

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D E P O S E
March 6, 2020	
Dragisa Adzic	
Ottawa, ON	5

SCT File No.: SCT-6002-19

**SPECIFIC CLAIMS TRIBUNAL**

**BETWEEN:**

ENOCH CREE NATION #440

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by the Minister of Crown-Indigenous Relations

Respondent

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**RESPONSE**

**Pursuant to Rule 42 of the  
*Specific Claims Tribunal Rules of Practice and Procedure***

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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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Counsel for the Claimant  
Enoch Cree Nation #440

## **I. Overview**

1. The Respondent, Her Majesty the Queen in right of Canada (“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 acknowledges these principles as it attempts to assist the Specific Claims Tribunal (“Tribunal”) in adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada is open to using the processes of the Tribunal to facilitate the resolution of issues and to narrow the matters for determination.
3. Canada acknowledges that the Enoch Cree Nation #440 (“Enoch Cree Nation”) is an adherent to Treaty No. 6 and is entitled to treaty benefits, including those related to agriculture.
4. The Enoch Cree Nation’s Declaration of Claim asserts that Canada breached its obligations under Treaty No. 6, as well as its fiduciary, trust, and honourable obligations by failing to provide the Enoch Cree Nation with treaty benefits relating to agriculture.
5. Canada states that it provided the benefits to the Enoch Cree Nation in accordance with its treaty commitment.

## **II. Status of Claim (R. 42(a))**

6. Canada admits that the requirements in section 16(1)(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“*SCTA*”) are satisfied as pleaded in paragraphs 2 to 5 of the Declaration of Claim.
  - a. Enoch Cree Nation filed its specific claim with the Minister of Indian Affairs and Northern Development, now the Minister of Crown-Indigenous Relations (“Minister”), on October 16, 2008.
  - b. On September 23, 2011, Canada informed the Enoch Cree Nation that the Minister had decided not to accept the specific claim for negotiation, which satisfies the requirements of section 16(1)(a) of the *SCTA*.

## **III. Canada’s Position Regarding the Validity of the Claim (R. 42(b) and (c))**

7. Canada does not accept the validity of the claim set out in the Declaration of Claim.
8. Canada denies that it breached Treaty No. 6 or any fiduciary duties in the provision of agricultural benefits to the Enoch Cree Nation.
9. If the Tribunal should find that the claim of the Enoch Cree Nation is valid, Canada states that:
  - a. Sections 20(1)(a) to (c) of the *SCTA* may provide the basis for the Tribunal to award compensation.
  - b. This would be subject, however, to any applicable deduction or set-off from such compensation calculated in accordance with section 20(3) of the *SCTA*.

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

***Pleading of Evidence***

10. In response to the whole of the Declaration of Claim, and to paragraphs 14 – 22 in particular, Canada states that the Enoch Cree Nation has pleaded evidence contrary to Rule 39 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Despite this, Canada has attempted to respond to the Declaration of Claim in a substantive manner.

***Enoch Cree Nation***

11. In response to paragraph 1 of the Declaration of Claim, Canada acknowledges that the Enoch Cree Nation is an adherent to Treaty No. 6, is a “band” within the meaning of section 2(1) of the *Indian Act*, RSC 1985, c I-5, and is a “First Nation” within the meaning of section 2 of the *SCTA*.

***Treaty No. 6***

12. In response to paragraph 9 of the Declaration of Claim, Canada admits that, in 1876, it entered into Treaty No. 6 with certain Plain and Wood Cree and other Tribes in what is now central Saskatchewan and Alberta.
13. In further response to paragraph 9 of the Declaration of Claim, Canada says by the terms of Treaty No. 6, the Indigenous signatories exchanged Aboriginal title to approximately 121,000 square miles of land for certain promises and benefits.
14. In response to paragraph 10 of the Declaration of Claim, Canada admits that Treaty No. 6 contains provisions for reserve lands and agricultural benefits.
15. Canada agrees with paragraph 11 of the Declaration of Claim that Treaty No. 6 was originally signed in 1876.

16. Canada acknowledges that the Enoch Cree Nation adhered to Treaty No. 6 by way of its conduct.
17. In response to paragraph 12 of the Declaration of Claim, Canada admits that:
  - a. In or about 1880, Edgar Dewdney, Commissioner of Indian Affairs (“Commissioner Dewdney”) made arrangements with Tommy le Potac, also referred to as Tommy La Potac (“Tommy le Potac”) that: (i) if he could gather together a large number of Indians living around Edmonton, and claiming no Chief; ii) then, Commissioner Dewdney would recommend that Tommy le Potac be placed in charge of this group, and that this group would be given a reserve.
  - b. In or about August 1883, the Acting Deputy of the Superintendent General of Indian Affairs reported to the Superintendent of Indian Affairs that (i) Commissioner Dewdney was satisfied with the manner in which Tommy le Potac had carried out his share of the arrangement; and (ii) Commissioner Dewdney recommended that the lands chosen by Tommy le Potac be set apart as a reserve.
  - c. The 1881 Annual Report of the Department of Indian Affairs listed “Tommy la Potack” under Farm No. 17.
18. In response to paragraph 13 of the Declaration of Claim, Canada admits that, in or about September 1882, certain individuals received annuities pursuant to Treaty No. 6, under the “Tommy LePotac Band” (later known as the Enoch Cree Nation).

***Implementation of Treaty No. 6 – Agricultural Benefits***

19. In response to paragraph 14 of the Declaration of Claim, Canada states that the Cree Chiefs sought a treaty, at least in part, to transition to an agricultural way of life. Canada states that its purposes for entering into Treaty No. 6 are set out in the

text of the treaty itself, and included opening up land for settlement, and exchanging land for various promises and benefits, including entitlement to reserve lands.

20. In response to paragraph 15 of the Declaration of Claim, Canada is not aware of the reduction of funding and its impact on the progress achieved by a number of First Nations who were farming. Canada states, however, that in the 1883 Annual Report, Indian Agent William Anderson reported that “Tommy le Potack’s” band had done remarkably well for the short time they have been on their reserve.
21. In response to paragraph 16 of the Declaration of Claim, Canada admits that:
  - a. In September 1884, John C. Nelson, Dominion Land Surveyor, surveyed a reserve of 44.5 square miles (or approximately 28,480 acres) for the Enoch Cree Nation.
  - b. The 1881 Annual Report of the Department of Indian Affairs listed “Tommy la Potack” under Farm No. 17.
  - c. In 1881, the Enoch Cree Nation had sown 27.75 acres and by 1885, this had increased to 102 acres.
22. In response to paragraphs 17, 22, 23, 24, 25 and 26 of the Declaration of Claim, Canada states that the Enoch Cree Nation was provided agricultural benefits pursuant to Treaty No. 6, with the view of assisting the Enoch Cree Nation in their transition to an agricultural economy. Canada provided the Enoch Cree Nation with sufficient implements, tools and livestock, and in some cases, the benefits exceeded what was owed under Treaty No. 6.

23. Canada further states that it acted with reasonable diligence to address complaints brought to the attention of federal officials relating to agricultural benefits. As an example:
- a. In September 1884, the Superintendent General of Indian Affairs (“Superintendent General”) received a letter from Commissioner Dewdney noting that the Chiefs of the area met to discuss grievances surrounding treaty obligations not being met.
  - b. The Superintendent General responded by asking officials to verify that the treaty obligations were being met.
  - c. In 1885, the Indian Affairs representatives met with the Chiefs and headmen of the Treaty No. 6 First Nations including those of the Enoch Cree Nation.
  - d. All parties along with the Chief of the Enoch Cree Nation and two of his headmen reached consensus as to the inventory of the implements, tools and livestock received from Indian Affairs as of December 31, 1884.
24. In further response to paragraphs 17, 22, 24 and 25 of the Declaration of Claim, Canada states that it provided the Enoch Cree Nation with access to agricultural instruction. From at least 1884 to 1910, farming instruction was provided to the Enoch Cree Nation either by the Indian Agent or an assistant farm instructor.
25. In response to paragraph 18 of the Declaration of Claim, Canada states:
- a. In or about 1883, Canada was aware that the First Nations in the Edmonton District were not as far advanced in agriculture as elsewhere “upon the Saskatchewan”.

- b. In great measure, however, this was attributable to the First Nations in the Edmonton District electing, until shortly before 1883, to pursue their traditional nomadic lifestyle instead of taking up agricultural pursuits.
  - c. While Canada acknowledges that the First Nations in the Edmonton District may not have always received the same encouragement as others to cultivate their reserve lands, by 1883, active measures were being taken to remedy the conditions. This included a careful investigation into the number of implements and cattle necessary to be supplied to the First Nations to successfully cultivate the reserve lands set aside for them.
26. In response to paragraph 19 of the Declaration of Claim, Canada admits that in 1884, several Treaty No. 6 Chiefs expressed to Canada a number of grievances regarding treaty obligations not being met.
27. In response to paragraph 20 of the Declaration of Claim, Canada admits that in discussion surrounding the amalgamation of Passpasschase First Nation with Enoch Cree Nation, Indian Agent William Anderson recommended transferring the Passpasschase's "stock" and "implements" as they "would help Enoch's band, especially the mower and rake, as they have none."
28. In response to paragraph 21 of the Declaration of Claim, Canada states that it had the discretion to assist First Nations with farming as well as the authority to implement policies to aid in this objective.
29. In response to paragraphs 27, 28 and 29 of the Declaration of Claim, Canada states that it acted honourably when negotiating and implementing Treaty No. 6, and with respect to providing agricultural benefits set out in Treaty No. 6 to the Enoch First Nation. Canada further states that the honour of the Crown is not an independent cause of action.

## **V. Statements of Fact (R. 42(e))**

### ***General***

30. Canada relies upon the facts set out under heading “IV. Allegations of Fact – Declaration of Claim”.

### ***Treaty No. 6***

31. In 1876, Canada entered into Treaty No. 6 with certain Plain and Wood Cree and other Tribes in what is now central Saskatchewan and Alberta.
32. By the terms of Treaty No. 6, the Indigenous signatories exchanged Aboriginal title to approximately 121,000 square miles of land for promises and benefits, including agricultural benefits.
33. The Enoch Cree Nation was not present at the negotiations of Treaty No. 6.
34. However, in or about 1880, Commissioner Dewdney made arrangements with Tommy le Potac that: (i) if he could gather together a large number of Indians living around Edmonton, and claiming no Chief; (ii) then, Commissioner Dewdney would recommend that Tommy le Potac be placed in charge of this group, and this group would be given a reserve.
35. In or about August 1883, the Acting Deputy of the Superintendent General of Indian Affairs reported to the Superintendent General of Indian Affairs that:
  - a. Commissioner Dewdney was satisfied with the manner in which Tommy le Potac had carried out his share of the arrangement; and
  - b. Commissioner Dewdney recommended that the lands chosen by Tommy le Potac be set apart as a reserve.

36. In response, the Department of Indian Affairs agreed that the reserve should be surveyed.
37. In September 1884, J.C. Nelson, a Dominion Land Surveyor, completed a survey of 44.5 square miles of land located about six miles south-west of Edmonton on the trail to Stony Plain. These lands were confirmed as Indian Reserve No. 135 set aside for the Enoch Cree Nation by Order in Council P.C. 1151 dated May 17, 1889.
38. In accepting reserve lands and the other benefits of Treaty No. 6, Canada states that the Enoch Cree Nation adhered to Treaty No. 6 by way of its conduct.
39. Canada provided the Enoch Cree Nation with agricultural benefits pursuant to Treaty No. 6 to support cultivation of its reserve lands and agricultural efforts and fulfill Canada's obligations under Treaty No. 6.

**VI. Relief (R. 42(f))**

40. Canada seeks the following relief:
  - a. Dismissal of the claim in its entirety (including the claim for solicitor-client costs of this proceeding);
  - b. In the alternative, if the Tribunal finds Canada liable to pay compensation to the Enoch Cree Nation as alleged, or at all, then Canada relies upon section 20(3) of the *SCTA* in order to claim a deduction or set-off of the value of any benefit received by the Enoch Cree Nation from such compensation deemed to be owed;
  - c. Costs; and
  - d. Such further relief as Canada may request and this Tribunal deems just.

**VII. Communication (R. 42(g))**

41. Canada's address for the service of documents is:

Department of Justice Canada  
Prairie Region (Edmonton Office)  
300 EPCOR Tower, 10423 – 101 Street  
Edmonton, Alberta T5H 0E7  
Attention: Tanya Knobloch / Dalal Mouallem

42. The facsimile number for service of documents on Canada is 780-495-2964.

43. The e-mail addresses for the service of documents on Canada are:

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**DATED** at the City of Edmonton, in the Province of Alberta, this 6th day of March 2020.

  


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