

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
April 17, 2020		
Isabelle Bourassa		
Ottawa, ON	6	

CANOE LAKE CREE FIRST NATION

Claimant

and

HER MAJESTY THE QUEEN 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: Canoe Lake Cree First Nation
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Overview

1. Canada acknowledges the treaty rights of Canoe Lake Cree First Nation (Canoe Lake), including its right to aid and assistance in agriculture or stock-raising or other work which is the subject of Canoe Lake's Declaration of Claim (Claim).
2. Canada acknowledges that from time to time after adhering to Treaty 10, Canoe Lake requested assistance for agriculture or stock-raising. Canada expended money and provided agricultural tools, implements, seed, and livestock to Canoe Lake thereby fulfilling its obligation under Treaty 10.
3. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.

I. Status of Claim

4. Canada admits that the requirements in section 16 of the *Specific Claims Tribunal Act (SCTA)* are satisfied, as pled in paragraphs 2 through 4 of the Claim.
5. Canoe Lake filed its claim with the Minister of Indian and Northern Affairs, now the Minister of Crown-Indigenous Relations (Minister) on October 16, 2008.
6. On September 23, 2011, the Minister notified Canoe Lake in writing of the decision not to accept the claim for negotiation.

II. Canada's position with respect to Validity of the Claim

7. Canada acknowledges Canoe Lake's treaty rights, including its rights to aid and assistance in agriculture or stock-raising or other work as set out in Treaty 10. Canada takes the following position in response to the specific allegations set out in Canoe Lake's Claim:
 - a. Canada fulfilled its obligation under Treaty 10 to provide aid and assistance in agriculture or stock-raising or other work;
 - b. Canada had an obligation under Treaty 10 to assist and aid the members of Canoe Lake in their pursuit of a livelihood including agriculture, but did not have an obligation under Treaty 10 or otherwise to guarantee or provide for an economic livelihood based on agriculture;
 - c. Canada did not have a fiduciary duty under Treaty 10 or otherwise to prevent or discourage members of Canoe Lake to expend personal funds to support Canoe Lake's agricultural livelihood;
 - d. Canada did not have a duty under Treaty 10 or otherwise to provide for an economic livelihood outside of providing assistance in agriculture or stock-raising or other work.
8. As such, Canada says that this Claim does not disclose a valid claim under the Specific Claims Tribunal Act.

III. Canada's position with respect to Allegations of Facts

9. Unless otherwise stated in this Response, Canada denies the allegations made in the Claim.

10. Canoe Lake is an adherent to Treaty 10, is a band within the meaning of the *Indian Act*, is a First Nation within the meaning of the *Specific Claims Tribunal Act (SCTA)* and is located in Saskatchewan. Canoe Lake adhered to Treaty 10 in 1906.
11. Canada admits that the area of Treaty 10 spreads across approximately 22,000 square kilometres in the northern half of Saskatchewan and a small portion of northeastern Alberta as pled in paragraph 8 of the Claim.
12. In response to paragraphs 9, 10, and 11 of the Claim, Canada admits that there had been periodic requests for a treaty to cover northern Saskatchewan since the late 1870s and says the decision to negotiate Treaty 10 did not occur until 1906 and says that it has no knowledge of the other facts pled in those paragraphs of the Claim.
13. Canada admits that Canada's officials initially considered extending the boundaries of Treaty 8 to include Treaty 10 as pled in paragraph 12 of the Claim.
14. Canada admits that the boundaries of Treaty 8 were not extended and Treaty 10 was negotiated as pled in paragraph 13 of the Claim.
15. Canada admits that Order-in-Council PC No. 1459 was passed July 20, 1906, and it authorized the establishment of a Treaty Commission and appointment of a Treaty Commissioner, for the portion of land in Saskatchewan lying north of the 54th parallel and a small adjoining area in Alberta as pled in paragraph 14 of the Claim.
16. In response to paragraph 15 of the Claim, Canada says that the Order-in-Council approving the proposed treaty negotiations provided "(d) for the affording of such assistance as may be found necessary or desirable to advance the Indians in farming or stock-raising or other work."

17. In response to paragraph 16 of the Claim, Canada says that by letter dated August 2, 1906, the Acting Deputy Superintendent General of Indian Affairs requested the Department of Justice draft a treaty based on the July 20, 1906, Order-in-Council. A copy of Treaty 8 was enclosed for information purposes. The Crown admits the text of Treaty 8 as quoted in paragraph 16.
18. In response to paragraph 17 of the Claim, Canada admits that the agricultural provisions of Treaty 8 were intentionally replaced with the Treaty 10 wording. Further, Canada says that as Treaty 10 lands were at best only suited to small scale gardening, without a realistic potential for larger scale commercial agriculture, the intent of the wording change was that Treaty 10 agricultural assistance would be substantially less than agricultural benefits provided for under Treaty 8.
19. Canada admits that the Canoe Lake Band adhered to Treaty 10 on September 19, 1906, at Ile-à-la-Crosse, represented by Chief John Iron and two of his Headmen as pled in paragraph 18 of the Claim.
20. Canada admits the Treaty 10 obligations as pled in paragraph 19 of the Claim.
21. Canada admits members of Canoe Lake were practising small-scale agriculture as early as 1870 as pled in paragraph 20 of the Claim.
22. Canada admits that in 1906 when negotiating Treaty 10, Canoe Lake requested cattle be provided to its members interested in stock-raising as pled in paragraph 21 of the Claim.
23. Canada admits that in 1907 when Canoe Lake met with Commissioner Borthwick, it requested Canada to provide implements and seeds for the following year's seeding as pled in paragraph 22 of the Claim.

24. In response to paragraphs 23 and 26 of the Claim, Canada admits that certain farming implements and livestock were requested by Canoe Lake in 1908 and 1916 and that during the Treaty payments in 1916, the acting pay officer recommended to the Department that Canoe Lake be encouraged to engage in gardening.
25. Canada admits Canoe Lake requested reserve lands be set aside in 1910 as pled in paragraph 24 of the Claim.
26. Canada admits Canoe Lake's reserve was surveyed in 1912 as pled in paragraph 25 of the Claim.
27. In response to paragraph 27 of the Claim, Canada admits Canoe Lake made repeated requests for agricultural assistance in the years following adhesion to Treaty 10. Canada does not have knowledge of Canoe Lake's diminished reliance on fishing, hunting and trapping as pled in paragraph 27 of the Claim.
28. In response to paragraph 28 of the Claim, Canada admits that a request for farming implements in 1924 was denied on the basis that it would "incur an unwarranted expenditure of money".
29. Canada admits Canoe Lake cleared four or five acres of land and purchased cattle using its own funds in 1925 as pled in paragraph 29 of the Claim.
30. Canada admits Canoe Lake increasingly relied on agriculture for sustenance from 1930 onward and by 1936 was relying on agriculture for one half of its food source for the winter and was recognized as one of the most progressive and independent bands in the Treaty 10 area as pled in paragraph 30 of the Claim.

31. In response to paragraph 31 of the Claim, Canada does not have knowledge of the efforts of Canoe Lake's members to engage in agricultural and other pursuits and Canada does not have knowledge of the 1911 direction referred to in paragraph 31 of the Claim.
32. In response to paragraph 32 of the Claim, Canada says that there were conflicting reports about the suitability of the Canoe Lake reserve lands for agriculture.
33. Canada admits that, for the most part, Canada kept records of agricultural assistance provided to Canoe Lake at the Agency level rather than at the individual band level as pled in paragraph 33 of the Claim.
34. In response to paragraph 34 of the Claim, Canada admits that Canoe Lake was administered under various agencies.
35. In response to paragraph 35 of the Claim, Canada says that between 1907 and 1972, agricultural assistance in satisfaction of Treaty 10 obligations was provided to Canoe Lake.

IV. Canada's Statements of Fact

36. On September 19, 1906, the Chief of the Canoe Lake Band signed Treaty 10 at Ile-à-la-Crosse. Treaty 10 was ratified by Order-in-Council P.C. 2490 on November 26, 1907.
37. The agricultural assistance provision of Treaty 10 states as follows:

Further, His Majesty agrees to furnish such assistance as may be found necessary or advisable to aid and assist the Indians in agriculture or stock raising or other work and to make such a distribution of twine and ammunition to them annually as is usually made to Indians similarly situated.

38. Canoe Lake engaged in small scale agricultural activity prior to Treaty 10 as early as 1870. However, Canoe Lake Band appears to have been more actively involved in hunting, fishing and trapping than in agricultural pursuits.
39. Canoe Lake's reserves were suited to small scale gardening and agricultural activity. However, Canoe Lake's reserves would not support larger scale agricultural activity.
40. The assistance required by Treaty 10 was "to aid and assist [Canoe Lake] in agriculture or stock raising" with the aim of encouraging small scale agriculture in order to aid in economic livelihood. The assistance and aid required by Treaty 10 was not to guarantee or provide for an economic livelihood.
41. Canoe Lake made periodic requests for agricultural assistance between 1907 and 1972. In response to these requests and in furtherance of providing assistance as required by Treaty 10, Canada provided aid and assistance to Canoe Lake in the form of agricultural tools, implements, seed, and livestock.

V. Relief

42. Canada seeks the following relief:
 - a. to have the Claim dismissed in its entirety;
 - b. costs; and
 - c. such further relief as this Honourable Tribunal deems just.

VI. Communication

43. 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: Patricia Warwick and Michael Digout

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

45. Email address for service is: sasSCT-5011-19-canoelake@justice.gc.ca

Dated this 17th day of April, 2020.



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