

**SPECIFIC CLAIMS TRIBUNAL**

**B E T W E E N:**

**CANOE LAKE CREE FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	January 21, 2020
Isabelle Bourassa	
Ottawa, ON	1

**Claimant**

v.

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

**Respondent**

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**DECLARATION OF CLAIM**

Pursuant to Rule 41 of the  
*Specific Claims Tribunal Rules of Practice and Procedure*

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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 23, 2020

\_\_\_\_\_  
Date

Isabelle Bourassa

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Registry Officer

TO: HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA  
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**I. Claimant (R. 41(a))**

1. The Claimant, Canoe Lake Cree First Nation (“Canoe Lake”, the “Claimant,” the “Band” or the “First Nation”) is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 as it is a “band” within the meaning of the *Indian Act*, RSC 1985, c I-5 as amended, located in the province of Saskatchewan.

**II. Conditions Precedent**

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. The First Nation filed its claim respecting unfulfilled treaty promises related to agricultural and economic benefits with the Specific Claims Branch of the Department of Indian and Northern Affairs Canada on January 17, 2008 (the “Claim”).
4. By letter dated September 23, 2011, the Senior Assistant Deputy Minister of Indian and Northern Affairs Canada wrote to the First Nation, advising that the Crown would not accept the Claim for negotiation under the Specific Claims Policy.

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

5. The Claimant does not seek compensation in excess of \$150 million for the Treaty 10 Benefits Claim.

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

6. The grounds for this Claim are laid out in s. 14(1)(a) and (c) of the *Specific Claims Tribunal Act*:

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

(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 provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation; ...

7. In particular, the Crown has failed to fulfill its legal obligation to provide agricultural and economic benefits to the First Nation pursuant to the terms of Treaty 10.

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

**(A) *Negotiation of Treaty 10***

8. Treaty 10 covers 220,000 square kilometres stretching across what is now the northern half of Saskatchewan and into a small portion of northeastern Alberta.
9. Beginning in 1879, Chiefs in what would become Treaty 10 territory repeatedly requested to treat with the Crown in order to alleviate the hardship facing their communities. The leaders were concerned with diminishing populations of animals to hunt for food and fur, the decrease in prices paid for furs, and resultant destitution.
10. The Crown, however, was not interested in engaging with the Indians, as the land they held was not yet considered valuable for settlement purposes.
11. It was not until the provinces of Saskatchewan and Alberta were created in 1905, combined with continued pressure from the Métis of Île-à-la-Crosse for scrip, that the Crown was compelled to enter into negotiations for Treaty 10.
12. Initially, the Crown considered extending the boundaries of Treaty 8, which had been signed in 1899, to the area now comprising Treaty 10. Inspector H.A. Conroy recommended such an extension as the most appropriate and efficient way to make treaty with the Indians in the area. He noted that the Indians of the region practiced the same livelihood and were related by marriage ties to the Indians of Treaty 8.
13. Ultimately, the Crown decided not to extend the boundaries of Treaty 8, but to negotiate a new treaty.

14. On July 20, 1906, the Crown passed Order in Council PC No. 1459, which authorized setting up a Treaty Commission for the portion of land in Saskatchewan lying north of the 54<sup>th</sup> parallel and the small adjoining area in Alberta, appointing J.A. McKenna as Treaty Commissioner. Commissioner McKenna had been part of the Treaty Commission that negotiated Treaty 8.
15. The Order in Council also set out the Minister's recommendations on the terms of the Treaty. These recommendations included, *inter alia*, that the Treaty provide "for the affording of such assistance as may be found necessary or desirable to advance the Indians in farming or stock-raising or other work."
16. The Deputy Minister of Justice was tasked with preparing an initial draft of Treaty 10, and was given the text of Treaty 8 as a guideline to draft the terms of the new Treaty. The written text outlining the agricultural benefits of Treaty 8 provide that:

FURTHER, 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.

FURTHER, 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 the provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bulls, 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 or larger families. The aforesaid articles, machines and cattle to be given once 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.

17. Although Treaty 10 was modelled on Treaty 8, these two specific clauses, above, were struck from the text of Treaty 10. As the Acting Deputy Minister of Justice recounted on August 2, 1906, this was done "on the assumption that paragraph (d) in the Order-in-Council [PC No. 1459] providing generally for the affording of assistance in farming or stock raising, or other work, is intended as a substitute for these."

**(B) *Treaty 10 and the Crown's Promise to Provide Agricultural and Economic Benefits***

18. Commissioner McKenna arrived in the Treaty 10 area in August 1906. He met with the Canoe Lake Band at Île-à-la-Crosse a month later. Canoe Lake adhered to Treaty 10 on September 19, 1906, represented by Chief John Iron and two of his Headmen.
19. Treaty 10 provides that each signatory band is entitled to receive reserve land, annuities, triennial clothing for chiefs and headmen, medals, flags, ammunition and twine, aid for the destitute, and agricultural and economic assistance. With respect to the latter, Treaty 10 promises:

Further His Majesty agrees to *furnish such assistance as may be found necessary or advisable to aid and assist the Indians in agriculture or stock-raising or other work* and to make such a distribution of twine and ammunition to them annually as is usually made to Indians similarly situated.

**(C) *The Claimant's Attempted Economic Transition***

20. The Claimant was practicing small-scale agriculture as early as 1870.
21. In 1906, when negotiating Treaty 10 with Commissioner McKenna, Canoe Lake requested cattle be provided to those Indians interested in stock-raising.
22. The Canoe Lake Band continued to express interest to engage in farming after adhering to Treaty 10. When the Band met with Commissioner Borthwick in 1907, it demanded that the Crown provide farming implements and seed.
23. In 1908, the Canoe Lake Band again asked the Crown for farming implements and livestock.
24. In 1910, the Canoe Lake Band requested its reserve be set aside. The Band specified that it should be laid out in two or more tracts, with “the main portion selected, if possible, from good land adapted to farming and stock raising, with smaller areas of spruce timber, and fishing stations...”. Inspector W.J. Chisholm informed the Department that the land selection was “fairly well adapted” for farming, haying, and timber activities. The following year, Inspector W.J. Chisholm reported that the Canoe Lake Band occupied fertile lands, rich in timber, hay meadows, and water, and that the Band was eager to engage in agriculture.

25. Canoe Lake's reserve was surveyed by Donald Robertson in 1912 and consisted of three blocks of land: 165, 165A and 165B, later confirmed by Orders in Council dated January 29, February 11, and September 9, 1930, respectively (the "Reserves"). The Reserves are located near where the southern boundary of Treaty 10 meets the northern boundary of Treaty 6.
26. The Band again requested agricultural implements during the treaty payments in 1916. William McKay, acting as paying officer, recommended to the Department that Canoe Lake be encouraged to engage in gardening.
27. After adhering to Treaty 10, the Canoe Lake Band's ability to rely on fishing, hunting, and trapping continued to diminish. The Band made repeated requests for agricultural assistance in the years following adhesion to Treaty 10 and members attempted to farm.
28. In 1924, Indian Agent Taylor conveyed the Band's request for farming implements to Indian Commissioner W.M. Graham. In declining to fulfil the request, Graham reasoned that if the Department provided articles of this sort, it would "incur an unwarranted expenditure of money."
29. In 1925, prompted by a poor fur catch, the Claimant's Chief encouraged Band members to further engage in cultivation. The Band was reported to have cleared four or five acres of its heavily timbered reserve and to have purchased cattle using its own funds. Some Band members also informed the Department that they were interested in pursuing commercial fishing to compensate for the poor fur catches.
30. Reports from 1930 onward indicate that the Claimant increasingly relied on agriculture for sustenance as its output from fishing, hunting, and trapping steadily declined. The Claimant was repeatedly recognized as one of the most progressive and independent bands in the Treaty 10 area and, by 1936, was relying on agriculture for one half of its food source for the winter.

**(D) *The Crown's Non-Provision of Assistance, Department Policies, and Record Keeping***

31. Despite the efforts of the Claimant and its members to engage in agricultural and other pursuits, the Crown's policy and administration of Treaty 10 hindered the Band's successful transition to a new economy. In 1911, the Office of the North Saskatchewan Inspectorate directed the paying officer for Treaty 10 to only provide implements and tools

to the destitute. Other requests for agricultural implements and tools were denied on the basis that the expense would be unwarranted.

32. The Crown also generally discouraged the Claimant from farming. This was predicated on the Crown's belief that the land in Treaty 10 was not suited to agricultural pursuits despite the reports from Indian Agents to the contrary, evidence of the Claimant's agricultural activities, and a successful farm at the industrial school in Beauval located east of Canoe Lake. The Métis community at Beauval also successfully engaged in commercial farming.
33. The Crown did not keep records of the agricultural and economic benefits that Treaty 10 bands individually received; it only maintained records at the Agency level.
34. The Canoe Lake Band was administered under various Indian Agencies after its adhesion to Treaty 10, including the Treaty 10 Inspectorate (1906-1911), the Île-à-la-Crosse District (1912-1933), the Battleford Agency (1933-1949), the Meadow Lake Agency (1949-1970), and the North Battleford District (1970-1974). At different times, Canoe Lake's designated agency was comprised of bands from Treaty 10, or Treaty 8, or Treaty 6.
35. Despite the Claimant's repeated requests for agricultural and economic benefits and evidence the Claimant was interested in and engaged in agricultural and other pursuits, there is no record of the Crown providing any agricultural or economic benefits to the Claimant pursuant to its treaty obligations.

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

36. The Treaty 10 Benefits Claim is brought on the grounds that the Crown breached its treaty, fiduciary, trust, and honourable obligations to the Claimant in its failure to fulfil the promises of Treaty 10 for the provision of agricultural and economic benefits to facilitate the Claimant's economic transition from a traditional livelihood.
37. The written terms of Treaty 10 do not represent the full extent of the Crown's treaty promises. The Crown's fundamental treaty obligation was to support the Claimant and provide the means to transition to an agricultural, stock-raising, or other suitable economic livelihood.
38. The Crown made a sacred and solemn promise to support and assist the Claimant in the effective exercise of the various benefits and rights recognized and protected under Treaty 10. Each promise, represented in the recorded terms of the Treaty, has meaning to the

Crown and the Indigenous signatories; each representation by the Crown gives rise to enforceable legal duties.

39. The Crown's failure, therefore, not only amounts to a breach of the written terms of Treaty 10 but also involves a breach of its fiduciary, trust, and honourable duties by failing to uphold the purpose and intent of the agricultural and economic benefits clause.
40. The Claimant further pleads that the honour of the Crown was at stake when negotiating and implementing the terms of Treaty 10, and that the Crown failed to uphold its honourable obligations with respect to the provision of agricultural and economic benefits to Canoe Lake.
41. In addition to failing to provide the treaty benefits as written in the text of Treaty 10, the Crown breached its treaty, fiduciary, trust, and honourable obligations to the Claimant by encouraging and promoting the Claimant and its members to expend personal funds to purchase tools, implements, livestock, and seed that should have been provided by the Crown pursuant to the terms of Treaty 10.
42. The Claimant pleads and specifically relies upon the established principles of treaty interpretation and the honour of the Crown to the effect that treaties should be liberally construed, treaty rights are not frozen at the date of the treaty, and must be implemented in a manner consistent with equivalent modern practices. In light of these interpretive principles, any assertion by the Crown that Treaty 10 afforded it wide discretion to distribute agricultural and economic benefits as it saw fit cannot be sustained.
43. The Claimant further pleads that, to the extent that the Crown misadministered or failed to keep important records related to the provision of Treaty 10 benefits, such misadministration leads to an evidentiary presumption in favour of the Claimant.
44. Finally, the Claimant pleads that to the extent that some of the lands in Treaty 10, including the lands traditionally occupied by the Claimant, may not be ideally suited for agriculture or ranching, the Crown had a positive duty to provide equivalent and appropriate alternate economic benefits pursuant to the text of the Treaty. The Claimant relied upon the good faith and honour of the Crown when negotiating the terms of Treaty 10 and, in particular, relied upon the Crown's promise to provide agricultural benefits or a comparable level of other economic benefits to assist the Claimant in transitioning from a traditional livelihood.



**VII. Relief Sought**

45. In light of the foregoing, the Claimant seeks the following relief:

- a. equitable compensation for the Crown's breach of its treaty, fiduciary, trust, and honourable duties;
- b. costs on a solicitor-client basis; and
- c. such other relief as this Honourable Tribunal deems just.

Dated this 20<sup>th</sup> day of January, 2020, at the City of Calgary in the Province of Alberta.

**MAURICE LAW**



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