

**SPECIFIC CLAIMS TRIBUNAL**

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F I L E D	TRIBUNAL DES REVENDICTIONS PARTICULIÈRES  July 18, 2012  Guillaume Phaneuf	D E P O S É
Ottawa, ON		1

B E T W E E N:

SUNCHILD FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Aboriginal Affairs and Northern Development Canada

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*.

July \_\_<sup>18</sup> \_\_, 2012

Guillaume Phaneuf

(Registry Officer)

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**I. Claimant (R. 41(a))**

1. The Claimant, Sunchild First Nation (“SFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of Alberta.

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

2. The following condition precedent, as set out in s. 16(1) of the *Specific Claims Tribunal Act* (“SCTA”), has 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. On November 12, 2006, SFN filed this claim under Canada’s Specific Claims Policy, asserting that Canada has failed to provide SFN with its full treaty land entitlement (“TLE”) pursuant to the terms of Treaty 6 (“TLE Claim”).
4. On October 9, 2009, SFN commenced an action in the Court of Queen’s Bench of Alberta against Canada for failing to satisfy Canada’s TLE obligations. This litigation has been put in abeyance since then to allow the TLE Claim to proceed under the Specific Claims Policy.
5. On November 24, 2008, Canada informed SFN that the TLE Claim met the Specific Claims Policy’s minimum standards, and had been assigned an effective date of filing with the Minister of October 16, 2008.
6. On October 7, 2010, Canada informed SFN in writing of the Minister’s decision not to negotiate the TLE Claim, in whole.

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

7. SFN does not seek compensation in excess of \$150 million in relation to its claim.

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

8. The following is the ground for SFN's claim as provided for in s. 14 of the *Specific Claims Tribunal Act*:

**14.** (1) ...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 fulfill a legal obligation of Canada to provide lands or other assets under a treaty or another agreement between the First Nation and Canada.

9. Specifically, Canada has failed to fulfill its legal obligation to provide SFN all the TLE land SFN is entitled to under Treaty 6.

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

10. While many First Nations located in the Treaty 6 region signed or adhered to Treaty 6, and had received and settled upon reserves by the late nineteenth century, it was not until May 25, 1944 that SFN, under Chief Louis Sunchild, executed an adhesion to Treaty 6.
11. From the early 1920s until SFN's adhesion to Treaty 6 in 1944, Canada undertook to determine the individuals eligible to enter Treaty 6 as members of SFN and be counted for TLE purposes. The result of this process was reflected in the 1944 SFN annuity payroll, which first contained the names of those persons eligible to

enter treaty and share in the benefits of Treaty 6. This list formed the foundation of subsequent SFN annuity lists.

12. The following provision of Treaty 6 imposes an obligation on Canada to set aside reserve land for each First Nation in an amount of 128 acres for each member of that First Nation:

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.

13. Between May 22, 1945 and September 11, 1945, surveyor, Charles Dudley Brown, surveyed lands in the foothills region on Baptiste River for SFN's TLE land.
14. On September 14, 1948, Alberta transferred 12,894 acres of land to Canada for the purpose of setting aside TLE land for SFN.
15. On September 13, 1949, by Order in Council, Canada set aside Reserve 202 for SFN in partial satisfaction of Canada's TLE obligations.
16. Since September 13, 1949, Canada has never provided SFN with any additional lands in fulfillment of its Treaty 6 obligations.

17. According to the terms of Treaty 6, the 12,894 acres set aside as Reserve No. 202 provides TLE lands for 100 SFN members.
18. SFN is entitled to a total of 16,512 acres of TLE land based on the reserve clause of Treaty 6 and a TLE population of 129 members.
19. Taking into account the 12,894 acres of reserve set aside for SFN in 1945, SFN is entitled to an additional 3,618 acres of additional TLE land in satisfaction of its full TLE under Treaty 6.

**VI. The Basis in Law on Which Canada is said to have failed to meet or otherwise breached a lawful obligation:**

20. Canada is in breach of Treaty 6 for failing to provide SFN with all of its TLE under the reserve clause of Treaty 6.

Calculating a First Nation's TLE

21. A First Nation is entitled to have each of its members counted once for the purpose of calculating its TLE. These members constitute the Adjusted Date of First Survey (“ADOFS”) population.
22. Each First Nation's TLE is calculated by multiplying its ADOFS population by the treaty formula of 128 acres per person.
23. The ADOFS population is calculated by totaling the Date of First Survey (“DOFS”) population and all those who:
  - a. adhered to treaty with the First Nation after the DOFS, whether by marriage or treaty adhesion; or
  - b. transferred to that First Nation after the DOFS from a First Nation that had yet to receive TLE lands at the date of his or her transfer.

24. The DOFS population is determined by counting all members listed on the treaty annuity payroll closest to the DOFS as either having been paid annuity payments or having been noted as absent. The DOFS for SFN's TLE calculation is 1945.
25. The exclusion of any of those members from the TLE calculation who have been counted in either the DOFS population or the ADOFS population is contrary to law.

Calculation of TLE Shortfall

26. Each First Nation that has received land in partial fulfillment of its TLE is entitled to additional land. The amount of additional land is equal to the difference between that First Nation's TLE based on the calculation outlined above and the quantum of land received pursuant to the terms of Treaty 6.

Honour of the Crown

27. The honour of Crown and principles of treaty interpretation and equity require Canada to treat all First Nations that are party to the same treaty in a similar and consistent manner.
28. The honour of the Crown requires Canada to act fairly and honorably during treaty implementation.
29. Canada has a continuing constitutional and treaty obligation to provide SFN with its TLE under Treaty 6.

Dated this 18<sup>th</sup> day of July, 2012



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Neil Reddekopp  
Solicitor for the Claimant



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