

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	September 18, 2012	D E P O S É
Amy Clark		
Ottawa, ON	1	

B E T W E E N:

BLOOD TRIBE, also known as
Kainaiwa or Kainai First Nation or the Blood Indian Band,
As represented by the Chief and Councillors of the Blood Tribe

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian 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*.

[DATE] September 18, 2012

Amy Clark

(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant (R. 41(a))

1. The Claimant, BLOOD TRIBE, (also known as the Kainaiwa or Kainai First Nation or the Blood Indian Band) confirms that it is a First Nation within the meaning of s. 2 (set out which of subsections (a) to (c) apply) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

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

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:
 - The Minister has notified the Claimant, the Blood Tribe, in writing of his decision not to negotiate the claim, in whole or in part, firstly by letter of September 20, 2011 and subsequently by letter of January 9, 2012.

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

3. The Claimant understands that the Tribunal in making a decision on the issue of compensation for a specific claim shall not award total compensation in excess of \$150 million and the Claimant waives amounts of the claim in excess of \$150 million.

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

4. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:
 - The Respondent has failed to fulfill a legal obligation of the Crown to provide cattle to the Claimant as promised pursuant to Treaty 7, or at all.

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

5. Shortly after Confederation, the Government of Canada embarked on a series of Treaties with the First Nation inhabitants of the West. Treaty Seven, made in 1877, encompassed the principal territory of the Blackfoot Nation, which was comprised of the Blackfoot, the Piikani Nation and the Blood Tribe.
6. Although the demise of the Buffalo and the whiskey trade had a harrowing effect on the Blackfoot peoples, they nevertheless still constituted a formidable presence within their territory at the time of the making of Treaty 7, as is evidenced in the characterization of the Blackfoot in official writings.
7. The Blackfoot conceived of the Treaty, in part, as a means to help conserve the dwindling Buffalo herds, protect their territory against encroachment, and gain assistance in the transition to a new means of subsistence. The social and economic changes being wrought were all too evident and the Blackfoot wanted assurances that some provision would be made for their future welfare.
8. David Laird, Lieutenant-Governor of the North-West Territories, and Colonel Macleod, Commissioner of the North-West Mounted Police, were appointed Treaty commissioners and ‘negotiations’ were held in the fall of 1877. The terms offered were similar in most respects to the preceding Numbered Treaties, the major difference being the inclusion of the following provision in the written terms of Treaty 7 to supply cattle to those that chose ranching over farming:

“...And further, Her Majesty agrees that the said Indians shall be supplied as soon as convenient, after any Band shall make due application therefor, with the following cattle for raising stock, that is to say: **For every family of five persons and under, two cows; for every family of more than five persons and less than ten persons, three cows; for every family of over ten persons, four cows; and every Head and Minor Chief and every Stoney Chief, for the use of their Bands, one bull;** but if any Band desire to cultivate the soil as well as raise stock, each family of such Band shall ...” [emphasis added]
9. In submitting the Treaty to the Hon. David Mills, Superintendent General of Indian Affairs, who would lay it before Parliament, Lieutenant-Governor Laird qualified a number of the terms, mentioning the cattle provision in particular. His statements of June 30, 1877 demonstrated that not only was farming understood to be impractical for the Blood Tribe and that ranching would be a far more suitable activity, but that considerations of economy were also an important factor.
10. The records show that the Department planned to provide the cattle stipulated by the Treaty the year after it was signed. However, as Lieutenant-Colonel Macleod, Commissioner of the North-West Mounted Police, noted in his report on Treaty Seven for the Annual Report of Indian Affairs for 1878, the cattle had not been distributed.

11. By 1880, buffalo were becoming scarce and members of the Treaty 7 First Nations were on the verge of starvation. The Superintendent General of Indian Affairs, E. Dewdney, noted in his Annual Report to the Department of Indian Affairs for the year ended December 31, 1879, that he had inspected the “Indian cattle” in July of 1879 and he thought that “the cattle were shortly to be distributed among the different tribes of the Blackfeet”.
12. While the eventual fate of these cattle is uncertain, it seems likely that at least a portion of them were eventually distributed to the Peigan and Stoneys, both of whom received cattle under Treaty. What is known for certain is that none of that herd was received by the Blood.
13. The Canadian Government had predicted, at the time of the making of Treaty 7, that the buffalo would last for ten years after Treaty, but they did not survive for even two.
14. Farming was introduced on the Blood Tribe Reserve in the early years following the making of Treaty 7. Blood Tribe members began raising crops to be used as cattle feed. The Blood Tribe began to settle their Reserve located between the Kootenay and St. Mary’s Rivers in the fall of 1880 and one of the first activities undertaken was the breaking a small piece of land for spring seeding.
15. Another indication of the Department’s intention to provide cattle to the Treaty Seven adherents was contained in a memorandum from J. McGirr, Clerk of Statistics, Indian Affairs, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, detailing the articles provided under Treaty. According to McGirr, as of June 30, 1882, 801 cows and 42 bulls were purchased by the Department for distribution to the adherents of Treaty Seven. The Blood Tribe did not receive any cattle at this time.
16. The 1881 Annual Report of the Department of Indian Affairs noted that in May of 1881 there were at least 3,146 Blood Tribe members on the ration list and those members situated on the reserve all winter were “comfortably installed in houses”. By this time, 63 houses had been built by Blood Tribe members, and 104 acres of land broken up, 40 of which were planted and fenced.
17. By 1882 the Blood Tribe was established on the Reserve and was in a position to accept the Treaty entitlement cattle. There were over 3,400 Blood Tribe members settled on the Reserve, and the Department’s Annual Report noted that the lands were well fenced and many new houses had been built.
18. Throughout the decade following the establishment of the Blood Reserve, even though other Treaty 7 First Nations were successfully raising cattle, the Blood Tribe did not receive the cattle promised under Treaty. During this period, there were continued reports by the Blood Tribe Agent of starvation and associated ill health among the Blood Tribe, but no cattle were forthcoming.

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19. In July of 1890, Agent Pocklington reported that “Chief Red Crow built himself a good stable and put up twenty tons of excellent hay”. Clearly, Red Crow was in a position to receive cattle prior to this date.
 20. The absence of any reference to cattle on the Blood Reserve was not a mere oversight on the part of the Agent. Between 1888 and 1892 Indian Commissioner A.E. Forget canvassed the Agents stationed in the North-West Territories regarding the cattle held by the Indians of different agencies. W. Pocklington, Indian Agent at the Blood Agency, consistently responded that the Blood Tribe had no cattle in their possession.
 21. A circular received by Agent Pocklington from the Indian Commissioner headed “Re: a certain stipulation in the Treaty as to cattle and certain assistance in agricultural implements—etc.” demonstrated that the Department was aware of the cattle provisions of Treaty Seven.
 22. A year later, in January of 1891, Agent Pocklington again indicated that the Treaty entitlement of cattle for the Blood Tribe remained unfulfilled.
 23. In June of 1892, Agent Pocklington reiterated that the Blood Tribe did not own any cattle.
 24. When James Wilson assumed the position of Indian Agent at the Blood Agency there was further consideration of the introduction of cattle among the Blood Tribe. Whether this was due to a more favourable attitude on the part of the new Agent or represented a change of policy within the Department is not clear, but there is evidence that the Blood Tribe members were eager to receive cattle and had been pressing for them for some time.
 25. The Department’s Annual Report for the year ended December 31, 1893 stated that the distribution of cattle to the Blackfoot, Blood and Peigan had been commenced, however, responding to yet another circular sent from the Commissioner’s office inquiring into cattle held by Band members in the various Agencies, a full 15 years after the making of Treaty 7, Indian Agent J. Wilson stated that outside of a few work oxen, none of the Blood Tribe members held cattle as of December, 1893.
 26. Agent Wilson found no shortage of individuals willing to give horses in trade for cattle. A letter from Wilson to A.E. Forget, Indian Commissioner dated February 26, 1894, reveals the extent to which the Blood were prepared to participate.

“With reference to your memorandum (1148) of the 19th January last regarding the number of cattle to be exchanged for horses by the Blood Indians I have the honour to inform you that so far Indians have given me their names for 275 head, but I think when the time comes to trade a number of other Indians will come forward. It would be well therefore I think to arrange for 300 head of cattle.”

27. Although the Department approved the project, evidently there was some bureaucratic lassitude to be overcome and Agent Wilson, at the insistence of the Blood Tribe, was required to prod the Department to take action. Wilson wrote on May 7, 1894 asking when cattle were to be purchased and exchanged for Indian horses in the spring and noted that there had been requests for “some time back” for the cattle.
28. Failing to get a response from the Indian Commissioner, Agent Wilson sent a telegram to Hayter Reed, Deputy Superintendent General of Indian Affairs, a few weeks later on May 23, 1894 advising that “Indians very anxious about cattle. Hope you will supply them during this financial year.”
29. When A.E. Forget, Indian Commissioner, finally gave Agent Wilson permission to proceed, he authorized the purchase of fifty head, far fewer head of cattle than Wilson had earlier recommended, this was demonstrated in Wilson’s acknowledgement of Forget’s telegram, dated June 2, 1894.
30. Agent Wilson wasted little time in concluding the transaction and his report on the matter asserted that the recipients of the cattle were well satisfied. Wilson’s letter of June 18, 1894 indicated the cattle were exchanged for horses.
31. The entire process was summed up in a passage from Agent J. Wilson’s submission for the Annual Report for the Department of Indian Affairs for 1894. It should be noted that the impetus for procuring cattle came from the Blood Tribe, who had merely requested that the Department supply them with cattle, making no mention of exchanging horses.
32. The new herd prospered on the Blood Reserve and the Department recognized that raising livestock would be a successful occupation for the Blood Tribe. In the spring of 1895 Agent J. Wilson, in a letter to the Indian Commissioner, requested that he be allowed to replace the Department’s aging draught animals with breeding stock.
33. While the early indications were encouraging for the Blood Tribe cattle industry, the Department clearly intended that it should be a self-financing enterprise. Before the first of the Blood Tribe cattle were even ready for slaughter, the Department was contemplating regulatory changes to ensure the Blood Tribe would bear the expense of replenishing the herd.
34. Although still not large, within a few short years the Blood Tribe herd had become firmly established. The August 1895 report from Alex McGibbon, Inspector of Indian Agencies and Reserves, related that the cattle in possession of the Blood began to show a fair increase in less than a year. The 50 head originally purchased by the four Chiefs had grown to 74. McGibbon also reported that a number of other individuals were eager to acquire cattle.
35. As well, the tabular statement “Agricultural and Industrial Statistics” published in the Annual Report of the Department of Indian Affairs for 1895 listed the Blood

- Tribe as having 62 cows, 25 oxen, 11 bulls and 130 young stock. This was still considerably fewer than other Treaty 7 First Nations, who had 500 to 700 head each.
36. Agent J. Wilson, in his report on the Blood that appeared in the 1896 Annual Report of the Department of Indian Affairs, characterized farming as unreliable in that region of the country and promoted raising stock as the preferable alternative. He praised the program of supplying cattle in exchange for horses, claiming that it instilled a strong sense of ownership and urged that it be expanded.
 37. A.E. Forget, Indian Commissioner, affirmed Agent Wilson's assessment in his report for the same year. He recounted that within Treaty Seven there were 2,017 head of cattle in the possession of 447 individuals and that the Blood Tribe in particular had demonstrated considerable enthusiasm for acquiring cattle. Forget also indicated that the exchange program may have been motivated at least in part by economic considerations:
 38. In an 1896 Annual Report of the Department, Haythe Reed, Deputy Superintendent, noted that First Nation members in the West had a greater inclination towards raising stock than farming and individuals were accumulating large herds.
 39. In the meantime, the Blood Tribe herd continued to grow, through both the on-going exchange of horses for cattle and natural increase. The tabular statement "Agricultural and Industrial Statistics" accompanying the 1897 Annual Report of the Department of Indian Affairs recorded 88 steers, 323 cows and 367 young stock as belonging to the Blood Tribe, an amount second only to the Peigan in Treaty 7.
 40. These declarations were echoed in the comments of A.E. Forget, Indian Commissioner, in the 1897 Annual Report. He remarked approvingly of the cattle industry on not only the Blood Tribe Reserve, but on the Peigan and Stoney Reserves as well. This venture was evidently aided by the developing market for Blackfoot horses. Although it is not known to what extent the provision of cattle to the Blood depended on the exchange and sale of horses, clearly they were expected to purchase their own livestock.
 41. In the Annual Report: for 1898 J.A. Smart, Deputy Superintendent General of Indian Affairs, remarked particularly upon the growing appreciation for stock evidenced among the Blackfoot Tribes. This passage revealed not only that the horse exchange was instituted primarily at the behest of the Department, but also that it was motivated by a desire to dispossess the Blackfoot Nation of their horses.
 42. By 1898 the Blood Tribe herd had become the largest within Treaty Seven. The tabular statement "Agricultural and Industrial Statistics" in that year's Annual Report indicated that the Blood Tribe had 138 steers, 361 cows, and 454 young

- stock. This expansion was reflected in the report from Indian Agent J. Wilson appearing in the same Annual Report. Wilson asserted that, with the poor farming on the Reserve, the focus of his efforts had been to increase the herd.
43. In December of 1898 J.D. McLean, Secretary, Indian Affairs, sent out a circular informing Agents of an arrangement to purchase bulls using a portion of the proceeds from the sale of cattle. This was characteristic of the Department's strategy to shift the financial burden of the Native cattle industry onto the bands.
 44. After the turn of the century, two significant changes were made to the Department's cattle ranching policy. First, in 1901, the exchange of horses for cattle was discontinued and replaced by a loan system. Second, a ranching fund was established under which a portion of each sale was retained by the Department to be used for ranching expenses such as putting up hay, fencing pastures, building stables and corrals, etc.
 45. By 1902 the Blood Tribe had over 3,000 head of cattle in the hands of 176 individuals. Blood Tribe ranchers were obtaining cattle under the Department's loan system and selling their ponies independently which netted them about \$8,000 in 1902. After two years of operation, the Bull Fund had collected over \$7,700 from western bands, which Departmental officials speculated would soon entirely relieve the Department of the expense of purchasing bulls. By 1905 there was a herd of 135 pure-bred bulls on the Blood Tribe Reserve.
 46. Reports and correspondence indicate that individual Blood Tribe cattle owners were supplying beef to the Department of Indian Affairs for rationing purposes. This research does not fully document how the individuals were compensated for supplying beef; however, it is known that portions of the money owing for slaughtered animals were funded to cover future ranching expenses.
 47. Department officials made further changes in the administration of the cattle industry which resulted in Indian Department employees having more direct control over the disposition of cattle and individual Blood Tribe owners having less control over their animals.
 48. Not only was the Department aware that the Treaty promise to provide cattle was not fulfilled but in fact efforts were made to conceal that fact. J.A. Markle, Inspector of Indian Agencies and Reserves wrote to J. Wilson, Indian Agent, Blood Agency, dated March 9, 1901 and stated:

"I don't know how to get over the treaty obligations, the Indians claim them [cattle] as their own also and you know the trouble this is sure to make. Possible the returned cattle that go into the ration house can be construed to "cover treaty obligations."
 49. In March of 1903 James Wilson wrote a very significant letter in response to the Department's proposal that rations be severely reduced in the Blood Agency. In the course of his letter, he reminded the Department that the treaty obligation to

provide cattle had never been fulfilled. He stated that “the Treaty obligation entered into by the Government has never been fulfilled. The Blood Indians were entitled to at [least] [some] 1500 head of cows but never got them”.

50. Agent R. N. Wilson commented in his report to the Department on January 10, 1905 as follows:

“Our cattle now numbering 5,000 head will soon – as they further increase – be more difficult to control. Up to the present time we have managed to prevent the Indians selling any of their cattle but only by means of a ‘bluff’. We tell them that it is wrong to do so and they think it illegal. One of the days the ‘bluff’ may be called and some Indian may sell his whole herd of cattle to outsiders or kill some of them for his own and friends consumption, in which event – except in regard to the ‘loan’ cattle – we would be helpless as the law now stands, *for none of these cattle were issued under treaty stipulations*”. [emphasis added]

51. The Blood Tribe did not receive cattle as promised through both the oral and written representations of Treaty 7 and only developed a cattle industry through initiatives taken by the Blood Tribe and through trading horses for cattle and a loan system established by the Respondent.
52. Cattle were to be provided to the Blood Tribe in order to provide a basis for an alternative economy and in return for adherence to treaty, not to trade cattle for horses or through loaned cattle.
53. The Claimant submitted the Blood Tribe Treaty Entitlement Cattle Claim to Specific Claims Branch in April 1998.
54. The Respondent notified the Claimant, the Blood Tribe, in writing of the decision not to negotiate the claim, in whole or in part, firstly by letter of September 20, 2011 and subsequently by letter of January 9, 2012.

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

Issue No. 1

Cattle were promised by Canada to the Blood Tribe through both the oral and written representations of Treaty 7. These promises were made by specific reference to cattle as well as through the promise of an alternative economy.

55. Canada's letter of September 20, 2011 admits that cattle were promised to the Blood Tribe in Treaty 7 through both written and oral promises. However it goes on to state that the provision of cattle was to assist the Blood Tribe to adapt to a new way of life of stock raising and did not go as far as to promise an alternative economy.
56. The text of Treaty 7 includes a commitment by the Government of Canada to supply "cattle for raising stock" "as soon as convenient after any Band shall make due application therefore". It is also clear that the cattle were to provide a basis for an alternative economy:
 - (a) From the wording of the treaty text, which stipulates that the cattle are "for raising stock" and "for the encouragement of the practice of agriculture among the Indians";
 - (b) From the accounts of the treaty negotiations; and,
 - (c) From many of the documents collected for the 30 year period under review.
57. Although the Treaty, governments reports and correspondence do not specify how the cattle would be supplied, no evidence has been located to indicate that the intention was anything other than to present cattle to individual bands in return for their adherence to treaty, and not to trade cattle for horses or to loan cattle.
58. The Claimant notes that although the specific method of supplying the cattle may not have been spelled out in the Treaty documents, the actions of the officials in giving cattle to other Treaty 7 First Nations in fulfillment of the Treaty obligation clearly signified the intent at the time.

Issue No. 2

The Blood Tribe was in a position to receive Treaty Entitlement Cattle in 1882.

59. The Claimant submits that the evidence clearly shows that cattle were requested at Treaty and by at least 1882 Blood Tribe members were well settled on the current Blood Reserve and were in a position to accept the Treaty Entitlement Cattle. The initial cattle intended for fulfillment of the Treaty promises were not sold until 1883 and there is no evidence other than the opinion of the Crown's agents at the time that the Blood Tribe was not prepared to take the cattle.

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60. If the Blood Tribe was to have established an alternative economy within 10 years of the making of Treaty 7 (the length of time it was first thought that the Buffalo would be extinct) the cattle would clearly have needed to be provided as soon as possible. As it was the Buffalo herds were destroyed within two years of the making of the Treaty and therefore the obligation of the Crown to provide the cattle in a timely fashion was increased.
 61. The evidence clearly shows that the Blood Tribe had been requesting cattle and was prepared to take such cattle well before the first cattle were traded for ponies in 1893/94. The Blood Tribe maintains the position that it was in a position to receive the Treaty Entitlement Cattle in 1882.

Issue No. 3

The cattle promised pursuant to Treaty 7 have not been provided to the Blood.

62. It appears to be the Respondents position that the Blood Tribe's entitlement to cattle was triggered in 1893 when Chief Red Crow and other leading men requested to exchange horses for cattle and that the cattle supplied through the pony/cattle exchange system and the loan system satisfied the Treaty entitlement to cattle.
63. It is incomprehensible to the Claimant that the Respondent's position is that the Treaty Entitlement Cattle were provided as promised pursuant to the Treaty by the fact that Blood Tribe members paid for the cattle either through trading horses for cattle or by obtaining a loan which was paid back. If in fact the entitlement was triggered in 1893 when Chief Red Crow and others requested to exchange horses, that entitlement was still not fulfilled by exchanges and loans rather than the giving of cattle to the Blood Tribe and Blood Tribe members as had been promised at the time of Treaty and completed with other Treaty 7 First Nations.
64. Research has revealed that not only was Canada aware that the Treaty promise to provide cattle was not fulfilled but in fact efforts were made to conceal that fact. J.A. Markle, Inspector of Indian Agencies and Reserves wrote to J. Wilson, Indian Agent, Blood Agency, dated March 9, 1901 and stated:

“I don't know how to get over the treaty obligations, the Indians claim them [cattle] as their own also and you know the trouble this is sure to make. Possible the returned cattle that go into the ration house can be construed to “cover treaty obligations.”
65. It is clear from the historical evidence that the Blood Tribe never received the cattle as promised in the oral and written terms of Treaty 7.

Issue No. 4

- The Blood Tribe has suffered damages due to the failure of Canada to provide cattle as promised, or at all.*
66. The Blood Tribe continues to assert that it has suffered damages due to the failure of Canada to provide cattle as promised.
67. The damages suffered by the Blood Tribe and individual members were significant and include the following:
- The inability to establish an alternative economy upon the disappearance of the Buffalo;
 - The loss of a cattle herd since 1882 to the present and the income generated for the original herd and progeny compounded over 125 years;
 - Loss of use of the financial income that would have been generated by the Treaty Entitlement Cattle herd;
 - Starvation by members of the Blood Tribe through a failure of the provision of an alternate food source;
 - Loss of horses due to the necessity of having to trade for cattle; and
 - Loss of financial gain by having to pay back loan monies in order to raise cattle.
68. The Blood Tribe continues to incur loss and damage as a result of the continued failure of Canada to provide the Treaty Entitlement Cattle, such loss and damage which now includes legal costs as a result of the necessity of having to have the claim validated notwithstanding the clear evidence of the outstanding lawful obligation.

Issue No. 5 Fiduciary Issues

69. As a result of Canada's fiduciary and trust relationship with the Blood Tribe it had a number of duties and obligations with respect to the Treaty promises, including the following outlined obligations:

An obligation to obtain cattle for the Blood Tribe pursuant to the promises and terms of Treaty 7, or to set aside monies to purchase same;

An obligation to care for the cattle obtained for the Blood Tribe until such time as the Blood Tribe requested the same;

An obligation to pass ownership of the cattle to members of the Blood Tribe when requested by the Blood Tribe and/or individual members;

An obligation to account for the cattle and/or trust monies held in trust for the Blood Tribe; and

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An obligation to disclose to the Blood Tribe that the Treaty obligations had not been fulfilled as promised, when Canada knew that it was in breach of its Treaty promise to provide cattle.

Dated this 18th day of September, 2012.



Per: Joanne F. Crook

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