

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
FILED	DEPOSE
December 10, 2021	
Dragisa Adzic	
Ottawa, ON	1

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

ALEXIS NAKOTA SIOUX NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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

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*.

December 10, 2021

Dragisa Adzic

(Registry Officer)

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I. Claimant (R.41(a))

1. The Claimant, Alexis Nakota Sioux Nation ('Alexis'), is a First Nation within the meaning of s.2(a) of the *Specific Claims Tribunal Act*, and its reserves are situated in the Province of Alberta.

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

2. The specific claim meets the filing condition set out in section 16(1)(a) of the *Specific Claims Tribunal Act (SCTA)*:

... the claim has been previously filed with the Minister and 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. Alexis submitted this claim to the Specific Claims Branch on or about December 4, 2017, and it was received by the Branch on December 20, 2017.
4. The Branch determined that the claim met the minimum standards, and the claim was filed with the Minister on or about May 30, 2018.
5. Alexis was informed that the Minister had decided not to pursue negotiations with respect to several aspects of the claim by letter dated February 26, 2021. Alexis was informed that the Minister had decided not to negotiate any aspect of the claim on a bilateral basis by the same letter.

III. Claim Limit (R.41(f))

6. The Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (R.41(d))

7. This specific claim is filed on the grounds set out in section 14(1)(a) and (c) of the *SCTA*:

(a) a failure to fulfil 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;

...

(c) a breach of a legal obligation arising from the Crown's...administration of reserve lands, Indian moneys or other assets of the First Nation;

...

8. Specifically, the Crown failed to fulfill its Treaty promise to provide Alexis with agricultural benefits and assistance.

V. Fact (R.41(e))

Treaty Promise

9. Treaty No. 6 was negotiated and solemnized at Fort Carlton and Fort Pitt in 1876.
10. An oral agreement was reached between the parties to Treaty No. 6 in which the Crown solemnly promised to provide agricultural benefits and assistance as set out in paragraphs 11 through 14 (the “Agricultural Benefits and Assistance”).
11. The Crown promised to provide agricultural benefits and assistance to enable the First Nation adherents to develop and transition to an agricultural economy.
12. The type, kind, and manner of agricultural benefits and assistance promised in the oral agreement included implements, livestock, means of transport, tools, provisions, and instruction. Or, in the alternative, if instruction was not an explicit oral term, it is an implied term of the oral agreement.
13. The Crown, through its Treaty Commissioners, expected and/or represented that, and the First Nation adherents to Treaty No. 6 expected and relied upon, the quantity, quality, type, kind, and manner of agricultural benefits and assistance promised being sufficient to enable a First Nation to develop and transition to a sustainable intergenerational agricultural economy commensurate with that of the settlers around them.
14. The oral promise to provide \$1,000.00 in provisions per year to each First Nation adherents to Treaty No. 6 while they were cultivating the soil was for three years only because the Crown, through its Treaty Commissioners, represented that after three years the First Nation adherents would be able to support themselves through agriculture.

Adhesion

15. Alexis adhered to Treaty No. 6 in Edmonton on August 21, 1877 on the same terms as if they had been present when the Treaty was first negotiated and solemnized, and is entitled to all of the benefits promised by the Crown in Treaty No. 6, including its promise to provide Agricultural Benefits and Assistance.

Implementation

16. Government records indicate that, in 1877 or the first half of 1878, years prior to surveying its reserve lands, the Crown distributed two oxen, a small number of implements, and some seed to Alexis.
17. Reserve lands were first surveyed for Alexis in 1880 and reserve lands were set aside by Order in Council in 1889.
18. Alexis had begun cultivating by 1880, had 28 acres of land under cultivation in 1881, and increased its land under cultivation to 35 acres in 1882.
19. The land Alexis had under cultivation declined in 1883 because the Crown failed to provide its Indian Agent with sufficient supplies, failed to authorize its Indian Agent to purchase more supplies, and ultimately failed to provide the Claimant with enough assistance to enable them to live on the reserves and cultivate the soil.
20. By 1883 Alexis had also taken up stock-raising but, of all the animals on reserve, only two oxen had been received as Treaty benefits.
21. Records of Agricultural Benefits and Assistance received by Alexis after its Reserves were set aside fail to adequately distinguish between benefits received by Alexis and Paul First Nation and/or have been lost or destroyed by the Crown.
22. From the solemnization of Treaty and well into the mid-1880s, implements and livestock distributed in Treaty No. 6, were often not as promised in the Treaty, being too poor-quality or too wild or to be of any use.
23. The Crown acknowledged that, among other failings, it had distributed cross-ploughs which were incapable of breaking the land instead of breaking ploughs, and cattle which were not fit to survive the winter.
24. In the decades following Alexis' adhesion to Treaty No. 6, the Crown implemented policies, including but not limited to the Pass System and Peasant Farming Policy, that directly impeded the Claimant's ability to transition from a hunting economy to an agricultural economy.
25. The Crown did not provide Alexis with sufficient Agricultural Benefits and Assistance as promised in Treaty No. 6.
26. The few Agricultural Benefits and Assistance that the Crown did provide Alexis were of negligible use as:
 - a. the items promised were complimentary and useless in isolation;
 - b. no instruction as to proper use was provided; and

- c. the limited number of items provided were not sufficient to successfully transition the Nation to an agriculture-based economy.
- 27. The Crown did not provide Alexis with the \$1,000.00 per year of provisions it had promised while they were cultivating the soil.
- 28. The Crown failed to provide Alexis with Agricultural Benefits and Assistance in a timely and diligent manner.

VI. Legal Basis

Failure to Fulfill Obligations

- 29. The Crown failed to fulfil its Treaty promise to provide Alexis with the agricultural benefits and assistance promised in Treaty No. 6.
- 30. The Crown did not meet the legal standard for the fulfillment of a Treaty promise and failed to uphold the honour of the Crown by:
 - a. failing to interpret its promise purposively;
 - b. failing to pursue the purpose behind its promise; and
 - c. failing to act diligently to fulfill the purpose of its promise.
- 31. The Crown breached its legal obligations related to and/or ancillary to its promise to provide agricultural benefits and assistance, including but not limited to
 - a. fiduciary obligations arising from the Crown's discretionary control over Alexis' legal and/or practical interests; and
 - b. trust obligations arising from the management of the Claimant's accounts;by, among other wrongdoings, failing to keep adequate records and expending the Claimant's money on benefits that should have been provided under Treaty.

Principles and Standards

- 32. The Claimant pleads and relies upon the established principles of Treaty interpretation, including that the honour of the Crown governs Treaty implementation, and the Crown must avoid the appearance of sharp dealing.
- 33. The Crown's obligations are not confined to the promises that it reduced to text:

- a. Historic Treaty texts “recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement” (*R v Badger*, [1996] 1 SCR 771 at 52);
 - b. “Where a treaty was concluded verbally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written terms” (*R v Marshall*, [1999] 3 SCR 456 at 12).
34. Treaty interpretation requires the Court to make honourable sense of the Treaty arrangement and to choose from among the various possible interpretations of the common intention [at the time the treaty was made] the one which best reconciles” the parties’ interests (*R v Marshall*, [1999] 3 SCR 456, at 14). In order to do this, the Court may consider the context of the Treaty and identify implied terms even in the absence of ambiguity.
35. In order to fulfill a Treaty obligation, the Crown must take a broad purposive approach to interpretation and “must seek to fulfill the obligation in a way that pursues the purpose behind the promise” — “the honour of the Crown requires the Crown to act in a way that accomplishes the intended purpose of treaty and statutory grants to Aboriginal people” (*Manitoba Metis v Canada*, 2013 SCC 14, at 80 & 73).
36. Treaty rights are not frozen in time or constrained by changes in technology; they must be recognized and affirmed in contemporary form: both historic means and historic standards of living have modern equivalents (*R v Sundown*, [1999] 1 SCR 393 at paras 29, 30, 31 & *R v Marshall*, [1999] 3 SCR 456, at para 7).
37. The honour of the Crown requires it to act diligently to fulfill the purpose of its solemn promises, and “a persistent pattern of errors and indifference that substantially frustrates the purposes of a solemn promise may amount to a betrayal of the Crown’s duty to act honourably in fulfilling its promise” (*Manitoba Metis v Canada*, 2013 SCC 14, at 82).

State of Obligation

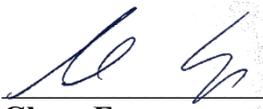
38. The Crown’s solemn Treaty obligation to provide agricultural benefits and assistance to Alexis is continuing, current, and outstanding: the “treaty calls for certain supplies” and, since “the respective obligations are clear the parties should get on with performance” (*Mikisew Cree v Canada*, 2005 SCC 69 at para 63).

VII. Relief Sought

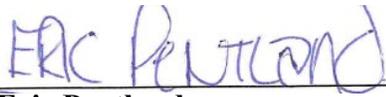
39. The First Nation seeks the following relief:
- a. Equitable compensation for loss of use of the Agricultural Benefits and Assistance;

- b. Compensation for the value of the outstanding promise to provide Agricultural Benefits and Assistance in contemporary form;
- c. Such other compensation the Tribunal deems just; and
- d. Costs.

December 10, 2021



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