

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**WILLIAMS LAKE INDIAN BAND**

F I L E D	SPECIFIC CLAIMS TRIBUNAL	D É P O S É
	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
	November 24, 2011	
	Guillaume Phaneuf	
	Ottawa, ON	3

**CLAIMANT**

v.

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

**RESPONDENT**

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

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

TO: WILLIAMS LAKE INDIAN BAND  
As represented by Clarine Ostrove, of  
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**I. Status of Claim (R. 42(a))**

1. The Williams Lake Indian Band submitted a claim to the Minister in February 1994 alleging among other things that the Colonial Government, and subsequently the federal Crown, had a fiduciary obligation to protect the Williams Lake Indian Band's settlement for its use and benefit, and that the federal Crown breached this obligation.
2. The Minister notified the Williams Lake Indian Band in writing on February 13, 2009 that its specific claim had not been accepted for negotiation.

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

3. The Crown does not accept the validity of any of the claims set out in the Declaration of Claim, and in particular:
  - a. The alleged 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; and
  - b. The alleged 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.
4. The Crown does not accept the validity of the claim that the Williams Lake Indian Band has suffered any damages. The Williams Lake Indian Band has already been compensated for any loss it may have suffered by the provision of extra land held by the Crown as reserves for the use and benefit of the Williams Lake Indian Band.

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

5. In reply to paragraph 12 of the Declaration of Claim, the Crown does not know if all the members of the Williams Lake Indian Band are, or consider themselves to be, members of the Secwepemc Nation, nor does the Crown know what the Claimant means by the expression “the Secwepemc Nation”. Accordingly, the Crown denies paragraph 12.

6. In reply to paragraph 13 of the Declaration of Claim, the allegation that the Williams Lake Indian Band “traditionally occupied settlements in the area in and around the city of Williams Lake” is both excessively vague and irrelevant to any matter properly before the Tribunal, and accordingly the Crown denies paragraph 13.

7. In reply to paragraph 14 of the Declaration of Claim, the Crown admits that in 1879 Chief William wrote a letter to the editor of the British Daily Colonist that said “The land on which my people lived for five hundred years was taken by a white man”, but denies that Chief William stated that his people had dwelled in or near what is now the town of Williams Lake.

8. In reply to the whole of the Declaration of Claim and particularly paragraphs 15 and 16 of it, the Crown denies that on October 1, 1859, or any time after that date, the Williams Lake Indian Band occupied Indian settlements or villages at the foot of Williams Lake or at Mission Creek, either as alleged in paragraphs 15 and 16 of the Declaration of Claim or at all.

9. In reply to paragraph 17 of the Declaration of Claim, the Crown admits that in 1859 Governor Douglas issued a circular for Magistrates and Gold Commissioners instructing them to reserve for the use and benefit of 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.

10. In reply to paragraph 18 of the Declaration of Claim, the Crown denies that on October 1, 1859, or any time after that date, the Williams Lake Indian Band occupied Indian villages within the meaning of the 1859 circular at the foot of Williams Lake or at Mission Creek.

11. In reply to paragraph 19 of the Declaration of Claim, the Crown admits that in 1859 Governor Douglas stated that the 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 were reserved and not subject to the proposed pre-emption law, as further described in paragraph 19 of the Declaration of Claim.

12. In reply to paragraph 20 of the Declaration of Claim, the Crown denies that on October 1, 1859 or any time after that date the Williams Lake Indian Band occupied Indian villages at the foot of Williams Lake or at Mission Creek, within the meaning of Governor Douglas's 1859 statement.

13. In reply to paragraph 21 of the Declaration of Claim, the Crown admits that the *Land Proclamation 23 Vict. No. 15 (Proclamation 15)* was enacted on January 4, 1860.

14. In reply to paragraph 22 of the Declaration of Claim, while the Crown admits that under *Proclamation 15* settlers were not permitted to pre-empt "Indian settlements", the Crown denies that a pre-emption of an alleged Indian settlement would be void if no steps were taken to challenge the pre-emption under the grievance process provided under *Proclamation 15* and subsequent versions of the pre-emption legislation.

15. In reply to paragraph 23 of the Declaration of Claim, the Crown denies that on October 1, 1859 or any time after that date the Williams Lake Indian Band occupied Indian settlements at the foot of Williams Lake or at Mission Creek, within the meaning of *Proclamation 15*.

16. In reply to paragraph 24 of the Declaration of Claim, the Crown admits that Governor Douglas described his policy of laying out reserves to include permanent village sites and other ground to which Indians had acquired an equitable title in a letter that he wrote in October 1874.

17. In reply to paragraph 25 of the Declaration of Claim, the Crown denies that on October 1, 1859 or any time after that date the Williams Lake Indian Band occupied village sites at the foot of Williams Lake or at Mission Creek that were pre-empted.

18. In reply to paragraph 26 of the Declaration of Claim, the Crown admits that in 1861 Gold Commissioner Nind reported that most of the farming land around Williams Lake had been pre-empted and would be taken up before the summer was over, but the Crown denies that in so doing he “reported ... regarding the First Nation’s settlements at Williams Lake” as alleged.

19. In reply to paragraph 27 of the Declaration of Claim, the Crown admits that in 1861 Gold Commissioner Nind was instructed to mark off a reserve of 400 to 500 acres and that there is no record that Gold Commissioner Nind acted on these instructions. The Crown denies that Gold Commissioner Nind was instructed to mark off a reserve at the foot of Williams Lake or at Mission Creek.

20. In reply to paragraphs 28 and 29 of the Declaration of Claim, the Crown admits that British Columbia joined Confederation pursuant to the *Terms of Union, 1871* and that subsequently a Joint Indian Reserve Commission was established as further described in paragraphs 28 and 29 of the Declaration of Claim. Indian Reserve Commissioner Peter O’Reilly was jointly appointed by both the provincial and federal Crowns in 1880.

21. In reply to paragraph 30 of the Declaration of Claim, the Crown states that in a letter published in the *British Daily Colonist* in 1879, Chief William stated that his people’s land had been taken by “a white man”, but the Crown denies that Chief William identified that land as being at the foot of Williams Lake or at Mission Creek.

22. In reply to paragraph 31 of the Declaration of Claim, the Crown admits that Indian Reserve Commissioner O’Reilly met with members of the Williams Lake Indian Band in June 1881 and informed them that the government would not interfere with existing pre-emptions.

23. In reply to paragraphs 32 and 33 of the Declaration of Claim, the Crown admits only that reserves were identified and allotted for the Williams Lake Indian Band in 1881 and 1894.

24. In reply to paragraph 34 of the Declaration of Claim, the Crown admits that in 1885, Crown grant no. 2923 for lots 71 and 72 Lillooet District was issued to William Pinchbeck, but

denies that the land in question included any Indian settlements occupied by the Williams Lake Indian Band on October 1, 1859 or any time after that date.

**IV. Statements of Fact (R.42 (a))**

25. In addition to the foregoing, the Crown sets out the following facts that are related to the specific claim.

26. The Colonial Government of British Columbia did not create any Indian reserves for the Williams Lake Indian Band.

27. *Proclamation 15*, which permitted settlers to pre-empt lands which were not the site of an Indian reserve or settlement, was repealed and replaced by the *Pre-emption Consolidation Act, 1861*. Both *Proclamation 15* and the *Pre-emption Consolidation Act, 1861* provided a grievance procedure which enabled a person affected by a pre-emption to go before a magistrate for a ruling on whether or not a pre-emption was valid. The Williams Lake Indian Band never challenged any pre-emptions through the grievance procedure set out in the legislation.

28. In June 1881 Indian Reserve Commissioner Peter O'Reilly travelled to Williams Lake and met with Chief William and other members of the Williams Lake Indian Band. A draft memorandum dated June 6, 1881 contains notes of a conversation between Commissioner O'Reilly and Chief William:

Commissioner - ... in the early days mistakes were made with the land, the Indians were engaged otherwise and did not care for the land, the consequence was the whites pre-empted it, that the Govt. wish to remedy the mistake as far as possible and has purchased a large and valuable tract of land which I am about to hand over to them ... if the land purchased by the Govt. shall prove insufficient other land will be given to them and also a sufficient quantity of water.

29. The land purchased by the Crown for the Williams Lake Indian Band was the Bates estate, comprised of 1,464 acres at the head of Williams Lake. The Bates estate, along with the adjoining lands, subsequently became Williams Lake Reserve No. 1.

30. On June 16, 1881, Commissioner O'Reilly recommended the establishment of 14 reserves for the Williams Lake Indian Band, totaling 5,634 acres.

31. In a letter to the Superintendent General at the Department of Indian Affairs dated September 22, 1881, Commissioner O'Reilly noted that the Chief and most of the tribe were involved in the selection process for the recommended reserves and that Chief William "expressed himself satisfied and thankful that their land question is now settled".

32. Eight graveyard reserves recommended by Commissioner O'Reilly were not confirmed as Indian reserves. These are the subject of a separate specific claim which has been resolved. The remainder of the reserves recommended by Commissioner O'Reilly in 1881 are currently held by the Crown for the use and benefit of the Williams Lake Indian Band.

**V. Relief (R. 42(f))**

33. The Crown denies the entitlement of relief sought and seeks to have the claim dismissed in its entirety.

34. The Crown seeks its costs in the proceedings.

35. If the Crown is liable, which is not admitted, then the Crown asserts that the Province of British Columbia contributed to the acts or omissions and any losses arising therefrom as set out in subparagraph 20(1)(i) of the *Specific Claims Tribunal Act*.

36. If the Crown is liable, which is not admitted, then the Crown seeks to have the Williams Lake Indian Band's claim for damages dismissed on the basis that the Williams Lake Indian Band was already compensated for the lands at issue by way of the provision of additional reserve lands.

37. The Crown pleads and relies on section 20 of the *Specific Claims Tribunal Act*.

38. Such further relief as this Honourable Tribunal deems just.

**VI. Communication (R. 42(g))**

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Dated: November 24, 2011



Signature of  
 Respondent     lawyer for Respondent  
**Myles Kirvan,**  
Deputy Attorney General  
**Per: Brian McLaughlin**  
Department of Justice  
British Columbia Regional Office