

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	October 5, 2022
Dragisa Adzic	
D E P O S E	
Ottawa, ON	4

SCT File No.: SCT-6002-22

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

FROG LAKE FIRST NATION

Claimant

v.

HIS MAJESTY THE KING IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

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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Frog Lake First Nation

Overview

1. The Respondent, His Majesty 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 Unipouheos Band and Puskiakiwenin Band, two distinct treaty bands that later amalgamated into Frog Lake First Nation, were entitled to agricultural benefits and economic assistance as adherents to Treaty No. 6. Canada further acknowledges that Frog Lake First Nation is a “band” as set out by Treaty No. 6.
4. This claim relates to Frog Lake First Nation’s assertion that Canada breached its Treaty No. 6 obligations by failing to provide Frog Lake First Nation with all the agricultural benefits that it was entitled to under Treaty No. 6. Frog Lake First Nation also asserts that Canada breached its fiduciary and trust obligations by failing to keep adequate records and requiring Frog Lake First Nation to expend its own funds to acquire benefits that should have been provided by Canada under the Treaty.
5. Canada admits that it did not provide the following Treaty No. 6 agricultural benefits to Unipouheos Band and Puskiakiwenin Band, the predecessors to Frog Lake First Nation:
 - a. Community level benefits: one cross-cut saw, one hand saw, one pit saw, some necessary files, two grindstones, one tool chest, six oxen, two bulls, twelve cows, two boars, four sows, one wagon, and one harness.
 - b. Family level benefits: sufficient number of hoes, spades, scythes, whetstones, hayforks, reaping hooks, axes, ploughs, and harrows.

Canada states that it provided all other Treaty No. 6 agricultural benefits to Unipouheos Band and Puskiakiwenin Band in a timely and diligent manner, and that no fiduciary or trust obligations were engaged as asserted in paragraph 39 of the Declaration of Claim.

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

6. 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 *Specific Claims Tribunal Act, SC 2008, c 22 (SCTA)*.
7. Canada admits the facts set out in the following paragraphs of the Declaration of Claim:
 - a. that Frog Lake First Nation submitted its specific claim to the Specific Claims Branch on February 21, 2018; (Paragraph 3)
 - b. that its specific claim was filed with the Minister on July 25, 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 July 20, 2021. (Paragraph 5)

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

8. In response to paragraph 7, Canada states that the statutory ground for this Declaration of Claim is limited to paragraph 14(1)(a) of the *SCTA*.
9. 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 promised under Treaty No. 6 in a timely and diligent manner, with the exception of an appropriate number of cross-cut saws, hand saws, pit saws, files, grindstones, tool chests, oxen, bulls, cows, boars, sows, wagons, harnesses, hoes, spades, scythes, whetstones, hayforks, reaping hooks, axes, ploughs, and harrows.
10. In the Tribunal's adjudication of the Declaration of Claim and, in the event that the Tribunal should find the claim of Frog Lake First Nation valid, paragraph 20(1) of the

SCTA may provide a basis for the Tribunal to award compensation. This would be subject, however, to any applicable deduction for 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))

Frog Lake First Nation

11. Canada admits that Frog Lake First Nation is a First Nation within the meaning of section 2 of the *SCTA*, as pleaded in paragraph 1 of the Declaration of Claim.

Treaty No. 6

12. Canada agrees with paragraph 9 of the Declaration of Claim regarding the solemnization of Treaty No. 6.
13. In response to paragraphs 10 to 14 of the Declaration of Claim, Canada admits that Treaty No. 6 provides agricultural benefits.
14. In further response to paragraph 12 of the Declaration of Claim, Canada states that Treaty No. 6 does not provide for instruction but does provide for agricultural supplies that are of the general type as described in paragraph 12 of the Declaration of Claim. However, Canada states that it provided access to agricultural instruction to Unipouheos Band and Puskiakiwenin Band.
15. In further response to paragraphs 11 and 13 of the Declaration of Claim, Canada states it did not provide a guarantee of agricultural success. Rather, Canada represented and expected that it would provide the agricultural benefits pursuant to Treaty No. 6 on a short-term basis to assist and encourage the practice of agriculture by Unipouheos Band and Puskiakiwenin Band. 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. Canada contemplated that the First Nations would also continue their traditional livelihoods of hunting and fishing.

16. In response to paragraphs 14 and 35 of the Declaration of Claim, Canada states, 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.
17. In further response to paragraph 14 of the Declaration of Claim, Canada states that there was an expectation that Unipouheos Band and Puskiakiwenin Band would increase in agricultural self-sufficiency over the three-year period of the seed-time provision. Canada further states that there was also an understanding that the agricultural benefits would supplement the Unipouheos Band and Puskiakiwenin Band’s hunting and fishing activities and that Canada could not guarantee agricultural success or provide agricultural benefits for an indeterminate duration.

Treaty Implementation

18. In response to paragraph 15 of the Declaration of Claim, Canada agrees that Unipouheos Band adhered to Treaty No. 6 at or near Fort Pitt on September 9, 1876. Canada states that Puskiakiwenin Band adhered to Treaty No. 6 in 1878 at or near either Edmonton or Sounding Lake. Canada agrees that Unipouheos Band and Puskiakiwenin Band amalgamated into Frog Lake First Nation in 1914. Canada agrees that Frog Lake First Nation is entitled to all the benefits under Treaty No. 6 that Unipouheos Band and Puskiakiwenin Band were entitled to.
19. Canada agrees with paragraph 16 of the Declaration of Claim regarding the survey of reserve lands for Unipouheos Band and Puskiakiwenin Band.
20. In response to paragraph 17 of the Declaration of Claim, Canada states that between 1877 and 1881, Canada provided several agricultural benefits to Unipouheos Band and Puskiakiwenin Band.

21. In response to paragraph 18 of the Declaration of Claim, Canada states that in 1879 Inspector T.P. Wadsworth and farming instructor John Delaney arrived at Frog Lake to establish a “home farm” that would act as a model for nearby bands. Canada does not agree that Inspector T.P. Wadsworth reported in 1880 that, unless the farming instructor, John Delaney, received assistance with his own agency/home farm, he would have no time to provide instruction. Rather, Inspector T.P. Wadsworth reported that he promised the First Nations of the Edmonton District additional help putting in their crops the following spring as the farming instructors were unable to do this with their present staff and get their own farms seeded in time. Canada states that between 1879 and 1885, Canada provided access to farming instruction to Unipouheos Band and Puskiakiwenin Band.
22. In response to paragraph 19 of the Declaration of Claim, Canada states that Unipouheos Band and Puskiakiwenin Band began cultivating the land sufficient to trigger the agricultural benefits under Treaty No. 6 by 1877 and 1879, respectively. Canada states that Unipouheos Band and Puskiakiwenin Band collectively had 12 acres of land under cultivation in 1881, 23.25 acres of land under cultivation in 1883, and 43 acres of land under cultivation in 1884. Canada states that Unipouheos Band alone had 9 acres of land under cultivation in 1882.
23. In response to paragraphs 20, 33, 36, 37, and 38 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 an appropriate number of cross-cut saws, hand saws, pit saws, files, grindstones, tool chests, oxen, bulls, cows, boars, sows, wagons, harnesses, hoes, spades, scythes, whetstones, hayforks, reaping hooks, axes, ploughs, and harrows.
24. In further response to paragraph 20 of the Declaration of Claim, Canada states that it did not provide agricultural benefits to Unipouheos Band and Puskiakiwenin Band only when they made demands.
25. Canada agrees with paragraph 21 of the Declaration of Claim regarding cattle. Canada states the cattle it distributed to Frog Lake First Nation in the summer of 1881 had to be relocated to Cold Lake by winter because no preparation was made to care for the animals over the winter.

26. In response to paragraphs 22 and 23 of the Declaration of Claim, Canada states that although the quality of some of the agricultural benefits may have been inadequate, when any such deficiencies came to its attention, Canada acted with reasonable diligence and investigated and remedied those deficiencies.
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, such as the Pass System and the Peasant Farm Policy, 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 it had to provide, as stipulated by Treaty No. 6, “once and for all”.
28. In response to paragraphs 25 and 26 of the Declaration of Claim, Canada states that after the 1885 North-West Rebellion, it closed the Frog Lake Farming Agency and members of Unipouheos Band and Puskiakiwenin Band were given the choice to farm at Seekaskootch reserve at Onion Lake with the support of Canada or support themselves off-reserve. Canada states that members of Unipouheos Band and Puskiakiwenin Band who moved to Seekaskootch reserve to farm were successful and continued to receive agricultural benefits and access to instruction from Canada.
29. In response to paragraphs 27 and 28 of the Declaration of Claim, Canada agrees that some members of Unipouheos Band or Puskiakiwenin Band might have returned to their reserves as early as 1899. Canada states that members of Unipouheos Band and Puskiakiwenin Band began to resettle on their reserves to farm and raise stock in or around 1903, rather than 1905 or 1906. Canada states that the resumption of stock-raising and cultivation on the Unipouheos and Puskiakiwenin reserves in or around 1903 occurred with the support of Canada in accordance with its Treaty promise.
30. In response to paragraph 29 of the Declaration of Claim, Canada states that in or around 1906, rather than 1907, it provided two bulls to Frog Lake First Nation. Canada states that adverse environmental conditions caused the hay shortages experienced by Frog Lake First Nation.

31. In response to paragraph 30 of the Declaration of Claim, Canada states that the agricultural benefits under Treaty No. 6 were not an on-going obligation, but rather, were a short-term obligation it had to provide, as stipulated by Treaty No. 6, “once and for all”. Canada states that Frog Lake First Nation was responsible for obtaining any agricultural implements that it required beyond those provided for in Treaty No. 6.
32. In response to paragraph 31 of the Declaration of Claim, Canada states it has insufficient knowledge of the cause of Frog Lake First Nation’s limited progress in agriculture.
33. In response to paragraph 32 of the Declaration of Claim, Canada again states that Treaty No. 6 does not provide for farming instruction. However, Canada states that it provided access to agricultural instruction to Unipouheos Band and Puskiakiwenin Band. Canada further states that in 1916, Inspector Chisholm’s successor noted that Frog Lake First Nation appeared to want to farm more extensively and would likely need a farming instructor in another year. The historical record is unclear as to why Canada did not appoint an instructor the following year.
34. In response to paragraph 34 of the Declaration of Claim, Canada states that Canada provided useful agricultural benefits and access to agricultural instruction. Canada states that if some of the implements provided were of negligible use, Canada acted with reasonable diligence and investigated and remedied the deficiencies.
35. In response to paragraph 39 of the Declaration of Claim, Canada acknowledges that the relationship between Frog Lake First 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 Frog Lake First Nation, or its historic predecessors, nor was it under any relevant trust duty. Canada states that:
 - a. its historical records reasonably record the agricultural benefits provided to Unipouheos Band and Puskiakiwenin Band;
 - b. it did not expend Unipouheos Band or Puskiakiwenin Band’s money on benefits that should have been provided under the Treaty; and

- c. it did not breach any other fiduciary or trust obligations, if such is proven, in the circumstances of this case.
- 36. In response to paragraph 40 of the Declaration of Claim, Canada acknowledges that Frog Lake First Nation pleads and relies upon the principles of treaty interpretation.
- 37. In response to paragraphs 41 to 46, 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.
- 38. In response to paragraph 47 of the Declaration of Claim, Canada states that any compensation owed to Frog Lake First Nation must be assessed in accordance with prevailing legal principles.

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

- 39. Canada relies upon the facts set out under section III. Allegations of Fact – Declaration of Claim (R.41(e)): Acceptance, denial or no knowledge (R. 42 (d)).
- 40. Treaty No. 6 was signed in Fort Carlton on August 23 and 28, 1876 and then at Fort Pitt on September 9, 1876.
- 41. On September 9, 1876, Chief Tus-tak-see-kwaise signed Treaty No. 6 at or near Fort Pitt representing the Unipouheos Band.
- 42. In 1878, the Puskiakiwenin Band, adhered to Treaty No. 6 at or near either Edmonton or Sounding Lake.
- 43. In 1914, Unipouheos Band and Puskiakiwenin Band amalgamated into Frog Lake First Nation.
- 44. Treaty No. 6 requires 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 the Crown provided once a First Nation triggered certain preconditions: the Crown was to provide the benefits 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.

45. The text of Treaty No. 6 does not include the provision of any farming instruction; however, Canada provided access to instruction.
46. Unipouheos Band and Puskiakiwenin Band began cultivating in 1877 and 1879, respectively. Canada began providing agricultural benefits to Unipouheos Band by at least 1877 and to Puskiakiwenin Band by at least 1879. Canada began providing access to farming instruction to these historic bands by at least 1879.
47. By 1885, Canada had provided several implements, tools, and livestock to the Unipouheos Band and Puskiakiwenin Band as set out by Treaty No. 6.

I. Relief sought by Canada (R.42 (f))

48. Canada seeks the following relief:
 - a. A determination of the amount for which Canada is liable for the admitted breach of Treaty No. 6 to Frog Lake First Nation;
 - b. Dismissal of the remainder of the Declaration of Claim;
 - c. Set-off under subsection 20(3) of the *SCTA*;
 - d. Canada may decide not to seek costs upon the final determination of the action, however it reserves the right to seek such costs; and
 - e. Such further relief as this Honourable Tribunal deems just.

II. Communication (R. 42(g))

49. The address for the service of documents on Canada is:

Department of Justice Canada
Prairie Regional Office (Edmonton)
300 EPCOR Tower, 10423 – 101 Street
Edmonton, Alberta T5H 0E7
Attention: Tanya Knobloch / Dakota Vassberg

50. The facsimile number for the service of documents on Canada is 780-495-2964.

51. The email addresses for the service of documents on Canada are:

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Dated this 5th day of October, 2022.



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