

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SUNCHILD FIRST NATION

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	September 17, 2012
Guillaume Phaneuf	
Ottawa, ON	1

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indians Affairs and Northern Development

Respondent

DECLARATION OF CLAIM
Pursuant to 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*.

September 17, 2012

Guillaume Phaneuf

(Registry Officer)

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I. Claimant (R. 41(a))

1. The Claimant, Sunchild First Nation (“SFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

II. Conditions Precedent (R. 41(c))

2. The following condition precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, has 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

- (a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part.

3. On or about February 26, 2008, SFN filed this claim under Canada’s Specific Claim Policy, asserting that Canada has failed to provide SFN with the agricultural and economic benefits SFN is entitled to under the terms of Treaty 6 (“Agricultural and Economic Benefits Claim”).
4. On or about April 7, 2009, Canada informed SFN that its Agricultural and Economic Benefits Claim met the Specific Claims Policy’s minimum standards, and had been assigned an effective date of filing with the Minister of February 11, 2009.
5. On or about June 23, 2009, SFN provided Canada with supplemental historical information and legal submissions in support of its Agricultural and Economic Benefits Claim.
6. On or about December 4, 2009, SFN commenced an action against Canada in the Federal Court of Canada for failing to provide SFN with the agricultural and

economic benefits SFN is entitled to under the terms of Treaty 6. This litigation has since been put in abeyance to allow the Agricultural and Economic Benefits Claim to be pursued under Canada's Specific Claims Policy.

7. On or about September 29, 2011, Canada informed SFN in writing of the Minister's decision not to negotiate the Agricultural and Economic Benefits Claim in whole.

III. Claim Limit (Act, s. 20(1)(b))

8. SFN does not seek compensation in excess of one hundred and fifty million (\$150,000,000) dollars.

IV. Grounds (Act, s. 14(1))

9. The following is the ground for SFN's claims, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

14(1) (a): 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.

10. Specifically, Canada has failed to fulfill its legal obligations to provide SFN with the agricultural and economic benefits to which SFN is entitled under Treaty 6.

V. Allegations of Fact (R. 41(e))

Objectives of Treaty 6

11. Treaty 6 was negotiated at Fort Carlton and Fort Pitt in 1876. These negotiations arose in the context of harsh circumstances for the First Nations of the Treaty 6 region that included starvation, disease, and disappearing buffalo herds, which

served as an important food source. Unrest among the First Nations was also mounting.

12. One of Canada's main goals for negotiating and signing Treaty 6 was to encourage the economic self-sufficiency of First Nations in order to avoid a drain on the public purse as a result of unrest resulting from these harsh circumstances.
13. To satisfy this goal, both Canada and the First Nation treaty signatories and adherents understood that the Plains First Nations would gradually become farmers and leave the trades of hunting, fishing and trapping.
14. Consequently, agricultural and economic benefits for the purpose of promoting economic self-sufficiency through the promotion of agriculture played a central role in Treaty 6 negotiations and formed a core promise owed by Canada to the First Nation parties.
15. The following provision of Treaty 6 obligated Canada to provide SFN with tools and implements, seed and livestock:

It is further agreed between Her Majesty and the said Indians, that the following articles shall be supplied to any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land, that is to say: Four hoes for every family actually cultivating; also, two spades per family as aforesaid: one plough for every three families, as aforesaid; one harrow for every three families, as aforesaid; two scythes and one whetstone, and two hay forks and two reaping hooks, for every family as aforesaid, and also two axes; and also one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone and one auger for each Band; and also for each Chief for the use of his Band, one chest of ordinary carpenter's tools; also, for each Band, enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such Band; also for each Band four oxen, one bull and six cows; also, one boar and two sows, and one hand-mill when any Band shall raise sufficient

grain therefor. All the aforesaid articles to be given once and for all for the encouragement of the practice of agriculture among the Indians.

16. The following provision of Treaty 6 obligated Canada to provide SFN with financial assistance in \$1,000 a year for three years to SFN for agricultural purposes :

That with regard to the Indians included under the Chiefs adhering to the treaty at Fort Pitt, and to those under Chiefs within the treaty limits who may hereafter give their adhesion thereto (exclusively, however, of the Indians of the Carlton region), there shall, during three years, after two or more reserves shall have been agreed upon and surveyed be distributed each spring among the Bands cultivating the soil on such reserves, by Her Majesty's Chief Indian Agent for this treaty, in his discretion, a sum not exceeding one thousand dollars, in the purchase of provisions for the use of such members of the Band as are actually settled on the reserves and engaged in the cultivation of the soil, to assist and encourage them in such cultivation.

17. All subsequent adhesions to Treaty 6, including that executed by SFN, were to the terms of Treaty 6 that were negotiated at Fort Carlton and Fort Pitt in 1876, which included the terms quoted in paragraphs 15 and 16 above, and which are collectively referred to as "Agricultural and Economic Benefits".

SFN'S Adhesion to Treaty 6

18. In the half-century following the execution of Treaty 6, SFN felt no impetus to enter treaty. The First Nation enjoyed stable hunting and trapping in the Rocky Mountain House/Nordegg region and SFN members were engaged in wage labour jobs on farms and ranches that provided them with the necessary income.
19. In the 1930s, SFN began to experience the same conditions that had led other First Nations to agree to Treaty 6 in 1876, as non-First Nation settlement in the region was on the rise.

20. By the early 1940s, SFN members were attempting to cultivate lands near the confluence of the Nordegg and Baptiste Rivers, but their efforts were limited by the small amount of equipment to which they had access, which was provided to SFN by a local non-Aboriginal settler.
21. SFN adhered to Treaty 6 on May 25, 1944.
22. Reserve land for SFN was set aside by Order-in-Council as IR No. 202 on September 13, 1949.

SFN's Agricultural Endeavours

23. By the time of the SFN adhesion in 1944, the First Nation had cleared about 200 acres of land, and in the negotiations that preceded the signing of the SFN adhesion, SFN expressed the hope to break the land and seed it with grass and oats in the summer of that year.
24. Rather than provide assistance to SFN in its endeavours in 1944, Canada's Treaty Commissioners proposed that SFN hire a neighbouring settler who Canada believed had the proper equipment to clear SFN's proposed reserve land of the brush for agriculture, and to delay seeding the following spring.
25. The clearing by the neighbouring settler never happened. However, SFN took charge of clearing on its own in the few months after SFN's adhesion to Treaty 6. SFN participated in this clearing for the purpose of utilizing the land for cattle, and did so by using the horses it owned prior to adhesion to Treaty 6.
26. By 1951, SFN had cleared 424 acres and had cultivated 168 of these acres. Over the next four years, an additional 15 acres of the cleared land was cultivated.

27. Beginning in 1951, SFN began to include agricultural implements and materials in its annual budget process, which was subject to the approval of the Indian Agent.

Canada's Failure to Fulfill its Obligations under Treaty 6

28. Canada refused to honour its treaty obligations with regard to Agricultural and Economic Benefits in the years after the Sunchild adhesion, even after Chief Sunchild complained in 1952 that among the treaty promises that had been not honoured was that relating to farming assistance.
29. Prior to the implementation of the Rotating Herd Program, which was unrelated to Treaty 6, in the 1960s, all agricultural equipment, supplies, and other assistance obtained by SFN resulted from private donation or was charged by Canada to SFN's Revenue Account.

VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

30. Canada is in breach of Treaty 6 for failing to provide SFN with its treaty entitlement to Agricultural and Economic Benefits. In particular, Canada has failed to provide SFN with:
- a. tools and implements, in particular:
 - i. four hoes, two spades, two scythes, one whetstone, two hay forks, two reaping hooks and two axes for every SFN family cultivating the soil;
 - ii. one plough, and one harrow for every three families cultivating the soil; and
 - iii. one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone, one auger, one hand mill, one chest of ordinary carpenter's tools, one horse, one harness and one wagon.

- b. livestock, in particular:
 - i. four oxen;
 - ii. one bull;
 - iii. one boar; and
 - iv. two sows.
 - c. seed, in particular enough wheat, barley, potatoes and oats to plant the land actually broken up for cultivation.
 - d. financial assistance, in particular one thousand (\$1,000) dollars per year for three years for First Nation cultivating the soil.
31. The obligation to provide SFN with Agricultural and Economic Benefits arose as early as 1944 and definitely no later than 1951.
32. SFN pleads the principles of treaty interpretation, specifically that the fulfillment of treaty rights is evolutionary rather than frozen in time, and that compensation arising from Canada's past and continuing failure to fulfill the obligation to provide SFN with Agricultural and Economic Benefits pursuant to Treaty 6 must reflect this principle.
33. Canada has a continuing constitutional and treaty obligation to provide SFN with its Agricultural and Economic Benefits under Treaty 6.
34. The honour of the Crown requires Canada to act fairly and honourably during treaty implementation, and it has not done so in this case.

VII. Relief Requested

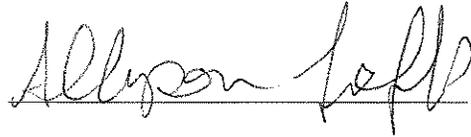
35. SFN seeks monetary compensation for Canada's failure to fulfill its legal obligations under Treaty 6 regarding Agricultural and Economic Benefits in an amount that reflects the evolutionary nature of treaty rights.

36. SFN also seeks costs of this proceeding.

September 17, 2012



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