

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
June 7 2022		
Guillaume Phaneuf		
Ottawa, ON		1

BETWEEN:

FROG LAKE FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN 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*.

June 6, 2022

Guillaume Phaneuf

(Registry Officer)

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I. Claimant (R.41(a))

1. The Claimant, Frog Lake First Nation ('Frog Lake'), is a First Nation within the meaning of s.2(a) of the *Specific Claims Tribunal Act*, and its reserves are situated in the Province of Alberta.

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

2. The specific claim meets the filing condition set out in section 16(1)(a) of the *Specific Claims Tribunal Act (SCTA)*:

... the claim has been previously filed with the Minister and 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. Frog Lake submitted this claim to the Specific Claims Branch on or about February 21, 2018.
4. The Branch determined that the claim met the minimum standards, and the claim was filed with the Minister on or about July 25, 2018.
5. Frog Lake was informed that the Minister had decided not to pursue negotiations with respect to several aspects of the claim by letter dated July 20, 2021.

III. Claim Limit (R.41(f))

6. The Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (R.41(d))

7. This specific claim is filed on the grounds set out in section 14(1)(a) and (c) of the *SCTA*:

(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...administration of reserve lands, Indian moneys or other assets of the First Nation;

...

8. Specifically, the Crown failed to fulfill its Treaty promise to provide Frog Lake with agricultural benefits and assistance.

V. Fact (R.41(e))

Treaty Promise

9. Treaty No. 6 was negotiated and solemnized at Fort Carlton and Fort Pitt in 1876.
10. An oral agreement was reached between the parties to Treaty No. 6 in which the Crown solemnly promised to provide agricultural benefits and assistance as set out in paragraphs 11 through 14 (the “Agricultural Benefits and Assistance”).
11. The Crown promised to provide agricultural benefits and assistance to enable the First Nation adherents to develop and transition to an agricultural economy.
12. The type, kind, and manner of agricultural benefits and assistance promised in the oral agreement included implements, livestock, means of transport, tools, provisions, and instruction. Or, in the alternative, if instruction was not an explicit oral term, it is an implied term of the oral agreement.
13. The Crown, through its Treaty Commissioners, expected and/or represented that, and the First Nation adherents to Treaty No. 6 expected and relied upon, the quantity, quality, type, kind, and manner of agricultural benefits and assistance promised being sufficient to enable a First Nation to develop and transition to a sustainable intergenerational agricultural economy commensurate with that of the settlers around them.
14. The oral promise to provide \$1,000.00 in provisions per year to each First Nation adherent to Treaty No. 6 while they were cultivating the soil was for three years only because the Crown, through its Treaty Commissioners, represented that after three years the First Nation adherents would be able to support themselves through agriculture.

Adhesion

15. The First Nations that later amalgamated into Frog Lake adhered to Treaty No. 6 near Fort Pitt on September 9, 1876 (Unipouheos) and at Sounding Lake on August 19, 1878 (Puskiakiwenin) on the same terms as if they had been present when the Treaty was first negotiated and solemnized, and Frog Lake is entitled to all of the benefits promised by the Crown in Treaty No. 6, including its promise to provide Agricultural Benefits and Assistance.

Implementation

16. Reserve lands were first surveyed for Frog Lake (both Unipouheos and Puskiakiwenin) in 1879.
17. Government records indicate that, in first half of 1879 the Crown distributed a small number of implements, and some tools to Frog Lake.
18. In 1879 a location just west of the lands surveyed for Frog Lake was selected for a farming instructor to establish an agency/home farm to serve as a model for nearby First Nations. In 1880 Inspector Wadsworth reported that unless the farming instructor, John Delaney, received assistance with his own agency/home farm he would have no time to serve any instructional purpose.
19. Frog Lake begun cultivating by 1880, and (Unipouheos and Puskiakiwenin combined) had 10 acres of land under cultivation in 1880, and increased their land under cultivation to 17 acres in 1881. Returns in 1881 were poor and the land Frog Lake had under cultivation declined to 9 acres in 1882.
20. While serving as farming instructor John Delaney was responsible for the distribution of agricultural implements to Frog Lake. In 1881 Indian Agent Hayter Reed reviewed the farming instructor's distribution records and found the records particularly muddle and that implements were only given when demands were made and not in accordance with Treaty obligations.
21. Cattle were initially distributed to Frog Lake in the summer of 1881 but were relocated to Cold Lake by winter. Government records suggest that there were 10 cattle on Frog Lakes reserves in 1884, but fail to distinguish between cattle that may have been provided under Treaty and those that were provided on loan.
22. From the solemnization of Treaty and well into the mid-1880s, implements and livestock distributed in Treaty No. 6, were often not as promised in the Treaty, being too poor-quality or too wild or to be of any use.
23. The Crown acknowledged that, among other failings, it had distributed cross-ploughs which were incapable of breaking the land instead of breaking ploughs, and cattle which were not fit to survive the winter.
24. In the decades following Frog Lake's adhesion to Treaty No. 6, the Crown implemented policies, including but not limited to the Pass System and Peasant Farming Policy, that directly impeded the Claimant's ability to transition from a hunting economy to an agricultural economy.

25. In 1885 the Crown forced the members of Frog Lake from their homes and relocated them to Onion Lake, resulting not only in the abandonment of agriculture for 1885 but also the loss of all progress Frog Lake had made in taking up agriculture to date.
26. During the period of their forced relocation to Onion Lake's reserve lands it was not possible for Frog Lake to benefit from the promise of Agricultural Benefits and Assistance by developing their own agricultural economy.
27. The Crown did not formally set a date for when members of Frog Lake would be permitted to return to their reserves. In 1905 the Onion Lake Indian Agent reported that some people who had been relocated to that the Onion Lake reserve were returning to their own reserves. Some members of Frog Lake might have returned as early as 1899 with no aid or assistance from the Crown under Treaty or otherwise.
28. Although stock-raising, and to a lesser degree cultivation, had resumed on the Frog Lake reserves by 1906 these efforts were not supported by the Crown in accordance with its Treaty promise.
29. In 1907 Frog Lake was provided with two bulls but its cattle-raising was hampered by persistent shortages of hay.
30. In 1912, and again in 1915, the Indian Agent reported that Frog Lake would require additional implements to increase their very limited practice of agriculture. The Agent contemplated Frog Lake bearing the expense of additional implements. Implements and cattle distributed to members of Frog Lake in 1915, 1916, and 1917 were recorded as liabilities owed to the Crown.
31. In 1915, Inspector Chisholm acknowledged that Frog Lake's limited progress in agriculture was a result of the lack of a farming instructor and lack of a working team of oxen.
32. In 1916, Chisholm's successor recommended the appointment of a farming instructor, but this was rejected by other Crown officials as an expense that could not be justified given what little progress Frog Lake had made in agriculture.
33. The Crown did not provide Frog Lake with sufficient Agricultural Benefits and Assistance as promised in Treaty No. 6.
34. The few Agricultural Benefits and Assistance that the Crown did provide Frog Lake were of negligible use as:
 - a. the items promised were complimentary and useless in isolation;
 - b. no instruction as to proper use was provided; and

- c. the limited number of items provided were not sufficient to successfully transition the Nation to an agriculture-based economy.
35. The Crown did not provide Frog Lake with the \$1,000.00 per year of provisions it had promised while they were cultivating the soil.
36. The Crown failed to provide Frog Lake with Agricultural Benefits and Assistance in a timely and diligent manner.

VI. Legal Basis

Failure to Fulfill Obligations

37. The Crown failed to fulfil its Treaty promise to provide Frog Lake with the Agricultural Benefits and Assistance promised in Treaty No. 6.
38. The Crown did not meet the legal standard for the fulfillment of a Treaty promise and failed to uphold the honour of the Crown by:
- a. failing to interpret its promise purposively;
 - b. failing to pursue the purpose behind its promise; and
 - c. failing to act diligently to fulfill the purpose of its promise.
39. The Crown breached its legal obligations related to and/or ancillary to its promise to provide agricultural benefits and assistance, including but not limited to
- a. fiduciary obligations arising from the Crown's discretionary control over Frog Lake's legal and/or practical interests; and
 - b. trust obligations arising from the management of the Claimant's accounts;
- by, among other wrongdoings, failing to keep adequate records and expending the Claimant's money on benefits that should have been provided under Treaty.

Principles and Standards

40. The Claimant pleads and relies upon the established principles of Treaty interpretation, including that the honour of the Crown governs Treaty implementation, and the Crown must avoid the appearance of sharp dealing.
41. The Crown's obligations are not confined to the promises that it reduced to text:

- a. Historic Treaty texts “recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement” (*R v Badger*, [1996] 1 SCR 771 at 52);
 - b. “Where a treaty was concluded verbally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written terms” (*R v Marshall*, [1999] 3 SCR 456 at 12).
42. Treaty interpretation requires the Court to make honourable sense of the Treaty arrangement and to choose from among the various possible interpretations of the common intention [at the time the treaty was made] the one which best reconciles” the parties’ interests (*R v Marshall*, [1999] 3 SCR 456, at 14). In order to do this, the Court may consider the context of the Treaty and identify implied terms even in the absence of ambiguity.
 43. In order to fulfill a Treaty obligation, the Crown must take a broad purposive approach to interpretation and “must seek to fulfill the obligation in a way that pursues the purpose behind the promise” — “the honour of the Crown requires the Crown to act in a way that accomplishes the intended purpose of treaty and statutory grants to Aboriginal people” (*Manitoba Metis v Canada*, 2013 SCC 14, at 80 & 73).
 44. Treaty rights are not frozen in time or constrained by changes in technology; they must be recognized and affirmed in contemporary form: both historic means and historic standards of living have modern equivalents (*R v Sundown*, [1999] 1 SCR 393 at paras 29, 30, 31 & *R v Marshall*, [1999] 3 SCR 456, at para 7).
 45. The honour of the Crown requires it to act diligently to fulfill the purpose of its solemn promises, and “a persistent pattern of errors and indifference that substantially frustrates the purposes of a solemn promise may amount to a betrayal of the Crown’s duty to act honourably in fulfilling its promise” (*Manitoba Metis v Canada*, 2013 SCC 14, at 82).

State of Obligation

46. The Crown’s solemn Treaty obligation to provide agricultural benefits and assistance to Frog Lake is continuing, current, and outstanding: the “treaty calls for certain supplies” and, since “the respective obligations are clear the parties should get on with performance” (*Mikisew Cree v Canada*, 2005 SCC 69 at para 63).

VII. Relief Sought

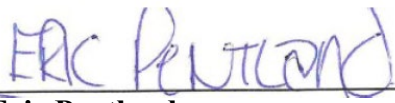
47. The First Nation seeks the following relief:
 - a. Equitable compensation for loss of use of the Agricultural Benefits and Assistance;

- b. Compensation for the value of the outstanding promise to provide Agricultural Benefits and Assistance in contemporary form;
- c. Such other compensation the Tribunal deems just; and
- d. Costs.

June 6, 2022



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