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| SPECIFIC CLAIMS TRIBUNAL | | |
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| I | PARTICULIÈRES | É |
| L | March 19, 2020 | P |
| E | Isabelle Bourassa | O |
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| Ottawa, ON | 7 | |

SCT File No.: SCT-5010-19

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

RED PHEASANT CREE NATION

Claimant

v.

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: Red Pheasant Cree Nation
As represented by Amy Barrington and Steven Carey,
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Overview

1. Red Pheasant Cree Nation (Red Pheasant) adhered to Treaty 6 and expected to receive all the agricultural benefits and supports set out in that Treaty. It claims Canada's efforts to provide those benefits fell short.
2. Canada acknowledges Red Pheasant has a treaty right to the agricultural benefits promised in Treaty 6. Canadian officials made good faith efforts to meet Canada's obligations to Red Pheasant.
3. Canada provided livestock, seed, and agricultural implements to Red Pheasant and its members "for the encouragement of the practice of agriculture" as set out in Treaty 6. In addition, Canada provided farming instruction, which was not set out in the Treaty. Treaty 6 also specified the livestock, seed, and implements promised were to be provided "once for all" and not on a continuing basis.
4. Canada also provided \$1,000.00 each spring to be shared by the First Nations that took treaty at Fort Carlton and \$1,000.00 to be shared by the First Nations that took treaty at Fort Pitt for the "purchase of provisions for the use of such of the band as are actually settled on reserves and are engaged in cultivating the soil, to assist them in such cultivation". Treaty 6 limited that promise to "three years".
5. Canada admits that certain agricultural implements and livestock promised to Red Pheasant were not provided. However, Canada does not agree with Red Pheasant on the amount of agricultural benefits that were provided by Canada, or on the intent of the parties respecting the agricultural benefits provisions at the time of entering Treaty 6.
6. 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.

7. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this Tribunal claim proceeds through the Tribunal process.

I. Status of Claim

8. Canada admits the requirements in section 16 of the *Specific Claims Tribunal Act (SCTA)* are satisfied, as pled in paragraphs 2 through 5 of the Amended Declaration of Claim (Claim).
9. Red Pheasant submitted a claim to the Minister of Indigenous and Northern Affairs, now the Minister of Crown-Indigenous Relations (the Minister) on March 12, 2014. On March 9, 2017, the Minister advised Red Pheasant of her decision to negotiate the Claim.
10. On February 7, 2020, the Minister consented in writing to the filing of the Claim with the Tribunal. As such, section 16(1)(c) of the *SCTA* is satisfied.

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

11. Canada admits the Claim discloses a valid claim under section 14(1)(a) of the *SCTA* on the grounds that Canada failed to provide some of the agricultural implements and livestock that were promised to Red Pheasant under Treaty 6, as pled at paragraphs 7-8 of the Claim.
12. Canada made good faith efforts to comply with its obligations to provide Red Pheasant with the agricultural benefits promised in Treaty 6. However, Canada acknowledges that not all of the promised agricultural implements and livestock were provided to Red Pheasant. Canada and Red Pheasant do not agree on either the extent of Canada's obligations under Treaty 6, or the extent of agricultural benefits that Red Pheasant received.
13. Canada provided Red Pheasant with access to agricultural instruction, but says that agricultural instruction was not included in the text of Treaty 6.

14. The validity of the Claim is limited to the matters admitted in paragraphs 11 and 12 of this Response, and in all other matters, the Claim does not disclose a valid claim under the *SCTA*.
15. Canada agrees that the Claimant is entitled to compensation under section 20(1)(c) of the *SCTA*, based on the extent of the shortfall of agricultural benefits which is to be determined.
16. Canada relies on section 20(3) of the *SCTA* and the application of set-off for any benefits received by Red Pheasant from Canada in relation to the subject matter of this Claim.

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

17. Canada and Red Pheasant generally agree on the historical documentary evidence that is relevant to this claim. Where historical allegations of fact from the Claim are not wholly admitted in this Response, it is generally based on a characterization of the facts alleged, or on the imputed legal effect of the facts alleged, not on a denial of the underlying facts. Canada proposes that the Parties develop an agreed statement of facts early in the process.

Treaty 6 and Canada's Promise to Provide Treaty Benefits

18. Canada admits that Red Pheasant is a "First Nation" within the meaning of section 2(a) of the *SCTA* and a "band" within the meaning of Treaty 6 and section 2(1) of the *Indian Act*, as pled in paragraph 1 of the Claim. Canada also admits that Red Pheasant is located south of North Battleford in the Province of Saskatchewan, as pled in paragraph 1 of the Claim.
19. Canada admits that, in 1876, it entered Treaty 6 with certain Plains and Woods Cree bands in what is now central Saskatchewan. Among other things, Treaty 6 provided for yielding up of aboriginal title to 121,000 square miles of land in exchange for various promises and benefits, as pled in paragraph 9 of the Claim.

20. Canada admits that Treaty 6 contains the provisions for reserve lands and agricultural benefits set out in paragraph 10 of the Claim.
21. Canada admits that Red Pheasant adhered to Treaty 6 on August 23, 1876 near Fort Carlton, as pled in paragraph 11 of the Claim.

Implementation of the Treaty Promises

22. Canada admits that following the execution of Treaty 6, its treaty commissioners informed Canada that many of the Cree signatories had commenced cultivating the lands selected for reserves, and were anxious to receive the agricultural implements and livestock as soon as convenient. Canada further admits that the treaty commissioners informed Canada of the importance of early fulfillment of the treaty promises, as pled in paragraph 12 of the Claim. The treaty commissioners noted that early fulfillment would assist in obtaining the future adherence of any bands who were absent from treaty negotiations that year.
23. Canada admits that Red Pheasant Indian Reserve No. 108 (Red Pheasant Reserve) was surveyed in August 1878, as pled in paragraph 13 of the Claim, with the survey being executed on November 27, 1878.
24. Canada admits that in the spring of 1878 Red Pheasant commenced farming on the land that became Red Pheasant Reserve, and further admits that Red Pheasant had 20 acres cultivated by 1878, 51 acres by 1880 and 170 acres by 1884, as pled in paragraph 13 of the Claim.
25. In response to paragraph 14 of the Claim, Canada says it provided significant agricultural assistance both under Treaty 6 and beyond the obligations set out in Treaty 6 to assist Red Pheasant's transition to an agricultural economy, including significant and timely farming instruction. Canada further says that in the years following the survey of Red Pheasant Reserve, Red Pheasant enjoyed substantial success in its agricultural pursuits.

26. Canada admits that the Governor General met with a councillor from Red Pheasant in the fall of 1881, as pled in paragraph 15 of the Claim. Canada further admits the councillor requested additional farming implements and cattle, and raised concerns about Red Pheasant's capacity to repair broken implements.
27. In response to paragraph 16 of the Claim, Canada says that the amount of funding provided for treaty agricultural benefits varied each year, and at times was reduced to reflect decreasing obligations, as many of the promises were made on a "once and for all basis." Canada says that any alleged impact of treaty funding fluctuations on bands who are not party to this claim is not relevant.
28. Canada admits that in 1884, a group of Cree Chiefs in Treaty 6 territory expressed grievances to Canada regarding the provision of Treaty 6 benefits, as pled in paragraph 17 of the Claim. Canada admits the grievances included concerns about the number of cattle provided, the quality of livestock received, and a lack of agricultural implements provided, and included concerns regarding some implements they assert were not provided that were interdependent with items provided, rendering the provided items useless.
29. In further response to paragraphs 14 and 17 of the Claim, Canada says that the grievances were shared with appropriate officials and investigated. Where warranted, farming implements were replaced or repaired.
30. Canada admits that in March 1885, the Northwest Rebellion (the Rebellion) commenced when Louis Riel declared a provisional government at Batoche, as pled in paragraph 18 of the Claim.
31. In response to paragraphs 18 and 24(d) of the Claim, Canada admits that, following the Rebellion, Canada determined that members of Red Pheasant were involved in the Rebellion, and levied the replacement cost of agricultural implements, tools and livestock that were lost or damaged during the Rebellion against Red Pheasant. Canada denies there was an absence of evidence to confirm Red Pheasant members were involved as determined.

32. In response to paragraphs 19 and 24(a) of the Claim, Canada says that in the decades subsequent to Treaty 6, Canada implemented a number of practices and policies with a view to assisting First Nations in their transition to an agricultural economy. The implementation and impact of any of these practices or policies on the agricultural success of Red Pheasant is unclear.
33. Canada admits that Red Pheasant did not receive the full complement of agricultural implements and livestock promised under Treaty 6, as pled in paragraph 20 of the Claim. In response to the balance of paragraph 20 of the Claim, Canada says that it provided significant and timely assistance both under Treaty 6 and beyond the obligations set out in Treaty 6 to assist Red Pheasant's transition to an agricultural economy in fulfillment of its obligations.

Canada's promise of three years of additional agricultural provisions

34. In response to paragraphs 21 and 22(c) of the Claim, Canada says that for three years Red Pheasant received its share of the distribution of \$1000.00 of agricultural provisions promised in Treaty 6.

Basis in Law for asserted breaches

35. In response to paragraph 22(a) and 23 of the Claim, Canada admits that Red Pheasant did not receive the full complement of agricultural implements and livestock promised under Treaty 6.
36. In response to paragraph 22(b) of the Claim, Canada provided Red Pheasant with access to agricultural instruction, but says that agricultural instruction was not included in the text of Treaty 6.
37. In further response to paragraph 23 of the Claim, Canada says that except as admitted in this Response, Canada provided the agricultural benefits to Red Pheasant in compliance with the terms of Treaty 6 and with a view of assisting Red Pheasant in its transition to an agricultural economy, thus fulfilling the purpose and intent of the obligation.

38. In response to paragraphs 24, 25 and 27, Canada says it acted honourably when negotiating and implementing Treaty 6, and with respect to providing agricultural benefits set out in Treaty 6 to Red Pheasant. Canada further says the honour of the Crown is not an independent cause of action.
39. In response to paragraphs 24(b) and (e) of the Claim, Canada says that Red Pheasant used surplus earnings from agriculture and other economic activities to privately purchase additional livestock and agricultural supplies beyond the requirements of Treaty 6.
40. In response to paragraph 24(c) of the Claim, Canada says it investigated concerns or inquiries of Red Pheasant regarding its agricultural provisions, and replaced or repaired farming implements where appropriate.
41. In response to paragraph 26, Canada says while there are gaps in the historical record, there is extensive evidence regarding the provision of treaty benefits, records of monies spent and livestock provided to Red Pheasant. Canada further says that the existence of gaps in the historical record does not mean the records were not kept, do not exist, or that treaty benefits were not provided.

IV. Canada's Statements of Fact

42. Chief Pee-yahn-kah-nichk-oo-sit (Chief Red Pheasant) signed Treaty 6 on behalf of himself and his followers at Fort Carleton in 1876.
43. At the time of Treaty 6, Chief Red Pheasant and his followers lived near the Battle River and engaged in small-scale agriculture.
44. Chief Red Pheasant informed Canada that he wished a reserve to be located in the Eagle Hills. Red Pheasant members had relocated to the Eagle Hills and began cultivating land by the spring of 1878.

45. Red Pheasant Reserve was surveyed in 1878, and confirmed by Order in Council in 1889.
46. Beginning in 1878, Canada expended money and provided agricultural implements, seed and livestock to Red Pheasant to support its transition to a diverse economy including agriculture.
47. Canada hired a farming instructor to supervise Red Pheasant Reserve beginning in 1879 and provided access to farming instruction to Red Pheasant for many years.
48. Red Pheasant band members proved themselves to be successful farmers.
49. Red Pheasant continued to engage in agricultural pursuits, and Canada continued to provide assistance both in accordance with the terms of Treaty 6 and beyond the terms of the Treaty when it was considered appropriate. Canada investigated concerns or inquiries of Red Pheasant regarding its agricultural needs and provided assistance as Canada deemed appropriate.
50. Despite Canada's efforts to provide all agricultural benefits due to Red Pheasant under Treaty 6, Canada admits that some itemized implements and livestock were not provided. In particular, Canada admits that the Band was not provided with the whetstones, the reaping hooks, the cross-cut saw, the hand-saw, the pit-saw, the auger, the boar, and the two sows promised under Treaty 6. Furthermore, Canada admits that it did not distribute a sufficient amount of the treaty benefits that were to be provided to cultivating families on Red Pheasant. As such, there was a shortfall in agricultural benefits from what was promised under Treaty 6.

V. Relief

51. Canada admits that Red Pheasant has a valid claim for compensation as set out in paragraphs 11 and 12 of this Response.

52. Canada seeks the following relief:

- a. Dismissal of the Claims set out in the Amended Declaration of Claim, except as admitted in paragraphs 11 and 12 of this Response;
- b. Costs; and
- c. Such further relief as this Honourable Tribunals deems just.

VI. Communication

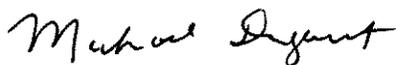
53. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Michael Digout and Patricia Warwick

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

55. Email address for service is: sasSCT-5010-19-redpheasant@justice.gc.ca

Dated this 19th day of March, 2020.



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