

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

SWAN RIVER FIRST NATION

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDICATIONS PARTICULIÈRES December 12, 2012 Guillaume Phaneuf	D É P O S É
	Ottawa, ON	

Claimant

v.

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

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*.

December 12, 2012

Guillaume Phaneuf

(Registry Officer)

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I. Claimant (R. 41(a))

1. The Claimant, Swan River First Nation (“SRFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

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

2. The following condition precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, has 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 or about July 23, 2008, SRFN submitted this claim under Canada’s Specific Claims Policy, asserting that the Crown has failed to provide SRFN with the agricultural benefits SRFN is entitled to under the terms of Treaty 8.
4. On or about June 26, 2012, the Crown notified SRFN in writing of the Minister’s decision not to negotiate SRFN’s claim.

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

5. The Claimant, the SRFN, does not seek compensation in excess of \$150 million.

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*:

Section 14(1)(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.

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

Treaty 8

7. SRFN adhered to Treaty 8 on June 21, 1899 as part of Keenooshayoo First Nation, which was comprised of a large group of smaller First Nation communities around Lesser Slave Lake.
8. By 1899, Crown officials identified the Lesser Slave Lake area as well-adapted for stock-raising and secondarily for agriculture.
9. At the time of negotiating Treaty 8, SRFN was assured that the Treaty would enable them to survive and prosper physically, culturally and economically in the face of increasing Canadian settlement. In order to serve this purpose, the Crown promised certain agricultural benefits in the following text of Treaty 8:

Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his

Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising;

(the “Agricultural Benefits”)

10. The common intention of the Crown and SRFN was that Treaty 8 was a means to transition SRFN’s economy from hunting, fishing and trapping to an emphasis on farming and livestock endeavours, specifically the hope that SRFN would be able to maintain a modest livelihood through farming and raising livestock. Both the Crown and Treaty 8 First Nations understood that Treaty 8 would last forever.

SRFN’s Reserve Land

11. The text of Treaty 8 provided 128 acres of reserve land to SRFN for each of its members.
12. The Treaty Commissioners appointed by the Crown to negotiate Treaty 8 expected the First Nation adherents to hunt and trap for a considerable time before taking up agriculture on reserve land. Therefore, the Commissioners advised the Crown that it would take many years before the Crown would have to make expenditures on Agricultural Benefits for First Nations.
13. However, as early as 1900, leaders of the Treaty 8 First Nations living at Slave Lake, including a representative of those families living at or near Swan River, began to request that reserve lands be set aside for agricultural use.

14. In 1902, the Crown began to survey reserve land requested by fourteen families in the vicinity of Swan River.
15. In or before 1910, these families had settled on the lands selected by them.
16. The survey of land for the families resident at Swan River was completed in 1912.
17. No later than 1910, the Crown had recognized the families living at and near Swan River as the original population of SRFN, and created an Annuity Paylist for SRFN as a First Nation separate from the other First Nations located along the shores of Lesser Slave Lake.
18. At some point before 1929, the Crown created a separate Revenue and Capital Account for SRFN.
19. By Privy Council Orders issued in 1922 and 1925, 11,228 acres of reserve land were set aside for SRFN.

SRFN's Agricultural Pursuits

20. In 1910, the Indian Agent for the Lesser Slave Lake Indian Agency reported that the families living at or near Swan River were anxious to begin farming and that the land on which these families had settled was suitable for that purpose, but that these families had no agricultural implements.
21. In 1912, the year in which the survey of reserve lands for SRFN was completed, the Crown recognized these reserves as containing good agricultural land and acknowledged the presence of good gardens on the lands.
22. Rather than provide SRFN and its members with livestock and other Agricultural Benefits under Treaty 8, the Crown used money from SRFN's Capital and Revenue accounts to purchase such livestock.

23. SRFN members also purchased animals and other items that would assist with farming by using loans taken out against their Treaty annuities, their future income, and their own personal property.

Canada's Failure to fulfill its Obligations under Treaty 8

24. Canada's obligation to provide Agricultural Benefits to SRFN under Treaty 8 arose as early as 1910, when SRFN members settled on lands chosen by them and began gardening and no later than 1912, when the survey of these lands was completed.
25. To date, Canada has refused or failed to honour and fulfill its obligation under Treaty 8 to provide SRFN with Agricultural Benefits under Treaty 8.

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

26. Canada is in breach of Treaty 8 for failing to provide SRFN with its treaty entitlement to Agricultural Benefits. In particular, Canada never provided SRFN with the specific Agricultural goods listed in the text of the Treaty 8, including:
 - a. tools and implements, in particular:
 - i. two hoes, one spade, one scythe, two hay forks for every SRFN family settled;
 - ii. one plough, and one harrow for every three families settled; and
 - iii. ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones to the Chief for the use of his First Nation.
 - b. livestock, in particular:
 - i. one cow for every family settled; and
 - ii. two horses or a yoke of ox and one bull for the Chief; and

- c. seed, in particular, enough wheat, barley, potatoes and oats to plant the land actually broken up and provisions for one month in the spring for several years while planting such seeds;
27. SRFN pleads and relies on the principles of treaty interpretation, including, but not limited to, the principle that treaty rights are evolutionary and not frozen in time. Treaty promises must be interpreted in a manner that provides for their modern exercise. This includes determining what current practices represent a logical evolution of the treaty terms in modern times.
28. The intent of Treaty 8 and the Agricultural Benefits promise was to provide SRFN with the means to establish a viable agricultural enterprise by which to earn a modest livelihood.
29. Canada has a continuing constitutional and treaty obligation to provide SRFN with Agricultural Benefits under Treaty 8.
30. To fulfill its Treaty 8 promise to provide Agricultural Benefits the Crown is legally obligated to provide SRFN the provisions, expertise and capital necessary in a modern economy to start a viable agricultural enterprise in the Swan River area by which to earn a modest livelihood,
31. The honour of the Crown requires Canada to act fairly and honourably during treaty implementation.

VII. Relief Requested

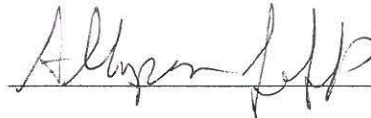
32. SRFN seeks:

- a) compensation required to satisfy Canada's treaty obligation to provide Agricultural Benefits in an amount reflecting the evolutionary nature of treaty rights;
- c) costs of this claim; and
- d) such other relief as the Tribunal deems fit.

Dated December 11, 2012



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