

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

WILLIAMS LAKE INDIAN BAND

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
October 26, 2011	
Guillaume Phaneuf	
Ottawa, ON	1

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA  
as represented by the Minister of Aboriginal 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*.

October 26, 2011

Guillaume Phaneuf

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(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
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Ottawa, Ontario K1A 0H8  
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**I. Claimant (R. 41(a))**

1. The Claimant, the Williams Lake Indian Band (the “First Nation”) confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province 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 First Nation filed the Williams Lake Village Sites Claim (the “Claim”) with the Specific Claims Branch on February 8, 1994.
4. Canada rejected the Claim on August 23, 1995.
5. On June 3, 2002, the First Nation requested that the Indian Claims Commission (the “ICC”) review the Claim.
6. The ICC conducted an inquiry. A Community Session was held on July 17 and 18, 2003 at the Sugar Cane Reserve at which Williams Lake Elders testified. Written submissions were prepared and argued at an oral hearing in Vancouver on October 7, 2004.

7. On March 30, 2006 the ICC issued its report. The ICC found that: the First Nation's village sites at Williams Lake were "Indian settlements" within the meaning of the colonial legislation in operation at the time; the pre-emption of the village sites was not valid pursuant to the pre-emption legislation; Canada had a fiduciary duty to the Band; Canada's fiduciary duty was breached when Commissioner O'Reilly failed to confirm the village sites as reserves in 1881; and that the village sites should have been set aside and recommended as possible reserves. The ICC recommended that Canada accept the Claim for negotiation.
8. On August 27, 2007, Canada advised the First Nation that Canada did not accept the ICC's recommendation.
9. On February 13, 2009, Canada confirmed that it formally rejected the Claim for the purposes of the *Specific Claims Tribunal Act*.

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

10. For the purposes of the Claim, the First Nation does not seek compensation in excess of \$150 million.

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

11. The following are the grounds for the specific Claim, as provided for in s. 14 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;

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

12. The First Nation is part of the Secwepemc Nation.

13. The First Nation traditionally occupied settlements in the area in and around what is now the City of Williams Lake.
14. In 1879 Chief William of the Williams Lake Indian Band stated that the First Nation had dwelt in the area of Williams Lake for 500 years.
15. The Secwepemc name for the First Nation's settlements at the foot of Williams Lake and at Mission Creek were *Yucw* and *Pellkekiki*, respectively (together the "Village Sites").
16. The existence of the First Nation's settlements at Williams Lake was identified by Father Modeste Demers as early as 1842. The settlements included, *inter alia*, traditional *kickwillies* (pit houses), burial areas and, European-style structures including houses and a church.
17. On October 1, 1859, Governor Douglas issued a circular for all Magistrates and Gold Commissioners instructing them to reserve from pre-emption and for the use and benefit of the Indians the sites of all Indian villages and the land they had been accustomed to cultivate to the extent of several hundred acres around such villages (the "1859 Circular").
18. The Village Sites were "Indian villages" within the meaning of the 1859 Circular.
19. On October 7, 1859, Governor Douglas informed the Chief Commissioner of Lands and Works of the colonial government's policy regarding Indian reserves. Governor Douglas stated that sites of all Indian villages and the land which the Indians had been accustomed to cultivate, to the extent of several hundred acres around each village, had been reserved and were not subject to the operation of the proposed pre-emption law ("Governor Douglas's October 7, 1859 Instructions").
20. The Village Sites were "Indian villages" within the meaning of Governor Douglas's October 7, 1859 Instructions.

21. The 1859 Circular and Governor Douglas's October 7, 1859 Instructions were formalized through the issuance of *Proclamation No. 15* on January 4, 1860 (*"Proclamation No. 15"*).
22. Under *Proclamation No. 15*, Indian settlements were exempted from the lands in the Colony that were available for pre-emption.
23. The Village Sites were "Indian settlements" within the meaning of *Proclamation No. 15* and subsequent legislation prohibiting the acquisition of Indian settlements.
24. Thereafter Governor Douglas pursued a policy and issued instructions to the Chief Commissioner of Lands and Works and to surveyors, to mark off and reserve for the Indians "the permanent village sites, the fishing stations and burial grounds, cultivated lands and all the favourite resorts of the Tribe, and in short to include every piece of ground to which they had acquired an equitable title, through continuous occupation, tillage, or other investment of their labour."
25. Subsequent to the issuance of *Proclamation No. 15*, the Villages Sites were pre-empted and the First Nation was displaced.
26. In May, 1861 Phillip Nind ("Nind"), Gold Commissioner and Assistant Commissioner of Lands, reported to the Acting Colonial Secretary regarding the First Nation's settlements at Williams Lake that much of the land at Williams Lake had already been pre-empted and purchased and that the land would likely all be taken up that summer.
27. In 1861 the Colonial Secretary instructed Nind to mark off on the ground a reserve of 400 to 500 acres for the First Nation at Williams Lake. There is no written record of Nind acting on these instructions

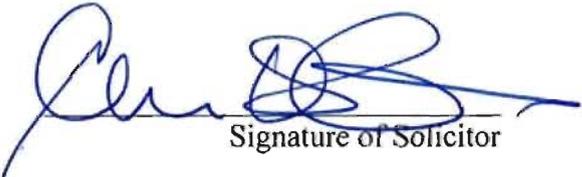
28. British Columbia joined Confederation pursuant to the *Terms of Union, 1871*, under which Canada assumed the “charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit”. Thereafter, Canada negotiated with British Columbia regarding Indian reserves in the Province culminating in an agreement in 1875/1876 to establish the Joint Indian Reserve Commission (“JIRC”). In 1878, the JIRC was replaced by a sole Commissioner, Gilbert Malcom Sproat. Sproat was replaced in 1880 by Peter O’Reilly.
29. The mandate of the JIRC was set out in Orders in Council. The Commissioners were instructed to adopt a liberal policy toward the Indians, to have regard for the Indians’ habits, wants and pursuits, and to make a full enquiry into all matters affecting the settlement of Indian reserves.
30. In 1879, a letter from Chief William was published in the *British Daily Colonist*. Chief William stated that his people were threatened by starvation and that their land had been taken by “white men”.
31. Indian Reserve Commissioner Peter O’Reilly (“O’Reilly”) met with the First Nation in June, 1881. O’Reilly informed the First Nation that while the government would give them other lands as a reserve, it would not interfere with existing pre-emptions and that the First Nation should not ask for land that had been pre-empted to be set aside as a reserve.
32. In 1881, O’Reilly set aside reserves for the First Nation. The Villages Sites were not included in the reserves.
33. A further reserve was set aside for the First Nation in 1894. The Villages Sites were not included in the further reserve set aside.
34. In 1885, Crown grant no. 2923 for Lots 71 and 72 Lillooet District, which included the Villages Sites, was issued to William Pinchbeck.

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

35. By allowing the Village Sites to be pre-empted, the colonial government breached its lawful obligation to the First Nation under colonial law and policy, including *Proclamation No. 15* and subsequent colonial legislation, to protect the Village Sites from alienation. Canada inherited and remains responsible for this outstanding legal obligation.
  
36. Based on colonial law and policy, including *Proclamation No. 15* and subsequent colonial legislation, the Village Sites were “lands reserved” for the Indians within the meaning of Article 13 of the *1871 Terms of Union*. By Article 13 Canada assumed a fiduciary duty to the First Nation in regards to the protection and management of “lands reserved” for the First Nation, including the Village Sites. Canada breached its fiduciary duty to the First Nation by failing to ensure that the Village Sites were protected and managed for the First Nation’s benefit.
  
37. Based on colonial law and policy, including *Proclamation No. 15* and subsequent colonial legislation, at the time of Confederation the Village Sites were “lands reserved for Indians” within the meaning of s. 91(24) of the *Constitution Act, 1867*. Consequently, based on the doctrine of interjurisdictional immunity, provincial land legislation was constitutionally inapplicable to the Village Sites. As far as it affected the Village Sites, Crown grant no. 2923 for Lots 71 and 72 was invalid. Canada further breached its fiduciary duty to the First Nation by failing to ensure that Crown grant no. 2923 for Lots 71 and 72 was declared null and void or otherwise set aside or quashed.

38. Canada further breached its fiduciary duty to the First Nation in the reserve creation process through O'Reilly's failure in 1881 to make a full enquiry into the pre-emption of the Village Sites, to advise the First Nation of the possibility of having the pre-emptions of its Village Sites cancelled and to take steps to have the pre-emptions cancelled and the Village Sites made eligible to be set aside as reserves.

Dated this 25<sup>th</sup> day of October, 2011.



Signature of Solicitor

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