

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

ST. MARY’S INDIAN BAND

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	<p>January 29, 2014</p> <p>Guillaume Phaneuf</p>
Ottawa, ON	1

Claimant

v.

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

Respondent

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**DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
*Specific Claims Tribunal Rules of Practice and Procedure*

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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*.

\_\_\_\_\_  
January 29, 2014

Guillaume Phaneuf  
\_\_\_\_\_  
(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building 234 Wellington Street East Tower  
Ottawa, Ontario K1A 0H8  
Fax number: (613) 954-1920

**I. Claimant (R. 41(a))**

1. The Claimant, ST. MARY'S INDIAN BAND (the "Band") confirms that it 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. I-5, as amended, in the Province of British Columbia.

**II. Conditions Precedent (R. 41(c))**

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

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

3. The Band filed the Alienation of St. Eugene Mission Residential School Farm Lands with the Department of Indian Affairs, Specific Claims Branch. The claim related to breach of duty by Canada that resulted in the Band's loss of entitlement to Lot 1, 2, 3, and 1063, consisting of 627.75 acres, otherwise known as the St. Eugene Mission Residential School Farm Lands, ("Mission Farm Lands").
4. After the school closed in 1970 the federal government failed to purchase the "Mission Farm Lands for the benefit of the Band (note the Mission Farm Lands do not contain the lands taken for a provincial road, which lands originally formed part of the Mission Farm Lands). In 1976, the Order of the Oblates of Mary Immaculate sold the Mission Farm Lands to Ernest Pighin. The Mission Farm Lands were part of the school operations. The Band asserts that the federal government breached its legal obligation and fiduciary duty to them by not taking steps to set aside the Mission Farm Lands as a reserve and by allowing the Mission Farm Lands to be alienated to a third party upon the closure of the school.

5. In a letter dated October 28, 2013, the Department of Indian and Northern Affairs stated:  
...it is the decision of the Minister of the Aboriginal Affairs and Northern Development not to accept for negotiation the Alienation of St. Eugene Mission Residential School Farm Lands specific claim on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

**III. Claim Limit (Act, s. 20(1)(b))**

6. For the purposes of the claim, the Band does not seek compensation in excess of \$150 million.

**IV. Grounds (Act, s. 14(1))**

7. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

14. (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(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 ...

**V. Allegations of Fact (R. 41(e))**

8. Lot 1, 2, 3 and 1063 otherwise known as the Mission Farm Lands, comprising 627.75 acres, lies adjacent to the Kootenay Indian Reserve No.1 and St. Mary's Indian Reserve No. 1A.
9. On December 4, 1868, John Shaw pre-empted Lot 1, which consisted of 160 acres. The pre-emption was transferred to Leon Foquet, Roman Catholic Missionary on May 19, 1875. A Crown Grant for Lot 1 was issued to Leon Foquet on May 11, 1881.
10. In the autumn of 1874, Reverend Father Léon Fouquet and Father John Burns traveled to the Kootenays to set up a mission to educate Aboriginal people in the Kootenay area about the beliefs of the Catholic religion and to provide education and training. By October of that year, they had raised a two-storey log house on Lot 1, Kootenay District which Reverend Father Fouquet had acquired by transfer in 1875 from John Shaw, the local Justice of the Peace. Lot 1 was pre-empted by John Shaw in 1868.
11. For the recently deceased C.J.E. de Mazenod, Reverend Father Léon Fouquet and Father John Burns named their endeavor "Mission de St. Eugene", which became known as the St. Eugene Mission. In June of 1875, Father Napoléon Grégoire arrived to help Father Léon M. Fouquet and Father John Burns. The Mission was expanded through pre-emptions of lots 2, 3 and 1063, by Mission officials.
12. On January 6, 1876, the provincial government passed an Order in Council that provided terms of reference the Reserve Commissioners to assign reserves.
13. On March 24, 1877, Napoleon Gregoire pre-empted Lot 2, which consisted of 280 acres. A Crown Grant for Lot 2 was issued to Napoleon Gregoire on November 2, 1880.
14. On January 29, 1878, Father John Burns homesteaded Lot 3, which consisted of 72 acres. A Crown Grant for Lot 3 was issued to Father John Burns on November 2, 1880.

15. On January 29, 1878, Father John Burns homesteaded Lot 1063 which consisted of 208 acres. A Crown Grant for Lot 1063 was issued to Father John Burns on April 22, 1896.
16. On August 9, 1880, O'Reilly was appointed Reserve Commissioner.
17. On April 17, 1883, Powell, the Dominion Inspector of Indian Agents, wrote to the Superintendent of Indian Affairs emphasizing the urgency of establishing reserves for the Ktunaxa people, including the Band. Despite the urgency, reserve allotment did not occur until 1884.
18. On April 10, 1884, Powell wrote to William Smithe (the Chief Commissioner of Lands and Works) to suggest that no applications to pre-empt or purchase land in Ktunaxa territory should be granted, except subject to what was deemed necessary for the Indians.
19. In 1884, Commissioner O'Reilly noted the factual circumstances of the First Nation, as well as their expectations regarding land allotment.
20. By a Minute of Decision, dated August 20, 1884, Commissioner O'Reilly allotted Kootenay Indian Reserve No. 1 to the First Nation, which did not include lot 1, 2, 3, and 1063 because they were pre-empted and could no be considered by Commissioner O'Reilly.
21. Lots 1, 2, 3 and 1063, totaling 760 acres, were transferred to the Oblates and title registered in the Land Registry in 1897. West of the Mission were Lots 494 and 1758 which were owned by the Sisters of Providence. Together, Lots 1, 2, 3, 1063, 494, and 1758 formed the St. Eugene Mission Property.
22. In 1890, the Hon. E. Dewdney, Supt. General of Indian Affairs visited the St. Eugene Mission and recommended that an effort be made to scatter the Indians from the Indian village on the Mission Farm Lands to the reserves.

23. In 1887, Father Reverend Fouquet was replaced by another Oblate priest named Father Coccola. The “Indian Industrial School” was opened at the St. Eugene Mission in 1890.
24. In 1898, the federal government, as represented by the Superintendent of Indian Affairs, acquired 33 1/3 acres of Lot 1. On or about 1910, the federal government funded and constructed an Indian residential school that formed part of the St. Eugene Mission, situated within the 33 1/3 acre parcel. The Mission School was operated by the Oblates until 1970, when it was closed. Students from the Ktunaxa Nation, including the Band and from other aboriginal groups attended the Mission School.
25. The area surrounding the St. Eugene’s Church and the residential school became known as the St. Eugene’s Mission and it became the area in which much activity took place. The Mission Farm Lands were utilized for farming purposes in support of the operations of the school, which was done by students of the school, Ktunaxa members who resided at the Mission and church officials. Members of the Ktunaxa Nation regularly attended both the Church and the Residential school. Many families of the Band resided in tipi’s and cabins on the grounds of the St. Eugene Mission on a year-round basis.
26. In the 1920’s the Oblate Fathers had discussions with the federal government for the sell of lands that were occupied by the members of the Band and the Ktunaxa Nation.
27. In 1925, the federal government purchased two parcels of land (25.05 acres and 1.91 acres) that were excepted out of Lot 1 from the Oblate Fathers for \$2,000. The federal government purchased these lands in order to ensure that the lands upon which “Indian houses” were not disposed of to a third party.
28. A memorandum, dated February 23, 1925, to the Superintendent General, Indian Affairs confirmed that the federal government was concerned about the potential alienation of lands that were occupied by the Band.

29. In 1951, the federal government set aside the 26.96 acres purchased in 1925 as reserve land for the following Bands: St. Mary's; Columbia Lake; Shuswap; Tobacco Plains; Lower Kootenay; and the Arrow Lake.
30. In anticipation of the closure of the Mission School, the Order of Oblates of Mary Immaculate commissioned in 1969 an appraisal of District Lots 1 (except those lands excepted) 2, 3 and 1063. During this time, Order of Oblates of Mary Immaculate was making plans to lease the lots for agricultural purposes.
31. On November 20, 1969, the Regional Superintendent of Education, Indian Affairs, stated, "As far as the land is concerned, if it is on reserve land and came originally from the Indian people, in all probability it will be returned to them". On December 2, 1969, the District Superintendent of Education, Indian Affairs, stated, "I should like to recommend that the land and buildings at St. Eugene's be transferred to the St. Mary's Band".
32. On December 23, 1970, an official of the Department of Indian Affairs and Northern Development suggested that the Order of Oblates of Mary Immaculate "keep in mind" a Mr. Victor Pighin for the purchase of the lots as the "Pighin family ... are long associates of the Mission and Victor [Pighin] would very much like to buy the Mission property for one of his family".
33. The Mission School was closed in 1970 when government policy changed to encourage public education for Indian children.
34. In 1971, after the Mission School closed the St. Mary's, Columbia Lake, Shuswap and Lower Kootenay Bands, by separate Band Council Resolutions, requested that the Department of Indian Affairs "turn ... over" Lot 494, Lot 1758 and a portion of Lot 1. In 1974, the federal government added 320.71 acres, from parcels, described as L1758, L494 and Parcel A, Assigned A and Assigned B of Lot 1, to the St. Mary's Indian Reserve No. 5A for the benefit of five Bands: St. Mary's; Columbia Lake; Shuswap; Tobacco Plains; and Lower Kootenay.

35. In 1976, the Order of the Oblates of Mary Immaculate sold the remaining Mission School lands of 627.75 acres to Ernest Pighin. The lands sold are identified as District Lots 1 (except those lands excepted) 2, 3 and 1063.

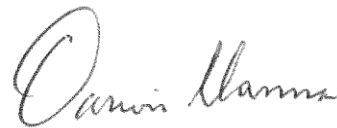
**VI. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation**

36. This claim is based on the Crown's breach of its common law fiduciary duty and legal obligation to complete the reserve creation process relating to the Mission Farm Lands Land, to ensure that these lands were surveyed as an Indian reserve and protected for the exclusive use and benefit of the First Nation and acquired by Canada as a reserve for the Band when the school closed in 1970.

37. The First Nation seeks compensation from Canada for:

- a. The failure of Canada to acquire the Mission Farm Lands from the Oblates and add the Mission Farm Lands to the reserve lands of the Band upon cessation of the St. Eugene Mission Residential School operations in 1970;
- b. Interest; and
- c. Such other damages or compensation as this Honourable Tribunal deems, just.

Dated this 29<sup>th</sup> day of January, 2014.



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Signature of Solicitor

**Darwin Hanna**

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