

Paragraphs 4, 7, 12-18, 19, 22, 23, 29-31 and 39 amended in response to the Further Amended Declaration of Claim filed November 28, 2013. Paragraphs 3-23 and 32-39 amended in response to the Amended Declaration of Claim filed October 4, 2012. Original Response filed August 7, 2012.

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

'NAMGIS FIRST NATION

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENdicATIONS PARTICULIÈRES	
F I L E D	D É P O S É
November 28, 2013	
Guillaume Phaneuf	
Ottawa, ON	32

Claimant

v.

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

Respondent

FURTHER AMENDED RESPONSE

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

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

TO: 'NAMGIS FIRST NATION

As represented by Stan H. Ashcroft of Ashcroft & Company, Barristers and Solicitors, Suite #205 – 1544 Marine Drive, West Vancouver, BC V7V 1H8

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

1. The 'Namgis First Nation ("Namgis") submitted a claim to the Minister of Indian Affairs and Northern Development Canada ("Minister") on January 22, 1998 ("Specific Claim").
2. The Specific Claim concerned the taking of .499 of an acre of land from Alert Bay Indian Reserve No. 1 ("I.R. No. 1") in or about 1934 for the construction of a road ("Road").
3. On January 21, 2010, the Minister notified 'Namgis of the Minister's decision not to accept the Specific Claim for negotiation on the basis that the Specific Claim did not disclose an outstanding lawful obligation on behalf of the Queen in Right of Canada ("Crown") relating to the taking of .499 of an acre of I.R. No. 1 land.

II. (a) Validity (Rule 42(b))

4. The Crown, solely based on and limited to the facts in the within proceeding and pursuant to the *Specific Claims Tribunal Act* ("Act"), section 31, admits the validity of the 'Namgis claim set out in the Further Further ~~denies the validity of the claims based on all the grounds in the~~ Amended Declaration of Claim dated November 28, 2013 ~~October 3~~ ("Further Further Amended Declaration"), paragraph 6(a), that the Crown failed to provide adequate compensation for I.R. No. 1 lands taken under legal authority in or about 1934.
5. ~~The Crown denies the validity of the claims in the Amended Declaration, paragraphs 34-40 and 35-41.~~
6. ~~In the alternative, if there were any failure, acts or omissions related to maintaining and preserving the Road as alleged in the Amended Declaration,~~

~~paragraphs 34-40 (c) and (d) (f), which the Crown denies, pursuant to the Specific Claims Tribunal Act (“Act”), section 20(1)(i), the Province of British Columbia (“Province”) caused or contributed to such failure, acts or omissions or the loss arising from such failure, acts or omissions and the Crown is not at fault for any such loss.~~

(b) Basis for the Tribunal to Award Compensation (Rule 42(c))

7. ~~The Crown denies~~ The Act, section 20(1)(e) may provide the basis for the Specific Tribunal (“Tribunal”) to award compensation ~~the validity of the claim for damages in the Amended Declaration, paragraph 36.~~

8. Deleted.

Jurisdiction

9. ~~The Specific Claims Tribunal (“Tribunal”) does not have jurisdiction under the Act, section 14, to adjudicate the claim in the Amended Declaration, paragraph 34(b), because this claim relates to losses alleged to have been incurred by individual band members.~~

10. Deleted.

11. Deleted.

III. Admissions, Denials or No Knowledge (Rule 42(d))

12. The Crown admits the facts in the Further Further Amended Declaration, paragraphs 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 14.a, 15, 16, 18 and 22, 24, 27, 28, 31, 34 and 33.

13. The Crown has no knowledge of the facts set out in the Further Further Amended Declaration, paragraphs 5 and 12, 25, 26, 35 and 29.

14. In reply to the Further Further Amended Declaration, paragraph 4, the Crown admits that 'Namgis was notified on January 21, 2010 of the Minister's decision not to accept the Specific Claim. Beyond this fact, the details of the Minister's decision are irrelevant and privileged.
15. In reply to the Further Further Amended Declaration, paragraph 17, the Crown says that the .499 of an acre of I.R. No. 1 land was purportedly transferred from the Crown to the Province pursuant to section 48 of the *Indian Act*, R.S.C. 1927, c. 98. In 1934, the .499 of an acre of I.R. No. 1 land was provincial Crown land to which the *Indian Act*, R.S.C. 1927, c. 98 did not apply. The Crown admits the remainder of the facts in paragraph 17.
16. In reply to the Further Further Amended Declaration, paragraph 19, the Crown ~~denies the facts in paragraph 19~~ admits that the Crown failed to obtain adequate compensation for .499 of an acre of I.R. No. 1 land taken under legal authority.
17. In reply to the Further Further Amended Declaration, paragraph 20, the Crown admits that no compensation was paid for the loss of .499 of an acre of I.R. No. 1 land. ~~If compensation was owed, which is not admitted, it was owed by the Province.~~ The Crown denies the other facts in paragraph 20.
18. In reply to the Further Further Amended Declaration, paragraph 21, the Crown denies the facts in the first sentence and admits the other facts in paragraph 21.
19. ~~In reply to the Amended Declaration, paragraph 23, the Crown has no knowledge of the facts in the first sentence and admits the other facts in paragraph 23.~~
20. Deleted.
21. Deleted.

- ~~22. In reply to the Amended Declaration, paragraph 30, the Crown admits the facts in the first sentence of paragraph 30 and has no knowledge of the other facts in paragraph 30.~~
- ~~23. In reply to the Amended Declaration, paragraph 32, the Crown admits the facts in paragraph 32. The date of the correspondence between Nimpkish Chief James Sewid and the Minister of Labour was November 10, 1950.~~

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

24. On October 20, 1884, Reserve Commissioner Peter O'Reilly allotted 46.25 acres of land to I.R. No. 1.
25. In 1887, a survey confirmed I.R. No. 1 was comprised of 46.25 acres. The following year the survey was endorsed by the Crown and approved by the Province.
26. By letter dated January 9, 1931, Indian Agent W.M. Halliday advised Indian Commissioner W. E. Ditchburn that the 'Namgis passed a band council resolution granting the Province a right-of-way to construct a road across I.R. No. 1. Indian Agent Halliday also advised that compensation would be paid to band members for improvements damaged by the Road.
27. By Order in Council P.C. 217 dated February 5, 1934 ("O.I.C. 217"), the Crown transferred .499 of an acre of I.R. No. 1 to the Province. The .499 of an acre was composed of a right-of-way fourteen feet in width and recorded as plan number Rd. 2534 ("Plan 2534").
28. By Order in Council 1036 dated July 29, 1938 ("O.I.C. 1036"), the Province formally transferred to the Crown the administration and control of reserve lands in the Province, including I.R. No. 1.
- ~~29. The Road was rebuilt at some point during the summer of 1941.~~

30. ~~By letter dated August 23, 1941, Indian Agent Todd informed S.D.H. Pope, District Engineer, that the 'Namgis agreed to give a portion of I.R. No. 1 land to the Province in order to straighten a six-foot bottleneck in the Road, which had been causing traffic to spill over onto the sidewalk.~~
31. ~~By letter dated November 17, 1941, Indian Agent Todd informed Indian Commissioner D.M. MacKay that the bottleneck in the Road had been straightened and a new sidewalk had been built.~~

32. Deleted.

33. Deleted.

34. Deleted.

35. Deleted.

36. Deleted.

37. Deleted.

V. Relief (Rule 42(f))

38. The Crown seeks an award to 'Namgis of compensation pursuant to the Act, section 20(1)(e), for .499 of an acre of I.R. No. 1 land taken under legal authority in or about 1934. a dismissal of all the claims set out in the Amended Declaration.

VI. Communication (Rule 42(g))

Respondent's address for service:	Department of Justice 900 – 840 Howe Street Vancouver, BC V6Z 2S9 Attention: James M. Mackenzie
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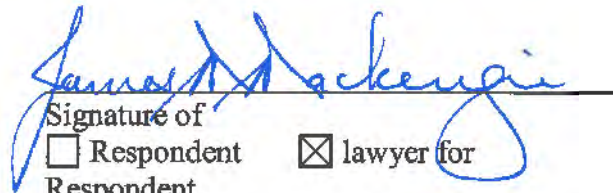
Fax number address for service: (604) 666-2710

Email address for service: james.mackenzie@justice.gc.ca

Original Response filed: August 7, 2012

Amended Response dated: January 3, 2013

Further Amended Response dated: November 28, 2013


Signature of

Respondent lawyer for

Respondent

William F. Pentney

Deputy Attorney General

Per: James M. Mackenzie

Department of Justice

British Columbia Regional Office