

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	September 16, 2013	D E P O S E
Amy Clark		
Ottawa, ON	6	

MIKISEW CREE FIRST NATION

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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**RESPONSE**

**Pursuant to Rule 42 of the  
*Specific Claims Tribunal Rules of Practice and Procedure***

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

TO:

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### **I. Status of Claim (R. 42(a))**

1. The Claimant, the Mikisew Cree First Nation (the “First Nation”), which is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act* (the “Act”), submitted a claim to the Minister of Indian Affairs and Northern Development (the “Minister”), asserting that the First Nation did not receive any of the agricultural benefits to which it was entitled pursuant to the terms of Treaty No. 8 (the “Original Claim”).
2. The Original Claim was submitted in or about January 1993.
3. The Original Claim was deemed to have been accepted for negotiation by the Minister on October 16, 2008.
4. The Original Claim has not been resolved by a final settlement agreement.

### **II. Validity (R. 42(b) and (c))**

5. In its Declaration of Claim, the First Nation alleges that Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (the “Crown”) has failed to provide the First Nation with certain Agricultural Benefits under Treaty No. 8 (the “Claimed Benefits”).
6. In response to the Declaration of Claim, and paragraph 15(a) in particular, the Crown accepts that it has an obligation to provide the First Nation with the assets listed in the first paragraph of the “Agricultural Benefits” clause of Treaty No. 8 as of 1988 quoted at paragraph 11 of the Declaration of Claim; that is, “for the use of [the] Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones” (the “Tool Chest Benefit”).
7. The Crown denies that it has an obligation to the First Nation to provide any of the other Claimed Benefits under Treaty No. 8. The Crown specifically denies the validity of these allegations set out in the Claim.

8. In the alternative, if the Crown does owe an obligation to provide any of the other Claimed Benefits, which is not admitted, none of paragraphs 20(1)(e) to (h) of the *Act* provides a basis for the Tribunal to award compensation in this matter. Any compensation related to the Claimed Benefits would be awarded pursuant to paragraph 20(1)(c).

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

9. Unless expressly admitted or accepted in this Response, the Crown denies the facts alleged in the Declaration of Claim.
10. In response to paragraph 10 of the Declaration of Claim, the Crown accepts that the First Nation adhered to Treaty No. 8 in 1899.
11. In response to paragraph 11 of the Declaration of Claim, the Crown accepts that Treaty No. 8 contains the “Agricultural Benefits” clause referred to by which the Crown agreed to provide certain benefits described in Treaty No. 8, but states that the last sentence of the clause states, “The aforesaid articles, machines and cattle to be given once for all [...]”. The remaining statements in paragraph 11 are not allegations of fact; rather, they constitute legal argument.
12. In response to paragraph 12 of the Declaration of Claim, the Crown accepts that reserve lands were first set aside for the use and benefit of the First Nation in 1988. In total, nine reserves were set aside for the use and benefit of the First Nation. The Crown states that the date of the original petition for reserve lands is irrelevant to this Claim.
13. In response to paragraph 13 of the Declaration of Claim, the Crown accepts that the First Nation filed a claim under the Specific Claim Policy in 1993 regarding Agricultural Benefits under Treaty No. 8. The remaining statements in paragraph 13 are not allegations of fact; rather, they constitute legal argument.

#### **IV. Statements of Fact (R. 42(a))**

14. Treaty No. 8 was made and concluded in 1899. The text of Treaty No. 8 sets out accurately the terms of the Treaty:

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 once for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

15. Reserves were first set aside for use and benefit of the First Nation in 1988. A total of nine reserves have been set aside for the benefit of the First Nation.
16. The First Nation has not elected to cultivate the soil and signify that it is prepared to break up the soil. Nor have the First Nation members signified a preference to raise stock instead of cultivating the soil. These actions are preconditions necessary to trigger the Crown's obligation to provide the Claimed Benefits. As such, the Crown

does not have an obligation under Treaty No. 8 to provide the Claimed Benefits (apart from the Tool Chest Benefit).

17. Alternatively or additionally,

(a) some or all of the Reserves as selected by the First Nation and set apart for the use and benefit of the First Nation in 1988 are not suitable for, or capable of sustaining, agriculture or the raising of livestock; and

(b) to the extent that the Reserves as selected by the First Nation and set apart for the use and benefit of the First Nation in 1988 are not suitable for, or capable of sustaining, agriculture or the raising of livestock, there is no obligation on the Crown to provide the Claimed Benefits to the First Nation (apart from the Tool Chest Benefit).

18. Alternatively or additionally, the purpose of the “Agricultural Benefit” clause in Treaty No. 8 was to provide one-time assistance for the encouragement of on-reserve agriculture for the First Nation’s population living on reserve. The majority of the First Nation’s population lives off reserve. If any Agricultural Benefits are owing, which is denied, the calculation of any such benefits is dependent on the number of the First Nation’s families settled on reserve.

19. The Crown states that communications between the Crown and the First Nation in furtherance of achieving a settlement of the Original Claim are protected by settlement privilege. This includes the letter from December 16, 1996, referenced in paragraph 4 of the Declaration of Claim. It is therefore irrelevant to this Claim.

20. In response to paragraph 17 of the Declaration of Claim, the Crown states that the content of any discussions that took place during negotiations is protected by settlement privilege. It is therefore irrelevant to this Claim.

21. In response to paragraph 18(b) of the Declaration of Claim, the Crown states that allegations regarding the Crown's conduct of negotiations prior to the filing of the Declaration of Claim are irrelevant and outside the jurisdiction of the Tribunal.

**V. Relief (R. 42(f))**

22. The Crown seeks:

- (a) dismissal of the First Nation's Declaration of Claim in its entirety, except for the First Nation's claim to the Tool Chest Benefit under Treaty No. 8;
- (b) the Crown's costs in this proceeding; and
- (c) such other relief as this Honourable Tribunal deems appropriate.

**VI. Communication (R. 42(g))**

23. The Respondent's email addresses for service of documents are:

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Dated this 16<sup>th</sup> day of September, 2013.

William F. Pentney  
Deputy Attorney General of Canada



Signature of Representative/Solicitor

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