavit attached to the printed copy of the surrender was dated 29 June 1904. IA Carruthers explained that the affidavit bore a different date than the surrender because the Commissioner had been absent.

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

17. Treaty 4 was entered into between the Crown and the First Nation on 15 September 1874. Treaty 4 was signed by Chief Gabriel Cote (Mee-May) as the Chief or Headman of the Cote First Nation. Under the terms of Treaty 4, reserve land was to be set aside for the use and benefit of the First Nation.
18. The Reserve was surveyed in 1877 and confirmed by Order-in-Council P.C. 1151 in 1889. The Reserve consisted of 36,160 acres on the east side of the Assiniboine River in what is now southeastern Saskatchewan.
19. CNoR built a right-of-way through the Reserve for railway purposes. Order-in-Council P.C. 1173 dated 14 July 1903 authorized the sale of 44.56 acres of the Reserve to the CNoR for the right-of-way.
20. On 11 September 1903, Munson & Allan, the solicitors representing MacKenzie, Mann & Co. (a subsidiary of CNoR) approached Laird in Winnipeg seeking additional Reserve land. The solicitors forwarded a blueprint showing 574.46 acres required for a divisional point and asked DIA to consider the matter and inform them of the price at

which the land would be sold. Laird replied on 16 September 1903, stating that the acreage was too extensive to be obtained under the *Railway Act* and that a surrender would be required.

21. On 5 October 1903, IA Carruthers informed DIA headquarters that the railway company had requested an additional 23 feet by 4200 feet (about 2.2 acres) of reserve land for a four track siding. By letter dated 6 October 1903, IA Carruthers informed DIA headquarters that the First Nation favored selling reserve land for a townsite and that if CNoR put the siding in before the land for the townsite had been purchased, it would give the First Nation a better price for the land. IA Carruthers was instructed to allow work on the four track siding.
22. At the end of October 1903, McKenna met with IA Carruthers, Chief Joseph Cote, and Band members. McKenna reported the substance of the meeting to solicitors Munson & Allan in a letter dated 29 October 1903. McKenna noted that the land requested for the divisional point was to consist of a siding and a townsite of approximately 574.46 acres, 99 acres of which was required for station grounds. McKenna outlined Chief Joseph Cote's position on the proposed taking. The First Nation considered 99 acres an excessive acreage for station grounds and that the amount of land for the station grounds ought to be fixed by the proper authority. The First Nation was willing to sell lands for station grounds at \$25.00 an acre and willing to surrender for sale such further amount of land required for railway purposes at \$50.00 an acre on condition that the same should be used exclusively for railway purposes. For land for a townsite, the First Nation asked for \$100.00 an acre on the same being surrendered. Alternatively, the First Nation was willing to surrender for subdivision and sale by CNoR land for a townsite upon down payment of \$25.00 an acre with CNoR and the First Nation sharing equally in the proceeds of the sale of the town lots less the amount of the advance. CNoR was to bear the expense of subdivision and sale. IA Carruthers was instructed by McKenna to verify with Chief Joseph Cote that he correctly represented the First Nation's position in his 29 October 1903 letter.

23. CNoR made a counter offer by letter dated 11 December 1903. The required acreage was reduced in this offer to 30.06 acres for the station grounds and 55.76 acres for the townsite. IA Carruthers was instructed to present it to the First Nation, drawing attention to the fact that, while CNoR was asking for the lands for the station grounds free of charge, under the *Railway Act* the company could obtain the station grounds through expropriation, in which case the rate paid for the right-of-way would likely be applied. The contents of the 11 December 1903 letter were brought to the attention of Chief Joseph Cote.
24. The First Nation met again on 14 January 1904 to consider CNoR's counter offer. The First Nation again counter offered, presenting three alternative options to CNoR. The first option was that the First Nation agreed to sell to CNoR 400 acres at \$25.00 per acre: \$10,000.00 cash to be paid to the Band at time of sale, after \$10,000.00 was paid back to CNoR for sale of the town lots, the Band was to share equally in the sale of any other lots that were sold. The First Nation agreed to give CNoR free of charge 30.06 acres for station grounds. The second option was to sell to CNoR 200 acres at \$50.00 per acre, cash at the time of sale, and to give CNoR 30.06 free of charge for station ground purposes. The third option was to sell to CNoR 55.76 acres at \$100.00 an acre and 30.06 acres for station purposes at \$50.00 an acre, cash to be paid in both instances at the time of sale; and an additional 50 acres at \$100.00 an acre would be held for CNoR by the First Nation for one year should CNoR wish to purchase the same.
25. CNoR again counter offered. In a letter dated 19 March 1904 from McKenna to IA Carruthers, McKenna outlined CNoR's new offer: 242 acres for a townsite and 30.06 acres for station grounds, making a total acreage of 272 acres. CNoR offered \$10.00 an acre in cash with the further stipulation that after there had been realized the sum of \$5000.00 in cash for the sale of lots, deducting from the same the costs of surveys and registration, the First Nation was to have a half interest in all proceeds of subsequent sales of lots. CNoR added that if the First Nation did not care to enter into this agreement, CNoR remained willing to pay \$10.00 an acre for 30.06 acres for station grounds, but the townsite proposal would be abandoned. IA Carruthers was instructed

by McKenna to meet with the First Nation and advise as to the conclusion reached respecting this new offer.

26. On 29 March 1904, IA Carruthers wrote to Laird to indicate that he met with the First Nation. The First Nation agreed to accept CNoR's offer, as described in paragraph 25, for the sale of the townsite and station grounds.
27. The SGIA approved the sale in a letter dated 20 May 1904, subject to the following conditions: (1) the surrender was not to be burdened with any conditions as to the percentage to be taken for management fund or any details of the manner in which the avails from the surrender were expended, (2) CNoR was to pay cash at a rate of \$10.00 per acre for 272 acres, (3) when CNoR had received \$5000.00 from the sale of the property the First Nation was to share equally with CNoR in the gross succeeding revenue free of all expenses of management, and (4) the upset price or valuation of lots was to be subject to the approval of the Government.
28. A letter from the Deputy Superintendent General of Indian Affairs to Laird dated 7 June 1904 authorized IA Carruthers to obtain the surrender. IA Carruthers was instructed to submit the surrender to the First Nation in accordance with the provisions of the *Indian Act*.
29. On 21 June 1904, the First Nation surrendered 272 acres of land more or less from the Reserve to the Crown. The surrender document was signed by Chief Joseph Cote and 13 other Band members in the presence of IA Carruthers and Fred Fisher, clerk and interpreter.
30. The surrender affidavit was sworn on 18 July 1904 by IA Carruthers and Chief Joseph Cote before a Justice of the Peace and witnessed by Fred Fisher. Chief Joseph Cote attested that the surrender was assented to by him and a majority of the male members of the Band of Indians of the full age of twenty-one years then present; that such assent was given at a meeting or council of the said Band of Indians summoned for that purpose, according to its Rules, and held in his presence; and that no Indian was

present or voted at such council or meeting who was not a habitual resident of the Reserve of the Band or interested in the land mentioned in the surrender.

31. CNoR issued cheques paying for 30.06 acres for the station grounds (\$300.60) and \$2,419.40 on account of the land required for townsite purposes (241.94 acres). These amounts were deposited to the First Nation's trust account on 31 August 1904.
32. The surrender was submitted to the Governor in Council on 13 September 1904 by the SGIA. The submission stated that the surrender was duly authorized, executed and attested in the manner required by section 39 of the *Indian Act*. The surrender was approved by Order in Council P.C. 1842 dated 28 September 1904.
33. The SGIA made a second submission to the Governor General in Council on 14 September 1904. The second submission indicated that owing to the circumstances that the First Nation was to share with CNoR in the proceeds of sale and that the sale of the townsite was incomplete, that patents should be issued to each purchaser of land in the townsite on report of the sale agent. This submission was accepted by Order in Council P.C. 1841 dated 28 September 1904.

V. Relief (R. 42(f))

34. The Crown seeks to have the claim dismissed in its entirety;
35. Costs; and,
36. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

37. 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: ~~Gwen MacIsaac~~ David C. Culleton

38. Facsimile number address for service: (306) 975-5013

39. E-mail address for service: saskSCT-5004-14-cote@justice.gc.ca

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Amended Response filed: May 4, 2016



David C. Culleton
Counsel for the Respondent

WILLIAM F. PENTNEY, Q.C.
Deputy Attorney General
Per: David C. Culleton
Department of Justice
Prairie Region (Saskatoon)
123 – 2nd Avenue South, 10th Floor
Saskatoon, SK S7K 7E6
Tel: (306) 975-6305
Fax: (306) 975-5013
Email address: saskSCT-5004-14-cote@justice.gc.ca