

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
March 16, 2022	
Dragisa Adzic	
Ottawa, ON	5

SCT File No.: SCT-6001-21

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

ALEXIS NAKOTA SIOUX NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations and Northern Affairs
Canada

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*.

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Overview

1. Her Majesty the Queen in right of Canada (Canada) is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada endeavors to embody these principles as it assists the Specific Claims Tribunal (Tribunal) in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.
3. Canada acknowledges that Alexis Nakota Sioux Nation was entitled to agricultural benefits and economic assistance as an adherent to Treaty No. 6. Canada acknowledges that Alexis Nakota Sioux Nation is a “band” as set out by Treaty No. 6.
4. The Declaration of Claim asserts that Canada breached its Treaty No. 6 obligations by failing to provide Alexis Nakota Sioux Nation with all the Treaty benefits relating to agriculture that it was entitled to under the Treaty. In addition, Alexis Nakota Sioux Nation asserts that Canada breached its fiduciary and trust obligations by failing to keep adequate records and by expending the Claimant’s money on benefits that should have been provided under Treaty.
5. Canada admits in response that it failed to provide the following Treaty No. 6 agricultural benefits to Alexis Nakota Sioux Nation:
 - Community level benefits: one boar, two sows, one wagon and one horse; and
 - Family level benefits: sufficient number of hoes, spades, scythes, whetstones, hayforks, reaping hooks, ploughs and harrows.

Canada states that it provided all other Treaty No. 6 agricultural benefits to Alexis Nakota Sioux Nation in a timely and diligent manner, and that no fiduciary or trust obligations were engaged.

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

6. Canada admits that Alexis Nakota Sioux Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (*SCTA*), as pleaded in paragraph 1 of the Declaration of Claim.
7. Canada admits, in response to paragraph 2 of the Declaration of Claim, that this Claim meets the condition precedent as set out in paragraph 16(1)(a) of the *SCTA*.
8. Canada admits the facts set out in the following paragraphs of the Declaration of Claim:
 - a. That Alexis Nakota Sioux Nation submitted its specific claim to the Specific Claims Branch on or about December 4, 2017 and it was received by the Specific Claims Branch on December 20, 2017; (Paragraph 3)
 - b. That its specific claim was filed with the Minister on or about May 30, 2018 meeting the minimum standards; (Paragraph 4) and
 - c. That the Minister had decided not to pursue negotiations with respect to some aspects of the claim by letter dated February 26, 2021. (Paragraph 5)
9. In further response to paragraph 5 of the Declaration of Claim, Canada states that the Minister was open to negotiating aspects of the claim, including aspects related to failing to provide some of the Treaty agricultural benefits to which the Alexis Nakota Sioux Nation was entitled under Treaty No. 6. Whether or not Canada wished to negotiate bilaterally or in some other manner is not relevant to the fulfillment of conditions precedent under subsection 16(1) of the *SCTA* or Rule 41(c) of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Canada admits that Alexis Nakota Sioux Nation and Paul Band were separate First Nations at all times relevant to this Declaration of Claim.

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

10. In response to paragraph 7, for the purposes of its Declaration of Claim, Alexis Nakota Sioux Nation relies on both paragraphs 14(1)(a) and 14(1)(c) of the *SCTA*. Canada states that the statutory ground for this Declaration of Claim is limited to paragraph 14(1)(a) of the *SCTA*.
11. In response to paragraph 8 of the Declaration of Claim, Canada states that it met its Treaty obligation by providing all of the agricultural benefits as promised under Treaty No. 6 in a timely and diligent manner, with the exception of the following:
 - Community level benefits: one boar, two sows, one wagon and one horse; and
 - Family level benefits: sufficient number of hoes, spades, scythes, whetstones, hayforks, reaping hooks, ploughs and harrows.
12. In the Tribunal's adjudication of the Declaration of Claim, paragraph 20(1) of the *SCTA* may provide a basis or limitation for the Tribunal to award compensation. This would be subject, however, to any applicable deduction or set-off from such compensation calculated in accordance with subsection 20(3) of the *SCTA*.

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

Treaty No. 6

13. Canada agrees with paragraph 9 of the Declaration of Claim regarding Treaty No. 6.
14. In response to paragraphs 10 - 14 of the Declaration of Claim, Canada admits that Treaty No. 6 provides agricultural benefits.
15. In response to paragraph 12 of the Declaration of Claim, Canada states that Treaty No. 6 provided for agricultural supplies that are of the general type as described in paragraph 12 of the Declaration of Claim, with the exception of instruction.

However, Canada states that it provided access to associated instruction on the use of agricultural implements, as part of the provision of these benefits to the Alexis Nakota Sioux Nation.

16. In response to paragraphs 11 and 13 of the Declaration of Claim, Canada states that rather than as a guarantee of agricultural success, Canada represented and expected that it would provide the agricultural benefits pursuant to Treaty No. 6 on a short-term basis for assistance and encouragement in the practice of agriculture for Alexis Nakota Sioux Nation. Canada states that the common intention behind Treaty No. 6 agricultural benefits clauses was to encourage First Nations to take up agriculture by providing the agricultural items listed in the Treaty. It was contemplated that the First Nations would also continue their traditional livelihoods of hunting, trapping and fishing.
17. In response to paragraphs 14 and 27 of the Declaration of Claim, Canada states that pursuant to Treaty No. 6 it was to provide, and did provide, a sum not exceeding \$1,000 per year in its discretion, for agricultural provisions, for a duration of three years. Canada states that as long as at least two reserves were surveyed, this sum not exceeding \$1,000 was to be divided and distributed, each year, among all the First Nations of Treaty No. 6 that adhered to the Treaty at Fort Pitt or later, and who were cultivating the soil. This is known as the “seed-time” provision.
18. In further response to paragraph 14 of the Declaration of Claim, Canada states that there was an expectation that Alexis Nakota Sioux Nation would increase in agricultural self-sufficiency over the three year period of the seed-time provision. However, Canada further states that there was also an understanding that the agricultural benefits would supplement Alexis Nakota Sioux Nation’s hunting and fishing activities and that Canada could not guarantee agricultural success or provide agricultural benefits for an indeterminate duration.

Treaty Implementation

19. In response to paragraph 15 of the Declaration of Claim, Canada agrees that Alexis Nakota Sioux Nation adhered to Treaty No. 6 in Edmonton on August 21, 1877. Canada states that Alexis Nakota Sioux Nation is entitled to all the benefits under Treaty No. 6 that apply to later adherents.
20. In response to paragraph 16 of the Declaration of Claim, Canada states that in 1877 and 1878, Canada provided significant agricultural supplies to Alexis Nakota Sioux Nation. Canada further states that in 1878, Alexis Nakota Sioux Nation was one of the greatest recipients of seed given to Treaty No. 6 First Nations that had already broken land and were ready to begin sowing.
21. Canada agrees with paragraph 17 of the Declaration of Claim regarding reserve lands for Alexis Nakota Sioux Nation.
22. In response to paragraph 18 of the Declaration of Claim, Canada agrees that by 1881, Alexis Nakota Sioux Nation had 28 acres of land under cultivation and that this increased to 35 acres in 1882. However, Canada states that Alexis Nakota Sioux Nation began cultivating the land sufficiently to trigger the agricultural benefits under Treaty No. 6 by 1878.
23. In response to paragraph 19 of the Declaration of Claim, Canada states that Alexis Nakota Sioux Nation's decline in cultivation in 1883 was due to Alexis Nakota Sioux Nation's crop being destroyed by a hailstorm. Canada states that it made a sustained effort to distribute seed throughout the years.
24. In response to paragraph 20 of the Declaration of Claim, Canada states that it provided at least four oxen to Alexis Nakota Sioux Nation as Treaty benefits by 1883.
25. In response to paragraph 21 of the Declaration of Claim, Canada states that its historical records reasonably record the agricultural benefits provided to the First

Nations of Treaty No. 6. Canada admits that due to the passage of time, some records have been lost or destroyed.

26. In response to paragraphs 22 and 23 of the Declaration of Claim, Canada agrees that in some instances the agricultural benefits provided were of poor quality or otherwise not useful. However, Canada states that when these deficiencies came to its attention, it acted with reasonable diligence and investigated and remedied them.
27. In response to paragraph 24 of the Declaration of Claim, Canada states that it had the discretion to assist First Nations with farming as well as the authority to implement policies to aid in this objective. However, Canada states that the agricultural benefits under Treaty No. 6 were not an on-going obligation, but rather, were a short-term obligation to be provided, as stipulated by Treaty No. 6, “once and for all”. As such, Canada’s policies decades after Treaty No. 6 adhesion are not relevant to a determination of whether Canada fulfilled its Treaty obligations.
28. In response to paragraph 26 of the Declaration of Claim, Canada states that it provided significant useful agricultural benefits, along with access to agricultural instruction. Canada states that while some of the implements were of negligible use, Canada acted with reasonable diligence and investigated and remedied the deficiencies.
29. In response to paragraphs 25, 28, 29 and 30 of the Declaration of Claim, Canada states that it provided all of the agricultural benefits under Treaty No. 6 in a timely and diligent manner, with the exception of the following:
 - Community level benefits: one boar, two sows, one wagon and one horse; and
 - Family level benefits: sufficient number of hoes, spades, scythes, whetstones, hayforks, reaping hooks, ploughs and harrows.
30. In response to paragraph 31 of the Declaration of Claim, Canada acknowledges that the relationship between Alexis Nakota Sioux Nation and Canada is a fiduciary one, and that in certain circumstances the relationship may give rise to and require the

performance of specific fiduciary duties by Canada. However, in the circumstances of this case, Canada did not owe, at any material time, any fiduciary duties to Alexis Nakota Sioux Nation nor was it under any relevant trust duty. Canada states that:

- a. its historical records reasonably record the agricultural benefits provided to Alexis Nakota Sioux Nation;
- b. it did not expend Alexis Nakota Sioux Nation's money on benefits that should have been provided under the Treaty; and
- c. it did not breach any other fiduciary or trust obligation if such is proven under the circumstances of this case.

31. In response to paragraph 32 of the Declaration of Claim, Canada acknowledges that Alexis Nakota Sioux Nation pleads and relies upon the principles of treaty interpretation.

32. In response to paragraphs 33 – 38 of the Declaration of Claim, Canada states that these paragraphs contain no facts to admit or deny but rather consist of case law and legal argument.

33. In response to paragraph 39 of the Declaration of Claim, Canada states that any compensation to Alexis Nakota Sioux Nation must be assessed in accordance with prevailing legal principles.

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

34. Treaty No. 6 was signed at Fort Carlton on August 23 and 28, 1876 and then at Fort Pitt on September 9, 1876.

35. On August 21, 1877, Chief Alexis Kees-kee-chee-chi signed Treaty No. 6 at Edmonton representing the historical Alexis Band, who are ancestors of the Claimant, Alexis Nakota Sioux Nation.

36. Treaty No. 6 required the Crown to provide agricultural benefits to adhering First Nations. The purpose was to provide a short-term benefit for the encouragement of

the practice of agriculture. These agricultural benefits took the form of monies, various tools, and livestock that would be provided once certain triggers arose: the benefits were to be provided to First Nations “now cultivating the soil, or who shall hereafter commence to cultivate the land.” Some agricultural benefits were based upon the number of families while others were to be provided at the community level or chief level. Other benefits were also based upon the First Nations reaching certain thresholds.

37. The text of Treaty No. 6 does not include the provision of any farming instruction. However, Canada provided access to instruction along with the agricultural implements.
38. Alexis Nakota Sioux Nation began cultivating in or around 1878. Canada began providing agricultural benefits to Alexis Nakota Sioux Nation by at least 1878 and access to farming instruction to Alexis Nakota Sioux Nation by at least 1878 and for several years onwards.
39. By 1885, Canada had provided many implements, tools, and livestock to Alexis Nakota Sioux Nation as set out by Treaty No. 6. Canada later provided additional implements, tools, and livestock to Alexis Nakota Sioux Nation. Canada also provided assistance with the purchase and provision of seed over at least the next few decades that was not explicitly required by the Treaty.
40. However, Canada did fail to provide Alexis Nakota Sioux Nation with the appropriate number of boars, sows, horses, and wagons in a timely manner. While Canada partially provided implements, it also failed to provide a sufficient number of hoes, spades, scythes, whetstones/scythe stones, hay forks, reaping hooks, ploughs, and harrows in a timely manner.

V. Relief Sought by Canada (R.42(f))

41. Canada seeks the following relief:

- a. A determination of the amount for which Canada is liable for the admitted breach of Treaty to Alexis Nakota Sioux Nation;
- b. Dismissal of the remainder of the Declaration of Claim;
- c. Set-Off under subsection 20(3) of the *SCTA*;
- d. Costs of the proceeding; and
- e. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

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

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Dated this 16th day of March, 2022.



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