

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
	June 2, 2026	
	Susie Thorsley	
Ottawa, ON		6

LAC DES MILLE LACS FIRST NATION

Claimant(s)

and

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*, SC 2008, c 22, and the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.

June 2, 2026

Date

Registry Officer

TO: Lac Des Mille Lacs First Nation (“LDML”)
As represented by Etienne Esquega, Counsel for the Claimant
Esquega Law Office
100 Anemki Drive, Suite 104
Fort William First Nation, ON
P7J 1K4
Email: ee@esquegalaw.com

Overview

1. Canada admits a failure to fulfill a legal obligation of the Crown in not setting aside the “garden islands” that the Lac Des Mille Lacs First Nation traditionally cultivated. Compensation should be determined for this failure. However, the Claimant has brought this Claim in support of a broader allegation that Canada failed to set aside a sufficient amount of farming lands in breach of Treaty 3. Canada denies having breached any other legal obligation in relation to the setting aside of the Claimant’s reserves.
2. Northern Ontario’s communities are largely natural resource-based economies. Agricultural pursuits are not particularly viable in the region, given the conditions of the land itself. It is not an accident that the modern-day sectors of mining, forestry, and hydroelectric energy generate most of the income for the region – these industries are profitable and well-suited to the land available for development.
3. Reserves set aside under Treaty 3 were not intended to be entirely devoted to agriculture. Their use and purpose are meant to adapt to the way of life of the First Nation and be responsive to the physical environment. Though Treaty 3 indicates that the Crown was prepared to encourage the practice of agriculture among the First Nations by providing agricultural implements, it is clear that the reserves could also be selected and set aside for “other purposes” in the proportions chosen by the First Nations. Traditional sources of livelihood and sustenance, such as fishing and hunting, were to continue throughout the tract surrendered, subject to regulations and excepting such tracts taken up by the Crown.
4. Canada acknowledges that Lac Des Mille Lacs was entitled to both a farming reserve and a “wild land” or “other” reserve. The parties agree that the Lac Des Mille Lacs received the appropriate total land entitlement across two reserves (22A1 and 22A2), as promised. The dispute is situated on the proportion of “farm lands” that ought to have been made available to the Claimant. However, there was no “formula” in Treaty 3 outlining how much farming land was to be allocated, rather, the treaty

established a process for how the land was to be allocated in “conference with the Indians.” Reserve allocation in this instance was not a unilateral or unfettered decision of the Crown, it was a bilateral process through which the First Nation chose the lands it wanted to have set aside as reserves.

5. It is an accepted fact that Lac Des Mille Lacs cultivated land before the making of Treaty 3. Treaty 3 makes it clear that in the process of setting aside reserves, “due respect [would be] had to lands at present being cultivated by said Indians.” Canada did not set the “garden islands” (land that was being cultivated since before the signing of Treaty 3) aside for Lac Des Mille Lacs. Canada agrees that it should have done so in this instance, and that compensation to the Claimant should be determined for this failure.

I. Status of Claim (Subrule 42(a) of the *Rules*)

6. Canada admits that Lac des Mille Lacs 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 that Lac Des Mille Lac’s two reserve bases are located on Reserve 22A1 and Reserve 22A2, both located in the Province of Ontario.
8. Canada admits, in response to paragraph 3 of the Declaration of Claim, that this Claim meets the condition precedent as set out in paragraph 16(1)(a) of the *SCTA*.
9. Canada admits the following facts set out in paragraph 4 of the Declaration of Claim:
 - a. Lac Des Mille Lacs submitted its specific claim to the Specific Claims Branch on or about March 1, 2022;
 - b. The specific claim met minimum standards and was deemed to have been filed with the Minister on or about August 30, 2022;

- c. The Minister partially accepted the claim and offered to pursue negotiations with respect to some aspects of the claim on or about August 26, 2025;
 - d. Lac Des Mille Lacs filed with the Specific Claims Tribunal on December 31, 2025.
10. In further response to paragraph 4 of the Declaration of Claim Canada states the contents of its offer to negotiate, and any communications exchanged regarding this offer including those expressing the parties' positions, are subject to settlement privilege. The settlement privileged information contained in this paragraph (or in any other paragraphs in the Declaration of Claim) should be struck.

II. Validity (Subrules 42(b) and (c) of the *Rules*)

11. In response to paragraph 6 of the Declaration of Claim, Lac Des Mille Lacs relies on paragraphs 14(1)(a), 14(1)(b) and 14(1)(c) of the *SCTA*. Canada submits that the statutory ground for this Declaration of Claim is limited to paragraph 14(1)(a) of the *SCTA*.
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 (Subrule 41(e) of the *Rules*): Acceptance, Denial or No Knowledge (Subrule 42(d) of the *Rules*)

13. In response to paragraph 8 of the Declaration of Claim, Canada admits that Lac Des Mille Lacs is an "Indian Band" under the *Indian Act*, R.S.C. 1985, c.I-5, and that its members engaged in gardening and cultivation before and after the signing of Treaty 3.

14. In response to paragraph 9 of the Declaration of Claim, Canada admits that one of the objectives of Treaty 3 was to “open a secure route” to the West, though that was not the Treaty’s only purpose.
15. In response to paragraph 10 of the Declaration of Claim, Canada defers to the terms of Treaty 3. Canada denies the promise of farming land was “the central objective” of Treaty 3. It was a common intention of the parties that hunting and fishing, which were traditional livelihoods of Lac Des Mille Lacs, would continue. Reserve allocation under Treaty 3 was a bilateral process through which the First Nation chose the lands it wanted to have set aside as reserves.
16. Canada admits paragraph 11.
17. Canada admits paragraph 12. Upon conclusion of the Treaty, Commissioner Dawson journeyed to Shebandowan Lake to obtain the adhesion of two bands (including Lac Des Mille Lacs) who were unable to attend the negotiations at North-West Angle. These bands indicated in advance that they would accept whatever terms were negotiated. Dawson outlined the terms of the adhesion in his report and noted “... before signing it, they [the First Nations] comprehended perfectly the nature of the obligations into which they were able to enter...”
18. Canada denies paragraph 13 and defers to the terms of Treaty 3. Signatories of Treaty 3 “...cede, release, surrender and yield up to the Government of Dominion of Canada for her Majesty the Queen and her Successors forever, all their rights, titles and privileges whatsoever, to the lands included within the following limits ...” It is not a resource-sharing arrangement as alleged.
19. Canada admits paragraphs 14- 15.
20. In response to paragraph 16, Canada has no knowledge of why (or when) Reserve 22A1 was abandoned. However, Canada notes the reserve lands were selected and set aside “in conference with the Indians,” as per the text of Treaty 3. Treaty 3

expressly states that lands may be set aside for “farming or other purposes,” and Reserve 22A1 was set aside for farming purposes in accordance with the Treaty.

21. In response to paragraph 17, as already noted, Canada admits that Lac Des Mille Lacs engaged in cultivation (gardening and harvest sites) before and after the signing of Treaty 3. Canada admits that the garden harvest sites observed were on various islands (or peninsulas) on Lac Des Mille Lacs, and on small plots of land located near dwellings, on what was to become Reserve 22A1.
22. In response to paragraph 18, Canada has no knowledge of current structures located on Reserve 22A1, or the community’s plans for development. Canada admits that there is little arable soil available for modern large-scale farming operations. However, Canada denies that there was a “formula” for how much arable land is owed. Treaty 3 explicitly promises that lands for farming would be set aside, and this promise was fulfilled. The amount of land to be designated as “farming lands” was not prescribed in the Treaty, nor was the quality of the land guaranteed. Treaty 3 did not promise to provide for agricultural success on the Canadian shield to Lac Des Mille Lacs and its members. Both parties were aware of the physical limitations of the land at the time of signing the Treaty. The terms “agriculture” and “farming” are also not defined in the Treaty itself.
23. In response to paragraph 19 of the Declaration of Claim, Canada admits that Treaty 3 provides for the one-time provision of agricultural implements and defers to the terms of the Treaty.
24. In response to paragraph 20, Canada again denies that Treaty 3 provided for any “formula” for allocating farming reserves. Agriculture was not the main or sole objective of the Treaty, though agriculture was an important feature. The Treaty itself is clear that reserves could be for pursuits “other” than agriculture, and the Treaty is silent on the proportion of lands to be allocated for agricultural purposes. Further, a variety of terms were discussed and negotiated in the lead-up to Treaty 3 being signed, including: education, ongoing funding, size of reserve to be allocated,

continuation of hunting and fishing rights, farming, provision of ammunition (along with twine and other goods), provision of agricultural implements, among other issues.

25. Canada denies paragraph 21. Treaty 3 stipulates that specific tools, implements and animals were “to be given once for all for the encouragement of the practice of agriculture among the Indians,” not for the enhancement of any existing agricultural pursuits, as the Claimant states.
26. Canada denies paragraph 22 of the Declaration of Claim. The Crown met its Treaty 3 obligations in keeping with the Honour of the Crown when it set aside Reserves 22A1 and 22A2 for Lac Des Mille Lacs. The Reserves were selected “in consultation with the Indians,” as provided for by the land selection process outlined in the treaty. The Reserves set aside included farming land and met the per capita land quantity stipulated in Treaty 3, based Lac Des Mille Lacs’ population.
27. In response to paragraph 23, Canada admits that it promised to set aside two types of reserves for “farming,” and “other,” and that it promised to provide agricultural implements “once for all for the encouragement of the practice of agriculture among the Indians.” These promises were fulfilled. However, Canada denies it promised the First Nation that the quality of the land provided would be able to support any types of specific crops or agriculture practices.
28. Canada denies paragraph 24 and defers to the text of Treaty 3 itself. Canada admits that setting aside of “farming lands” as part of the reserve creation process was one common intention of the parties.
29. Canada denies paragraph 25 and defers to the text of Treaty 3 itself.
30. In response to paragraph 26, Canada admits that one of the government’s goals outlined in the Commissioner’s instructions was to develop “agencies” to promote settlement. One such agency was to encourage agriculture, but Canada notes that

“agencies” also included other objectives, such as the development of schools, the creation of reserves, and the implementation of missionary tools.

31. Canada admits paragraph 27-28, but notes that as aforementioned, agriculture was an important element of the treaty negotiations, not the “major component.”

32. Canada admits paragraph 29.

33. Canada admits paragraph 30, however, the practice of what constitutes agriculture was not defined. The shorthand reporter also captured that Lieutenant Governor Morris said in the same sentence: “I think that we should do everything to help you by giving you the means to grow some food, so that if it is a bad year for fishing or hunting, you may have something for your children at home.”

34. Canada admits paragraph 31.

35. In response to paragraph 32, Canada admits that land was to be set aside for farming as part of the reserve creation process under Treaty 3. This promise was fulfilled. Canada denies that there was a “formula” for how much arable land was owed to Lac Des Mille Lac. The amount of land to be designated as “farming lands” was not prescribed in the Treaty, nor was the quality of the land guaranteed. Treaty 3 did not promise to provide for agricultural success or land “conducive” to large-scale farming operations on the Canadian shield to Lac Des Mille Lacs and its members. Such land does not, and did not, exist. Both parties knew of the physical limitations of the land at the time of signing the Treaty. This was the shared common intention and understanding. The terms “agriculture” and “farming” are also not defined in the Treaty itself.

36. Canada admits paragraph 33-34, except notes that the text of Treaty 3 makes express reference to “reserves for farming lands” and “other reserves of land”.

37. In response to paragraph 35, Canada admits “farming lands” on reserves was one of the important items negotiated in the lead-up to the signing of Treaty 3, but not the

only one. Other negotiated terms included education, ongoing funding, size of reserves to be allocated, continuation of hunting and fishing rights, provision of ammunition (along with twine and other goods), provision of agricultural implements, among other issues.

38. In response to paragraphs 35 and 36, Canada submits that any matter with respect to the reserve selections for the Lake of the Woods First Nations has no bearing on assessing the joint reserve selection process that took place between the Crown and Lac Des Mille Lacs.

39. Canada admits paragraph 37.

40. Canada admits paragraph 38, but notes that Lieutenant Governor Morris stated that agriculture was “a very important feature of all treaties,” and this comment is not specific to Lac Des Mille Lacs, or Treaty 3. Canada notes that Lieutenant Governor Morris goes on to specify in the same comment that: “agricultural implements, oxen, cattle (for form the nuclei of herds), and seed grain” are the tools necessary to “transform hunters into farmers.” This comment indicates that a broader view of agriculture (that includes husbandry and the raising of stock, and not just the cultivation of land for crops) was contemplated by the parties.

41. Canada admits paragraph 39, but notes that the Surveyor Ross field book also includes reference to “some high land, good soil” available that was allocated to the First Nation as part of the reserve creation process. Surveyor Ross also noted “an area of very good land” near the shore, including a “sandy loam in the northeast corner of the reserve.”

42. Canada denies paragraph 40, and states that there is no evidence to support that the Crown intentionally withheld arable land during the reserve creation process. Further, the reserve allocation in this instance was not a unilateral or unfettered decision of the Crown. Rather, it was a bilateral process through which the First Nation chose the lands it wanted to have set aside as reserves. First Nations participated in the location

and selection of their own reserves, in conformity with Treaty 3 processes. Surveyor Robert Ross noted in 1875 in the context of surveying Lac Des Mille Lacs' farming reserve that the "country is generally high, rough, stony and wooded with spruce, pine and popular." An 1889 document noted the "limited area of arable land ... owing to the marshy and rocky nature of the reserves..." and further noted the land being cultivated by Lac Des Mille Lacs "is limited to small garden patches around their dwellings, broken up by grub-hoes and planted with potatoes." Lac Des Mille Lacs was engaged in some horticultural activities on its land prior to the signing of the Treaty, and so the First Nation would be familiar with the type of land available in their area. The physical features of the land were observable to all who stood on it. Given these facts, both parties would have been aware that the conditions were not amenable to large-scale commercial agriculture at the time of signing Treaty 3.

43. In response to paragraph 41, it is Canada's position that both treaty parties knew that there was limited arable soil in the region, as the reserves were selected in consultation with the First Nations, in the area that the First Nation had used and occupied since time immemorial, including for harvesting or gardening activities before the time the Treaty was signed.
44. In response to paragraph 42-44, Canada denies that the Rainy River and Lake of the Woods First Nations examples are analogous to this matter. They should have no bearing on assessing the reserve selection made jointly between the Crown and Lac Des Mille Lacs. The proportion of arable land Rainy River/ Lake of the Woods First Nations received was different because of the physical characteristics of the land available in the areas near those First Nations. The historical record reveals that the most fertile areas of land in all of Treaty 3 was along the shores of the Rainy River. In contrast, and as mentioned above, there was very little arable land available to allocate to Lac Des Mille Lacs on or near the areas that they used or occupied.
45. Canada denies paragraph 45-46. The definition of farming is not clear from the Treaty or from the historical record. For example, Treaty 3 stipulates that the provision of

one yoke of oxen, one bull, and four cows was provided for the “encouragement of the practice of agriculture among the Indians.” The use of the word “agricultural” in the above context is to be understood in relation to the raising of stock or husbandry, and is not strictly to the cultivation of crops.

46. Canada admits paragraph 47. The parties agree that the Lac Des Mille Lacs received the appropriate total land entitlement across two reserves (22A1 and 22A2), as promised.

47. With respect to paragraph 48, Canada has no knowledge of the modern soil conditions on Lac Des Mille Lacs First Nation. Canada notes, however, that the soil study cited by the First Nation has not been independently verified.

IV. Statements of Fact (Subrule 42(a) of the *Rules*)

48. Treaty No. 3, known as the “Northwest Angle Treaty” was signed on October 3, 1873 at the Northwest Angle of Lake of the Woods.

49. Lac Des Mille Lacs First Nation was represented by Chief Metassoqueneshawk (sometimes referred to as Chief Blackstone), who signed the Treaty on its behalf on October 3, 1873, as part of the Shebandowan Adhesion.

50. Two reserves were assigned to Lac Des Mille Lacs First Nation (22A1 and 22A2). Treaty 3 is express that reserve selection shall be made “after conference with the Indians,” and Lac Des Mille Lacs participated in selecting the location of their own reserves. Treaty 3 did not set aside reserves expressly, but it did create a process for doing so. This process was followed.

51. Lac Des Mille Lacs First Nation is situated in Northern Ontario, and the land reflects the general nature of the terrain in the region. The First Nation would be aware of the observable physical characteristics of its land, which is that it is rocky, reflecting the Canadian shield, and that it is heavily forested. Lac Des Mille Lacs also harvested gardens (that included “Indian corn, potatoes, pumpkins, onions and carrots) before

Treaty 3 was signed. Lac Des Mille Lacs would have some awareness of the soil conditions of the land they have used and occupied since time immemorial, given their harvesting activities.

52. Treaty 3's text provides for the setting aside of reserves for "farming lands, with due respect being had to lands at present being cultivated by said Indians," along with reserves for "other" purposes. The treaty is not explicit as to what constitutes "farming lands," or the activity of "farming." The treaty is also silent on the quality of land that was to be given. There was no "formula" in the Treaty as to how much farming land was owed. The exact amount of farmland allocated varied from reserve-to-reserve and depended on local conditions.

53. Husbandry may have been intended to constitute farming, particularly given the text of the Treaty itself specifies the provision of one yoke of oxen, one bull, and four cows to be provided for the "encouragement of the practice of agriculture among the Indians." The quality of land that would be needed to support husbandry (the raising of animals) is different and lower than the quality of land that is needed to sustain large-scale commercial cultivation. The Treaty is express that traditional sources of livelihood and sustenance, such as fishing and hunting, were to be continued as one of the primary goals of Treaty 3 was to promote self-sufficiency.

54. Other than the failure to include the "garden islands" as part of Reserve 22A1, Canada upheld the Honour of the Crown with respect to and in the context of the selection of Lac Des Mille Lacs reserves.

- a. The First Nation participated in choosing the location of its reserves.
- b. The First Nation selected land on or near the land that they used and occupied since time immemorial, with which they were intimately familiar.
- c. The First Nation had previously cultivated small gardens and harvest fields, and they were aware of where the soil was most hospitable to grow traditional community-level crops.

- d. The First Nation continued to grow community-level crops and engaged in agricultural pursuits after the Treaty was signed. Lac Des Mille Lacs also increased their small-scale agricultural pursuits, making use of the farming aids and implements provided under the Treaty, and engaging in husbandry.
- e. There is no historical evidence that the Crown intentionally withheld arable land from the Lac Des Mille Lacs First Nation in the context of reserve selections.

55. Canada failed to set aside the “garden islands” for Lac Des Milles Lacs, which was an area of traditional cultivation for the First Nation from before the Treaty was signed. The statutory ground for compensation for this failure falls under section 14(1)(a) of the *Specific Claims Tribunal Act*. However, with respect to the broader allegation that Canada failed to set aside a greater amount of farming lands in breach of Treaty 3, there is no interpretation of Treaty 3 that supports such a determination. Canada denies any failure to fulfill its other legal obligations under the Treaty in relation to the setting aside of the Claimant’s reserves. Canada requests that the Tribunal limit its findings to the “garden islands” component of this claim.

V. Relief (Subrule 42(f) of the *Rules*)

56. Canada seeks the following relief:

- a. A determination of the amount of compensation for which Canada is liable for failing to fulfill a treaty obligation in not setting aside the “garden islands” for Lac des Mille Lacs 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 Claim; however, it reserves the right to seek such costs; and
- e. Such further relief as this Honourable Tribunal deems just.

VI. Communication (Subrule 42(g) of the *Rules*)

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

Erin Estok
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street W, Suite 400
Toronto, Ontario
Phone: 807-356-6986

Email address for the service documents are: erin.estok@justice.gc.ca;
aenea.young@justice.gc.ca

Dated this 2nd day of June, 2026.

Erin Estok

Erin Estok
Counsel for the Respondent