

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
September 16, 2020	
Isabelle Bourassa	
Ottawa, ON	1

**SCT File No.:** SCT-3001-20

**SPECIFIC CLAIMS TRIBUNAL**

**B E T W E E N:**

**ATIKAMEKSHENG ANISHNAWBEK**

Claimant

v.

**HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA**  
as represented by the Minister of Crown-Indigenous Relations

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*.

September 16, 2020

\_\_\_\_\_  
Date

Isabelle Bourassa

\_\_\_\_\_  
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, Atikameksheng Anishnawbek (the “Claimant,” the “First Nation,” “Atikameksheng,” or “Whitefish Lake Band”) 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*, RSC 1985, c I-5, as amended, and a signatory of the *Robinson-Huron Treaty* (the “Robinson-Huron Treaty”). The First Nation is located near the city of Sudbury in the Province of Ontario.

**II. Conditions Precedent (R. 41(c))**

2. The First Nation originally filed a claim respecting various alleged breaches by the Crown relating to the unlawful surrender and sale of timber rights on its reserve in 1995.
3. The parties were not able to resolve the claim through negotiation under Canada’s Specific Claims Policy, and the claim was filed with the Ontario Superior Court in December 2002.
4. In these proceedings, Canada admitted that it breached its fiduciary duty owed to the First Nation. As such, the litigation was focused on the question of valuation of the historical asset and compensation. The Court concluded that the timber rights were acquired and sold by Canada in 1886 for only one percent (1%) of their value at that time.
5. The decision of the Ontario Superior Court of Justice was then appealed to the Supreme Court of Ontario in 2007. Ultimately, the Ontario Court of Appeal sent the matter back to trial to address “deficiencies in the record [which] prevent this court from assessing Whitefish’s compensation.”
6. Litigation at the Ontario Superior Court was resumed. In December 2017, as the Ontario Superior Court trial date neared, the parties met and agreed to put the matter into abeyance to resume negotiations.
7. On August 16, 2019, Canada offered to settle *part* of the claim. This offer was contingent on the First Nation releasing Canada from liability in relation to the *totality* of the Claim.
8. On May 27, 2020, Atikameksheng Anishnawbek formally rejected Canada’s offer and requested the Minister’s written consent to file the claim with the Specific Claims Tribunal.

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

9. The First Nation does not seek compensation in excess of \$150 million.

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

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

14 (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(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; or

(f) fraud by employees or agents of the Crown in connection with the acquisition, leasing or disposition of reserve lands.

11. In particular, the Crown has breached its legal obligations to the Whitefish Lake Band by promoting and allowing the surrender of the Band's timber rights with no competitive process, by fraudulently prioritizing the interests of the purchasers over those of the Whitefish Lake Band, and by arranging for the sale of this asset to the purchasers at less than one percent (< 1%) of its fair market value.

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

**(A) *The Robinson Huron Treaty and the Whitefish Lake Band's Reserve***

12. The Whitefish Lake Band of Indians entered into the Robinson-Huron Treaty with the Crown in 1850.
13. The impetus for a treaty on the north shore of Lake Huron arose from the issuance of more than thirty mining licences issued by the Crown Lands department in 1845-46 granting Mining Locations on unceded Indian lands, notwithstanding the prohibition against such conduct set out in the *Royal Proclamation 1763*.
14. Chief Shawenakishik of Whitefish Lake and his son Mongowin attended the negotiation meetings with Treaty Commissioner Robinson at Sault Ste. Marie in 1850, and Chief Shawenakishik signed the Robinson-Huron Treaty with his mark.
15. The "Schedule of Reservations made by the above-named Chiefs and Principal Men," which was attached to the treaty, includes the following description of the Whitefish Lake Band's reserve entitlement:

Sixth-Shawenakishick and his Band, a tract of land now occupied by them, and contained between two rivers, called Whitefish River, and Wanabitaseke, seven miles inland.
16. Whitefish Lake Indian Reserve No. 6 ("I.R. 6") was surveyed in 1884 and contained 74 square miles.

**(B) *The Unlawful Surrender and Sale of the Timber Rights on Whitefish Lake I.R. 6***

17. With respect to the disposal of reserve lands and natural resources, the Robinson-Huron Treaty states:

And should the said Chiefs and their respective Tribes at any time desire to dispose of any part of such reservations, or of any mineral or other valuable productions thereon, the same will be sold or leased at their request by the Superintendent-General of Indian Affairs for the time being, or other officer having authority so to do, for their sole benefit, and to the best advantage.

18. In the fall of 1885, Joseph Riopelle and his business partner, Honore Robillard, a member of the Ontario legislature and personal friend of then Prime Minister John A. Macdonald, applied to obtain a timber limit on I.R. 6, and began to aggressively lobby Indian Department officials and the Prime Minister for the right to cut pine timber on I.R. 6.

19. At the same time that Riopelle and Robillard made their application, another party expressed its interest in acquiring timber on I.R. 6, but this party was discouraged from pursuing the matter further by officials from the Indian Department.

20. Before any surrender could take place, on January 25, 1886, Prime Minister MacDonald wrote directly to Deputy Superintendent Lawrence Vankoughnet in a letter marked "Private," stating that Vankoughnet "had better" instruct the James C. Phipps, the Visiting Superintendent of the Manitowaning Agency (which the Whitefish Lake Band belonged to), to "go to the island and see about getting the consent of the Indians to the Surrender that Mr. Robillard M.P.P. is interested in."

21. By April 1886, when no further progress regarding the surrender had ostensibly been made, Robillard wrote to MacDonald explaining in detail why he should be granted the right to cut timber on I.R. 6. Robillard explained that he had expended considerable sums of money to obtain a licence to cut timber on a fifty square mile timber berth in the District of Keewatin, and that this expense had been put in jeopardy because of the judgement in *St. Catherine's Milling and Lumber Co. v. R.* Robillard concluded his letter by stating:

I therefore respectfully submit that in view of the expenditures I have sustained etc. I should now have granted me (in lieu) of the limits in Keewatin a tract of timber territory known as the Whitefish Lake Indian Reserve described in my application of the 13<sup>th</sup> day of October last.

22. In the marginalia to this letter, again marked private, Prime Minister MacDonald wrote to Vankoughnet stating "It would be well to press for a surrender & get a decent price for the timber before it is all wasted stolen or burnt."

23. By May 1886, when no further progress regarding the surrender had ostensibly been made, Robillard again wrote to MacDonald, requesting that the Prime Minister hasten the surrender and sale of the timber rights on I.R. 6.

24. The Whitefish Lake Band allegedly surrendered timber rights to the Crown in on July 1, 1886. There is no surviving information about the alleged surrender meeting.
25. On July 10, 1886, Vankoughnet wrote to Robillard stating that the Whitefish Lake Band have surrendered the timber on their reserve “[i]n compliance with the *promise* made you.”
26. Notwithstanding the Crown’s knowledge that other parties were interested, the Crown elected against holding any competitive bidding process for the timber rights, opting instead to simply award timber rights to the entire 79 square miles of I.R. 6 to Riopelle and Robillard in October 1886 under Timber Licence #68.
27. The total fee paid by Riopelle and Robillard for these rights was \$399. This amount was comprised of a bonus of \$4.00 per square mile (total of \$316.00), \$1.00 per square mile in up front charges for ground rent (total of \$79.00), and a \$4.00 license fee.
28. Riopelle and Robillard did not work the timber berth, but instead sold it approximately five months later to Alexander Barnet for \$44,000.00.
29. Barnet did not work the timber berth, but instead sold it approximately four months later to J. H. Francis for \$55,000.
30. J. H. Francis did ultimately work the timber berth.

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

31. This claim is brought on the grounds that the Crown breached its treaty, trust, fiduciary, honourable, and equitable obligations to the Claimant through the unlawful surrender and sale of Timber Licence #68. In particular, the Crown breached its legal duties by:
  - a. subordinating the interests of the Whitefish Lake Band to the interests of third parties, including Robillard who was an elected MPP and later MP in the Macdonald government, with respect to the surrender and sale of Timber Licence #68;
  - b. granting Timber Licence #68 to Riopelle and Robillard without any competitive process; and
  - c. allowing the sale of Timber Licence #68 for less than 1% of its fair market value on terms that were foolish, improvident, and amounted to exploitation of the Whitefish Lake Band.
32. The Crown had no legal obligation to allow for the surrender and sale of the timber berth at all, but once it fixated on doing so, it had, at a minimum, an obligation to ensure that the surrender and sale was “for [the] sole benefit” of the Whitefish Lake Band, and to the Whitefish Lake Band’s “best advantage.”

33. Instead, it was Riopelle, Robillard, Barnet, Francis, and the Crown who benefitted from a transaction that was exclusively to their collective advantage.

**VII. Relief Sought**

34. In light of the foregoing, the Claimant seeks the following relief:

- a. equitable compensation for the Crown's breach of its treaty, trust, fiduciary, honourable and equitable duties;
- b. costs on a solicitor-client basis; and
- c. such other damages or compensation as this Honourable Tribunal deems just.

Dated this 16<sup>th</sup> day of September, 2020, at the City of Calgary in the Province of Alberta.

**MAURICE LAW**



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