

SPECIFIC CLAIMS TRIBUNAL		
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January 27, 2021		
Alexandre Bois		
Ottawa, ON	1	

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

MAKWA SAHGAIEHCAN FIRST NATION

Claimant

v.

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

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

January 27, 2021

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building, 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

I. Claimant (R. 41(a))

1. The Claimant, Makwa Sahgaiehcan First Nation (the “First Nation” or “Makwa”) is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of *Treaty No. 6* (hereafter “Treaty 6”) and the *Indian Act*, RSC 1985, c 1-5, as amended. Makwa is located in the Province of Saskatchewan.

II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act* have been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;...

3. Makwa originally filed a claim alleging that Canada still owed reserve land to the First Nation according to the terms of Treaty 6 (the “Claim”) with the Specific Claims Branch in 1998.
4. In a letter dated March 26, 2010, the Senior Assistant Deputy Minister of Aboriginal Affairs and Northern Development Canada informed Makwa of the Minister’s decision not to accept the Claim for negotiation under Canada’s Specific Claims Policy on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

III. Claim Limit (Act, s. 20(1)(b))

5. The First Nation does not seek compensation in excess of \$150 million.

IV. Grounds (Act, s. 14(1))

6. The First Nation submits that the Claim falls within s. 14(1)(a) of the *Specific Claims Tribunal Act*, which states that:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal based on any of the following grounds, for compensation for its losses arising from those grounds:

(a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

V. Allegations of Fact (R. 41(e))

(a) Treaty 6 and the Crown’s Promise to Provide Reserve Land

7. Treaty 6 was signed at Fort Carlton in August 1876 and at Fort Pitt in September 1876. It provided for (what the Crown viewed as) the surrender of aboriginal title to 121,000 square miles of land in exchange for various promises and benefits to be provided by the Crown, including reserve lands to be set aside for each band in the amount of one square mile for each family of five, or 128 acres per person.

8. The reserve land provision in Treaty 6 mandated that government officials send a suitable person to determine and set apart reserves for each band after consulting with each band as to their preference of location for their reserve.
9. The historical record refers to Makwa as the “Loon Lake Band” or “Makwa Lake Band” interchangeably. This claim will use “Makwa Lake” and “Makwa Lake Band” in reference to the historical place and entity.
10. Prior to Treaty, Makwa Lake Band members lived in a remote area about 130 kilometres northeast of what is now Lloydminster, Saskatchewan. Some were present at the signing of Treaty 6 and received treaty payments in 1876 and 1877 as members of other bands, including Seekaskootch and Oonepowhayo. However, they had disappeared from the paysheets of these bands before receipt of reserve land under Treaty 6. Other future members of what would become the Makwa Lake Band resided in the Island Lake area and never received any annuities at all, having yet to formally adhere to Treaty.
11. In 1911, Island Lake Reserves 161 and 161A were set apart by Order in Council PC 1911-1704 for members of the Island Lake Band (known today as the “Ministikwan Lake Cree Nation”). In 1912, three individuals and two families living at Makwa Lake were paid with the Island Lake Band. An additional 27 non-treaty Indians were reported to be residing at Makwa Lake.
12. In April 1914, Indian Agent Sibbald met with Makwa Lake Band members to discuss establishment of their own reserve and to arrange for members previously paid with Island Lake Band to be listed separately at the next annuity payments. In July, the Makwa Lake Band first appears on its own annuity payroll, which reported 33 paid and six absentees (39 individuals total) for that year (the “1914 Paylist”). In August, land was set apart for the eventual selection of reserves, but the reserves were not formally surveyed.
13. In April 1915, Secretary J.D. McLean of the Department of Indian Affairs (the “DIA”) instructed Surveyor Donald F. Robertson to survey reserves at Makwa Lake for the Indians residing there. On July 2 and 3, annuities were paid to 28 members of the Makwa Lake Band on their own payroll, with nine absentees noted (37 individuals total). In August, Surveyor Robertson referred to the 1914 Paylist as the basis for his survey of Indian Reserves 129 and 129A (“IRs 129 and 129A”). IR 129 contained 4,491.2 acres and IR 129A contained 638 acres for a combined total of 5,129.2 acres, sufficient land for 40 individuals under the terms of Treaty 6.
14. IR 129 and IR 129A were confirmed by Order in Council PC 1919-294 dated February 12, 1919 and again by Order in Council PC 1919-722 dated April 4, 1919, with the latter correcting clerical errors in the original land description.
15. In a letter dated February 9, 1916, Surveyor Robertson noted that as early as 1916, Makwa Lake Band members expressed their dissatisfaction with the amount of land surveyed for them. In the same letter, he also noted that he met with 77 non-treaty Indians who resided at Makwa Lake, and that his attempt to persuade them of the benefits that

would accrue if they took treaty was unsuccessful. He concluded his letter with a recommendation that the DIA hold lands in anticipation of their adherence to treaty.

16. In December 1928, the DIA recommended that the remaining non-treaty Indians at Makwa Lake be encouraged to take treaty.
17. In July 1929, 42 individuals from Makwa Lake formally adhered to Treaty 6.
18. In 1930, Indian Reserve 129B, (“IR 129B”) was surveyed and set aside by Order in Council PC 1930-1776 containing 9,243.7 acres of reserve land for Makwa Lake Band – sufficient land for 72 people under the terms of Treaty 6.
19. On April 24, 1936, departmental authority was given to admit additional persons to Makwa Lake Band as adherents to Treaty 6. Five families with a total population of 15 persons were admitted in 1936 and one family of four adhered in 1940 on this authority.

VI. The Basis in Law on which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation

20. The Crown breached its treaty and fiduciary obligations to the First Nation by failing to set aside Makwa’s full entitlement to reserve land under the terms of Treaty 6. The Crown’s lawful obligation remains outstanding to the present.

(a) *Date of First Survey for Makwa*

21. Surveyor D. R. Robertson conducted the first survey of reserve land for the Makwa Lake Band from August 24-28, 1915, making 1915 the Date of First Survey.

(b) *Quantum of Reserve Land Set Aside for Makwa under Treaty 6*

22. The “reserve clause” in Treaty 6 provides that a signatory band’s treaty land entitlement is based on the formula of one square mile for every family of five, which amounts to 128 acres per person.
23. IRs 129, 129A and 129B provided a total of 14,372.9 acres, sufficient land for 112 people under the terms of Treaty 6.

(c) *The Band’s Population for Treaty Land Entitlement Purposes*

24. Makwa had an entitlement population of at least 130 band members.
25. As such, Makwa was entitled to at least 16,640 acres under the terms of Treaty 6. Since only 14,372.9 acres were set aside for the First Nation between IRs 129, 129A and 129B, this leaves an historic TLE of at least 2,267.1 acres that remains outstanding.

VII. Relief Sought

26. In light of the foregoing, the First Nation seeks the following relief:

- (a) Equitable compensation for Canada's breach of its treaty, trust, fiduciary, and honourable duties in failing to satisfy Makwa's full TLE of at least 16,640 acres in a timely manner;
- (b) Solicitor-client costs in relation to the Claim and this proceeding; and
- (c) Such other relief as this honourable Tribunal deems just.

Dated this 27th day of January, 2021, at the City of Calgary in the Province of Alberta.

MAURICE LAW



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