

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D E P O S É
January 7, 2022		
Susie Thorsley		
Ottawa, ON		6

**BIRCH NARROWS FIRST NATION and
BUFFALO RIVER DENE NATION**

Claimants

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

As represented by the Minister of Crown-Indigenous Relations and Northern Affairs
Canada

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: Birch Narrows First Nation and Buffalo River Dene Nation
As represented by Glenn Epp and Eric Pentland
Ackroyd LLP
1500 First Edmonton Place
10665 Jasper Avenue
Edmonton, AB T5J 3P7
Phone: (780) 412-2704 and (780) 412-2721
Fax: (780) 423-8946
Email: gepp@ackroydlaw.com and epentland@ackroydlaw.com

Overview

1. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership; and Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. 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.
3. Birch Narrows First Nation (BNFN) and Buffalo River Dene Nation (BRDN) are First Nations within the meaning of the *Specific Claims Tribunal Act (SCTA)*. Canada acknowledges that BNFN and BRDN are successors to the Clear Lake Band as a result of Clear Lake's split in 1972. Clear Lake Band adhered to Treaty No. 10 in 1906 and BNFN and BRDN are entitled to take the benefit of Treaty No. 10 as successors to the Clear Lake Band, including the Crown's promise to set aside 128 acres of reserve land per person.
4. Canada says that it fulfilled its Treaty Land Entitlement (TLE) obligations to Clear Lake Band and therefore to BNFN and BRDN under the terms of Treaty No. 10.

I. Status of Claim

5. Canada admits the requirements in section 16 of the *SCTA* are satisfied, as pled in paragraphs 3 through 6 of the Declaration of Claim.
6. The First Nations submitted a TLE claim to the Minister of Indian and Northern Affairs Canada (the Minister) on February 8, 2001, before the *SCTA* came into force. Canada admits that pursuant to section 42(1) of the *SCTA*, the claim is deemed to have been filed with the Minister in accordance with section 16 of the *SCTA*.

7. In 2010, the Minister notified the First Nations in writing of the decision to not negotiate the First Nations' TLE claim. Canada acknowledges that this decision satisfies the requirements of section 16(1)(a) of the *SCTA* and the specific claim is validly before the Tribunal.

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

8. Canada has complied with its treaty and fiduciary obligations in the setting apart of a reserve for the First Nations in a fair and timely manner. Canada fulfilled its TLE obligations to Clear Lake Band and therefore to successors of the Clear Lake Band under the terms of Treaty No. 10. As such, the facts do not establish a valid claim under the *SCTA*.

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

9. The material facts related to this claim are not in dispute. Where allegations of fact from the Declaration of Claim are not wholly admitted in the Response, it is generally based on a characterization of the facts alleged, not on a denial of the underlying facts. Canada intends to propose that the Parties develop an agreed statement of facts early in the process.

Surveying and Setting Aside Reserve Lands

10. In response to paragraph 12 of the Claim, Canada does not currently have information to deny or confirm that the Clear Lake Band requested that reserve land be set aside for them, at the latest, in 1921.
11. In response to paragraphs 13 and 14 of the Claim, Canada does not currently have information to deny or confirm that WA McMaster was appointed to survey reserve land for the Clear Lake Band in the spring of 1923, that he commenced surveying lands in June 1923, and that he completed his surveys by September 8, 1923.

12. In response to paragraph 15 of the Claim, Canada admits that WA McMaster surveyed three reserves for the Clear Lake Band:
 - a) 26,450 acres as Peter Pond no. 193;
 - b) 395 acres as Churchill Lake no. 193A; and
 - c) 231 acres as Turnor Lake no. 193B.

13. In response to paragraphs 16 and 17 of the Claim, Canada admits that these three reserves were set aside for the Clear Lake Band by Orders-in-Counsel dated 23 January 1930; and that an additional 3.78 acres was set aside for the Claimants (at that time called the Peter Pond Lake Band) by Order-in-Counsel dated 23 July 1965.

14. In response to paragraph 18 of the Claim, Canada admits that in 1972, the Peter Pond Lake Band was divided into the Peter Pond Lake Band (now BRDN) and Turnor Lake band (now BNFN). BRDN and BNFN split their existing 27,079.78 acres of reserve land. Canada does not currently have information to deny or confirm whether additional reserve lands were set aside.

Treaty Land Entitlement Population

15. In response to paragraph 19 of the Claim, Canada does not currently have information to deny or confirm that 210 people were paid Treaty annuities as members of the Clear Lake Band on or about 17 June 1922, and that an additional three members were absent for the payment of annuities.

16. In response to paragraph 20 of the Claim, Canada admits that 206 people were paid Treaty annuities as members of the Clear Lake Band on or about 27 June 1923, and that one additional member was absent for the payment of annuities.

17. In response to paragraph 21 of the Claim, Canada does not currently have information to deny or confirm that after WA McMaster's surveys there were a number of late adherents to the Clear Lake Band.

18. In response to paragraph 22 of the Claim, Canada does not currently have information to deny or confirm that from the date of the surveys through 1965 there were, at least, 29 adherents (individuals who had not yet taken Treaty)

and landless transfers (individuals who had transferred from other band, but who had not yet been included in any other band's TLE calculations), including marriages (individuals who had joined the band through marriage, but had not been counted elsewhere in a TLE calculation).

19. In response to paragraph 25 of the Claim, Canada states that the implementation of TLE policy has been updated since the time of the payroll analysis, in order to respond to gender-based changes to the *Indian Act* (Bills C-31, C-3 and S-3). Canada currently does not have information to confirm the number of women who may be eligible to be counted in the entitlement population.

IV. Canada's statements of fact

20. Canada's position is that the Date of First Survey (DOFS) generally represents the date upon which Canada's obligation to provide land pursuant to Treaty is crystalized. The first survey of the Clear Lake Band was completed in July 1923. The annuity payroll dated 27 June 1923, being the payroll closest in time to the DOFS, is the most appropriate payroll from which to begin the assessment of the First Nations' eligible TLE membership.

21. Canada calculated a DOFS population of 183. Canada included one Late Addition.

22. Based on an adjusted DOFS of 184 persons (1923 eligible DOFS membership plus eligible Late Addition), the BNFN and BRDN have a surplus of 3,527.78 acres. No shortfall exists.

- 1923 eligible DOFS population (base payroll, arrears, and absentees): 183
- Eligible Late Additions (including Landless Transfers and Non-Treaty Women): 1
- Total: 184 individuals

23. Treaty No. 10 provides for a land entitlement of 128 acres per person. Four Orders-in-Counsel (OICs), dated 1930 and 1965, set aside Reserves Nos. 193, 193A, 193B, and 193 Addition, containing a total of 27,079.78 acres, for the Clear Lake Band. This land was sufficient for 211.56 individuals.

Reserve	Confirmation	Original Survey Plan (acres)
Peter Pond IR 193	O.C.P.C. 150 (1930)	26,450.00
Churchill Lake IR 193A	O.C.P.C. 144 (1930)	395.00
Turnor Lake IR 193B	O.C.P.C 151 (1930)	231.00
Peter Pond IR 193 Addition	O.I.C. 1311 (1965)	3.78
Total		27,079.78 acres

24. Canada states it appears there was no treaty land entitlement shortfall for the Clear Lake Band and therefore no treaty land entitlement shortfall for its successor First Nations.

V. Relief

25. Canada seeks the following relief:

- a. Dismissal of the Claims set out in the Declaration of Claim;
- b. Costs; and
- c. Such further relief as this Honourable Tribunal deems just.

VI. Communication

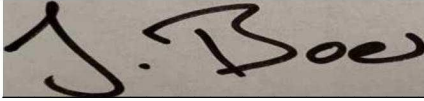
26. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Judith Boer

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

28. Email address for service is: SCT-5003-21@justice.gc.ca.

Dated this 6th day of January 2022.

A rectangular area containing a handwritten signature in black ink. The signature appears to be 'J. Boer' written in a cursive style.

ATTORNEY GENERAL OF CANADA

Department of Justice

Prairie Region (Saskatoon)

410 – 22nd Street East, Suite 410

Saskatoon, SK S7K 5T6

Fax: (306) 975-4030

Per: Judith Boer

Tel: (306) 518-0738 and (306) 518-0741

E-mail address: SCT-5003-21@justice.gc.ca

Counsel for the Respondent