

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

STONEY NAKODA NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	August 1, 2012	D É P O S É
Amy Clark		
Ottawa, ON		7

Claimant

v.

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

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*.

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1. This is the response of Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development (the “Crown”) to the

Declaration of Claim (the “Claim”) filed by the Stoney Nakoda Nation with the Specific Claims Tribunal (the “Tribunal”) on May 17, 2012 pursuant to the *Specific Claims Tribunal Act* (the “Act”).

2. The Claim relates to land owed to the Stoney Indian Band (the “Stoney Band”) pursuant to the terms of Treaty No. 7 (treaty land entitlement or “TLE”).

I. Status of Claim (R. 42(a))

3. The Stoney Nakoda Nation first submitted a claim to the Minister in April 1972 and re-submitted the claim in May 2008, alleging that the Crown failed to set aside sufficient land for the Stoney Band as required by the terms of Treaty No. 7.
4. The Crown states that the criteria contained in section 16(1)(a) of the *Act* are met and this claim is validly before the Specific Claims Tribunal.

Validity (R. 42(b) and (c))

5. The Crown does not accept the validity of the Claim, or that the Stoney Nakoda Nation has suffered any damages.
6. Notwithstanding that the criteria contained in section 16(1)(a) of the *Act* are met, the Stoney Nakoda Nation have not claimed any monetary compensation as required by section 15(4)(a) and (b) of the *Act*. Therefore, they are barred from filing this Claim and the Specific Claims Tribunal is without jurisdiction to consider it.
7. In the alternative, should the Tribunal find that this Claim is not barred, paragraph 20(1)(c) of the *Act* may provide a basis for the Tribunal to award compensation in respect of the claim.

II. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))

8. The Crown states that the Stoney Nakoda Nation is not a band as defined in subsection 2(1) of the *Indian Act* and is therefore not a First Nation within the meaning of the *Act*. Rather, it is the Stoney Band that is a band within the meaning of the *Indian Act* and therefore the First Nation who may, as a claimant, file a specific claim with the Tribunal.
9. Further, the Crown has no knowledge of the organization or membership of the Stoney Nakoda Nation and cannot admit that it may have a TLE claim.
10. The Crown has no knowledge of whether the Stoney Chiefs and Councilors who signed Treaty No. 7 on behalf of the Stoney Indian Band (the “Stoney Band”) are predecessors to the Stoney Nakoda Nation.
11. The Crown states that with respect to paragraph 10 and paragraphs 21 to 28, the statements made are legal argument.
12. The Crown denies the statements made in paragraph 11, 17, 18, 19, and 20 of the Claim.
13. With respect to paragraph 12, the Crown admits only that:
 - a. the term of Treaty No. 7 is quoted accurately; and
 - b. Treaty No. 7 creates an obligation on the Crown to reserve lands for the Stoney Band in accordance with the terms thereof.
14. With respect to paragraph 13, the Crown admits that the reference to Morleyville contained in Treaty No. 7 was the site of a Methodist mission but has no knowledge of whether that mission ministered to the members of the First Nation.

15. With respect to paragraphs 14 and 28, Treaty No. 7 was a written agreement duly signed by the Stoney Band and the Crown. The Crown denies that any oral terms or representations form part of Treaty No. 7 as alleged or at all.
16. With respect to paragraph 15, the Crown admits that a surveyor appointed by the Crown surveyed three undivided parcels of reserve land in the vicinity of Morleyville for the Stoney Band in August and September, 1879 and that the land surveyed at this time totaled 69,760 acres. The remaining statements constitute an interpretation of facts combined with legal argument. The Crown denies these statements.
17. With respect to paragraph 16, the Crown admits that by Order-in-Council 1151 dated May 17, 1889, the 69,760 acres surveyed in 1879 were set aside for the Stoney Band as Indian Reserves (“IR”) 142, 143 and 144. The remaining statements constitute an interpretation of facts combined with legal argument. The Crown denies these statements.
18. In further response to paragraphs 22 to 28, the Crown does not accept the calculation of the TLE nor the calculation of the shortfall.

III. Statements of Fact (R. 42(a))

19. The Stoney Indian Band (the “Stoney Band”) signed Treaty No. 7 on September 22, 1877. The Stoney Band identify themselves as being comprised of three different groups, namely, the Wesley First Nation, Bearspaw First Nation and the Chiniki First Nation; however, the Wesley First Nation, Bearspaw First Nation and Chiniki First Nation are not recognized as Bands under the *Indian Act*. Canada recognizes the Stoney Band as being one Band.
20. It was a term of Treaty No. 7 that reserves be allocated to the signatories thereto of sufficient area to allow one square mile (640 acres) for each family of five persons, or in that proportion for larger or smaller families (the “treaty land entitlement or TLE”). This works out to 128 acres per eligible person.

21. It was a further term of Treaty No. 7 that the reserves of the Stoney Band shall be located in the vicinity of Morleyville.
22. Reserves for the Stoney Band were first surveyed in September 1879 (the “date of first survey”) and 69,760.0 acres of land were set aside for the Stoney Band as Indian Reserves 142, 143 and 144 by Order in Council 1151-1889.
23. Further reserves were set aside for the Stoney Band from time to time after that date.

IV. Relief (R. 42(f))

24. The Crown seeks to have the claim dismissed in its entirety as the Claimant is barred from bringing the claim pursuant to section 15(4)(a) and (b) of the *Act*.
25. The Crown seeks its costs in the proceedings.
26. If the Tribunal finds that the Crown failed to set aside sufficient land for the First Nation as required by the terms of Treaty No. 7, then the Crown asserts that the Province of Alberta contributed to the acts or omissions and any losses arising therefrom, as set out in paragraph 20(1)(i) of the *Act*.
27. The Crown pleads and relies upon section 20 of the *Act*.
28. Such further relief as this Honourable Tribunal deems just.

V. Communication (R. 42(g))

29. Respondent’s Address for Service:

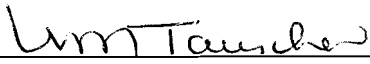
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Dated this 1st day of August, 2012.

Myles J. Kirvan
Deputy Attorney General of Canada



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