

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SWAN RIVER FIRST NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	March 12, 2013	D É P O S É
Amy Clark		
Ottawa, ON	5	

Claimant

v.

HER MAJESTY THE QUEEN IN 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 Crown's Response to Declaration of Claim SCT-6005-12 ("SRFN's Claim") filed by the Swan River First Nation ("SRFN") with the Specific Claims Tribunal ("Tribunal") on December 12, 2012 pursuant to the *Specific Claims Tribunal Act* ("*Act*").
2. SRFN alleges that Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development ("Crown") has refused or failed to provide SRFN with certain agricultural benefits under Treaty No. 8 ("Claimed Benefits").

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

3. SRFN's Claim was received by the Crown on October 1, 2008, with additional documentation provided on April 17, 2009, and was filed with the Minister of Indian Affairs and Northern Development (the "Minister") on July 8, 2009.
4. By letter dated August 6, 2009 SRFN was informed that it would receive further notification as to whether SRFN's Claim would be accepted for negotiation.
5. On June 26, 2012 SRFN was informed that SRFN's Claim was not being accepted for negotiation.
6. The criteria contained in section 16(1)(a) of the *Act* are met and SRFN's Claim is validly before the Specific Claims Tribunal.

II. Validity of Claim (R. 42(b) and (c))

7. For the purposes of its Claim SRFN relies on s. 14(1)(a) of the *Act*:

a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or other agreement between the First Nation and the Crown.
8. The Crown does not admit that it failed to supply SRFN with the Claimed Benefits or that SRFN has suffered any damages. Canada has fully discharged any Treaty No. 8

agricultural benefit obligation that may be owed to the SRFN in that the SRFN has received its full complement of Treaty agricultural benefits as set out in Treaty No. 8.

9. Further, the Crown does not accept, and specifically denies, the validity of the allegations set out in SRFN's Claim.
10. In the alternative, if the Tribunal should find SRFN's Claim to be valid, paragraphs 20(1)(b) and (c) of the *Act* may provide a basis for the Tribunal to award compensation in respect of SRFN's Claim. None of sections 20(1)(e) to (h) of the *Act* provide the basis for the Tribunal to award compensation.
11. Further, and in the alternative, the Crown specifically pleads section 20(3) of the *Act* and the application of set-off.
12. Further, and in the alternative, the Crown specifically pleads section 15(4)(a) and (b) of the *Act*.

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

13. Unless expressly admitted or accepted in this Response, the Crown denies each and every fact alleged in SRFN's Claim. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts alleged in paragraphs in paragraphs 10, 17, 22 and 23.
14. The Crown admits that SRFN is a First Nation within the meaning of the *Act*, as pleaded in paragraph 1 of SRFN's Claim.
15. The Crown admits the facts set out in paragraphs 8, 13, 14, 18, 20 and 21 of SRFN's Claim.
16. In response to paragraph 7, the Crown admits only that: Treaty No. 8 was signed by Cree Chief Keenooshayoo and five Headmen at Lesser Slave Lake on June 21, 1899

on behalf of Chief Keenooshayoo's Band; at the time of signing of Treaty No. 8, Chief Keenooshayoo Bands' members resided in several communities located in the Lesser Slave Lake region; SRFN is one of the successor Bands of Chief Keenooshayoo's Band on whose behalf Treaty No. 8 was executed.

17. In response to paragraph 9, the Crown admits only that Treaty No. 8 contains the clauses referred to by which the Crown agreed to provide certain benefits described in Treaty No. 8. The Crown says its obligation was to provide the benefits once and for all. The remaining statements are not allegations of fact; rather, they constitute legal argument.
18. In response to paragraph 11, the Crown admits only that it was a term of Treaty No. 8 that reserves be allocated to such Bands "as desire reserves" of one square mile (640 acres) for each family of five persons, or in that proportion for larger or smaller families. This works out to 128 acres per eligible person. Notwithstanding this admission, the facts alleged in paragraph 11 are irrelevant to SRFN's Claim.
19. In response to paragraph 12 of SRFN's Claim, the Crown admits only that the Report of Commissioners for Treaty No. 8 includes the following excerpt:

...In addition to the annuity, which we found it necessary to fix at the figures of Treaty Six, which covers adjacent territory, the treaty stipulates that assistance in the form of seed and implements and cattle will be given to those of the Indians who may take to farming, in the way of cattle and mowers to those who may devote themselves to cattle-raising, and that ammunition and twine will be given to those who continue to fish and hunt. The assistance in farming and ranching is only to be given when the Indians actually take to these pursuits, and it is not likely that for many years there will be a call for any considerable expenditure under these heads. The only Indians of the territory ceded who are likely to take to cattle-raising are those about Lesser Slave Lake and along the Peace River, where there is quite an extent of ranching country; and although there are stretches of cultivable land in those parts of the country, it is not probable that the Indians will, while present conditions obtain, engage in farming further than the raising of roots in a small way, as is now done to some extent. In the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake

will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.

Notwithstanding this admission, the text of Treaty No. 8 speaks for itself. Further, the facts alleged in paragraph 12 are irrelevant to SRFN's Claim.

20. In response to paragraph 15, the Crown admits only that in 1910 families and individuals who had selected Swan River as their desired settlement location began to move to IR 150 E.
21. In response to paragraph 16, the Crown admits only that the survey of IR 150 E at Swan River ("Swan River") and survey of IR 150 F at Assineau River ("Assineau River") were completed in 1912. The Crown has no knowledge of the remainder of the facts at paragraph 16.
22. In response to paragraph 17, the Crown admits only that in 1910, for reasons of administrative convenience, the Indian Agent at Lesser Slave Lake Agency placed the Indians of Chief Keenooshayoo's Band on separate pay-lists organized in accordance with the residential locations of each component group of Chief Keenooshayoo's Band.
23. In response to paragraph 19, the Crown admits only that, by Order in Council P.C. 2505 dated December 18, 1922, 177 acres of land were set aside as Assineau Indian Reserve No. 150 F for the members of Keenooshayoo's Band resident at Swan River and Assineau River. By Order in Council P.C. 508 dated April 4, 1925, 11,064.14 acres of land were set aside as Swan River Indian Reserve No. 150E. Notwithstanding this admission, it is the Crown's position that the number of acres of land set aside for IR 150 F and IR 150 E is irrelevant to SRFN's Claim.
24. In response to paragraph 22, the Crown admits only that Chief Keenooshayoo's Band resident at Swan River and Assineau River, and, or, the successor Bands of Chief Keenooshayoo's Band resident at Swan River and Assineau River made purchases of agricultural livestock, seed and implements with money from Band accounts. The

Crown did not count these purchases towards the fulfillment of the Crown's obligation to provide the Claimed Benefits.

25. In response to paragraph 23, the Crown states that the facts alleged in paragraph 23 are irrelevant to SRFN's Claim.
26. In response to paragraph 24, the Crown denies that the obligation to provide the Claimed Benefits to members of Chief Keenooshayoo's Band or to members of successor Bands of Chief Keenooshayoo's Band resident at Swan River and Assineau River arose in the period between 1910 and 1912. The remaining statements are not allegations of fact; rather, they constitute legal argument.
27. In response to paragraph 25, and in response to SRFN's Claim as a whole, the Crown states that the provision of the Claimed Benefits to Chief Keenooshayoo's Band discharged the Crown's obligation to provide the Claimed Benefits to Chief Keenooshayoo's Band and also discharged the Crown's obligation to provide the Claimed Benefits to the successor Bands of Chief Keenooshayoo's Band, including Chief Keenooshayoo's Band resident at Swan River and Assineau River, and to successor Bands, including SRFN.
28. Additionally or alternately, in response to paragraph 25 and in response to the Claim as a whole, the Crown discharged any obligation to provide the Claimed Benefits to the successor Bands of Chief Keenooshayoo's Band, including Chief Keenooshayoo's Band resident at Swan River and Assineau River, and including SRFN, when the Lesser Slave Lake Indian Agency provided the Claimed Benefits to Chief Keenooshayoo's Band and, or, to Chief Keenooshayoo's Band resident at Swan River and Assineau River, and, or, to the successor Bands of Chief Keenooshayoo's Band resident at Swan River and Assineau River on or about 1911 and over the course of subsequent years.

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

29. Treaty No. 8 was made and concluded in 1899. The text of Treaty No. 8 sets out accurately the Benefits to which Chief Keenooshayoo's Band is entitled:

Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller and larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing. (the "Benefits")

30. Upon entering into Treaty No. 8 with Chief Keenooshayoo's Band and thereafter, the Crown provided the Claimed Benefits to: Chief Keenooshayoo's Band; the successor Bands of Chief Keenooshayoo's Band (including Swan River Band and its successor, SRFN); individual Indians who were members of Chief Keenooshayoo's Band; and, individual Indians who were members of successor Bands of Chief Keenooshayoo's Band.
31. The Crown provided the Claimed Benefits and, or, benefits including, but not limited to, ammunition and twine; enough seed to plant land actually broken up for cultivation; agricultural tools and implements; and support with the cultivation of lands and agricultural efforts through the Lesser Slave Lake Indian Agency.

32. As of 1912, the families and individuals living at Swan River had several good gardens, a few farm implements and some good horses. As well, the families and individuals living at Swan River were given a few cattle during that year.
33. As of 1913, the families and individuals living at Swan River were involved in hunting, fishing, raising stock, keeping gardens and selling hay. As well, the families and individuals living at Swan River had some horses, a few cattle and a few farm implements.
34. By 1914, all of the successor Bands of Chief Keenooshayoo's Band in the Lesser Slave Lake region had horses.

V. (Relief Sought by the Crown (R. 42(f)))

35. The Crown seeks to have the claim dismissed in its entirety.
36. The Crown seeks its costs in the proceedings.
37. The Crown seeks to have deducted from the amount of compensation, if any is awarded and payable, the value of any benefit received by the members of Keenooshayoo's Band, or, alternately, the value of any benefit received by members of Keenooshayoo's Band resident at Swan River and Assineau, or its successor Band, including SRFN, in relation to the Claimed Benefits.
38. SRFN has not restricted its claim to monetary compensation as required by section 15(4)(a) and (b) of the *Act*. The Crown seeks to have SRFN's claim for relief in the nature of provisions, expertise and capital dismissed.
39. Such further relief as this Honourable Tribunal deems just.

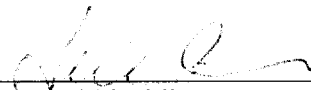
VI. Communication (R. 42(g))

40. The Respondent's email addresses for service of documents are:

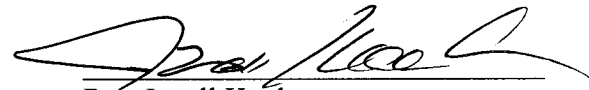
sukhi.sidhu@justice.gc.ca and janell.koch@justice.gc.ca.

Dated this 12th day of March, 2013.

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