

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

MADAWASKA MALISEET FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	August 13, 2012	D E P O S É
Guillaume Phaneuf		
Ottawa, ON		1

Claimant

v.

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

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*.

[ Date: August 13, 2012 ]

Guillaume Phaneuf

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(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
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**I. Claimant (R. 41(a))**

1. The Claimant, Madawaska Maliseet First Nation 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 New Brunswick.

**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 Madawaska Maliseet First Nation submitted a specific claim with Specific Claims Branch, Indian and Northern Affairs Canada on April 16, 1998 regarding Alienation of Reserve Lands (the “Claim”), which was acknowledged on May 11, 1998.
4. On January 13, 2009 Michel Roy, Senior Assistant Deputy Minister, Treaties and Aboriginal Government wrote to the Madawaska Maliseet First Nation declaring that the Claim had not been accepted for negotiation by the Minister of Indian Affairs and Northern Development on the basis that “there is no outstanding lawful obligation on the part of the Government of Canada” because the specific parcels of land (Parcels A, B and C) did not constitute a “reserve” within the meaning of the *Indian Act* at the time they were alienated.

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

5. The Madawaska Maliseet First Nation does not seek compensation in excess of \$150 million for the purposes of the Madawaska Maliseet First Nation's Claim.

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

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

...

- a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;
- 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;
- d) an illegal lease or disposition by the Crown of reserve lands;
- e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

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

**Reserve Lands**

- 7. Parcels A, B and C are part of a tract of land situated at the confluence of the Madawaska River and the St. John River set aside for the benefit of the Maliseets at the Madawaska River.
- 8. **1760:** Captain Peach map shows an Indian Village at the confluence of the Madawaska River and the St. John River.
- 9. **1787:** James Peachey map identifies an Indian Village along the shores of the St. John River between the Madawaska River and the Iroquois River.
- 10. **1787:** Sproule map shows the Indian Village, principal residence of the St. John Tribe, at the confluence of the Madawaska River and the St. John River. "*The Indians require the tract of land included within the red lines to be reserved for their use. Except Kelly's lot.*" The tract of land spans both sides of the Madawaska River and both sides of the St. John River.
- 11. **1790:** An original grant of land to Joseph Muzerall and 48 others shows an Indian Reserve that spans both sides of the Madawaska River. The word Indian is written

on the West side of the Madawaska River and the word Reserve on the East side. The word Indian on the West side of the Madawaska has lines through it and it is rewritten over the word Reserve on the East side.

12. **1792:** Isaac Hedden Sketch copied from a survey plan shows an Indian Village at the confluence of the Madawaska River and the St. John River.
13. **January 1792:** Noel Bernard petitioned Governor Carleton for a lot on the north side of the St. John River in the district of Madawaska. The cover page to the petition includes the statement "*complied with 7th Sept. 1792.*"
14. **October 1792:** Noel Bernard, Louis Denis and Simon Xavier petition Governor Carlton for a lot on the north east side of the St. John River in the district of Madawaska. The cover page of the petition states "*Simon Fran. Xavier and other in behalf of the Melicite Tribe of Indians ask a tract of land above the Madawaska Settlement.*" Crossed out below this is a statement "*complied with 4th Jany 1792.*"
15. **1798:** A new chart of the coast of Nova Scotia with the south coast of New Brunswick by Cpt. Holland shows the Indian Village just below the mouth of the Madawaska River on the east side of the St. John River.
16. **1831:** Report prepared by John D. Deane and Edward Kavanagh to the Governor of the State of Maine refers to the Indians living on the east bank of the St. John River just below the mouth of the Madawaska River.
17. **1831:** Report prepared by John D. Deane and Edward Kavanagh refers to Simon Hebert's questionable claim to ownership based on a late grant or certificate from the British. (Parcel B)
18. **1838:** Schedule of Indian Reserves in New Brunswick does not have a listing for the Madawaska Reserve.
19. **1841:** Report of Moses Perley. He met with the Captain of the Madawaska settlement, Louis Bernard, who pointed out the boundaries that were assigned to the tribe when he was a youth. The report contains reference to the circumstances surrounding the 1824 grant (Parcel A) and the 1829 license of occupation to Simon Hebert (Parcel B).

20. **1841:** Saunders, surveyor general for New Brunswick responds to Moses Perley's report. Saunders could not find mention of a reserve at the mouth of the Madawaska River.
21. **1842:** Schedule of Indian Reserves in New Brunswick includes a listing for the Madawaska Reserve at 700 acres.
22. **1845:** H. M. Garden sketch of a survey of eight lots of the reserve at the mouth of the little Madawaska River contains approximately 1600 acres.
23. **1846:** Sketch outlining the claims of New Brunswick Settlers under the Treaty of Washington that shows the Indian Reserve located at the confluence of the Madawaska River and the St. John River.
24. **1860:** Instructions were given to James Brown to survey the Indian Reserve at Little Falls.
25. **1860:** Deputy Chas. E. Beckwith prepared a survey plan of the Indian Reserve at St. Basile showing 8 lots totaling 722 acres.
26. **1900:** St. Basile Reserve was included listed in the Indian Lands Registry and noted that it was accorded a "*de facto*" recognition.

### **Alienation of Reserve Lands**

#### **Royal Proclamation**

27. The Royal Proclamation of 1763 contains an official directive that no warrants of survey or land grants were to be issued in any of Britain's colonies, for territories which had not been ceded to, or purchased by, the Imperial government. It further stated that private persons were enjoined from making any purchase from the Indians of any lands reserved to them. The Proclamation contains a recognition that there had, in the past, been frauds and abuses committed in the purchasing of lands of the Indians, thus prejudicing official interests and creating dissatisfaction among the Indians.
28. The Maliseet people of New Brunswick, including those at Madawaska, fall within the categories of Indians described by the Proclamation. As members of the St. John River Indians who were signatories of Dummer's and Mascarene's Treaties in 1725-26, they were connected to Britain by formal agreement. Their

traditional territory along the St. John River, fell within the boundaries of the territory ceded by France to Britain under the Treaty of Utrecht. The Maliseet at Madawaska were included in the phrase “who live under our Protection.”

**An Act to regulate the management and disposal of Indian Reserves in this Province, 1844**

29. The second section of the Act sets out the procedure to be followed before the Lieutenant Governor in council could sell reserve lands.
30. **October 1867:** Request by the New Brunswick Lands Commission for a listing of all the reserve lands sold under the 1844 Act.
31. **December 1867:** Correspondence from R. Sutton, New Brunswick's Crown Land Commission providing a list of Indian Reserves and sales there from under the 1844 Act.

**Alienation of Parcel A**

32. **1825:** The portion of Parcel A comprising 250 acres that was granted to Simon Hebert, purported to be purchased from the Indians, did not follow the procedure for alienation of reserve lands provided for in the Royal Proclamation 1763.
33. **April 12, 1860:** The portion of Parcel A comprising 100 acres that was granted to John Hartt did not follow the procedure for alienation of reserve lands provided for in the Royal Proclamation 1763 or the procedure for alienation of reserve lands provided for in *An Act to regulate the management and disposal of Indian Reserves in this Province, 1844*.

**Alienation of Parcel B**

34. **1829:** The license of occupation granted to Simon Hebert did not follow the procedure for alienation of reserve lands provided for in the Royal Proclamation 1763.

**Alienation of Parcel C**

35. **1787:** The reserve established for the Maliseets as indicated by the Surveyor General for New Brunswick is a large tract of land on both sides of the Madawaska River and both sides of the St. John River. The Surveyor General notes “The Indians require the tract of land included within the red lines to be reserved for their use”. This was the first documentation of the de facto reserve at Madawaska.
36. **1845:** The H. M. Garden’s sketch of a survey of the reserve at the mouth of the little Madawaska River indicates that the reserve contains approximately 1600 acres.
37. **1860:** The Chas. E. Beckwith survey plan shows the Indian Reserve at St. Basile containing 722 acres.

**VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:**

38. This Claim is based in the Crown’s breach of its common law fiduciary duty with respect to the alienation of Parcels A, B and C and additionally, with respect to its failure to meet its obligations under *The Royal Proclamation* and *An Act to regulate the management and disposal of Indian Reserves in this Province* when it alienated Parcels A, B and C.
39. The Madawaska Maliseet First Nation seeks compensation from Canada for:
- (a) Damages for the value of the Land alienated.
  - (b) Such other damage or compensation as this Honourable Tribunal thinks just.

Dated this 13th day of August, 2012

**J. Richard Hatchette**

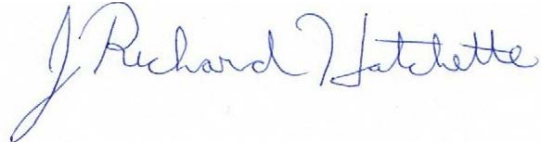
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Signature of Representative



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