

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	October 24, 2014	D E P O S É
Nicholas Young		
Ottawa, ON	28	

THE STONEY INDIAN BAND, a.k.a. STONEY NAKODA NATION

Claimant

v.

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

Respondent

AMENDED RESPONSE
TO THE AMENDED DECLARATION OF CLAIM
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: Allyson F. Jeffs
Karine De Champlain
Ackroyd LLP
Solicitor for the Claimant
1500, 10665 Jasper Avenue
Edmonton, AB T5J 3S9

Phone (780) 412-2708 / (780) 412-2723
Fax (783) 423-8946
Email ajeffs@ackroydlaw.com
kdechamplain@ackroydlaw.com

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 Amended Declaration of Claim (the "Claim") filed by the Stoney Indian Band, a.k.a. Stoney Nakoda Nation with the Specific Claims Tribunal (the "Tribunal") on January 11, 2013 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim relates to land owed to the Stoney Indian Band, a.k.a. Stoney Nakoda Nation (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 Band 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 Band has suffered any damages.
 6. In the alternative, 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))**
7. The Crown admits paragraph 10 of the Claim.

8. The Crown states that with respect to paragraph 9 and paragraphs 20 to 27, the statements made are legal argument.
9. The Crown denies the statements made in paragraph 13, 16, 17, 18, and 19 of the Claim.
10. With respect to paragraph 11, 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.
11. With respect to paragraph 12, 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.
12. With respect to paragraph 14, the Crown admits only 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 ^ . The Crown denies the remaining statements in paragraph 14 of the Claim.
13. With respect to paragraph 15, the Crown admits that by Order-in-Council 1151 dated May 17, 1889, ^ 69,760 acres ^ were ^ confirmed 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.
14. With respect to paragraph 27, Treaty No. 7 was a written agreement duly signed by the Stoney Band and the Crown. The Crown denies that any additional terms or oral terms or representations form part of Treaty No. 7 as alleged or at all.

15. In further response to paragraphs 21 to 27, the Crown does not accept the calculation of the TLE nor the calculation of the shortfall.

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

16. 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.
17. 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.
18. It was a further term of Treaty No. 7 that the reserves of the Stoney Band shall be located in the vicinity of Morleyville.
19. Reserves for the Stoney Band were first surveyed in September 1879 (the "date of first survey") ^ and again in 1888. By Order in Council 1151-1889, 69,760.0 acres of land were confirmed for the Stoney Band as Indian Reserves 142, 143 and 144.
20. Further reserves were set aside for the Stoney Band from time to time after that date.
21. A Settlement Agreement, dated for reference January 29, 1999, was entered into between Her Majesty the Queen in Right of Canada and the Stoney Indian Band. The Settlement Agreement provided that Canada and the Stoney Indian Band agreed to settle all facts, matters and issues arising or resulting from the Stoney

Indian Band's claim pertaining to the alienation of 320 acres of the Stoney Indian Band's reserve in 1889, following a re-survey of the reserve in 1888. That Settlement Agreement is registered as P.C. 1999-571.

22. With respect to Indian Reserves 142, 143 and 144, the Stoney Band received a total of 70,080 acres of land pursuant to Treaty No. 7, as follows:
- a. 69,760 acres confirmed by Order in Council 1151, dated May 17, 1889, and
 - b. The equivalent of 320 acres pursuant to a Settlement Agreement registered as P.C. 1999-571 and dated for reference January 29, 1999.

IV. Relief (R. 42(f))

23. With respect to Indian Reserves 142, 143 and 144, the Stoney Band received a total of 70,080 acres of land pursuant to Treaty No. 7, as follows:
- a. 69,760 acres confirmed by Order in Council 1151, dated May 17, 1889, and
 - b. The equivalent of 320 acres pursuant to a Settlement Agreement registered as P.C. 1999-571 and dated for reference January 29, 1999.
24. The Crown seeks to have the claim dismissed in its entirety.
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:

Ursula M. Tauscher
Department of Justice Canada
300, 10423 – 101 Street
Edmonton, Alberta T5H 0E7
Phone: (780) 495-7153
Fax: (780) 495-2964
Email: ursula.tauscher@justice.gc.ca

Sherry Daniels
Department of Justice Canada
300, 10423 – 101 Street
Edmonton, Alberta T5H 0E7
Phone: (780) 495-6478
Fax: (780) 495-2964
Email: sherry.daniels@justice.gc.ca

Dated this 14th day of October, 2014.

William F. Pentney
Deputy Attorney General of Canada


Ursula M. Tauscher /
Sherry Daniels
Solicitors for the Respondent
Department of Justice Canada