

June 3, 2026

Mark Chamoun

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File No. SCT-4001-25

SPECIFIC CLAIMS TRIBUNAL

Ottawa, ON

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BETWEEN:

BLACK RIVER FIRST NATION

Claimant

- 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* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Black River First Nation
As represented by
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Overview

1. The Respondent, His Majesty the King in right of Canada (“Canada”), is committed to reconciliation and to a renewed nation-to-nation relationship with Indigenous peoples based on a recognition of rights, respect, cooperation and partnership. This commitment exists within the context of litigation and beyond. Canada endeavours to embody these principles as it assists the Specific Claims Tribunal (the “Tribunal”) in its task of adjudicating matters brought before it.
2. Black River First Nation’s (“Black River”) Declaration of Claim (the “Claim”) is premature. The Minister of Crown Indigenous Relations (the “Minister”) accepted this Claim for negotiation on December 17, 2024, and has never notified Black River in writing of their decision not to negotiate the claim. Accordingly, the Tribunal does not have jurisdiction to adjudicate this Claim because the preconditions of subsection 16(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“SCTA”) have not been met.
3. Canada is willing to continue the ongoing negotiations of this Claim under the specific claims process but intends to bring an application to strike the Claim before the Tribunal in its entirety, for lack of jurisdiction. Canada is only filing this Response to preserve its right to defend the Claim on the merits, should its application be unsuccessful.
4. Regardless of the jurisdictional issue, Canada’s position before the Tribunal is that it did not breach any legal obligations to Black River as it fulfilled its obligation to provide Black River with the agricultural benefits promised in Treaty 5.
6. Canada acknowledges that the Honour of the Crown is always at stake in its dealings with Indigenous peoples. Canada acknowledges that it had an obligation to purposively and diligently implement the terms of the treaty. In this case, Canada upheld the honour of the Crown and fulfilled its treaty obligations to provide agricultural benefits to Black River.

I. Status of Claim

7. Canada denies that the requirements in subsection 16(1) of the *SCTA* are satisfied, as pled in paragraphs 2 through 14 of the Claim. The Minister never communicated a decision not to negotiate, as pled.
8. In further response to paragraphs 4 to 7 and paragraphs 9 to 14 of the Claim, Canada asserts settlement privilege over these communications as they were made in the context of negotiation discussions. Canada denies Black River's characterization of the communications.
9. Paragraphs 10 to 15 of this Response also include settlement privileged information. This information is included as it is necessary to respond to the Claim and to establish that the subsection 16(1) conditions precedent set out in the *SCTA* have not been met. Canada is not waiving privilege over these communications.
10. Black River submitted a claim to the Minister on April 29, 2024. On December 17, 2024, the Minister advised Black River of their decision to negotiate the claim. On December 31, 2024, Black River accepted the Minister's offer to negotiate the claim.
11. Negotiation meetings occurred between January 2025 and March 2025. On March 23, 2025, the federal election was called. As such, Canada paused negotiation meetings pursuant to the "caretaker convention".
12. On June 24, 2025, August 13, 2025, and October 15, 2025, Canada's negotiators advised Black River that they were awaiting instructions to resume negotiations.
13. On October 15, 2025, January 6, 2026, and March 4, 2026, Canada's negotiators advised Black River that they were not yet in a position to resume negotiations, but the necessary steps were being taken to resume negotiations.
14. On April 29, 2026, Canada's negotiators advised Black River that it was ready to resume negotiations.

15. On May 5, 2026, Canada advised Black River by letter that Canada was now in a position to resume negotiations and confirmed that Canada's negotiators have already contacted Black River'
16. The parties held a negotiations meeting on May 11, 2026.
17. Canada denies that the Minister notified Black River of a decision not to negotiate the Claim. Canada specifically advised Black River of the Minister's decision to negotiate the Claim and that Canada's negotiators were taking the necessary steps to resume negotiations. As a result, the requirements of paragraph 16(1)(a) of the *SCTA* are not satisfied.
18. Furthermore, the requirements of paragraph 16(1)(d) of the *SCTA* are not satisfied as three years have not elapsed since the day on which the Minister notified Black River of their decision to negotiate the Claim.
19. None of the other preconditions in subsection 16(1) are relevant or met.
20. Canada acknowledges that Black River does not seek compensation in excess of \$150 million for the purposes of this Claim, as stated in paragraph 15 of the Claim.

II. Canada's Position Regarding the Validity of the Claim

21. Canada's position is that the Tribunal does not have jurisdiction to adjudicate this Claim as the conditions precedent of subsection 16(1) of the *SCTA* have not been satisfied. Canada intends to bring an application to strike the entirety of this Claim, without leave to amend, pursuant to paragraph 17(a) of the *SCTA*, which allows the Tribunal to order that a claim be struck out on the ground that it "is on its face, not admissible under sections 14 to 16". Canada is only filing this Response to reserve its right to defend the Claim on its merits, if its application is unsuccessful.
22. Regardless of the jurisdictional issue, Canada has complied with its obligation to provide Black River with the agricultural benefits promised in Treaty 5. As such, the facts do not establish a valid claim under the *SCTA*, as claimed in paragraphs 16 and 17, and throughout the Claim.

23. Canada's analysis of this Claim for the purpose of litigation is in the early stages. If this Claim progresses before the Tribunal, Canada will continue to consider its position as more information becomes available and, if appropriate, amend its Response.

III. Canada's Position Regarding Assertions of Fact in the Declaration of Claim

24. In response to paragraph 1 of the Claim, Canada agrees that Black River is a First Nation within the meaning of subsection 2(a) of the *SCTA*. Canada also agrees that Black River Indian Reserve No. 9 is located on the shores of Lake Winnipeg in the Province of Manitoba.
25. Canada agrees that the written terms of Treaty 5 contain explicit promises and benefits to be provided by Canada to the bands adhering to the treaty as pled in paragraph 18 of the Claim.
26. In response to paragraph 19 of the Claim, Canada agrees that Black River adhered to Treaty 5 on September 7, 1876.
27. In response to paragraph 20 of the Claim, at this time, Canada is unaware if Black River had requested a reserve at Black River and requested hand carpentry tools in 1875, prior to its formal adhesion. Canada denies that there is no evidence that Black River received hand carpentry tools. On April 13, 1878, the Acting Indian Superintendent reported that when Black River adhered to Treaty 5, it received four handsaws, three planes, one grindstone and crank, three augers, six saw files, one pit saw and handle, two hammers, four gimlets, two grooving picks, and three chisels.
28. In response to paragraph 21 of the Claim, at this time, Canada is unaware if in 1876, the Crown adopted a policy that only those Treaty 5 bands settled on reserve would receive treaty cattle.
29. In response to paragraph 22 of the Claim, Canada admits that Indian Commissioner J.A.N Provencher signed the adhesion on behalf of the Crown in addition to JAS. F. Graham, H. Martineau and J.P. Wright. However, Canada denies that Provencher

viewed the treaty promise as including both the promised goods as well as instruction in agricultural livelihood. Canada states that the promise to agricultural benefits is confined to the wording of the treaty, which does not include agricultural instruction.

30. In further response to paragraph 22, Canada states that a September 9, 1876, Manitoba Superintendency Report indicates that Black River wished to have a reserve where it had been settled for many generations.
31. In response to paragraph 23 of the Claim, Canada states that in October 1877, a 2000-acre reserve was surveyed by J.P. O'Hanly for Black River. This reserve was confirmed as Black River Indian Reserve 9 on February 25, 1930.
32. In response to paragraph 24 of the Claim, and the Claim as a whole, Canada denies that Black River did not receive the full complement of agricultural benefits and assistance promised under Treaty 5.
33. In further response to paragraph 24 and in response to paragraphs 25, 26, and 29 of the Claim, Canada states that Black River received the full complement of agricultural benefits and assistance provided for in Treaty 5 and that Canada has not breached any treaty or other legal duties to Black River. Canada states that its treaty obligations with respect to agricultural benefits are confined to the specific wording set out in the text of Treaty 5. Canada denies that it has ever had treaty obligations to provide the means to transition Black River to an agricultural economy and / or to provide agricultural instruction.
34. In further response to paragraph 25(b) of the Claim, Canada states that at this time, it does not know whether Black River had access to agricultural instruction, but there was no treaty promise to provide the same.
35. In response to paragraph 27 of the Claim, Canada agrees that the basic principles of treaty interpretation for historic treaties are well-established, including that treaties should be liberally construed, however, when construing the language generously, courts cannot alter the terms of the treaty by exceeding what is possible

on the language or realistic. Treaty rights must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed. However, Canada denies that all aspects of treaty rights must necessarily be updated and implemented in a manner consistent with equivalent modern practices and states that the updating of treaty rights is irrelevant to this Claim.

36. In response to paragraph 28 of the Claim, Canada denies any misadministration of records in this Claim. Moreover, Canada states while there may be gaps in the historical record, there is evidence regarding the provision of treaty benefits, records of monies spent and agricultural benefits provided to Black River. Canada further states that the existence of gaps in the historical record does not mean the records were not kept, do not exist, or that treaty benefits were not provided. Canada states that in historical claims of this nature, due to the prejudicial effect of the passage of time, gaps in the historical record should not be resolved in favour of Black River.
37. In further response to paragraph 29 of the Claim, Canada states that it acted honourably when negotiating and implementing Treaty 5, and with respect to providing the agricultural benefits set out in Treaty 5 to Black River. Canada further states that the honour of the Crown is not in itself a cause of action.
38. In response to paragraph 30 of the Claim, Canada agrees that it has accepted Black River's claim for negotiation but denies that it has refused to continue negotiations.
39. In response to paragraph 31, Canada denies that Black River is entitled to any relief.

IV. Canada's Statement of Facts

40. Canada relies on the facts set out in section III.
41. In 1876, Black River adhered to Treaty 5.

42. Treaty 5 provided an itemized list of agricultural benefits to be supplied to any band cultivating land, “to be given once for all for the encouragement of the practice of agriculture among the Indians.”
43. The purpose and intent of the Treaty 5 agricultural clause, and the common intention of the parties, was that Canada would provide the itemized benefits to Black River, to encourage Black River to practice agriculture. There was no promise to provide the means to transition to an agricultural economy of farming instruction.
44. In 1877, a 2,000 acre reserve was surveyed and set aside for Black River.
45. Canada honourably fulfilled its treaty obligation by providing Black River with the Treaty 5 itemized list of agricultural benefits.
46. Canada did not breach any legal obligations to Black River as asserted in this Claim or otherwise.

V. Canada’s Statement of Relief

47. Canada seeks the following relief:
 - a. Dismissal of this Claim on the basis that it is outside of this Honourable Tribunal’s jurisdiction as Black River has not satisfied the conditions precedent that must be satisfied before a claim can be filed with the Tribunal as set out in subsection 16(1) of the *SCTA*;
 - b. Dismissal of this Claim on the basis that it is not valid;
 - c. If this Honourable Tribunal finds any portion of the Claim to be valid, set-off under subsection 20(3) of the *SCTA* for agricultural implements received;
 - 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 counsel may request and this Honourable Tribunal deems just.

VI. Communication

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

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Dated this 3rd day of June 2026



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