

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES May 14, 2019 Isabelle Bourassa
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Ottawa, ON	1

SCT File No.: SCT - 5002-19

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

PELICAN LAKE FIRST NATION

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

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*, Rule 41.

May 14, 2019

 Date

Isabelle Bourassa

 Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant

1. The Claimant, Pelican Lake First Nation (the “First Nation” or “Pelican Lake”) is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5 and within the meaning of Treaty No. 6 (“Treaty 6”). The First Nation is located in west-central Saskatchewan.

II. Conditions Precedent

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

...

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim; ...

3. The First Nation filed a claim with the Minister of Crown-Indigenous Relations and Northern Affairs (Specific Claims Branch) on February 17, 2016, outlining the particulars of the Respondent’s breach of treaty, statutory and fiduciary duties in relation to the unlawful expropriation of 26.57 acres of land from Chitek Lake Indian Reserve No. 191 (“IR 191” or “Chitek Lake Reserve”) by the Canadian Pacific Railway (“CPR”) for railway purposes (the “Claim”).
4. Over three years have elapsed since the First Nation has filed the Claim with the Minister.

III. Grounds of the Specific Claim

5. The following grounds are plead pursuant to s. 14(1) 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;
- ...
- (e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

IV. Statement of Facts

6. IR 191 was created by letter of reservation and confirmed by Order-in-Council P.C. #2509 on December 28, 1929, pursuant to the terms of Treaty 6 for the Pelican Lake people. As originally constituted, IR 191 contained 8,630.40 acres of land and is situated approximately 230 kilometres northwest of Saskatoon, Saskatchewan.
7. In April 1930, the CPR informed the Department of Indian Affairs ("DIA" or the "Department") headquarters that IR 191 would be affected by a right-of-way for a branch line. Shortly thereafter, the CPR informed the DIA that it intended to apply for a highway crossing through IR 191.
8. The DIA advised the CPR that an Order-in-Council would be required to transfer Chitek Lake Reserve land ("Reserve"). It outlined the process, which included the filing of a plan or blueprints with the Department, an appraisal of the requested lands and an agreement on price, prior to requesting the permission of the Governor General in Council to transfer the lands.
9. The CPR agent expressed dissatisfaction with this process. He stated that the CPR intended to take title to the right-of-way according to its final survey plan.
10. On May 16, 1930, the CPR made an urgent request to the DIA seeking permission to enter the Reserve for construction. If allowed entry, the CPR undertook to pay a "reasonable" deposit and to provide compensation for the right-of-way pending agreement on the price and the completion of a survey by the Dominion Land Surveyor. The CPR asked the DIA to respond at once with authorization.
11. On the same day, Assistant Deputy and Secretary for the DIA, A.F. MacKenzie, wired the CPR agent and requested a \$760.00 deposit prior to allowing entry to

- the Reserve. He instructed Indian Agent Weir to allow the CPR to begin construction upon payment of the deposit.
12. Lawyers for the CPR disputed the amount of the deposit. They argued that the CPR should not be required to make a “unduly large” deposit as it might prejudice the amount of final settlement and requested permission to proceed with construction upon deposit of a lower amount.
 13. The DIA responded that the deposit demanded was not reflective of final purchase price but rather required to waive the usual procedure and grant early entry to the Reserve prior to determination of compensation.
 14. Acting Assistant Deputy and Secretary for the DIA, A.S. Williams, then instructed Indian Agent Weir to negotiate a purchase price satisfactory to all parties. On the same day, Williams advised the CPR that as a result of Agent Weir’s interim report, the required deposit had been reduced to \$250.00.
 15. Shortly thereafter, the \$250.00 deposit was paid. On June 9, 1930, Agent Weir forwarded the deposit to DIA headquarters and advised that he would permit CPR entry on IR 191 to construct the railway right-of-way.
 16. Formal authorization for the right-of-way was not obtained until 1932. A Revised Location Plan, altering the original location of the rail line, was used to obtain formal authorization for the right-of-way and was certified and sanctioned by the Board of Railway Commissioners for Canada in September 1931. This Plan was later registered at the Battleford Registry Office in October 1931, pursuant to Order-in-Council dated April 22, 1932, purporting to transfer the land to the CPR pursuant to s. 48 of the *Indian Act*.
 17. In January 1932, the DIA requested the outstanding balance owing on the Chitek Lake Reserve right-of-way.
 18. Letters Patent were issued to the CPR on August 2, 1932, purporting to convey the land in absolute terms in consideration for the purchase price of \$265.70.

V. The Basis in Law – Crown Breaches of Lawful Obligations

19. Pelican Lake’s claim is brought on the grounds that the Respondent breached its statutory and fiduciary duties to the First Nation in the context of this taking for the railway right-of-way by:
- a. failing to strictly comply with the expropriation procedures set out by the *Indian Act* and the *Railway Act* when it expropriated reserve land for the right-of-way;
 - b. failing to advise Pelican Lake of the valuation of the land to be taken and its statutory right to seek arbitration if it was not satisfied with the compensation for the lands taken;
 - c. failing to ensure minimal impairment of Pelican Lake’s use and enjoyment of its reserve land by purporting to grant fee simple title to the right-of-way lands to the CPR when it only required a limited interest in the nature of a statutory easement with a reversionary right in favour of the First Nation when the lands were no longer required for railway purposes;
 - d. failing to withhold its consent to the taking of Chitek Lake Reserve land as the transaction was foolish, improvident and exploitative; and
 - e. in the alternative, if no statutory breach is found, breach of fiduciary duty for failing to obtain adequate compensation for the taking of Pelican Lake’s reserve lands.

VI. Relief Sought

20. The First Nation does not seek compensation in excess of \$150 million.
21. The First Nation seeks the following relief:
- a. compensation for the fair market value and loss of use of the Claim lands;
 - b. compensation for damages for injurious affection;

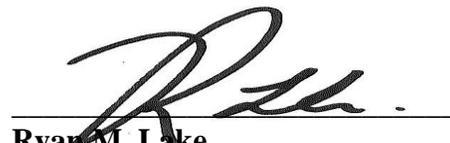
- c. an Order that any interests conveyed to the CPR are limited to a statutory easement, and such interests revert to the Crown on behalf of the First Nation when the lands are no longer required for railway purposes, and that the underlying mineral rights remain vested in the Crown on behalf of the First Nation;
- d. an Order rescinding the August 2, 1932, Letters Patent and rectifying all Land Titles and other government records to reflect the interests in land described in paragraph 21(b) herein;
- e. an award of solicitor-client costs pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, section 110(2) in relation to the specific claim and this proceeding; and
- f. such other relief as this Honourable Tribunal deems just.

Dated this 13th day of May, 2019, at the City of Calgary, in the Province of Alberta.

MAURICE LAW


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