

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	February 5, 2026	D E P O S É
Susie Thorsley		
Ottawa, ON	3	

SPECIFIC CLAIMS TRIBUNAL

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

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: Waterhen Lake First Nation
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OVERVIEW

1. His Majesty the King in right of Canada (Canada) is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. This commitment exists within the context of litigation and beyond. 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. As this matter evolves and the historical record is assembled and analyzed, Canada will continue to consider all appropriate forms of resolution. Further, Canada recognizes the significant role treaty-making has played in building Canada and the contemporary importance of treaties as foundations for continuing progress toward reconciliation.
3. This claim pertains to Treaty 6 which was signed in 1876 and makes provision for the annual payment of a specified sum of money to each beneficiary under the treaty, commonly referred to as the Annuity Payment. The Annuity Payment in Treaty 6 includes five dollars (\$5) to every treaty beneficiary as well as twenty-five dollars (\$25) to each Chief and fifteen dollars (\$15) to each subordinate officer (not exceeding four in each Band).
4. Canada recognizes an ongoing legal obligation to make Annuity Payments to its treaty partners in perpetuity, including to Waterhen Lake First Nation as a signatory to Treaty 6. Canada acknowledges the Treaty 6 right to Annuity Payments is recognized and affirmed by section 35 of the *Constitution Act, 1982*. Canada values its ongoing dialogue with First Nations on the interpretation of agreements like Treaty 6, and the role of these agreements in the ongoing relationship between treaty First Nations and the Crown.
5. The Treaty annuity obligation is financial consideration provided by Canada over an infinite period of time, rather than as a lump sum. In accordance with the words of the Treaty, the annuities obligation is confined to the specific amounts set out in the text of the Treaty 6 annuity terms payable in Canadian dollars.

Canada is not under a duty or obligation to adjust, index for inflation, or otherwise “modernize” the Annuity Payments. The parties to the Treaty intended that the annuity obligation would ensure the provision of the fixed payment specified in the text of Treaty 6. Canada has accordingly paid the specific unadjusted amounts set out in Treaty 6 from the date of Treaty adhesion.

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 Waterhen Lake First Nation 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 (“Claim”).

8. Canada admits paragraphs 2 to 5 of the Claim including that:

- a) Waterhen Lake First Nation submitted a claim to the Minister of Crown Indigenous and Northern Affairs Canada (“CIRNAC”) on July 14, 2022 (the “Claim Submission”). The Claim Submission asserted breaches of fiduciary and other obligations resulting from the failure on the part of Canada to index annuities paid under Treaty 6;
- b) By letter dated December 28, 2022, Canada advised Waterhen Lake First Nation that its Claim Submission met the minimum standard to be filed with the Minister and that the Claim Submission was filed with the Minister on December 13, 2022; and
- c) Three years have elapsed since the Claim was filed with the Minister and the Minister has not notified Waterhen Lake First Nation of his or her decision on whether to negotiate the claim.

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

9. In response to paragraph 7 of the Claim, Canada denies that all the claims asserted by Waterhen Lake First Nation are properly grounded under subsection 14(1) of the *SCTA*.
10. In response to paragraphs 8 and 38 of the Claim, Canada admits the assertions in these paragraphs are properly grounded under paragraphs 14(1)(a) and 14(1)(c) of the *SCTA* on the basis that Treaty 6 Annuity Payments constitute "other assets" under those paragraphs. Canada denies the facts as pled, or at all, establish a valid claim under the *SCTA*.
11. In response to paragraphs 39 and 46-50 of the Claim, Canada says the claims in the alternative are not based on any enumerated grounds in subsection 14(1) of the *SCTA* and are therefore outside the jurisdiction of the Tribunal.
12. Canada says Waterhen Lake First Nation is barred from claiming compensation for annuities paid within the 15 years preceding December 13, 2022, under section 15(1)(a) of the *SCTA*.
13. As of the date of this Response, there are two duplicative actions related to the indexation or augmentation of annuities under Treaty 6, based on substantially the same facts asserted in the Claim and where Waterhen Lake First Nation could be part of the proposed class of represented plaintiffs.¹ Canada reserves the right to make all representations and submissions regarding the application of subsection 15(3) of the *SCTA* if a class action is certified or a representative action on behalf of all beneficiaries of Treaty 6, including Waterhen Lake First Nation or its members, proceeds concurrently with this Claim.
14. Canada is not required by Treaty 6, any fiduciary duty, the honour of the Crown, or any legal and/or equitable obligation to discharge its treaty Annuity Payment

¹ *Witchehan Lake First Nation and Red Pheasant Cree Nation on behalf of all Treaty 6 First Nations and Chief Raymon Harris and Chief Cody Benson on their own behalf and on behalf of all members of Treaty 6 First Nations v. Attorney General of Canada*, Federal Court Docket: T-3277-24; *Witchehan Lake First Nation and Red Pheasant Cree Nation on behalf of all Treaty 6 First Nations and Chief Raymon Harris and Chief Cody Benson on their own behalf and on behalf of all members of Treaty 6 First Nations v. Attorney General of Canada* Court File No:KBG-SA-1424-2024

obligations in the manner asserted by Waterhen Lake First Nation and disagrees with all the breaches asserted by Waterhen Lake First Nation in the Claim (as described in paragraphs 7 to 8, 38 to 50 inclusive). Canada does not have a legal duty to adjust its treaty Annuity Payment obligations under Treaty 6 based on purchasing power, comparative value of monetary amounts, or any form of indexation or augmentation. Canada did not have any fiduciary or other equitable or honourable obligation to negotiate a clause providing for the indexation or augmentation of treaty annuities over time, nor can such an assertion ground a claim filed with the Tribunal under subsection 14(1) of the *SCTA*.

15. In further response to paragraphs 40-45 of the Claim, Treaty 6 is a *sui generis* agreement, which was solemnly entered into between the signatories with the intention of having legal effect. Waterhen Lake First Nation's right to Annuity Payments is defined entirely in Treaty 6. The amount and timing of the Annuity Payment was a negotiated term of Treaty 6 and reflects the common intention of the Treaty 6 partners. The rights set out in Treaty 6, including the right to Annuity Payments, are recognized and affirmed under section 35 of the *Constitution Act*, 1982. However, the right to an Annuity Payment does not include a right to augmentation as Waterhen Lake First Nation asserts. Treaty 6 is silent as to inflation and does not include an augmentation clause of any kind.
16. In further response to paragraphs 39, 41, and 46 to 49 of the Claim, Canada acknowledges that although the honour of the Crown governs treaty implementation and guides all interactions with First Nations peoples, the honour of the Crown does not create a legal obligation in itself and does not give rise to the performance of specific obligations in the circumstances of this case. Canada further acknowledges that the relationship between the Crown and First Nation signatories of Treaty 6, including Waterhen Lake First Nation, is a fiduciary one, and in certain circumstances the relationship may give rise to fiduciary obligations. However, Canada does not owe such obligations to Treaty 6 beneficiaries in the circumstances of this case. Canada has not undertaken discretionary control over any specific, cognizable and communal interest of

Waterhen Lake First Nation with respect to treaty Annuity Payments, which is a treaty right that arises solely from the Crown's executive treaty-making function.

17. In further response to paragraphs 41 to 50 of the Claim, the honour of the Crown requires Canada to take a broad, purposive approach to the interpretation of Treaty 6, and to act with good faith, diligence, integrity, and fair dealing when implementing the terms of the Treaty. Canada's interpretation and implementation of the Treaty 6 annuity provisions is consistent with the honour of the Crown. Since Treaty 6 was executed, Canada has fulfilled its obligations to Waterhen Lake First Nation under the Treaty 6 annuity provision.

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

18. In response to paragraph 9 of the Claim, Canada admits that on June 23, 1870, the *Rupert's Land and North-Western Territory Order* admitted Rupert's Land and the North-Western territory to the Dominion of Canada and states that Rupert's Land was concurrently transferred to the Dominion of Canada from the United Kingdom ("Rupert's Land Transfer"). The transfer was subject to certain conditions including the payment of £300,000 by Canada to the Bank of England to the credit of the Hudson's Bay Company when Rupert's Land was transferred to the Dominion of Canada.
19. In response to paragraph 10 of the Claim, Canada acknowledges expansion into the North-West Territories presented challenges and disrupted the traditional lifestyle of First Nations occupying that territory. Canada acknowledges the treaty process after confederation was driven by a desire by Canada to open up the West for settlement, immigration, and trade and to obtain peace with Indigenous nations inhabiting the territory. Canada acknowledges that the Crown-Indigenous treaty process typically involved taking surrenders of First Nation lands in consideration for various one-time and perpetual benefits to the First Nation treaty signatories or adherents.
20. In response to paragraph 11 of the Claim, Canada admits that between 1871 and 1921, the Crown entered into Treaties 1 through 11 (collectively the "Numbered Treaties"). Canada further acknowledges that one of the purposes of the

Numbered Treaties included the Crown's intention to open up the west for settlement, immigration, trade and other purposes. Canada also acknowledges that Treaties 2, 4, 5, 6, 8 and 10 cover the area that is now known as Saskatchewan.

21. In further response to paragraph 11 and in response to paragraph 13 of the Claim, Canada admits the Numbered Treaties provide for several specific and enforceable benefits to signatory First Nations in exchange for their consent to surrender their lands and open up the area covered by the treaties to settlement, immigration, and trade. With respect to Treaty 6 specifically, these promises included the provision of annuities, in perpetuity, of five dollars (\$5) per person per year for each member of a signatory First Nation. The parties to Treaty 6 intended treaty Annuity Payments to be confined to the specific amounts in the text of Treaty 6. Other benefits under Treaty 6 included, among other things, the payment of an initial present, the provision of agricultural benefits, and the provision of reserve land entitlements, including the promise to set aside land for the exclusive use and benefit of treaty signatories or adherents.
22. In response to paragraph 12 of the Claim, Canada does not accept Waterhen Lake First Nation's characterization of the Numbered Treaty negotiations as being generally fraught with conflict. Canada acknowledges the Rupert's Land Transfer gave rise to questions and grievances by some Indigenous persons inhabiting what had been Rupert's Land and the North-Western Territory.
23. In response to paragraph 14 of the Claim, Canada says that treaties negotiated in proximate time periods and regions were similar in form, scope, and content. However, Canada denies that it intended to establish or established a clear set of uniform treaty terms during its long history of treaty making with Indigenous nations. Canada says the terms of each Crown-Indigenous treaty were ultimately informed by the individual circumstances of the treaty signings and the objectives of the parties at the time of negotiation and entering treaty.
24. In response to paragraph 15 of the Claim, Canada says the perpetual nature of the opening-up of land for settlement called for a reciprocal commitment from the

Crown, which included the payment of annuities. Beginning in 1818, the Crown changed the compensation model for land surrenders and began paying perpetual annuities rather than large one-time distributions or lump sum payments to signatory First Nations.

25. In further response to paragraph 15 of the Claim, Canada acknowledges that shortly after an uprising against the British by various First Nations in 1763 and the conclusion of the Seven Years War in 1760, the British Crown issued the *Royal Proclamation, 1763*, (GB), 3 Geo 3 (reproduced in RSC 1985, App II, No 1) (the *Royal Proclamation*). The *Royal Proclamation* addressed a number of matters, including the British Crown's policy towards Indigenous peoples regarding land. Through that policy, the British Crown declared its intention to observe the common law right of Indigenous peoples to their land and to refrain from alienating those lands absent consent. With respect to lands located outside the provinces of Quebec (which then included present day Quebec and much of southern Ontario), Nova Scotia, St. John's Island (present day Prince Edward Island) and Newfoundland, the Hudson's Bay Company territories and the thirteen American colonies, the policy enunciated in the *Royal Proclamation* forbade the purchase of and settlement on those lands. With respect to lands within the aforesaid provinces and colonies, but not the Hudson's Bay Company territories, the policy forbade settlers from obtaining lands directly from Indigenous peoples and established a procedure for such purchases should Indigenous peoples desire to sell lands. Canada acknowledges that the *Royal Proclamation* stated the principle that an Indigenous interest in land is inalienable except upon surrender to the Crown.
26. In response to paragraph 16 of the Claim, Canada admits that:
 - a) on July 18, 1817, the Earl of Selkirk entered into treaty with the "Chippeway or Saulteaux Nation" and the "Killistine or Cree Nation" for the surrender to the Crown of lands adjacent to the "Red River" and "Ossiniboine River". Canada further acknowledges that in consideration for the surrender, the "Earl, his heirs and successors, or their agents" agreed to "annually pay... the present or quit rent

consisting of one hundred pounds weight of good and merchantable tobacco...” to each First Nation. The Selkirk Treaty was later supplanted by Treaty 1.

- b) on October 17, 1818, William Claus, Deputy Superintendent General of Indian Affairs (DSGIA Claus), entered into the Lake Simcoe-Nottawasaga Treaty No. 18 with the “Principal men of the Chippewa Nation of Indians...” for the surrender to the Crown of a tract of land containing approximately 1,592,000 acres in exchange for “the yearly sum of twelve hundred pounds, Province currency, in goods at the Montreal price...” paid annually in full consideration for the surrender.
- c) on October 28, 1818, DSGIA Claus entered into the Ajetance Treaty No. 19 with the “Principal men of the Mississague Nation of Indians inhabiting the River Credit, Twelve and Sixteen Mile Creeks, on the north shore of Lake Ontario...” for the surrender to the Crown of a tract of land containing approximately 648,000 acres in exchange for the “yearly sum of five hundred and twenty-two pounds ten shillings Province currency in goods at the Montreal price...” paid annually in full consideration for the surrender; and
- d) on November 5, 1818, DSGIA Claus entered into the Rice Lake Treaty No. 20 with the “Principal Men of the Chippewa Nation of Indians...” for the surrender to the Crown of a tract of land containing approximately 1,951,000 acres in exchange for the “yearly sum of the seven hundred and forty pounds Province currency in goods at the Monreal price...” paid annually in full consideration for the surrender.

27. In response to paragraph 17 of the Claim, Canada admits the treaties negotiated by the Crown and First Nations in Upper Canada between 1818 and 1836 provided for the payment of annuities in-kind rather than in cash. At this time, Canada does not have knowledge about the nature of the goods or merchandise

received by First Nations pursuant to their in-kind annuities between 1818 and 1836, including whether all the goods purchased were essential to the recipient First Nation's survival or to sustaining their livelihood.

28. In response to paragraph 18 of the Claim, Canada admits that in January 1850, William Robinson was appointed as treaty commissioner and was tasked with negotiating land cession agreements with the Huron and Superior Anishinaabe for lands north of Lakes Superior and Erie. During the negotiations, Robinson offered the full amount available to him under his mandate: £4000 in cash and a perpetual annuity of £1000 to be divided between the Superior and Huron First Nations. On September 7, 1850, the Robinson-Superior treaty was executed, and the subject lands were surrendered to the Crown in consideration for "two thousand pounds of good and lawful money of Upper Canada... and for the further perpetual annuity of five hundred pounds..." On September 9, 1850, the Robinson-Huron treaty was executed, and the subject lands were surrendered to the Crown in consideration for "two thousand pounds of good and lawful money of Upper Canada... and for the further perpetual annuity of six hundred pounds of like money..." (collectively the "Robinson Treaties").
29. In further response to paragraph 18 of the Claim, Canada admits the Robinson Treaties contain augmentation clauses, which provide for an increase of the perpetual Annuity Payments under certain conditions. The augmentation clause in the Robinson-Superior treaty reads:

... The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided, further, that the number of Indians entitled to the benefit of this Treaty shall amount to two-thirds of their present number (which is twelve hundred

and forty), to entitle them to claim the full benefit thereof, and should their numbers at any future period not amount to two-thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

30. In response to paragraph 19 of the Claim, Canada admits that the first and only increase to the perpetual annuities paid under the Robinson Treaties was made in 1875. In 1850 the per person annuity was equivalent to about \$1.70 under the Robinson-Huron Treaty, and \$1.60 under the Robinson-Superior Treaty. In 1875 the per person annuities under both treaties were increased to \$4 (£1). Canada further admits the Chiefs of the Superior and Huron First Nations successfully petitioned the government to pay annuity arrears for the period of 1850 to 1874 to recognize that the economic conditions for increasing the annuity had existed before the 1875 increase. The Crown began paying arrears to the beneficiaries of the Robinson Treaties in 1903.
31. In response to paragraph 20 of the Claim, Canada admits the Numbered Treaties do not contain an augmentation clause equivalent to those in the Robinson Treaties. Canada denies that the Crown had any necessary or honourable obligation to include a similar provision for the augmentation of treaty annuities in subsequent Numbered Treaties.
32. In further response to paragraph 20 of the Claim Canada says the augmentation clauses in the Robinson Treaties are terms that were negotiated because of the unique circumstances existing at the time of those respective treaties. The funds available to Robinson were modest and could not support the standard \$10 (£2.10) per person annuity provided under the other contemporaneous treaties negotiated between 1818 to 1850. Robinson had limited access to funds for treaty because the provincial government viewed the economic prospects of the subject lands as bleak, and because upper Canada was in a financial crisis and could not support a \$10 per person annuity. Because of these circumstances, Robinson negotiated a lower annuity along with the promise to increase the annuity if the Crown received revenues from the territory that would permit it to do so without incurring a loss.

33. In response to paragraph 21 of the Claim, Canada admits the provision of annuities was an important feature of the Numbered Treaties.
34. In response to paragraph 22 of the Claim, Canada admits that Treaty 1, the Stone Fort (or Lower Fort Garry) Treaty, and Treaty 2, the Manitoba Post Treaty, which collectively secured the surrender of lands in what is now southern Manitoba, were the first treaties negotiated following Canadian Confederation on July 1, 1867. Canada further admits that Wemyss M. Simpson, Indian Commissioner, and Adams G. Archibald, Lieutenant-Governor of Manitoba and the North-West Territories, negotiated the terms of the treaties on behalf of the Crown.
35. In response to paragraph 23 of the Claim, Canada says that Joseph Howe, Secretary of State for the Provinces, included a copy of the Robinson-Superior Treaty with his instructions to Commissioner Simpson prior to the negotiations for Treaties 1 and 2. Canada states that a copy of the Robinson-Superior Treaty was provided to the Treaty Commissioners for information only.
36. In further response to paragraph 23 of the Claim, Canada admits Lieutenant-Governor Archibald expressed at the negotiations of Treaty 1 that the Indigenous peoples assembled would be treated with in a similar manner to the Indigenous peoples who had previously entered treaties with the Crown in the East. Canada denies there was any explicit promise made that Canada would enter treaties with the Indigenous peoples at Stone Fort on identical terms and conditions as the Anishinaabe of the Upper Great Lakes region under the Robinson Treaties.
37. In response to paragraph 24 of the Claim, Canada says that Treaty 1 was signed on August 3, 1871, and was ratified by the Governor General in Council on September 12, 1871. Canada admits that, in addition to other promises made, Treaty 1 as recorded in English provides:

... 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, at some period during the month of July in each year, to be duly notified to the Indians and at or near their respective reserves, 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 of blankets, clothing, prints (assorted colours), 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...

38. In further response to paragraph 24 of the Claim, Canada says that Treaty 2 was signed on August 12, 1871, and was ratified by the Governor General in Council on November 25, 1871. Canada further says that, in addition to other promises made, Treaty 2, as recorded in English provides:

... 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 tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period during the month of August in each year to be duly notified to the Indians, and at or near their respective reserves, 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 payments to be made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine or traps, at the current cash price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interest of Her Indian People, in cash.

39. In further response to paragraphs 16 and 24 and in response to paragraph 25 of the Claim, Canada acknowledges that the reference in Treaties 1 and 2 to the payment of annuities in-kind has similarities to the annuity provisions in the treaties entered into by the British Crown and First Nations in Upper Canada between 1818 and 1836. Canada admits that annuities under Treaty 1 were sometimes paid in goods but says that the payments were not made in the goods referred to in the Treaty. Canada does not currently have knowledge as to whether from time to time, the Crown paid all or part of the annuities under Treaty 2 in goods. Canada admits the purchasing power of the annuities has decreased since the dates of treaty. Canada denies that reference to the payment of annuities in-kind gives rise to an inherent treaty promise to increase the Annuity Payments to maintain purchasing power. The reference to the Montreal cost price in Treaties 1 and 2 and the Upper Canada Treaties is recognition of the fact that there was a

wide discrepancy between what the Hudson's Bay Company posts could charge for goods in the isolated post areas and the prices in settled districts such as Montreal or Toronto. The reference was not a means of anticipating and incorporating the future cost of such goods, but rather a mechanism for locking in the historical (contemporaneous) cost at lower, or wholesale, prices.

40. In response to paragraph 26 of the Claim, Canada admits Treaty 3, or the North-West Angle Treaty, was signed on October 3, 1873. Canada admits negotiations between the Crown and signatory First Nations resulted in a per capita annuity of \$5, which was higher than the per capita annuity of \$3 agreed to in Treaties 1 and 2. Canada acknowledges that the treaty Annuity Payment was an important part of Treaty 3 but does not admit Annuity Payments in and of themselves were seen, or intended as, a means to secure the future livelihood of the collective. Canada states that, as with other treaties, the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nations with those of the Crown and new settlers.
41. In response to paragraph 27 of the Claim, Canada admits that Treaty 4, or the Qu'Appelle Treaty, was signed on September 15, 1874. Canada admits that during the negotiations Chief Pasqua expressed that the First Nations wanted the money paid to the Hudson's Bay Company for the Rupert's Land Transfer but has no knowledge of how this impacted the negotiations.
42. In further response to paragraph 27 of the Claim, Canada says the treaty process after Confederation was driven by a desire by Canada to open up the West for settlement and to maintain peace with the Indigenous nations inhabiting the territory. Canada denies that the North-West Council provided Alexander Morris, then Lieutenant-Governor of Manitoba and the North-West Territories, with the mandate to negotiate the terms of Treaty 4 on September 8, 1873. Canada says Lieutenant-Governor Morris did not receive instructions to proceed with making a treaty with First Nations in the Qu'Appelle region until around the spring of 1874.

43. In response to paragraph 28 of the Claim, Canada acknowledges the Annuity Payment was an important part of Treaty 4 but does not admit that the Annuity Payments were for the purpose of safeguarding the First Nations signatories' livelihoods, including for future generations. Canada states that the Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nation signatories to Treaty 4 and with those of the Crown and new settlers.
44. In response to paragraph 29 of the Claim, Canada says that Treaty 5, or the Winnipeg Treaty, was signed on September 20, 1875. Canada admits that the provisions in Treaty 5 respecting annuities (\$5 per capita) and salaries (\$25 each Chief and \$15 for three subordinate officers) are identical to those in Treaty 3. Canada further admits that Treaty 3 contains a one-time gratuity of \$12 per person and that Treaty 5 contains a one-time gratuity of \$5 per person.
45. In further response to paragraph 29, Canada admits that Treaty Commissioner Morris reported that "the gratuity paid each Indian in recognition of the treaty was also five dollars per head, instead of twelve dollars the circumstances under which the treaty was made being different."
46. In response to paragraph 30 of the Claim, Canada says this paragraph is argument and does not contain assertions of material fact to admit or deny.
47. In response to paragraph 31 of the Claim, Canada admits that as early as 1871 First Nations bands in the area that is covered by Treaty 6 were anxious to enter treaty with the Crown. Canada admits that prior to commencing Treaty 6 negotiations it was generally aware of the following:
 - a) Indigenous peoples in the North-West had approached government officials expressing interest in making treaties with the Crown.
 - b) There was a rapidly expanding population of miners and other non-Indigenous settlers in the area eventually covered by Treaty 6.

- c) There was some potential for conflict between First Nations and non-Indigenous settlers, and a treaty with the Indigenous nations was conducive to peace in the area.
 - d) Some First Nations were largely dependent on buffalo and that the buffalo population was declining.
 - e) First Nations bands had communicated their concerns to government officials regarding smallpox and the possibility of starvation due to the diminution of the buffalo.
48. In further response to Paragraph 31 of the Claim, Canada admits the process of negotiating Treaty 6 was driven by Canada's desires to open up the west for settlement, immigration, and to maintain peace with Indigenous nations inhabiting the territory.
49. In response to paragraph 32 of the Claim, Canada admits that Treaty 6 was entered into in August and September 1876 at Forts Carlton and Pitt with certain "Plains and Wood Cree Tribes of Indians." Canada acknowledges the Annuity Payment was an important part of Treaty 6. However, Canada does not admit that the Annuity Payments were for the purpose of safeguarding the First Nations signatories' livelihoods, including for future generations.
50. In further response to paragraph 32, Canada says that that Annuity Payment was only one of several benefits provided, within treaty and otherwise, in consideration for the surrender of subject lands and to further the reconciliation of the interests of the First Nation signatories to Treaty 6 and with those of the Crown and new settlers.
51. In response to paragraph 33 of the Claim, Canada admits that Waterhen Lake First Nation did not sign Treaty 6 in 1876. Canada says that it was not aware of Waterhen Lake First Nation as a band until in or around 1903 and began efforts to encourage Waterhen Lake First Nation to adhere to Treaty 6 in 1910.

52. In response to paragraph 34 of the Claim, Canada admits that Waterhen Lake First Nation adhered to Treaty 6 on November 8, 1921, and that a one-time gratuity or present of seven dollars (\$7) was provided to each beneficiary.
53. In response to paragraph 35 of the Claim, Canada admits that, from 1921 to present, it has made Annuity Payments owing under Treaty 6 to individual members of Waterhen Lake First Nation.
54. In response to paragraphs 36 and 37 of the Claim, Canada admits the purchasing power of the Annuity Payments has decreased since the Crown and signatory First Nations executed Treaty 6 in 1876. Canada admits that Annuity Payments under Treaty 6 have not been augmented, increased, or indexed since the date of execution.
55. In response to paragraph 52 of the Claim, compensation is not owed to Waterhen Lake First Nation, as Canada has upheld any legal obligations it may have had to Waterhen Lake First Nation in the circumstances of the facts giving rise to this Claim. In the event the Tribunal finds compensation is owed, Canada states that any compensation must be assessed in accordance with prevailing legal principles and section 20 of the *SCTA*.

IV. Canada's Statements of Fact

Treaty 6

56. Treaty 6 was signed initially on August 23 and 28, 1876 at Fort Carlton and on September 9, 1876, at Fort Pitt, with various later adhesions. Treaty 6 represents solemn and sacred promises between Canada and First Nations, including Waterhen Lake First Nation, and perpetuates nation-to-nation relationships. Canada and the Treaty 6 First Nations' treaty relationship is guided by the terms of Treaty 6, taken as a whole, and the annuity provision should be considered in the context of the entirety of Treaty 6.
57. The terms of Treaty 6, as recorded in English, state the "Plain and Wood Cree Tribes of Indians inhabiting the district hereinafter described and defined do hereby cede, release, surrender, and yield up to the Government of the Dominion

of Canada... forever, all their rights, titles and privileges whatsoever to the lands” covered by Treaty 6, however, the interpretation of this provision is not at issue in this proceeding. The lands surrendered under Treaty 6 covers approximately 121,000 square miles (309,760 square kilometres) in what is now central Alberta and Saskatchewan.

58. Treaty 6 contains several promises to signatory First Nations to obtain their consent to open up the area covered by Treaty 6 to settlement, immigration, and trade. These promises included the provision of an annuity, in perpetuity, of five dollars (\$5) per person per year for each member of a signatory First Nation. The signatories to Treaty 6 intended the Annuity Payments to be confined to the specific amounts in the text of Treaty 6.
59. The Annuity Payments were an important term bargained for in Treaty 6. However, the Annuity Payment was only one of several benefits provided, within the Treaty and otherwise, in consideration for the surrender of the subject lands and to further the reconciliation of the interests of the signatory First Nations with those of the Crown and new settlers.
60. In addition to the Annuity Payments, Treaty 6 provides, among other things, that the Crown will set apart land as reserves; distribute fifteen hundred dollars (\$1,500) each year in ammunition and twine; provide a school on reserve; provide various tools and supplies; provide a medicine chest kept for the benefit of each band; provide relief in the event that the treaty First Nations were overtaken by any pestilence or general famine; and provide several one-time monetary payments and goods. Treaty 6 gave all beneficiaries an initial payment or present of twelve dollars (\$12).
61. The parties to Treaty 6 intended Annuity Payments to be confined to the specific amounts agreed upon and set out in the text of the Treaty. Canada is not required to increase the Annuity Payment under Treaty 6 and has met and continues to meet its Annuity Payment obligations to Waterhen Lake First Nation under Treaty 6.

Waterhen Lake First Nation Adhesion to Treaty 6

62. Although its members attended the negotiations of Treaty 6 in 1876 and had been living in central Saskatchewan for many generations, specifically in the area surrounding Waterhen Lake, Waterhen Lake First Nation was not one of the original signatories to Treaty 6.
63. The Indigenous peoples of Waterhen Lake do not appear in the Crown's records until in or around 1903.
64. Beginning in 1910, Canada made efforts to encourage Waterhen Lake First Nation to adhere to Treaty 6. On May 3, 1910, the Inspector of Indian Agencies, W.J. Chisholm (Chisholm), of the Department of Indian Affairs, advised the Secretary of the Department of Indian Affairs, J.D. McLean (McLean), to send an invitation to the Waterhen Lake and Big Island Lake area to offer the band members admission to treaty.
65. On June 24 and 25, 1910, Chisholm met with the Waterhen Lake First Nation at Waterhen Lake to discuss an adhesion to Treaty 6. Chisholm reported to McLean in November 1910 that the band members made it clear they did not wish to take treaty and declined to sign an adhesion.
66. In January 1913, Chisholm reported to Indian Affairs Headquarters that because of the rapid sub-division of lands near Waterhen Lake, the Indigenous people there were increasingly concerned that they would lose not only the extensive land area to which they occupied, but also the more limited area of land they might be able to secure through treaty. Chisholm was informed around this time by J.H. Reid, Manager of the Île-à-la-Crosse post of the Hudson's Bay Company that the Indigenous peoples residing near Waterhen Lake were prepared to enter into treaty relations in the next summer.
67. From June 22 to 25, 1913, Chisholm met with members of the Waterhen Lake First Nation with the intention of having them adhere to Treaty 6. Notwithstanding Chisholm's efforts in June 1913, the members of the Waterhen Lake First Nation again declined to take treaty.

68. In 1915, Canada renewed its efforts to have Waterhen Lake First Nation adhere to Treaty 6. In March 1916, W.B. Crombie (Crombie) replaced Chisholm as Inspector of Indian Agencies and on March 22 and 23, 1917, Crombie met with members of the Waterhen Lake First Nation. Again, the band declined to adhere to Treaty 6.
69. In February 1918, Crombie received instructions to secure Waterhen Lake First Nation's adhesion to Treaty 6 on the same terms as Treaty 6 except that a payment of a one-time gratuity or present in the amount of seven dollars per person (\$7) was to be paid to each member as opposed to the twelve dollars per person (\$12) provided for in Treaty 6.
70. In November 1921, Indian Agent Taylor (Taylor) replaced Crombie for the purpose of seeking Waterhen Lake First Nation's adhesion to Treaty 6. Taylor arrived at Waterhen Lake on November 5, 1921, and met with members of Waterhen Lake First Nation in the evening of November 7, 1921, assisted by Indian Agents MacDonald and Villebrun.
71. The primary concerns of Waterhen Lake First Nation members during the November 7 and 8 negotiations was the question of suitable reserve lands and the preservation of their traditional way of life. Band member Running Around, who was thereafter elected Chief, sought assurances that a reserve be laid out immediately and expressed concerns regarding the promise to set aside reserve land at a future date. Taylor assured the members of Waterhen Lake First Nation present that "it is always the policy of the government to fulfill any reasonable promise made to their red children."
72. On November 8, a majority of the members present voted in favour of accepting treaty and thus Waterhen Lake First Nation adhered to Treaty 6 on November 8, 1921. Taylor proceeded with initial treaty Annuity Payments thereafter.

V. Relief

73. Canada seeks the following relief:
 - a) Dismissal of the claim;

- b) Reservation of the right to seek costs upon the final determination of the proceedings; and
- c) Such further relief as this Honourable Tribunal deems just.

VI. Communication

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

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Gabriela Fuentealba

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

76. Email address for service is: Gabriela.Fuentealba@justice.gc.ca

Dated this 5th day of February 2026.



ATTORNEY GENERAL OF CANADA

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