

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

LAKE BABINE NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	May 18, 2012	D E P O S E
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

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

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*.

Date: May 18, 2012

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, the Lake Babine Nation (the "Nation") confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act* ("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 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. On June 26, 1997, the First Nation filed the Tachet Topley Landing Specific Claim (the "Claim") with Indian and Northern Affairs Canada ("INAC").
4. The Specific Claims Branch conducted research and prepared a historical review, dated August 29, 1997.
5. The Nation filed a response to the Specific Claims Branch's historical review on August 17, 1998.
6. On May 25, 2011, INAC advised the Nation that it rejected the majority of the allegations in the Claim. In particular, INAC rejected the allegations relating to Canada's breach of its fiduciary duties in failing to reserve and protect the following lots for the use and benefit of the Nation: Lot 1610A, Lot 1353, and the east half of Lot 1354.

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

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

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

8. The following are the grounds for the Claim, as provided for in s. 14 of the Act:
- 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...

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

9. The Nation traditionally used and occupied the lands around Fulton River, where it meets Lake Babine. In particular, the Nation had at least two settlements in this area; one north of the Fulton River (Tachet), and one south of the Fulton River (Topley Landing).
10. An October 1909 survey conducted by J.H. Brownlee of the provincial Department of Lands Surveyor General's Branch showed "Indian shacks" north of the Fulton River, on the eastern portion, close to Babine Lake.
11. A 1913 pre-emptor's map from the provincial Department of Lands showed that a portion of land south of the Fulton River, on the shores of Lake Babine was an "Ind. Res."
12. In or around 1915, the Nation applied to the Royal Commission on Indian Affairs for B.C. ("McKenna McBride Commission") under Application No. 84 for reserve land around the Fulton River where it meets Lake Babine, including:
- a. The eastern portion of Lot 1610A, north of the Fulton River
 - b. Lot 1353, south of the Fulton River; and
 - c. The eastern portion of Lot 1354, south of the Fulton River.
13. On November 16, 1915, Commission Secretary C. H. Gibbons wrote to the provincial Deputy Minister of Lands, R. A. Renwick, requesting that certain lands be withheld from alienation pending the final decision of the McKenna McBride Commission. The land to be set aside under this application was described as

“Item No. 84, Babine - E. 1/2 Lot No. 1354 and the Lot directly N. thereof; also the projection of land on the E. end of Lot 1610a, said protection to be subtracted from the land of Lot 1610a, covered by A.P.”

14. On May 30, 1916, the McKenna McBride Commission issued a Minute of Decision relating to the Nation's Application No. 84, allotting to the Nation an Indian Reserve comprising about 128 acres south of the Fulton River described as ungazetted Lot 1353.
15. An undated map prepared by the McKenna McBride Commission's Surveyor, Ashdown Green, and associated with Application No. 84, situates Indian Reserve No. 25 ("I.R. 25"), comprising 128 acres, south of the Fulton River on Lot 1353.
16. I.R. No. 25 was confirmed as an Indian reserve of the Band by B.C. Order in Council No. 911 on July 25, 1923 and by Order in Council PC 1265 on July 19, 1924.
17. Members of the Nation who had lived south of the Fulton River for generations were encouraged by Indian Agent Edgar Hyde ("Hyde") to expand their settlement south of the Fulton River because it was reserved.
18. An undated blue-print ("blue-print") that the Indian Agent G. C. Mortimer ("Mortimer") received from the Indian Commissioner in 1926 shows seven "Indian houses" on the lot south of the Fulton River, on the shore of Lake Babine.
19. On April 13, 1927, Indian Affairs Assistant Deputy and Secretary J. D. McLean ("McLean") instructed British Columbia Land Surveyor V. Schjelderup ("Schjelderup") to survey ungazetted Lot 1353, containing 128 acres, as I.R. No. 25. McLean instructed Schjelderup that "should occasion arise where the information you obtain from Victoria is not sufficiently definite to properly identify the parcels you are inspected to survey, the Indian Agent should be consulted."

20. On May 21, 1927, the provincial Surveyor General, J. E. Umbauch (“Umbauch”) instructed Schjelderup to survey an area north of the Fulton River as Lot 1353. Umbauch stated that “it has been decided to cancel the survey of Lot 1610-A” and that “it is understood that the area desired for the Indian Reserve is the easterly portion of said Lot 1610-A, lying north of the river, and that you intend to survey the reserve as Lot 1353.”
21. In 1927, Schjelderup surveyed I.R. 25, comprising 116.2 acres, north of the Fulton River, and called this Lot 1353. He surveyed the lot south of the Fulton River, containing 126 acres, as Lot 2173. He surveyed two other lots located within Lot 2173, at the shore of Lake Babine, on either side of the road. The small lot north of the road is recorded as Lot 2175, and it contains “A. Sidaris General Store.” The small lot south of the road is recorded as Lot 2174 and it contains an “old log bldg” close to the road, and “H.B. Co Warehouse and stable” on the shore of Lake Babine.
22. Unlike the blue-print, Schjelderup’s 1927 survey plan of Lot 2173 does not show any Indian houses.
23. On September 4, 1931, Daniel J. Leon, a member of the Nation, contacted the Department of Indian Affairs (“DIA”) for help as the B.C. Forest Department had told him to move his house from the area south of the Fulton River – the reserve allotted by the McKenna McBride Commission. Mortimer recommended that DIA purchase the land south of the Fulton River occupied by the Indians “so as to eliminate any hardships occasioned by the Indians at that point.”
24. On May 30, 1940, Mortimer’s replacement, S. Mallinson (“Mallinson”), inquired of DIA whether it would be possible to obtain the land south of the Fulton River occupied by the Indians as an Indian reserve.
25. On November 13, 1940, provincial Deputy Minister H. Cathcart, following up on complaints made by District Forester R. C. St. Clair regarding the “Indians

squatting” on the land south of the Fulton River, requested to DIA that the Indians living south of the Fulton River be removed. He renewed this request in 1944.

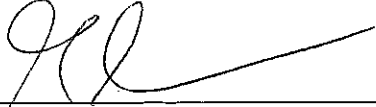
26. DIA initially took the position that it would do nothing, and that it would not remove the Indians living south of the Fulton River until compelled to do so by the Province.
27. In 1948 DIA secured statutory declarations from the Indians residing at Topley Landing, including Daniel Leon, Rosie Leon, John Baptiste (Paddy) Leon, and Jim Charley to the effect that each of them had been born at Topley Landing and had lived there all or most of their lives. DIA took no further steps to protect or reserve the lands for the Nation.

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

28. This claim is based on the Crown’s breach of its common law fiduciary obligations to complete the reserve creation process relating to the lands south of the Fulton River, and in particular to ensure that these lands were surveyed as an Indian Reserve and protected for the exclusive use and benefit of the Nation.
29. Furthermore, Canada failed to follow through on promises made to the Nation to protect the lands and failed, when the opportunity arose, to remedy previous breaches of its fiduciary obligations by taking steps to reserve the lands for their benefit.
30. The Nation seeks compensation from Canada for:
 - a. The loss of the reserve comprising approximately 128 acres south of the Fulton River allotted to the Nation by the McKenna McBride Commission in 1916;
 - b. Interest;

- c. Such other damages or compensation as this Honourable Tribunal deems .
just.

Dated this 18th day of May, 2012.



Signature of Solicitor

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