

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	January 5, 2026	D E P O S É
Susie Thorsley		
Ottawa, ON		1

BETWEEN:

WATERHEN LAKE FIRST NATION

Claimant

- and -

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

Respondent

DECLARATION OF CLAIM
Treaty 6 Annuities Indexation

(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*.

January 5, 2026

Date
Susie Thorsley

Registry Officer

TO: Assistant Deputy Attorney General, litigation, Justice Canada

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I. CLAIMANT (r. 41(a))

1. The Claimant, Waterhen Lake First Nation (the “First Nation” or “Waterhen Lake” or “the Band”), is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c. 22 (the “SCTA”), by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c. I-5 and within the meaning of Treaty No. 6 (“Treaty 6”). The Waterhen Lake Reserve No. 130 is located in west-central Saskatchewan.

II. CONDITIONS PRECEDENT (r. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *SCTA* have been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;

3. The First Nation submitted the *Waterhen Lake First Nation Treaty 6 Annuities Indexing Specific Claim Submission* (the “Claim Submission”) on July 14, 2022, regarding the Crown’s failure to augment or increase the annual payments of \$5 for every man, woman and child as set out in Treaty 6 (the “Annuity Payments”) in order to offset the impacts of inflation and maintain the purchasing power thereof (the “Claim”).
4. By letter dated December 28, 2022, Canada advised that early review of the Claim Submission had been completed and it had been determined that the Claim Submission met the Minimum Standard established by the Minister of Crown-Indigenous Relations pursuant to the *SCTA*. The Claim was filed with the Minister on December 13, 2022.
5. Three years have elapsed since the Claim was filed with the Minister and the Minister has not notified the First Nation of his or her decision on whether to negotiate the claim.

III. CLAIM LIMIT (Act, s. 20(1)(b))

6. For the purposes of this Claim, the Claimant does not seek compensation in excess of \$150 million.

IV. GROUNDS (*Act*, s. 14(1))

7. The First Nation submits that the Claim falls within s. 14(1) of the *SCTA* which states:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds: [...]

(b) a failure to fulfill 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 provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;

8. The Crown's failure to index the Annuity Payments to offset the impact of inflation and to maintain the purchasing power thereof has resulted in the erosion of the value of the Annuity Payments to the point of being worthless in breach of the Crown's legal obligation to provide "other assets under a treaty" pursuant to s. 14(1)(a). The Crown's failure to index the Annuity Payments constitutes a breach of its legal obligation with respect to its administration of "Indian moneys or other assets of a First Nation" pursuant to s. 14(1)(c).

V. STATEMENT OF FACTS (r. 41(e))

The Crown Sought to Enter Treaties Throughout the North-West Territories to Open Up Canada for Settlement, Immigration, Mining, Lumbering, Trading and Other Purposes

9. Pursuant to the *Rupert's Land and North-Western Territory Order* dated June 23, 1870, the North-West Territories (which included lands within the present-day province of Saskatchewan) were admitted into the Dominion of Canada on certain terms and conditions including, *inter alia*, the payment of £300,000 by the federal Crown to the Hudson's Bay Company.

10. The Indian signatories to the numbered Treaties faced an uncertain future in the time immediately prior to entering into Treaty. The collapse of the bison economy, the decimation of Indian population as a result of diseases brought by Europeans, and the continued encroachment of European settlers had created a sense of urgency on the part of Bands to protect their interests. At the same time, the Crown sought to pave the way for future settlement of the west by acquiring (what it viewed as) legal title to large masses of land and reduce the threat of an uprising of the Indians through the making of Treaties.

11. Between 1871 and 1899, the Crown entered into Treaties 1 through 8 with various Indian Bands and Tribes (referred to hereinafter as “Treaty Bands” or “Bands”) throughout the North-West Territories, which included present-day Saskatchewan, to open up the west for settlement, immigration, mining, lumbering, trading and other purposes. According to the written terms of the Treaties, the Crown promised to provide specific benefits, including, *inter alia*, the payment of an initial present or gratuity, annuities, and reserves to be set aside for the exclusive use and benefit of Treaty Bands.
12. The Treaty negotiations were fraught with conflict, as the Bands were aware that the Crown had paid the Hudson’s Bay Company (£300,000) for its interests in the vast territory of what was then referred to as Rupert’s Land. The Bands vehemently argued that the lands belonged to them, and that the money should have been paid to them not the Hudson’s Bay Company. This confirms that the Bands and the Crown contemplated the payment of monetary compensation in exchange for rights to and interests in land.
13. Central to the negotiations for virtually all of the numbered Treaties were the assurances on the part of the Government that the Indian signatories would receive specific and enforceable Treaty benefits in exchange for their agreement to “cede” their collective rights and interests to a vast area of land. The Crown’s promise to provide Treaty benefits to assist and support a sustainable future for the Bands in light of their rapidly changing circumstances was critical to their acceptance of Treaty.
14. The negotiation of Indian Treaties in Canada stretched over a period of over 200 years. While there are important differences between the Treaties, there is necessarily a unity to the Treaty process and the Crown intended to establish a clear set of terms with relative parity to ensure that all Bands were treated equitably and did not receive substantially more or substantially less than other signatories to other Treaties.

Pre-Confederation Treaties in Canada and the Origin of Annuity Payments

15. With the end of the Seven Years War in 1760, the practice of paying annuities to the Indians, sometimes in addition to presents, was adopted by the Crown as a means of securing the consent of the Indians to the land cession Treaties. *The Royal Proclamation of 1763*, which protected Indian lands from encroachment by settlers by requiring that Indian lands be surrendered to the Crown before they could be alienated, entrenched the process of

treaty-making as the preferred means of ceding Aboriginal title to land. The special protection afforded to Indian lands by the *Royal Proclamation of 1763* constituted legal recognition by the Crown of the collective rights held by the Indians in their lands that could only be surrendered to the Crown, giving rise to the requirement to compensate the Indians for the abrogation of those rights through the payment of a one-time lump-sum and later annuities in perpetuity.

16. The Selkirk Treaty of 1817, between Lord Selkirk and the Ojibwe, Cree and Assiniboine of the region within two miles on either side of the Red and Assiniboine Rivers in present-day Minnesota and Manitoba, included a provision that the Chiefs and warriors were to be paid annually “the present or quit rent consisting of two hundred pounds weight of good and merchantable tobacco” thereby equating the annuity with the amount of goods it could buy. This trend continued with a provisional agreement with the Chippewas of Lakes Huron and Simcoe in 1818 which provided the payment of a yearly sum to the collective of “twelve hundred pounds currency **in goods at the Montreal prices . . . as a full consideration for the Lands hereby sold and conveyed to His Majesty.**” The same wording, with minor differences, was used in subsequent agreements with the Mississauga of Credit River in October 1818 and Rice Lake in November 1818.
17. In none of the Treaties concluded between 1818 and 1836 were any portion of annuities paid in cash. Rather, annuities were paid in the form of goods deemed essential to survival which linked the value of the annuities to sustaining the livelihood of the individual recipients and the collective as a whole.
18. The Robinson Treaties of 1850, negotiated by William Robinson with the Indians along Lakes Huron and Superior, “were the forerunners of the future treaties and shaped their course.” In order to secure title to 33.5 million acres, Robinson offered the Indians £4,000 in cash and an annuity of £1,000 in perpetuity. In the final version of the Robinson Treaties, the lump sum payment had been reduced to £2,000 and the annuity to £500, however, the written text of the Treaties included an augmentation clause that promised an increase in the annuity in the event that the territory ceded produced an amount that enabled the Government of Ontario to augment the annuity without incurring loss.

19. The first and only augmentation to the annuities was made in 1875 when the Government of Canada, in response to years of demands from various Chiefs of the two territories, increased the annuities to £1 per capita which has been paid out to individuals on an annual basis since that time. Further, in 1877, the Chiefs began petitioning for arrears of the increase to annuity payments for the period 1850-1874, arguing that economic circumstances had existed for many years prior to 1875 to justify this increase. Payment of arrears finally began in 1903.
20. While an equivalent augmentation clause was not included in any of the Numbered Treaties that followed the Robinson Treaties, the Crown was aware that it was not only just but necessary to increase the Annuity Payments in accordance with the amount of profit that the Crown derived from the territory ceded to fulfill its honourable obligations to its Treaty partners.

Unity of the Terms of the Numbered Treaties

21. After Confederation in 1867, the payment of annuities remained a central feature of the Numbered Treaties negotiated with the Indians in the territory stretching from the Lake of the Woods to the eastern slopes of the Rocky Mountains.
22. Treaties 1 and 2 were the first Indian Treaties negotiated by the newly created Dominion of Canada at Fort Garry in 1871. Canada appointed the Lieutenant-Governor of Manitoba, Adams G. Archibald, and the Indian Commissioner, Wemyss M. Simpson, to negotiate the terms of the Treaties with the Cree and Saulteaux Indians to open up fertile agricultural lands in what is now southern Manitoba to settlement.
23. Significantly, a copy of the Robinson Treaties was provided to the Treaty Commissioners to guide them in their approach to treaty-making with the Indians. Moreover, while negotiating the terms of Treaty 1 in 1871, Lieutenant-Governor Archibald made an explicit promise to the Indians assembled at the Stone Fort that they would be treated in a similar manner to the Indians of the Robinson Treaties:

Another thing I want you to think over is this: in laying aside these reserves, and in everything else that the Queen shall do for you, you must understand that she can do for you no more than she has done for her red children in the East. *If she were to do more for you that would be unjust for them. She will not do less for you because you are all her children alike, and she must treat you all alike.*

24. Treaty 1 was ratified in September of 1871 and Treaty 2 was signed on August 21, 1871 and ratified by Order in Council dated November 25, 1871. The written text of Treaties 1 and 2 demonstrates the intended and direct correlation between the value of the annuity provided for in the Treaty and its purchasing power:

Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families, and shall in every year ensuing the date hereof (...) *pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require or blankets, clothing, prints (assorted colors), twine or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.*

25. The option of providing the annuity in goods or cash demonstrates a link between the Numbered Treaties and the Pre-Confederation Treaties' purpose of furnishing the Indians with necessities for survival in the form of an annuity. It also links the value of the Annuity Payments with the purchasing power of same giving rise to an inherent Treaty promise that the Annuity Payments will keep pace with the price of goods that those payments intend to supply.
26. Treaty 3 was concluded in October 1873. As with Treaties 1 and 2, of prime importance to the signatories to Treaty 3 was the need to ensure their economic subsistence and security through cash, clothing and materials which supported their livelihood. During the Treaty negotiations, the Treaty 3 Chiefs argued for a higher annuity than the amount offered under Treaties 1 and 2 on the basis that the lands were more valuable. The Annuity Payments were seen by the parties as consideration for the land **and** the means to secure the future livelihood of the collective.
27. Negotiations for Treaty 4 took place at Fort Qu'Appelle in September 1874. When Treaty 4 was negotiated, starvation and the food security crisis was the primary focus. Chief Pasqua also protested to the Treaty commissioners that the money paid to the Hudson's Bay Company for title to Rupert's Land should have gone to the Indians. The Crown did not find disease and impending starvation sufficient to warrant entering into Treaty 4. However, it was the Crown's determination to expand settlement and to avoid an Indian war which precipitated the Treaty 4 negotiations. On September 8, 1873, the North-West Council provided Lieutenant-Governor Morris with the mandate to negotiate the terms of

Treaty 4. In doing so, the Council recommended including an annuity payment that terminated in 25 years and that the payments should be made in goods rather than cash.

28. With respect to the Annuity Payments, Treaty Commissioner Morris promised the Indian signatories that the Crown **“would like that you have some money every year to buy things that you need.”** This promise was made in the context of the foreseeable demise of the buffalo and the Crown’s recognition of its honourable obligation to provide for the Bands and their descendants: “for you and for your children, and . . . for the children that are yet to be born.” The Annuity Payments which consisted of “five dollars to every man, woman and child, as long as the sun shines and the water flows” were for the purpose of safeguarding the Indian signatories’ livelihood and the livelihood of future generations in the face of new challenges and an uncertain future.
29. The 1875 Treaty 5 provisions respecting presents, annuities and salaries are the same as those contained in Treaty 3, except that the present was fixed at \$5 rather than \$12 per capita. Treaty Commissioner Morris reported that this was because “the circumstances under which the treaty was made” were “different”, but he offered no explanation as to how they were to be distinguished.

The Situation Prevailing when Treaty 6 was Signed

30. The historical events that were contemporaneous with the negotiation and signing of Treaty 6 inform the intentions of the parties with respect to the scope and meaning of the promise to provide Annuity Payments.
31. As early as 1871, the Treaty 6 area bands were anxious to enter into Treaty with the Crown. Sickness and the impending extermination of the buffalo posed a very real existential threat which prompted the Indians’ urgent requests to treat with the Crown. In addition to threats of starvation and disease, the Indians were also concerned about the rapid settlement of the area. As was the case with Treaty 4, the Crown’s decision to negotiate Treaty 6 was driven by the dual goals of expanding settlement and avoiding an Indian war.

Treaty 6 Negotiations and the Promise to Pay Annuities

32. In August and September 1876, Treaty 6 was signed by the Treaty commissioners on behalf of the Crown and the Plains and Woodland Cree and other tribes inhabiting Treaty 6 lands in the central regions of modern-day Alberta and Saskatchewan. The promise to provide the Annuity Payments in support of the future livelihood of the Bands in changing circumstances was critical with respect to concluding the Treaty.
33. The Waterhen Band was not one of the 1876 signatories to Treaty 6. The Waterhen Band lived in the area between the northern border of Treaty 6 and the southern border of Treaty 8. As their territory was initially of little interest for railway, resource extraction and settlement, the Department of Indian Affairs did not pursue signing a Treaty with Waterhen until the early 1900s.
34. On November 8, 1921, Waterhen Lake First Nation adhered to Treaty 6. The Crown unilaterally changed the Treaty 6 terms that set out an initial payment of \$12 to each person by reducing the amount to \$7.
35. Since adherence to Treaty 6 in 1921, the Waterhen Band has received Annuity Payments in cash in the amount of \$5 per man, woman and child in proportion to the population of its members.

The Crown has Failed to Augment, Increase or Index the Annuity Payments in Breach of the Treaty and the Crown's Honourable and Fiduciary Obligations

36. Over the last 104 years since Waterhen Lake First Nation adhered to Treaty 6 with the Crown in 1921, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.
37. The amount of the Annuity Payment has never been augmented, increased or indexed for the purposes of offsetting the impacts of inflation and maintaining the real value thereof.

VI. THE BASIS IN LAW ON WHICH THE CROWN IS SAID TO HAVE FAILED TO MEET OR OTHERWISE BREACHED A LAWFUL OBLIGATION

38. The Crown breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and the Honour of the Crown when it failed to increase, augment or index the Annuity Payments, as promised by the Crown under the terms of Treaty 6, in order to maintain the

real value of the Annuity Payments and to implement the purpose and intention of the Treaty promise.

39. In the alternative (if the Crown did not have an ongoing obligation to increase, augment or index the Annuity Payments), the Crown breached its fiduciary duty, by failing to uphold the Honour of the Crown and/or committed equitable fraud when:
 - a. The Crown fell below the standard of a fiduciary and acted in bad faith during the negotiations and the subsequent implementation of Treaty 6;
 - b. The Governor-in-Council approved and consented to Treaty 6 on terms which were unconscionable, foolish, improvident, and otherwise amounted to exploitation;
 - c. The Crown proceeded to implement Treaty 6 on terms that were unconscionable, foolish, improvident, and otherwise amounted to exploitation; and
 - d. The Crown failed to diligently implement the terms of Treaty 6 in a uniform and equitable manner for all Treaty 6 Bands.

The Crown Breached its Treaty, Fiduciary, Honourable, Legal and/or Equitable Obligations and Failed to Uphold the Honour of the Crown

40. Treaty 6 is a source of enforceable rights which are recognized and constitutionally affirmed at Canadian law under section 35 of the *Constitution Act, 1982*.
41. It is well-established that the Honour of the Crown governs the interpretation of historic Treaties in a way that fulfils the intended purposes of Treaty and statutory grants and assumes that the Crown always intends to fulfill its promises.
42. The Treaty-making process and the promises arising therefrom, which resulted in the Crown's taking of lands held pursuant to Aboriginal Title in exchange for certain promises, necessarily requires an interpretation of the Treaty that maintains fidelity to the spirit and intent of the Treaty. The Annuity Payment clause must be interpreted in a way that is consistent with, *inter alia*, the Nation-to-Nation relationship between the parties, the Honour of the Crown and the duty of diligent implementation, and the Crown's fiduciary duties.

43. The intention behind the Annuity Payment clause in Treaty 6 is clear: in exchange for the taking of vast traditional territories and natural resource wealth, the Crown was, in consideration, to provide the Annuity Payments to safeguard the livelihood of the signatories and subsequent generations in the face of new challenges and an uncertain future. When Treaty 6 was signed, the value of the Annuity Payment equated with a basket of goods premised upon sustaining each member of the collective. This value, or purchasing power, is inherent in the written promise and/or constitutes an implied term of the Treaty. What the Treaty signatories bargained for was a livelihood and not merely a trivial cash payment of merely symbolic value.
44. The Claimant asserts that, when properly interpreted according to the relevant interpretation principles, including the officious bystander test and the Honour of the Crown, Treaty 6 includes a promise to augment, increase or index the amount of the Annuity Payment from time to time.
45. The Claimant asserts that the Crown failed to fulfill its obligations to properly administer the Annuity Payments by failing to ever augment, increase or index the annual payments since entering into Treaty 6 with the Claimant in 1921. Over time, the relative value of the Annuity Payments has decreased due to inflation to the point of rendering the Annuity Payments meaningless in terms of purchasing power.

In the Alternative, the Federal Crown Breached its Fiduciary Duty, Failed to Uphold the Honour of the Crown and/or Committed Equitable Fraud at the Time of Treaty-making and by Proceeding to Implement the Treaty on Unconscionable Terms

46. The Crown recognized that it had an “obligation of honourable dealing” with Indigenous peoples as early as the *Royal Proclamation of 1763*. This obligation, which underpins the Honour of the Crown, “derives from the Crown’s assertion of sovereignty in the face of prior Aboriginal occupation”. The Honour of the Crown is always at stake in the Crown’s dealings with Indigenous peoples. “A constitutional principle”, the Honour of the Crown is a source of enforceable affirmative obligations which extends to the making and diligent implementation of Treaty 6.
47. Where the Crown assumes discretionary control over a specific or “cognizable” Aboriginal interest (such as Aboriginal Title), this gives rise to fiduciary duties on the part of the Crown. As a fiduciary, the Crown must act with utmost loyalty and cannot consent to any

improvident bargain.

48. The Claimant asserts that the Crown's actions in failing to secure an explicit augmentation clause fell below the standard of a fiduciary, failed to uphold the Honour of the Crown, and/or amounted to bad faith during the negotiations of Treaty 6. The Robinson Treaties equipped the Crown with an awareness of the justice and the necessity of such a provision and by failing to explicitly include an augmentation clause in Treaty 6, the Crown engaged in sharp dealing. Further, by promising to treat the Indians in the North-West Territories in the same manner as the Indian signatories to the Robinson Treaties and then by failing to uphold that promise with respect to the inclusion of an augmentation clause, the Crown breached its fiduciary and honourable obligations.
49. The Claimant asserts that the Crown breached its fiduciary duty to Waterhen Lake First Nation when it approved and consented to Treaty 6 on terms which were foolish, improvident, and otherwise amounted to exploitation.
50. The Claimant asserts that the Crown further breached its duties by continuing to implement the improvident bargain on unconscionable terms.

VII. RELIEF SOUGHT

51. The Claimant seeks the following relief:
 - a. A determination that Treaty 6 imposes an obligation on the Crown to increase the annual payment of \$5 payable to each Treaty Indian "for ever", from time to time, to maintain the real value of the Annuity Payments and give effect to the purpose and intention of this Treaty promise in recognition of the signatories' right to its fair share of the revenues flowing from the Crown's taking up of the territory for settlement, immigration, mining, lumbering, trading and other purposes; and
 - b. A determination that the Respondent has breached its Treaty, fiduciary, honourable, legal and/or equitable obligations and/or failed to uphold the Honour of the Crown when it failed to increase, augment or index the amount of the Treaty Annuities from \$5 since 1921, the value of which has been seriously eroded due to inflation and the time value of money.

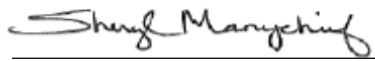
In the alternative:

- c. A determination that the Respondent had a fiduciary duty to Waterhen Lake First Nation in the negotiation and implementation of Treaty 6, which included the duty to act prudently, in good faith, with loyalty to the beneficiaries' interest, and to provide disclosure of the effects of inflation on the value of the Treaty Annuities which the Respondent breached when it failed to include in Treaty 6, a provision to augment, increase, or index the amount of \$5 from 1921 to the present, to maintain the real value of the Annuity Payments which has been seriously eroded since the time of Treaty;
- d. A determination that the Respondent failed to uphold the Honour of the Crown and/or committed equitable fraud when the Governor-in-Council approved and consented to Treaty 6 on terms which were foolish, improvident, and otherwise amounted to exploitation; and
- e. A determination that the Respondent committed a further breach of its duties and obligations by failing to implement the terms of Treaty 6 in a uniform and equitable manner as compared to the signatories to the Robinson Treaties and with respect to the Governor-in-Council's consent and approval of said inequitable terms.

52. The remedy for which, includes but is not limited to:

- a. Equitable compensation for the historic failure to increase or augment the Annuities Payment provision from time to time;
- b. Costs to be awarded on a solicitor-client basis pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, section 110(2) in relation to the Specific Claim and this proceeding; and
- c. Such other relief as counsel may advise and this Honourable Tribunal deems just.

Dated this January 5, 2026



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