

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**BIG ISLAND LAKE CREE NATION**

Claimant

v.

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

Respondent

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**RESPONSE**  
Pursuant to Rule 42 of the  
*Specific Claims Tribunal Rules of Practice and Procedure*

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This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Big Island Lake Cree Nation  
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## **Overview**

1. 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 endeavours to embody these principles as it assists the 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 Tribunal claim proceeds through the Tribunal process.
3. Big Island Lake Cree Nation, an adherent to Treaty 6, had 11,616.9 acres of land surveyed for reserve and confirmed by an Order in Council dated February 14, 1919. This was a shortfall of 3,615.1 acres based on a population of 119 members at the time.
4. Big Island Lake Cree Nation has an outstanding treaty land entitlement, which Canada acknowledged in 1982. In 1991, Big Island Lake Cree Nation accepted Canada's offer to negotiate, and that same year, Canada accepted the Treaty Commissioner's recommendation that negotiation be based on a population of 119 members and 3,615.1 acres outstanding. The parties have unsuccessfully attempted to resolve this claim through negotiation.
5. The parties agree on the Adjusted Date of First Survey ("ADOFS") population and outstanding acreage. The only issue for the Tribunal's determination is the appropriate compensation.
6. In this Response, Canada periodically uses terminology now recognized as antiquated. Canada does so only when required for legal accuracy or when referring to or quoting from historical sources.

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

7. Canada admits that Big Island Lake Cree Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act* (“SCTA”), as pleaded in paragraph 1 of the Declaration of Claim.
8. Canada admits, in response to paragraphs 2 to 4 of the Declaration of Claim, that this Claim meets the condition precedent as set out in paragraph 16(1)(d) of the *SCTA*.
9. Canada admits the facts set out in paragraphs 3 and 4 of the Declaration of Claim and states further that Big Island Lake Cree Nation submitted a claim to the Minister of Indian and Northern Affairs (the “Minister”) in, or around, December 1981 before the *SCTA* came into force. Canada admits that pursuant to section 42(1) of the *SCTA*, the claim is deemed to have been filed with the Minister as of October 16, 2008, in accordance with section 16 of the *SCTA*.
10. On December 1, 1982, the Minister notified Big Island Lake Cree Nation that Canada agreed there was an outstanding treaty land entitlement (“TLE”), and Canada would negotiate the claim.
11. Big Island Lake Cree Nation agreed to negotiate the TLE claim with Canada on or about August 14, 1991.
12. On or about August 16, 1991, the Office of the Treaty Commissioner notified Big Island Lake Cree Nation that it recommended the population figure of 119 individuals as the basis for calculating the TLE.
13. On or about October 17, 1991, Canada notified Big Island Lake Cree Nation that it had accepted the Commissioner’s recommendation of 119 as the ADOFS population.

14. On September 22, 1992, the Treaty Land Entitlement Framework Agreement (the “Framework Agreement”) was executed by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of Saskatchewan, and twenty-two (22) of the twenty-six (26) First Nations in Saskatchewan which had established their claims to receive additional land under Treaty 6.
15. Big Island Lake Cree Nation was formerly known as Joseph Bighead Band and identified as such in the Framework Agreement as one of the “Entitlement Bands”. Despite being party to the Framework Agreement, Big Island Lake Cree Nation did not execute the final Agreement. Consequently, Big Island Lake Cree Nation is not considered to be a signatory to the Framework Agreement.
16. In 2006, the newly elected chief, Chief Colleen Sandfly, requested a meeting with the Department of Indian and Northern Affairs officials to discuss the TLE. At a meeting with the Portfolio Manager for Saskatchewan in or around April 2006, Canada again offered to resume negotiations, but Big Island Lake Cree Nation did not pursue the matter further at that time.
17. Negotiations resumed in or around 2009, but were sporadic between 2009 and 2016. Given that Big Island Lake Cree Nation submitted the TLE claim before the *SCTA* came into force, the date of the Minister’s decision to negotiate the claim is deemed to be October 16, 2008, in accordance with section 42(2) of the *SCTA*.
18. Canada presented a without prejudice settlement offer to Big Island Lake Cree Nation on or about August 22, 2019. Final settlement was not reached.

**II. Canada's Position with Respect to Validity of the Claim (R.42(b) and (c))**

19. Canada admits that the facts establish a valid claim under section 14(1) of the *SCTA* as pled by Big Island Lake Cree Nation at paragraph 6 of their Declaration of Claim.
20. More specifically, in response to paragraphs 6, 7, 23 and 24 of the Declaration of Claim, Canada admits that it has failed to fulfill its legal obligation to provide a sufficient quantum of land to Big Island Lake Cree Nation in accordance with Canada's obligations under Treaty 6.
21. In response to paragraphs 23 to 28, Canada agrees with the methodology set out by the Claimant for calculating the Date of First Survey population and the ADOFS population. Canada further admits to the calculation set out in paragraphs 29 to 31 of the Declaration of Claim for the ADOFS population and agrees that the appropriate ADOFS population figure is 119 members.
22. In response to paragraph 32, Canada admits that the ADOFS was not fully accounted for when the size of the reserve was set at 11,616.9 acres by Order in Council dated February 4, 1919.
23. In response to paragraphs 33 and 34, Canada admits that Big Island Lake Cree Nation is entitled to additional reserve acres under the terms of Treaty 6 based on the ADOFS population figure of 119 and that the total acres that should have been provided at reserve creation was 15,232 acres.
24. Canada admits that there is a TLE shortfall of 3,615.1 acres as set out in paragraph 34 of the Declaration of Claim.

**III. Canada's Position with Respect to Assertions of Fact**

25. The material facts related to this claim are generally not in dispute and Canada has admitted the TLE shortfall. Canada's position regarding the facts set out in the Declaration of Claim is set out below.

26. In response to paragraphs 8 through 11 of the Declaration of Claim, Canada admits that, in 1876, it entered into Treaty 6 with certain Plains and Woods Cree Bands in what is now central Saskatchewan. In part, Treaty 6 represented the exchange of Aboriginal title to 121,000 square miles of land for various promises and benefits, including entitlement to reserve land.
27. In response to paragraph 12, Canada admits that in or around 1909, the Joseph Bighead Band was identified by the Department of Indian Affairs to be made up of “Indians” who lived near Ministikwan Lake, Makwa Lake, and Lac des Isles (“Big Island Lake”).
28. In response to paragraph 13, Canada admits that members of Big Island Lake Cree Nation told federal surveyor I.J. Steele (Steele) that they objected to the subdivision of their traditional territory along the Beaver River. Canada has no knowledge of the assertion in paragraph 13 that Steele noted in a letter to the Surveyor General in August 1911 that 40 families lived near Big Island Lake.
29. Canada admits the facts contained in paragraph 14, which assert that by December 14, 1911, the Department of the Interior had ordered surveys of land north of the Beaver River for the Indigenous peoples residing around Big Island Lake (Lac des Isles) and that the Department of the Interior was asked to keep a tract of land about six miles deep around the lake free from settlement until the question of a reserve could be settled there. Canada will provide additional context in Canada’s Statement of Facts, particularly in paragraphs 43 to 45 below.
30. In response to paragraph 15, Canada admits that the Department of the Interior mistakenly opened up some of the land described in paragraph 14 for settlement as a tract of land about six miles deep around Lac de Isles (Big Island Lake). This error could not be reversed.

31. In response to paragraph 16, Canada admits that Joseph Bighead signed the adhesion to Treaty 6 on June 25, 1913, and that he was appointed Chief of the Band. Canada agrees that the terms of the adhesion agreement as set out at paragraph 16 are accurate representations.
32. In response to paragraph 17, Canada admits that Indian Agent Sibbald did attend Big Island Lake on November 29, 1913, and met with Chief Bighead and his son-in-law Kisaynew and discussed the possible layout of a reserve with them. Canada admits that most members of the First Nation were then away hunting during this discussion. In a December 13, 1913, letter to Assistant Deputy and Secretary for Indian Affairs, J.D. McLean, Sibbald noted that opinions were divided within the First Nation and that some members sought a reserve far greater than what they were entitled to under Treaty 6, but that others including Chief Bighead and Kisaynew, were amenable to considering a smaller area. Canada admits that Sibbald assured Chief Bighead that anything Chief Bighead told Sibbald that could allow Sibbald to give the Department of Indian Affairs an approximate idea where a reserve should be set aside would not be looked upon as a final settlement.
33. In response to paragraph 18, Canada admits that Sibbald traveled to Big Island Lake and Little Island Lake in March 1914 to assist a Dr. Hill to administer vaccines and that following the visit he wrote to the Department of Indian Affairs to propose offering the Band at Big Island Lake additional reserve land in excess of what was required by Treaty 6. However, he did not provide any specific amount in that recommendation. Canada admits that Sibbald was of the opinion that some of the land to be included in the reserve was of inferior quality to land included in other reserves. Canada admits that Sibbald's request was declined by the Department of Indian Affairs.
34. In response to paragraph 19, Canada admits that an unsigned letter was sent on April 27, 1915, to the Department of Indian Affairs indicating that the "Joe Bighead Band" was entitled to 640 acres per family of five.

35. In response to paragraphs 20 and 29, Canada admits that 80 individuals were counted as Joseph Bighead Band's base population paylist in 1915.
36. In response to paragraph 21, Canada admits that Donald Robertson surveyed lands for the Joseph Bighead Band and determined that the area surveyed comprised an area of 11,605 acres based on a count of 88 people. Canada has no knowledge of whether the survey took place in September 1915 as asserted at paragraph 21 but states that the survey was confirmed by Mr. Robertson in a letter dated January 5, 1916. Canada admits that the area confirmed by Order in Council P.C. 1919-0238 on February 4, 1919, was 11,616.9 acres.
37. In response to paragraph 22, Canada admits that Canada has not provided Big Island Lake Cree Nation with any additional reserve lands since the February 4, 1919, Order in Council confirmed an area of 11,616.9 acres.

#### **IV. Canada's Statements of Fact**

38. Treaty 6 includes a promise to set aside a reserve for each Band in the amount of one square mile for each family of five (approximately equal to 128 acres per person).
39. Inspector of Indian Agencies to the Secretary, W.J. Chisholm, and Indian Agent Sibbald visited Island, Loon, Hollow, Horse and Big Island Lake on March 20-23, 1907. The Department of Indian Affairs originally treated the First Nations peoples at Island, Loon, and Big Island Lake as a single Band.
40. Island Lake later became known as Ministikwan Lake, and Big Island Lake was also known as Lac des Isles. The similarity in name, and relative geographical proximity between Island Lake and Big Island Lake created some confusion during the early 1900s period of reserve creation.
41. On or about April 6, 1910, the Secretary of Indian Affairs was informed that there were 117 individuals residing at Island Lake, 27 at Loon Lake, 24 at Big

- Island Lake and 17 non-treaty Indians at Hollow and Horse Lakes. It was suggested that all these Bands be encouraged to take their land in one reserve, but it was also acknowledged that there was a possibility of these Bands residing at or near Island, Loon, Big Island, Hollow and Horse Lakes refusing to consolidate. It was therefore suggested that separate reserves be surveyed in proportion to the number of people in each Band.
42. In 1911, a reserve was created at Ministikwan Lake (Island Lake) and set aside for individuals that included three Bands, including those from Big Island Lake. It was later determined that the separate Bands could not live together as one Band and consequently the reserve at Ministikwan Lake was reduced following the creation of new reserves for the other Bands that had broken off.
  43. Federal surveyor Steele came into contact with the First Nations peoples at Big Island Lake in August 1911. He wrote to the Surveyor General in Ottawa that the First Nations peoples at Big Island Lake were objecting to the sub-division of that area of the country and that they claimed the Beaver River as the southern boundary of their hunting ground. Therefore, they requested a reserve reflecting this boundary to the south. Steele also relayed their request regarding the location of a reserve at Big Island Lake to J.D. Maclean (Assistant Deputy and Secretary for Indian Affairs) at the Department of Indian Affairs.
  44. The Surveyor General replied to Steele by letter dated August 22, 1911, and confirmed that a tract of land about six miles deep around the lake had been reserved in the books of the Department of the Interior pending examination and survey by the Department of Indian Affairs.
  45. The Surveyor General also advised Steele to proceed with his subdivision as this would not affect a proposed reserve at Big Island Lake. Unfortunately, the Surveyor General had mistakenly informed Steele concerning the reservation of a six-mile tract around the wrong lake. This reserved land was around

Ministikwan Lake (Island Lake) not Big Island Lake, which was the lake to which Steele had been referring.

46. McLean wrote to Sibbald on September 8, 1911, in reference to the reserve at Island Lake, which had by then had its name changed to Ministikwan Lake. He informed Sibbald that in addition to "Island Lake" there was another lake which he referred to as Lac des Isles about thirty (30) miles northeast of Ministikwan Lake where another Band was located. This lake was within the area Sibbald was responsible for in his Indian Agency.
47. McLean informed Sibbald about the resistance Steele was getting from the Lac des Isles (Big Island Lake) "Indians" regarding sub-dividing that area of the country until the question of a reserve for them was settled. He asked Sibbald to go to Lac des Isles and file a report regarding the situation there.
48. Sibbald went to Big Island Lake and, in his report to Mclean filed on or about September 8, 1911, he pointed out that the individuals at Lac des Isles (Big Island Lake) had been treated as part of the Band at Island Lake (Ministikwan) and that land had been set aside for them there. He reported a Band size of 46 treaty and 33 non-treaty people residing at Lac des Isles, and that they refused to move out of the area and wanted a large reserve encompassing their traditional hunting area north of the Beaver River.
49. McLean relayed Sibbald's findings to the Surveyor General of the Department of the Interior by letter dated December 14, 1911, and noted that Island Lake, which was by then called Ministikwan Lake, was south of the Beaver River while Big Island Lake, which was called Lac des Isles on the maps, was north of the Beaver River. He explained that Sibbald was unable to define the locality or extent of the lands to be reserved for the Band at Big Island Lake as he considered their demands to be extravagant.

50. As a result, McLean requested that the Department of the Interior not confirm any surveys for townships around Big Island Lake until the Department of Indian Affairs had the opportunity to address the questions of lands to be reserved for the Band at Big Island Lake.
51. In a responding letter dated November 20, 1912, the Surveyor General of the Department of the Interior acknowledged McLean's request but informed him that there had been a mistake in that office resulting in it being overlooked. Due to this oversight, a preliminary plan of townships around Big Island Lake had been prepared. The Surveyor General advised that he had asked for the plan to be recalled but that request was not successful.
52. Given these circumstances, McLean was put in a position of needing to finalize a reserve at Big Island Lake quickly. He directed Sibbald to work to identify the lands to be set aside as a reserve for the Big Island Lake Band without delay. He suggested a population of 90 people at Big Island Lake and an entitlement of 11,520 acres.
53. On May 31, 1913, Sibbald went to Big Island Lake and met with Musqua kokochin and other members of the Band who all informed him that they wanted a reserve. He advised them of a meeting to be held at Waterhen Lake on June 17, 1913, to take up the question of reserve location and treaty adhesion. He urged them to attend the meeting.
54. Sibbald reported to McLean that the Band at Big Island Lake wanted their present locations included in the reserve in addition to large areas surrounding these locations and that they would not be satisfied with less. He advised McLean that he could not stake out a reserve as McLean had requested because the Band was not ready to make a clear selection. He did provide some estimates of what the reserve boundaries could be.

55. Inspector of Indian Agencies, W.J. Chisolm traveled to Waterhen Lake on June 22, 1913, to meet with Bands to encourage them to adhere to Treaty 6. Upon arrival he met with the Band at Waterhen Lake as well as members of the Band at Big Island Lake. He discussed and explained the adhesion to Treaty 6 at that time to all who were present.
56. On June 25, 1913, Chisolm met with the people of Big Island Lake separately and once again explained all the principal provisions of the Treaty to guard against any possible misunderstanding.
57. On that day, June 25, 1913, Joseph Bighead signed the adhesion to Treaty 6 on behalf of the historical Joseph Bighead Band, which is the ancestor of the Claimant, Big Island Lake Cree Nation. He was appointed Chief.
58. Chisolm asked Chief Bighead where he and his Band wished to have a reserve set apart and in a general way, he gathered from them that they wanted their reserve to be located on the southern and southwestern shore of Big Island Lake.
59. Chisolm noted that, along with members of the Joseph Bighead Band that were recently admitted to Treaty 6, there were also an approximate equal number of members of the Island Lake Band (Ministikwan) in the Onion Lake Agency that were also residing around Big Island Lake. Chief Bighead requested that these individuals also be provided with lands together with those recently admitted to treaty because they were all one Band.
60. Chisolm advised Chief Bighead that all individuals enrolled as members of Island Lake Band had been provided for in the Island Lake reserve when it was set apart. Land could be given to them at Big Island Lake only with the special direction of the Department of Indian Affairs, and on condition that a similar area be deducted from the Island Lake reserve. He informed the Band that he would report the request to the Department for consideration.

61. Following Chief Bighead's request, Chisholm recommended to the Secretary of Indian Affairs on or about August 16, 1913, that certain members of the Island Lake Band residing in the neighbourhood of Big Island Lake, join the Joseph Bighead Band and be taken into account at the survey of the latter's reserve.
62. Sibbald thereafter traveled to Big Island Lake on or about November 29, 1913, and met with Chief Bighead and his son-in-law Kisaynew. At that time, the majority of the Band was away hunting. Sibbald discussed the possible layout of a reserve with Chief Bighead and Kisaynew at that time.
63. In March 1914, Sibbald was involved in helping a Dr. Hill provide vaccinations including at Big Island Lake. He suggested to the Department of Indian Affairs that it offer to the Joseph Bighead Band an acreage greater than to what they were entitled. He reasoned that it could be an incentive to vaccination campaigns and as a set-off against what he personally considered to be some less valuable land contained in the proposed reserve than in reserves of other Bands in his agency. This suggestion was not accepted by the Department of Indian Affairs.
64. On or about July 24, 1914, Chisholm submitted a sketch to the Department of Indian Affairs in Ottawa showing the lands that the Joseph Bighead Band wished to be set apart as a reserve. He indicated that the membership of the Band consisted of about 90 individuals, inclusive of a few who had not yet taken treaty.
65. It was noted that 52 of these individuals were already provided for in the reserve of the Island Lake Band (Ministikwan) but, as they insisted on membership in the Joseph Bighead Band, it appeared advisable to make provision for them in the reserve of this Band, even though an equivalent area needed to be deducted from the then-reserve of the Island Lake Band.
66. In 1914, 56 members from the Island Lake Band (Ministikwan) joined the Joseph Bighead Band as noted in the 1914 Paylist of the Joseph Bighead Band.

67. On or about April 27, 1915, Assistant Deputy and Secretary D.F. Robertson from the Department of Indian Affairs requested that a reserve be surveyed at Big Island Lake for the Joseph Bighead Band and that under the conditions of Treaty 6, the Band was entitled to an area in the proportion of 640 acres to a family of five.
68. The 1915 annuity payroll identified an eligible treaty land entitlement membership of 80 individuals.
69. An Order in Council dated February 4, 1919, set apart 11,616.9 acres of land as reserve for the Big Island Lake Cree Nation which was referred to as Bighead Indian Reserve No. 124, at Lac des Iles, in Townships 62 and 63, Ranges 24 and 25, west of the 3rd Meridian in Saskatchewan. This acreage corresponded to a population of approximately 90 individuals.
70. In 1991, the Office of the Treaty Commissioner conducted a complete review of the payroll analysis and concluded that there were additional individuals to be included in the ADOFS. This included a total of 14 added as arrears/absentees, 23 as new adherents/landless transfers, and 4 marriages to non-treaty women. The resulting ADOFS population was 119.

## **V. Relief**

71. Canada seeks the following relief:
  - a) An Order declaring that Big Island Lake Cree Nation has established a shortfall of 3,615.1 acres of reserve land owing under Treaty 6;
  - b) A determination of the amount of compensation owed to Big Island Lake Cree Nation for the admitted breach of Treaty;
  - c) Canada may decide not to seek costs upon the final determination of the proceedings, however it reserves the right to seek such costs;
  - d) Such further relief as this Honourable Tribunal deems just.

**VI. Communication**


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

Department of Justice (Canada)  
Prairie Regional Office (Saskatoon)  
410 – 22<sup>nd</sup> Street East, Suite 410  
Saskatoon, SK S7K 5T6  
Attention: Gabriela Fuentealba and Emily Arthur

73. Facsimile number for service is (306) 975-4030.

74. Email address for service is: [gabriela.fuentealba@justice.gc.ca](mailto:gabriela.fuentealba@justice.gc.ca).

Dated this 26<sup>th</sup> day of July 2024.



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