

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

STONEY NAKODA NATION

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	May 17, 2012	D É P O S É
Guillaume Phaneuf		
Ottawa, ON		1

Claimant

v.

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

May 17, 2012

Guillaume Phaneuf

(Registry Officer)

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

I. Claimant - R. 41(a)

1. The Claimant, Stoney Nakoda Nation (“SNN” or “the Claimant”), 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...;

3. This claim, that Canada has failed to provide SNN with sufficient treaty land entitlement (“TLE”) land to satisfy Canada’s obligation according to the terms of Treaty 7 (“the SNN TLE claim”), was first filed with the federal government in 1972 and was reviewed by the then-Indian Claims Commissioner.
4. Canada’s failure to satisfy the SNN TLE claim was also included within litigation filed by SNN in 1977. This litigation was put in abeyance in 2002 to allow the TLE claim to be pursued under the Specific Claims Policy.
5. The materials required by Canada to assess the SNN TLE claim have been in the hands of the Specific Claims Branch (“SCB”) since 2003.
6. On or about September 28, 2011, the Claimant received a letter on behalf of the Minister notifying the Claimant of the Minister’s decision not to negotiate the SNN TLE claim, in whole.

III. Claim Limit - R. 41(f)

8. The Claimant does not seek compensation in excess of \$150 million in relation to this claim.

IV. Grounds - R. 41(d)

9. The following are the grounds for the Claimant's specific 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 the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown.

10. Specifically, the Crown has failed to fulfill its legal obligation to provide all the reserve land to which the Claimant is entitled under Treaty 7.

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

11. On September 22, 1877, three Stoney Chiefs, representing respectively the Bearspaw, Chiniquay (Chiniki), and Jacob's (Wesley) Stoney Bands, became signatories to Treaty 7. These three Bands were collectively the predecessors of the SNN. The Crown grouped the three Stoney Bands together for the purposes of fulfilling its obligations under Treaty 7, including the calculation of TLE.

12. The following provision of Treaty 7 imposes an obligation on the Crown to set aside 128 acres of reserve land for each member of the Claimant's population who is entitled to Treaty 7 benefits:

Reserves shall be assigned them of sufficient area to allow one square mile for each family of five persons, or in that proportion for larger and smaller families, and that said Reserves shall be located as follows, that is to say:...And, Thirdly --- That the Reserve of the Stony Band of Indians shall be in the vicinity of Morleyville (“the reserve clause of Treaty 7”).

13. The “Morleyville” referenced in Treaty 7 was the site of a Methodist mission that ministered to the members of the SNN.
14. It was an oral term of Treaty 7 that First Nations were entitled to select and receive reserve land comprised of fertile lands near their hunting grounds.
15. In August and September of 1879, a surveyor appointed by the Crown surveyed three undivided parcels of reserve land surveyed for the Claimant in the vicinity or Morleyville. The land surveyed at this time totaled 69,760 acres, or 109 square miles. Based on the reserve clause of Treaty 7 (one square mile for each family of five or 128 acres per person), the reserves surveyed satisfied the TLE of 545 SNN members.
16. On May 17, 1889, Order-in-Council 1151 set aside, as reserve land, the 69,760 acres surveyed in 1879 in partial fulfillment of the Crown’s TLE obligations. This reserve land was identified as I.Rs. 142, 143, and 144, but these reserves were undivided. The Order-in-Council made specific reference to the fact that the reserves were set aside in accordance with the terms of Treaty 7.
17. The reserve lands surveyed in 1879 and confirmed by Order-in-Council in 1889 do not satisfy the SNN TLE.
18. The Crown has never provided SNN with any additional lands in fulfillment of its Treaty 7 obligations since the Order-in-Council of 1889.

19. The Claimant is entitled to 95,232 acres of reserve land, based on the reserve clause of Treaty 7 and a TLE population of 744 persons.
20. Taking into account the 69,760 acres of reserve land surveyed for the SNN in 1879, the Claimant is entitled to an additional 25,472 acres of reserve land in satisfaction of its TLE under Treaty 7.

VI. Legal Basis of Claim - Practice Direction 1

21. In failing to provide SNN with all of the land to which it is entitled under the reserve clause of Treaty 7, the Crown is in breach of the said Treaty 7.

Calculating a First Nation's TLE

22. For the purpose of calculating a First Nation's TLE, the First Nation is entitled to have each of its members counted once. These members constitute the Adjusted Date of First Survey ("ADOFS") population.
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; 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 transfer.
24. The DOFS population is determined by counting all members listed as either having been paid annuity payments or having been noted as absent on the payroll of the DOFS. The DOFS for the Claimant's TLE calculation is 1879.
25. Each First Nation's TLE is calculated by multiplying its ADOFS population by the treaty formula of 128 acres per person.

26. The exclusion of any of those members counted as either the DOFS population or the ADOFS population is contrary to law.

Calculation of TLE Shortfall

27. Each First Nation that has already received partial fulfillment of its TLE is entitled to additional land in an amount equal to the difference between that First Nation's TLE based on the calculation outlined in the previous section and the quantum of land received at first survey.
28. For lands to fulfill the Crown's TLE obligations, the Crown must provide the lands expressly for the purpose of satisfying the First Nation's TLE, and the lands must meet all the criteria of TLE reserve lands, including the criteria set out by the oral terms agreed to by the treaty parties.

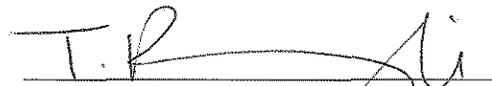
VII. Relief Sought

29. A determination that the Claimant has established a Treaty Land Entitlement shortfall of 25,472 acres of reserve land under Treaty 7, and that this figure should be used to inform the negotiation of the SNN TLE claim by the Claimant and Canada.

Dated this 17th day of May, 2012



Neil Reddekopp
Solicitor for the Claimant



Tarlan Razzaghi
Solicitor for the Claimant

Ackroyd LLP

1500, 10665 Jasper Avenue
Edmonton AB T5J 3S9
(Tel): 780-423-8905 (Fax): 783-423-8946