

SPECIFIC CLAIMS TRIBUNAL

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	December 13, 2012	
	Amy Clark	
Ottawa, ON		1

BETWEEN:

ATHABASCA CHIPEWYAN FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

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 13, 2012

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(Registry Officer)

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I. Claimant (R. 41(a))

1. The Claimant, the Athabasca Chipewyan First Nation (“ACFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (“*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*, 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...

(d) three years have elapsed after the day on which the Minister has notified the First Nation in writing of the Minister’s decision to negotiate the claim, in whole or in part, and the claim has not been resolved by final settlement agreement.

3. On or about January 1994 the ACFN filed a claim with the Indian Specific Claims Commission alleging that the Crown has failed to provide ACFN with the agricultural benefits ACFN is entitled to pursuant to Treaty 8.
4. The ACFN was notified pursuant to s. 42(1) of the *Specific Claims Tribunal Act*, that, for the purposes of the legislation, the Minister was deemed to have accepted the claim for negotiation as of October 16, 2008.
5. More than three years has elapsed since the Minister notified ACFN that it would negotiate the claim and the claim has not been resolved by final settlement agreement.

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

6. The ACFN does not seek compensation in excess of one hundred and fifty million dollars (\$150,000,000).

IV. Grounds (*Specific Claims Tribunal Act*, s. 14(1))

7. The following are the grounds for the specific claim, pursuant to 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 the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

8. Specifically, Canada has failed to fulfill its legal obligation to provide ACFN with the agricultural benefits to which ACFN is entitled pursuant to Treaty 8.

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

Treaty 8

9. The ancestors of the ACFN adhered to Treaty 8 on or about July 13, 1899 under the leadership of Chief Laviolette.
10. At the time of negotiating Treaty 8, ACFN was assured that the Treaty would enable them to survive and prosper physically, culturally and economically in the face of increasing Canadian settlement. In order to serve this purpose, the Crown promised certain agricultural benefits in the following text of Treaty 8 (the Agricultural Benefits):

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.

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 provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, 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 one for all for the encouragement of agriculture and stock raising;

11. It was the common intention of the Crown and ACFN that Treaty 8 would be a means to transition ACFN's economy from hunting, fishing and trapping to an emphasis on establishing viable farming and livestock endeavors to maintain a moderate livelihood. Both the Crown and ACFN understood that Treaty 8 would last forever.

ACFN's Reserve Land

12. The text of Treaty 8 provided 128 acres of reserve land to ACFN for each of its members.
13. The Treaty Commissioners appointed by the Crown to negotiate Treaty 8 expected the First Nation adherents to hunt and trap for a considerable time before taking up agriculture on reserve land. Therefore, the Commissioners advised the Crown that it would take many years before the Crown would have to make expenditures on Agricultural Benefits for First Nations.
14. ACFN did not request the Crown to set aside reserve lands until 1922. This request was renewed in 1923 and 1927.
15. In 1931, the Crown surveyed several small reserves, which were set aside for the ACFN in 1954 as Indian Reserves 201A to 201G.

16. The ACFN main reserve, Indian Reserve 201 was established on or about June 3, 1954.
17. The ACFN continued to hunt and trap until the number of fur-bearing animals in the region began to decline at which point ACFN members looked to other pursuits, including agriculture, for their livelihood.
18. None of the Agricultural Benefits provided for in Treaty 8 have ever been provided to the ACFN.

Canada's Failure to fulfill its Obligations under Treaty 8

19. Canada's obligation to provide Agricultural Benefits to ACFN under Treaty 8 first arose in 1994 when the ACFN made a first-time request to the Crown for compensation for the modern equivalent value of the Treaty 8 Agricultural Benefits.
20. To date, Canada has refused or failed to honour and fulfill its obligation under Treaty 8 to provide ACFN with Agricultural Benefits. No agricultural benefits, equipment, implements or other assistance has been provided to ACFN pursuant to Treaty 8.

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

21. Canada is in breach of Treaty 8 for failing to provide ACFN with its treaty entitlement to Agricultural Benefits. In particular, Canada has never provided ACFN with the specific Agricultural Benefits listed in the text of Treaty 8, including:
 - a. tools and implements, in particular:

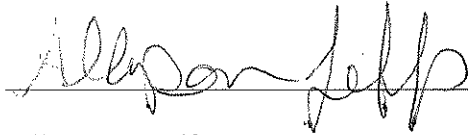
- i. two hoes, one spade, one scythe, two hay forks for every ACFN family settled;
 - ii. one plough, and one harrow for every three families settled; and
 - iii. ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones to the Chief for the use of his First Nation.
 - b. livestock, in particular:
 - i. one cow for every family settled; and
 - ii. two horses or a yoke of ox and one bull for the Chief; and
 - c. seed, in particular, enough wheat, barley, potatoes and oats to plant the land actually broken up and provisions for one month in the spring for several years while planting such seeds.
22. ACFN pleads and relies upon the principles of treaty interpretation, including, but not limited to, the principle that treaty rights are evolutionary and are not frozen in time. A treaty right is to be interpreted and implemented in a manner consistent with equivalent modern practices. Compensation arising from Canada's failure to fulfill the obligation to provide ACFN with Agricultural Benefits must reflect this principle.
23. The purpose and intent of the Agricultural Benefits provision of Treaty 8 was to enable members of the ACFN to establish and sustain a moderate livelihood from agriculture.
24. Canada has a continuing constitutional and treaty obligation to provide ACFN with Agricultural Benefits pursuant to Treaty 8.
25. The honour of the Crown requires Canada to act fairly and honourably during treaty implementation, and it has not done so in this case.

VII. Relief Requested

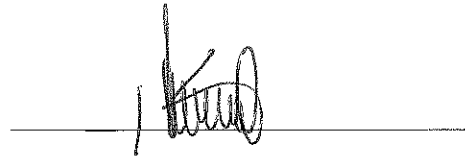
26. ACFN seeks:

- a) monetary compensation required to satisfy the Crown's Treaty 8 obligation to provide Agricultural Benefits to the ACFN in an amount reflecting the evolutionary nature of treaty rights;
- b) costs of this claim; and
- c) such other relief as the Tribunal deems fit.

Dated this 12th day of December, 2012



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