



Assignment 18 (Unit 8-2)

Review Template Specific Claim

In this assignment, you will review a template specific claim as you complete Chapter 8.

A specific claim is a legal document. It requires legal terminology to cover particular legal concepts. Like evidence in a court case in process, it is confidential. For this reason, we have not used examples of an actual claim for this assignment. Instead, we created a fictional example of a claim drafted after completion of the research report.

Instructions

1. To begin, print the assignment.
2. As you review Chapter 8, refer to the appropriate sections of the template specific claim when prompted to do so.



A: TITLE

Alienation of Reserve Lands, IR 5,
Template Specific Claim

Submitted by the _____ First Nation
April 16, 2001



B: TABLE OF CONTENTS

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C. INTRODUCTION

List of Allegations

1. The Claim relates to breaches by Canada of (1) a legal obligation of Canada under the Indian Act, and (2) a legal obligation of Canada in its administration of reserve lands.

Statement of Facts

2. IR No. 5 of the First Nation is and was at all times material to the Claim, an Indian reserve within the meaning of the Indian Act. In 1961, Indian Agent George Pickett permitted the Province of British Columbia ("BC") to take gravel from IR No. 5 without compensation to the First Nation and without lawful authority under the Indian Act. The Band says that Pickett's actions and omissions as set out in the Claim were in breach of the Indian Act and of Canada's statutory and common law fiduciary obligations to the First Nation.
3. On February 2, 1961, the Province applied to Indian Agent George Pickett for permission to take gravel from IR No. 5 for the purpose of road repairs in the area. Pickett agreed to allow the Province to take the gravel without compensation to the First Nation on the ground that the road work would be of benefit to the First Nation.

Legal Arguments

4. Pickett's conduct was contrary to the Indian Act. He had no authority to consent to the Province taking gravel from IR No. 5, except as set out in the Indian Act, RSC 1952, Chapter 149 and in particular, under Sections 28(2), 35, and 37-41 which provided for the taking of lands and resources from Indian reserves by means of permits, expropriation, and surrender. In this instance, none of the requirements of the Indian Act were met.
5. Further, Canada has fiduciary responsibilities to the First Nation, relating to the administration and management of IR No. 5, and in its dealings with third parties relating to IR No. 5, to preserve and protect the First Nation's interests in IR No. 5, to prevent an exploitative bargain, and to act with loyalty, good faith, full disclosure and ordinary prudence in the best interests of the First Nation. Canada breached its lawful obligations to the First Nation in this instance.



Statement of Compensation Claimed

6. The First Nation is entitled to compensation from Canada for the loss of the gravel and for damage to IR No. 5 resulting from the taking of the gravel.

C. HISTORICAL REPORT

i. Background

The First Nation is a part of the Shuswap Nation, located near Williams Lake. Two Indian reserves are set apart for the use and benefit of the First Nation, IR No. 5 and IR No. 6. IR No. 6 is a timber reserve. IR No. 5 is the main village of the First Nation, and is the home of approximately 150 First Nation members, about half of the total First Nation population.

ii. Reserve Establishment and History

By Minutes of Decision dated November 3, 1881, Peter O'Reilly, Indian Reserve Commissioner ("O'Reilly") allotted IR No. 5 for the First Nation (Doc. No. 1). In May, 1882, IR No. 5 was surveyed by Ashdown Green at 70 acres (Doc. No. 2). On June 3, 1882, the reserve allotment and survey were approved by the provincial Chief Commissioner of Lands and Works (Doc. No.3). By Minutes of Decision dated July 4, 1914, the Royal Commission on Indian Affairs in the Province of British Columbia ("the McKenna McBride Commission") confirmed IR No. 5 at 270 acres (Doc. No. 4). IR No. 5 was listed as a reserve of the First Nation on the Schedule of Indian Reserves attached to provincial Order in Council 1036 date July 29, 1938(Doc. No. 5).

iii. History of Transaction

On February 2, 1961, John Doe, provincial Department of Public Works ("Public Works"), wrote to Indian Agent George Pickett ("Pickett") asking to take gravel from IR No. 5 for road repairs near (but not on) IR No. 5(Doc. No. 6). Pickett replied on February 15, 1961 that Public Works could take



gravel from IR No. 5 for this purpose (Doc. No. 7). There is no record that he consulted with the First Nation at all with regard to Public Works' request or his response.

Shortly thereafter, on March 2, 1961, Public Works removed gravel from the Reserve. When members of the First Nation objected, the Public Works crew advised them that they had obtained permission from DIA to take the gravel (Doc. No. 8).

The First Nation received no compensation for the gravel taken by Public Works.

Public Works records indicate that a total of 30,000 cubic yards of gravel were taken from IR No. 5 in March, 1961 (Doc. No. 9).

iv. Impacts on IR No. 5

The purpose of this section is to describe detrimental impacts of the Crown's conduct on the value of the Reserve and/or on the First Nation's ability to use and enjoy the Reserve. For instance, Canada permitting the Province to take gravel from IR No. 5 may have resulted in the creation of a safety hazard, or created unwanted pits or ditches, or the digging may have obstructed access from one part of IR No. 5 to another.

E. DOCUMENT INDEX

Doc. No. Description

1. November 3, 1881: Minutes of Decision, Peter O'Reilly, Indian Reserve Commissioner, in [archival source].
2. May 2, 1882: Survey field notes, George Knotts, Dominion Land Surveyor, in [archival source].
3. June 3, 1882: Plan of IR No. 5 signed by CCLW, in [archival source].
4. July 4, 1914: Minutes of Decision, McKenna McBride Commission, in [archival source].
5. July 29, 1938: Order in Council 1036 (BC), in [archival source].
6. 1961: Annual Report, Department of Public Works, in [archival source].



7. February 2, 1961: Letter from John Doe, Department of Public Works to George Pickett.
8. Indian Agent, in [archival source].
9. July 4, 2009: Statutory Declaration of James Jones, Elder.

F. LEGAL ARGUMENT

In this section, legal counsel will develop a comprehensive legal analysis that Canada breached its legal obligations to the First Nation. In a real specific claim, the legal argument would be presented in detail in this section and legal authorities would be directly cited. A summary of the legal argument is on page 4 of this template.

The Minimum Standard provides that the claim document must include “legal arguments supporting each allegation,” and a list of legal authorities relied on such as statutes, treaties, and case law.

G. CONCLUSION

1. The Band says that the facts set out herein demonstrate that Canada has an outstanding legal obligation to the First Nation, to provide fair compensation for the gravel removed from IR No. 5 and for impacts to IR No. 5 resulting from the taking of gravel.
2. In permitting the Province’s actions and failing to take steps to prevent the trespass and obtain compensation for the gravel taken, Canada acted in contravention of its statutory and common law fiduciary duties to the First Nation. The First Nation seeks compensation for this breach, including compensation for the gravel and for detrimental impacts to IR No. 5 arising from the Province’s actions, and interest.