

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	February 1, 2018	D É P O S É
Dragisa Adzic		
Ottawa, ON		5

BIRCH NARROWS 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: Birch Narrows First Nation
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1. This is the Crown's response to the Declaration of Claim (the Claim) filed by Birch Narrows First Nation (the First Nation) with the Specific Claims Tribunal (the Tribunal) on December 4, 2017 pursuant to the *Specific Claims Tribunal Act* (the Act).
2. The Claim relates to alleged breaches of legal obligations arising under Treaty 10 regarding the provision of agricultural and economic benefits.

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

3. The requirements in section 16 of the Act are satisfied in that:
 - The Claim was originally submitted to the Minister of Indian Affairs and Northern Development (the Minister) on December 9, 2009 and filed with the Minister of Aboriginal Affairs and Northern Development on April 7, 2010.
 - On August 28, 2012, the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

4. The Attorney General must respond to this claim according to the rules of practice applicable to pleadings in a matter of this nature and consistent with her duties and functions in the conduct of litigation for or against the Crown in right of Canada. Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, co-

operation and partnership. The Attorney General and the Government of Canada seek to work in other contexts beyond pleadings to achieve the fulfilment of those commitments.

5. The Crown denies the validity of all of the allegations put forth in the Claim and denies it breached its lawful obligation regarding the provision of agricultural and economic benefits under Treaty 10.

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

6. The Crown, unless expressly admitted, denies every fact alleged in the Claim and will require the First Nation to prove those facts. The Crown specifically will require the First Nation to prove the facts in the following paragraphs of the Claim: 14, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 39 and 40.
7. The Crown admits the facts set out in the following paragraphs of the Claim: 3, 6, 7, 12, 13, 15, 22, 24, and 26.
8. The Crown has no knowledge of the facts in the following paragraphs of the Claim: 8
9. In response to paragraph 1 of the Claim, the Crown admits the Claimant is a First Nation within the meaning of s.2 (a) of the *Specific Claims Tribunal Act* and says that the First Nation is in the Province of Saskatchewan.
10. In response to paragraph 2 of the Claim, the Crown admits that the Clear Lake Band adhered to Treaty 10 in 1906. The Crown further says

that in 1972 the Clear Lake Band ceased to exist and the Peter Pond Lake Band and the Turnor Lake Band were created, the latter of which became the Birch Narrows First Nation in 1994. The Crown does not admit that the Claimant is entitled to any agricultural benefits to which the Clear Lake Band may have been entitled.

11. In response to paragraph 4 of the Claim, the Crown admits that on or about December 9, 2009 the First Nation filed this claim under Canada's Specific Claim Policy asserting that Canada had failed to provide the First Nation with the agricultural assistance benefits it was entitled to under the terms of Treaty 10.
12. In response to paragraph 5 of the Claim, the Crown admits that by letter dated September 9, 2010 Canada informed the First Nation that its Treaty 10 entitlement to Agricultural Benefits Specific Claim met the Specific Claims Policy's minimum standards and had been assigned an effective date of filing with the Minister of April 7, 2010
13. In response to paragraph 11 of the Claim, the Crown admits there had been periodic requests for a treaty to cover northern Saskatchewan since the late 1870s and says the decision to negotiate Treaty 10 did not occur until 1906.
14. In response to paragraph 16 the Crown says that the Order-in-Council approving the proposed treaty negotiations provided "(d) for the affording of such assistance as may be found necessary or desirable to advance the Indians in farming or stock-raising or other work."
15. In response to paragraph 17, the Crown says that by letter dated August 2, 1906 the Acting Deputy Superintendent General of Indian Affairs,

requested the Department of Justice draft a treaty based on the July 20, 1906 Order-in-Council. A copy of Treaty 8 was enclosed for information purposes.

16. In response to paragraphs 18, 19 and 20 the Crown admits that the agricultural provisions of Treaty 8 were intentionally replaced with the Treaty 10 wording. The Crown further says that as Treaty 10 lands were at best only suited to small scale gardening, with no realistic potential for larger scale commercial agriculture, the intent of the wording change was that Treaty 10 agricultural benefits would be substantially less than those provided for under Treaty 8.
17. In response to paragraph 21 the Crown admits that James Andrew Joseph McKenna (McKenna) was appointed Treaty Commissioner to negotiate Treaty No. 10 by Order-in-Council of July 20, 1906 and says that by letter dated August 2nd 1906 J.D. McLean, Acting Deputy Superintendent General of Indian Affairs, requested McKenna draft the Treaty.
18. In response to paragraph 23 the Crown admits that during negotiations preceding the execution of Treaty 10 the treaty Commissioner received a request from one of the Bands involved in the negotiations, the identity of which Band is unclear, for a few head of cattle to be given to those of the Indians who asked to go into the industry of stock-raising.
19. In response to paragraph 25, the Crown admits that in 1910 an Inspector of Indian Agencies made the referenced observations.
20. In response to paragraph 33, the Crown admits that there are documented requests by the Claimant for assistance.

21. In response to paragraph 38, the Crown admits that the honour of the Crown required Canada to act fairly and honourably during treaty implementation. The remainder of paragraph 38 is denied.

IV. Statements of Fact (R. 42(e))

22. On August 28, 1906 the Chiefs of the Clear Lake and English River Bands signed Treaty 10 at Ile-à-la-Crosse. Treaty 10 was ratified by Order-in-Council P.C. 2490 on November 26, 1907.

23. The agricultural assistance provision of Treaty 10 states as follows:

Further, His Majesty agrees to furnish such assistance as may be found necessary or advisable to aid and assist the Indians in agriculture or stock raising or other work and to make such a distribution of twine and ammunition to them annually as is usually made to Indians similarly situated.

24. There is no evidence of the Clear Lake Band engaged in agricultural activity prior to Treaty 10. The Clear Lake Band, particularly the portion residing at Clear Lake, appears to have been more actively involved in hunting, fishing and trapping than it was in agricultural pursuits.
25. The Band's reserves were only suited to small scale gardening and there was no realistic potential for larger scale, commercial agricultural. Band members' needs for cultivation of gardens or subsistence farming were minimal.
26. Canada had wide discretion to determine what agricultural assistance was "necessary or advisable" with respect to the form, extent, time for

delivery and duration of the assistance, which discretion was to be exercised in keeping with the honour of the Crown.

27. The agricultural benefits were to "aid and assist the Indians in agriculture or stock raising" with the aim of encouraging small scale agriculture.
28. Requests for agricultural assistance were made periodically by the Clear Lake Band between 1907 and 1972. In response to these requests agricultural assistance was provided to the Clear Lake Band.
29. In providing agricultural benefits to the Clear Lake Band and the First Nation, Canada exercised its wide discretion in keeping with the honour of the Crown and in satisfaction of its obligations under Treaty 10.

V. Relief (R. 42(f))

30. The Crown seeks the following relief:
 - a. to have the claim dismissed in its entirety;
 - b. costs; and
 - c. such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

31. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
10th Floor, 123-2nd Avenue S
Saskatoon, SK S7K 7E6
Attention: Lauri Miller

32. Facsimile number for service is (306) 975-5013.

33. Email address for service is:

saskSCT-6001-17-BirchNarrows@justice.gc.ca

Dated this 1st day of February, 2018.



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