

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
December 21, 2018		
Isabelle Bourassa		
Ottawa, ON	3	

SCT File No.: SCT-2001-18

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

WOLF LAKE FIRST NATION

Claimant

V.

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

Respondent

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

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

To:
THE SPECIFIC CLAIMS TRIBUNAL

And
WOLF LAKE FIRST NATION
As represented by:
David C. Nahwegahbow
Nahwegahbow Corbière,
Genoodamagejig/Barristers and Solicitors,
109, 5884 Rama Road, Rama, ON, L3V 6H6
Telephone: (705) 325-0520 Facsimile: (705) 325-7204
E-mail: ndaystar@nncfirm.ca

I. Context

1. The Plaintiff claims a breach of a legal obligation of Canada arising from the non-provision of reserve lands and demands compensation for all losses arising from the denial of such a reserve.
2. This claim was not accepted for negotiation under the Specific Claims Policy in 2009. Canada is presently re-assessing its position on this claim and is committed to work in light of the reconciliation principles.
3. It is hoped that this response will help build bridges with the Wolf Lake First Nation (hereafter "WLFN"), and will assist the parties to work collaboratively in finding alternative ways for resolving this claim, outside of litigation.

II. Status of Claim (R. 42 (a))

4. The WLFN submitted its Claim to the Minister of the Department of Indian Affairs and Northern Development (hereafter "DIAND") under the Specific Claims Policy in 1996, claiming a breach of a lawful obligation on the part of the Crown to provide a reserve to the band.
5. In January 2000, the Claim was re-submitted after further research was undertaken by the WLFN.
6. In 2002, the DIAND Minister and Assistant Deputy advised the WLFN that the Claim was not accepted for negotiation under the Specific Claims Policy.
7. The Claim was then submitted to the Indian Specific Claims Commission (hereafter "ISCC").
8. The ISCC commenced an inquiry into the Reserve Lands Claim in 2002. The inquiry was placed into abeyance in 2004 and recommenced in October 2006.
9. Even though it recommenced, the inquiry did not reach the community session stage.
10. On July 18, 2006, Canada advised the WLFN of its decision not to negotiate a settlement of this Claim.
11. In November 27, 2007, an Order in Council was passed mandating the ISCC to cease all activities on inquiries which had not reached a certain point in the process.

12. As a result, the WLFN inquiry did not proceed, and no activities such as planning conferences, exchange of documents, etc. took place.
13. On January 13, 2009, the WLFN advised the DIAND Minister that it wished to re-submit its claim to the Minister. The purpose of the re-submission was to either have the claim accepted for negotiation or give the WLFN the option to file the claim with the Tribunal as per section 43 of the *SCTA*.
14. On July 13, 2009, the DIAND Minister informed the WLFN that the Claim was not accepted for negotiation.
15. In response to paragraph 10 of the Declaration of Claim, Canada admits that this specific claim meets the conditions precedent set out in paragraph 16(1) (a) of the *SCTA*.

III. Validity (R. 42 (b) and (c))

16. Canada has not accepted the validity of the claims set out in the Declaration of Claim including those in paragraphs 12 to 132, and in particular the allegations that Canada's non-provision of reserve lands constitute a failure to meet its legal obligations, including unilateral undertakings that give rise to a potential fiduciary obligation.
17. That being said, a further analysis of the claim is presently under way and, for the moment, Canada reserves its right to contest all or part of the submissions in the Declaration of Claim.

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

18. At this stage of the proceedings, given the fact that Canada is reassessing the Claim or parts of the Claim, Canada is not in a position to deny any allegation.
19. Therefore, unless expressly admitted, Canada takes the position that it has no or incomplete knowledge of the allegations stated in the Declaration of Claim and puts the Claimant to the proof thereof if ever this case is to proceed.
20. Where the allegations in the Declaration of Claim are based on a document to be put into evidence, Canada refers the Tribunal to the content of the document, without admitting the admissibility and veracity of such document for the moment.

21. That being said, Canada submits that if this Claim (or parts of this Claim) is to proceed before the Tribunal, it would be preferable that the WLFN and Canada try to come to an agreement on a joint statement of facts in order for this case to be dealt with in a just and timely manner.
22. Canada admits paragraph 1 and paragraphs 8 to 10 of the Declaration of Claim.
23. Canada has no or incomplete knowledge of the allegations stated in paragraphs 2 to 7 and 11 to 124 of the Declaration of Claim and refers the Tribunal, among other things, to the primary source of historical documents and legislation in support and intends to further state its position in an amended response if ever the case is to proceed. Canada also takes note that:
- a) At paragraph 4 of the Declaration of Claim, the WLFN limits its claim for compensation to the period starting in 1951.
 - b) At paragraph 11 of the Declaration of Claim, the WLFN does not seek compensation in excess of 150 million dollars.
 - c) At paragraph 43 of the Declaration of Claim, the WLFN state that in the years 1875, the Claimant did receive relief and implements paid for by the Indians of Quebec fund.
 - d) At paragraph 46 of the Declaration of Claim, the WLFN state that in the years 1880 and 1890, DIAND did give assistance to the members of the WLFN, including providing medical services.
24. The respondent takes note of the legal arguments stated at paragraphs 125 to 132 of the Declaration of Claim.
25. The respondent takes note of the relief sought at paragraph 133 of the Declaration of Claim.

V. Statement of facts (R. 42 (e))

26. The WLFN is part of the Algonquin Nation.

27. The WLFN is an Indian band located near Temiscaming, in the northern part of the Province of Quebec and has been recognized and formalised as a band by federal Order in Council in 1973.
28. From the available historical documentation, it is apparent that the WLFN made repeated requests, both prior to and after the year 1951, to the Government of Canada that its members be provided with reserve lands.
29. The WLFN made a request that it be provided with a reserve or alternatively, housing for its members, early in 1968. In response, DIAND advised that it was looking for a good site on which to locate a reserve for three separate bands in the area: WLFN, Hunters Point First Nation and Kipawa First Nation. Ultimately, DIAND could not give a favourable response to the band at the time, as the province of Quebec had refused to provide lands for reserve.
30. Although Canada suggested to the WLFN on more than one occasion that it would be beneficial for the WLFN to amalgamate with the Kipawa First Nation, WLFN advised Canada that it did not wish to join the Kipawa First Nation on a common reserve, despite the close proximity of the two First Nations.
31. Around the time period of 1973-1974, discussions took place between the Province of Quebec and Canada in order to establish a federal national park in the Kipawa area.
32. Given the fact that the federal national park regulations would exclude residences as well as hunting and fishing habitats, it was contemplated by Canada that the needs of the WLFN would be dealt with during the creation of the park.
33. Sometime in 1973, negotiations with the Province of Quebec regarding the creation of the federal national park in Kipawa came to an end, due to a growing reluctance on the part of Quebec to transfer land to Canada for this purpose.
34. Also in 1973, Canada had expressed interest in acquiring lands privately on behalf of WLFN from the Booth Lumber Company for reserve purposes, but in the end, this did not take place as the lands in question turned out to be owned not by the Booth Lumber, but rather by the Provincial Crown. Given the circumstances, the WLFN was asked by Canada to identify another location where they would accept to locate the band.
35. A year later, Canada concluded negotiations with the Gordon Creek Improvement Company and purchased 53.1 acres of land, to be used as a reserve for the neighbouring Kipawa First nation. The purchase was concluded on January 21, 1974, and DIAND began housing on the lands for the members. The reserve was confirmed in 1975 by Order in Council.

36. During the 1970's, the membership of the WLFN steadily declined. During the years 1974 and 1975, many WLFN members moved to the new Kipawa reserve and transferred their membership to the Kipawa First Nation.
37. However, the WLFN continued to exist as a separate First Nation, and to send regular requests to DIAND for reserve lands.
38. In 1980, DIAND officials met again with the WLFN Band. A follow up letter was sent to the Chief on February 26, 1981 in which Canada stated that a formal request for a reserve is now being made to the Province of Quebec.
39. On October 24, 1980 and February 11, 1981, the WLFN sent two further band council resolutions to Canada stating their need for housing and that if houses can only be obtained by on-reserve members that a request for a reserve was made.
40. On March 3, 1981, a response from the Director of Operations for DIAND stated that such a request was already sent to the Province.
41. In 1982, the WLFN made another request for reserve land directly to John Munro, DIAND Minister. The letter was copied to René Levesque, then Premier of Quebec.
42. In reply, Canada indicated that they were unable to proceed with the creation of a reserve for the WLFN at that time because Quebec was in the process of developing a new reserve policy for the Province.
43. In response to Canada, the WLFN forwarded a Band Council Resolution dated July 19, 1982 containing another formal request for reserve land.
44. This prompted a reply directly from the Minister, John Munro, explaining that Canada has to wait until the Government of Quebec issues a policy regarding the creation of Indian reserves before it can negotiate for a territory on their behalf.
45. The Province of Quebec approved its new Policy on Reserve Creation and Expansion on December 21, 1982.
46. On October 28, 1986 after a joint site visit to a potential reserve location for the WLFN between the province of Quebec, Canada and the WLFN, Quebec responded to Canada in a follow up letter that that they had no particular objection with the proposed location for a new reserve for the WLFN, other than standard issues that did not represent any major inconvenience (railway and a body of water).
47. On November 12, 1986, Canada informed the WLFN that it was requesting its technical services to start working on a master development plan as requested by Quebec.

48. On July 28, 1987, following a request for information from the new Chief Harold St-Denis, DIAND confirmed that the process of creating a new reserve would involve the cooperation of the Province, as well as the approval from the DIAND Deputy Minister, which was now required under Canada's new statement of reserve policy.
49. Between 1987-1988, the Quebec Regional Office of DIAND prepared the site selection submission and submitted it to DIAND Headquarters. However, it was not forwarded to the DIAND Deputy Minister's office for approval in principle on the basis that: 1) such a submission should rather be included in a comprehensive package for information to be considered under the new reserve policy and; 2) such a submission raised financial concerns. Canada concluded that it could not be justified under the new policy and for these reasons, the reserve creation process for WLFN was stopped.
50. On November 7, 1988, a meeting was held between Chief St. Denis of the WLFN, Oscar Kistabish and Richard Kistabish of the Algonquin Council of Western Quebec and the staff of the DIAND Quebec Regional Office in order to review, among other things, the recent events connected with the WLFN request for reserve lands. The written record of this meeting indicates that the negative response from Headquarters was explained to the Chief of the WLFN. At the end of the meeting, the Chief of WLFN stated that he wanted to rethink the subject of obtaining a reserve.
51. In August 1996, the WLFN submitted its Specific Claim to the DIAND Minister.

VI. Relief (R. 42 (f))

52. Canada is re-assessing the Claim and, at this time neither denies, nor accept the entitlement of relief sought.
53. Canada pleads and relies on the *Crown Liability Act*, S.C. 1952-43, c. 30, as amended, and in particular section 24.
54. If Canada is liable, which, for the moment, is not admitted, Canada asserts also that the Province of Quebec caused or contributed to the acts or omissions and any losses arising therefrom as set out in section 20(1)(i) of the SCTA.
55. Where there will be contestation, Canada seeks to have its costs in the proceedings.

VII. Communication (R.42 (g))

56. The Respondent's address for the service of documents is hereafter stated in the signature of this proceeding.

Dated: December 21, 2018



FOR

Department of Justice Canada
Quebec Regional Office (in Ottawa)
284, Wellington Street, SAT-6064
Ottawa, Ontario K1A 0H8
Fax: (613) 952-6006

Per:
Mélyne Félix
Tel: (613) 960-3188
Email: melyne.felix@justice.gc.ca

And

Eric Gingras
Tel: (613) 946-2771
Email: eric.gingras@justice.gc.ca

**Solicitors/Counsels for the Respondent,
Her Majesty the Queen in Right of Canada**