

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
	December 2, 2019	
	Isabelle Bourassa	
Ottawa, ON	1	

SCT File No.: SCT-5010-19

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

RED PHEASANT CREE NATION

Claimant

v.

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

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 2, 2019

Date

Isabelle Bourassa

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant (R. 41(a))

1. The Claimant, the Red Pheasant Cree Nation (“Red Pheasant”, the “Claimant”, or the “First Nation”) 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 within the meaning of *Treaty No. 6* (hereinafter “Treaty 6”). The First Nation is located south of North Battleford in the Province of Saskatchewan.

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

2. The claim is filed with reference to the following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

...

(c) in the course of negotiating the claim, the Minister consents in writing to the filing of the claim with the Tribunal; or

(d) three years have elapsed after the day on which the Minister has notified the First Nation in writing of the Minister’s decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

3. The First Nation originally filed a claim respecting various alleged breaches by Canada relating to its failure to provide agricultural and other benefits promised under Treaty 6 as well as other breaches of Canada’s treaty, legal, trust, fiduciary, and equitable obligations, with the Minister of Indian Affairs and Northern Development on March 12, 2014 (the “Original Claim”).
4. On March 9, 2017, Canada advised the First Nation of its decision to negotiate the portion of the Original Claim relating to its failure to provide agricultural benefits and instruction (the “Agricultural Benefits Claim” or the “Claim”). The First Nation accepted Canada’s offer to negotiate the Agricultural Benefits Claim on March 15, 2017.
5. To date, negotiations have failed to produce a settlement of the Agricultural Benefits Claim. On October 18, 2019, and November 28, 2019, the Claimant requested written consent to file the Claim with the Tribunal, but the Minister has not yet provided such consent.

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

6. The First Nation does not seek compensation in excess of \$150 million for the Agricultural Benefits Claim.

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

7. 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:

(a) a failure to fulfil 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;

...

(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; ...

8. In particular, the Crown has failed to fulfill its legal obligation to provide agricultural benefits and instruction to the First Nation pursuant to the terms of Treaty 6.

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

(A) Treaty 6 and the Crown's Promise to Provide Treaty Benefits

9. In 1876, the Crown entered into Treaty 6 with the Plains and Wood Cree Indians and other tribes in what is now the central regions of Alberta and Saskatchewan. Among other things, the treaty provided for the purported surrender of aboriginal title to roughly 121,000 square miles of land in exchange for various promises and treaty benefits to be provided by the Crown.

10. The written terms of Treaty 6 contain explicit promises and benefits to be provided by the Crown including, *inter alia*, the following:

...to lay aside reserves for farming lands, due respect being had to the lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.

...

... that the following articles shall be supplied to any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land,

that is to say: *Four hoes for every family actually cultivating; also, two spades per family as aforesaid; one plough for every three families, as aforesaid; one harrow for every three families, as aforesaid; two scythes and one whetstone, and two hay forks and two reaping hooks, for every family as aforesaid, and also two axes; and also one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone and one auger for each Band; and also for each Chief for the use of his Band, one chest of ordinary carpenter's tools; also, one for each Band, enough wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such Band; also for each Band four oxen, one bull and six cows; also, one boar and two sows, and one handmill when any Band shall raise sufficient grain therefor. All the aforesaid articles to be given once and for all for the encouragement of the practice agriculture among the Indians.*

...

That during the next three years, after two or more of the reserves hereby agreed to be set apart to the Indians shall have been agreed upon and surveyed, *there shall be granted to the Indians included under the Chiefs adhering to the treaty at Carlton, each spring, the sum of one thousand dollars, to be expended for them by Her Majesty's Indian Agents, in the purchase of provisions for the use of such Band as are actually settled on the reserves and are engaged in cultivating the soil, to assist them in such cultivation.*

...

That with regard to the Indians included under the Chiefs adhering to the treaty at Fort Pitt, and to those under Chiefs within the treaty limits who may hereafter give their adhesion thereto (exclusively, however, of the Indians of the Carlton region), there shall, during three years, after two or more reserves shall have been agreed upon and surveyed be distributed each spring among the Bands cultivating the soil on such reserves, by Her Majesty's Chief Indian Agent for this treaty, in his discretion, *a sum not exceeding one thousand dollars, in the purchase of provisions for the use of such members of the Band as are actually settled on the reserves and engaged in the cultivation of the soil, to assist and encourage them in such cultivation.*

11. The Red Pheasant Band entered into Treaty 6 with the Crown in 1876.

(B) *Implementation of the Treaty Promise*

12. Immediately after the signing Treaty 6, the Crown's Treaty Commissioners impressed on Crown officials that the Cree signatories were eager to commence cultivation of reserve land, and emphasized the importance of providing the bands with the livestock and agricultural implements promised under treaty without delay.

13. The Red Pheasant Reserve #108 was surveyed in August 1878 by Dominion Lands Surveyor G. A. Simpson. At the time of the survey, the Band had already begun cultivation.

By the fall of 1878, Lieutenant Governor and Indian Superintendant of the Northwest Territories, David Laird, reported that Red Pheasant had about 20 acres under crop. By 1880, the Band had sowed 51 acres. This had increased to 170 acres by 1884.

14. The Band's transition to an agricultural economy was frustrated by the Crown's failure to provide the livestock, implements, and instruction required under the terms of Treaty 6. The little that was provided was often of inferior quality and was not provided in a timely manner. A lack of sufficient and consistent farming instruction further hampered the transition to an agricultural economy.
15. In the fall of 1881, the Governor General, Marquess of Lorne, met with Indians throughout the Northwest Territories, including a headman from the Red Pheasant Band. The headman stated that Chief Red Pheasant requested more farming implements and cattle to plough with. The headman also made the Governor General aware that when their implements broke, the First Nation had no means to repair them.
16. Beginning in 1883, the Department of Indian Affairs drastically reduced funding which negatively affected the progress achieved by a number of bands in farming.
17. In 1884, a group of Cree Chiefs in the Battleford and Carlton areas expressed to the Crown a number of grievances regarding the provision of Treaty 6 benefits including, *inter alia*:
 - a. the insufficient number of cattle provided;
 - b. the poor quality of the livestock received; and
 - c. the lack of agricultural implements provided, including some implements not provided that were interdependent with items that were provided, rendering the provided item useless for agricultural purposes.
18. In March 1885 the Northwest Rebellion (hereinafter the "Rebellion") broke out when the Métis declared a provisional government at Batoche. Notwithstanding the absence of any evidence that the Claimant Band or its members had any significant involvement in the Rebellion or the destruction of property, the Crown levied against the Red Pheasant Band the replacement cost of the agricultural implements, tools and livestock that were lost or damaged as a result of this event.
19. Following the signing of Treaty 6, the Crown also designed and unilaterally implemented a number of policies to undermine the ability of Treaty 6 Indians to transition to an agricultural economy as contemplated by the terms of the Treaty. Beginning in the 1870s, these policies persisted for decades starting in the late 1870s, and included, *inter alia*, the Home Farm Program, the Permit System, the Pass System, the Cattle on Loan/Birtle System, subdivision of reserve land policy (referred to as the Severalty Policy), and the Peasant Farming policy.
20. The Claimant did not receive the full complement of agricultural assistance promised under Treaty 6. What little assistance provided was rendered ineffective or useless due to poor

quality of implements, tools and livestock, lack of complementary or necessarily linked tools and implements, delays in provision of implements, and the Crown's implementation of its Indian agricultural policies.

(C) *The Crown's Promise of Three Years of Additional Agricultural Provisions*

21. The Claimant did not receive its share of the distribution of \$1000 in agricultural provisions under Treaty 6.

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

22. The Agricultural Benefits Claim is brought on the grounds that Canada breached its treaty, legal, trust, fiduciary and/or equitable obligations to the Claimant in its failure to fulfil the written promises of Treaty 6 for the provision of agricultural benefits and instruction, including:
- a. the failure to fulfil the Claimant's entitlement to agricultural implements, tools, livestock, and seed for the cultivation and encouragement of agriculture; and
 - b. the failure to fulfil the Claimant's entitlement to agricultural instruction;
 - c. the failure to fulfil the Claimant's entitlement to a share of the \$1000 worth of provisions to assist in annual cultivation for the first three years after two or more reserves were surveyed.
23. Notwithstanding that the Crown failed to provide the benefits promised under a strict, literal, reading of Treaty 6, it is also clear that the written terms of Treaty 6 do not represent the full extent of the Crown's treaty promises respecting agricultural benefits and instruction. In particular, the Crown's fundamental treaty obligation was to support the Claimant and provide the means to transition to an agricultural economy. In this context, the Crown has not only breached the written terms of Treaty 6, but also its fiduciary and other legal duties by failing to uphold the purpose and intent of the agricultural benefits and instruction clauses.
24. The Crown also breached its treaty, trust, fiduciary and/or honourable obligations to the Claimant by:
- a. implementing a suite of laws and unilateral policies specifically designed to undermine the Red Pheasant Band's ability to transition to an agricultural economy;
 - b. approving expenditures from the Claimant's own accounts to purchase implements and livestock that should have been provided by the Crown pursuant to the terms of Treaty 6;
 - c. providing livestock, implements, tools, and provisions that were of inferior or inadequate quality;

- d. levying replacement fees for agricultural implements destroyed in the Rebellion; and
 - e. encouraging and promoting the Claimant and its members to expend personal funds to purchase tools, implements, livestock, and seed that should have been provided by the Crown pursuant to the terms of Treaty 6.
25. The Claimant pleads and specifically relies upon the established principles of treaty interpretation and the honour of the Crown, including but not limited to those enunciated by the Supreme Court of Canada in *R v Marshall*, 2005 SCC 43, to the effect that treaties should be liberally construed, treaty rights are not frozen at the date of the treaty, and must be updated and implemented in a manner consistent with equivalent modern practices.
26. The Claimant further pleads that to the extent that the Crown misadministered or failed to keep important records related to the provision of Treaty 6 benefits, such misadministration leads to an evidentiary presumption in favour of the Claimant.
27. The Claimant further pleads that the honour of the Crown was at stake when negotiating and implementing the terms of Treaty 6, and that the Crown failed to uphold its honourable obligations with respect to the provision of agricultural benefits and instruction to the Red Pheasant Band.

VII. Relief Sought

28. In light of the foregoing, the Claimant seeks the following relief:
- a. equitable compensation for the Crown's breach of its treaty, fiduciary, and honourable duties;
 - b. costs on a solicitor-client basis; and
 - c. such other damages or compensation as this Honourable Tribunal deems just.

Dated this 29th day of November, 2019, at the City of Calgary in the Province of Alberta.

MAURICE LAW



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