

**SPECIFIC CLAIMS TRIBUNAL**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	May 22, 2013	D É P O S É
Amy Clark		
Ottawa, ON	1	

B E T W E E N:

ALEXANDER 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*.

May 22, 2013

Amy Clark

\_\_\_\_\_  
(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation  
Justice Canada  
Bank of Canada Building, 234 Wellington Street East Tower  
Ottawa, Ontario K1A 0H8

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

1. The Claimant, Alexander First Nation (hereafter “AFN”), 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, by virtue of being a band within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, 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:

(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 Alexander First Nation Relief and Medical Assistance Claim (hereafter the “Claim”) was filed on June 14, 2004, in respect of the Crown’s mismanagement of the First Nation’s trust accounts during the period of 1905 to 1950. The Claim alleges that the Crown in right of Canada (hereafter “Canada” or “the Crown”) expended funds held by it in trust for AFN on relief and medical assistance for AFN rather than draw from public funds, contrary to the statutory and fiduciary duties owed by Canada to the First Nation, and contrary to express provisions of Treaty 6, to which both AFN and Canada are parties, namely the Relief Clause and the Medicine Chest Clause, as defined in paragraph 9 below.

4. In a letter dated August 19, 2011, Canada wrote to AFN rejecting the Claim on the basis that there is no outstanding lawful obligation on the part of Canada. Canada took the position that:

a) with respect to the Medicine Chest Clause:

- the Claim, as it is framed, does not fall within any of the grounds of the Specific Claims Policy;
- medical services do not fall within the definition of “asset”;

- the Claim deals with funding of programs or services related to health, which fall outside of the scope of the Specific Claims Policy; and
  - the Claim deals with claims related to treaty rights of an ongoing and variable nature;
- b) with respect to the Relief Clause:
- the Crown met its obligations and provided relief in the form of money and food; and
  - the Crown was authorized to use trust funds to provide relief to destitute Band members pursuant to section 92(d) of the *Indian Act*, R.S.C. 1906, c.81.
5. According to the status report on the Specific Claims Branch’s website, the status of the Claim is considered concluded, there being no lawful obligation found.

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

6. AFN does not seek compensation in excess of one hundred and fifty million dollars (\$150,000,000) in relation to this Claim.

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

7. The following are the grounds for the specific claim, as provided for in s. 14(1) of the *Specific Claims Tribunal Act*:

- (c) a breach of a legal obligation arising from the Crown’s [...] administration of [...] Indian moneys or other assets of the First Nation; [...].

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

**(A) Treaty 6 and the Relief Clause and Medicine Chest Clause**

8. In 1876, the Crown and the Plains and Wood Cree Indians in what is now central Alberta and Saskatchewan entered into Treaty 6. The Chief and Headmen of AFN were not present at the 1876 treaty negotiations, but subsequently adhered to Treaty 6 on August 21, 1877 at Edmonton on precisely the same terms as the treaty had been made the year before.

9. Treaty 6 purported to have AFN cede rights and interests in their traditional lands, in exchange for reserve lands and other treaty benefits including among others, relief in times of pestilence or general famine and medical assistance:

That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.

[hereafter “the Relief Clause”]

[...]

That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.

[hereafter “the Medicine Chest Clause”]

10. The aforementioned Relief Clause and Medicine Chest Clause are unique to Treaty 6 and were adopted in direct response to ardent concerns and requests voiced by the Chiefs during the 1876 treaty negotiations. In 1870 an epidemic raged throughout Cree territories, with starvation quickly following, as well as poverty resulting from the diminution of the buffalo.
11. Although a draft of Treaty 6 had been prepared and provided to the Commissioners prior to the treaty negotiations, the insistence of the Cree Chiefs on government assistance, resulted in the addition of the Relief Clause and the Medicine Chest to the written treaty.
12. The Cree Chiefs’ concern with the future survival and food sources of the Cree was articulated repeatedly during the Treaty 6 negotiations. The Chiefs expressly requested medicines “free of cost” or a “free supply of medicines.” In addition to medical help, the Chiefs also requested aid in case of “troubles seen and unseen,”

or “when we can’t help ourselves in case of trouble,” or “in case of extremity,” or “general famine.”

13. In response, Treaty Commissioner and main federal negotiator Alexander Morris assured the Chiefs that the Queen would come to their aid in times of “national calamity” or “unforeseen circumstances,” and cited several examples where the Crown had assisted other Indians. Morris told them to trust in her generosity and:

that if any great sickness or general famine overtook you, that on the Queen being informed of it by her Indian agent, she in her goodness would give such help as she thought the Indians needed.

[...]

I cannot undertake the responsibility of promising provision for the poor, blind and lame. In all parts of the Queen’s dominions we have them; the poor white have as much reason to be helped as the poor Indian; they must be left to the charity and kind hearts of the people.

[...]

A medicine chest will be kept at the house of each Indian agent, in case of sickness amongst you.

14. With respect to the request for food and relief, Alexander Morris himself wrote that a “...whole day was occupied with this discussion on the food question, and it was the turning point with regard to the treaty,” and without agreement on the food question and Relief Clause the treaty would not have been made.
15. With respect to the request for medicines, according to the translator, Erasmus, Morris had promised that a medicine chest would be kept in the house of every Indian Agent for the “free use of the band.”

**(B) 1905 Purported Surrender and Settlement Agreement**

16. Pursuant to the terms of its adhesion to Treaty 6, the Crown set aside Reserve No. 134 for the Alexander First Nation in 1889.

17. Some sixteen years later, in 1905, AFN purportedly agreed to surrender 9,518 acres of the reserve lands to Canada to be disposed of for the benefit of the First Nation.
18. The trust funds of AFN following the purported surrender were principally obtained from the surrender of nearly one third of the AFN's reserve lands in 1905.
19. Pursuant to separate negotiations with Canada, it was agreed for purposes of the Specific Claims process, that the 1905 surrender was not valid on the basis that "a majority of eligible voters did not attend the surrender meeting as required by section 39 of the 1886 *Indian Act*," meaning that the surrender and any terms thereof were void. Further, there was no evidence that the purported terms of the Agreement were ever discussed with the members of the AFN.
20. A specific claim related to the 1905 surrender was settled in 2002 on the basis that matters related to Canada's administration of trust moneys received from the sale of purportedly surrendered lands were specifically excluded from the releases in the settlement agreement dated January 29, 2002.
21. For purposes of this Claim, the only question therefore is whether, between 1905 and 1950, certain of the trust funds held for AFN were expended improperly, or in accordance with statutory and fiduciary duties on the part of the Crown, including duties arising from Treaty 6.

**(C) Illness, Pestilence and Famine**

22. The first half of the twentieth century was a harsh period of chronic deprivation and peril during which AFN was visited by an inordinate amount of illness, pestilence and famine:
  - a) In August 1910, all of the children on the reserve contracted measles and at least ten children died. The farming instructor also reported that the doctor was forced to charge for medicine during this time of "much

sickness” since the medicines sent for had not arrived. The population decreased from 165 to 141 from 1910 to 1911.

- b) The period from 1912-1913 was also a period of high mortality for all bands in Alberta, and despite efforts to keep a close eye on the medical expenses, food and medical expenses still increased dramatically from 1910 to 1912.
- c) Illness appears to have returned to the First Nation in early 1914, affecting numerous families. Again, the farming instructor was instructed to curtail medicines and medical supplies as much as possible. The farming instructor was also told to arrange for the vaccination of all AFN members who had not been vaccinated within the prior three years.
- d) In the summer of 1918, despite a positive report by the farm instructor, a contrary report came from Zeph. Lizée that there was great concern for food on the reserve and that some of the members were close to starving.
- e) By the end of 1918, the Spanish Influenza epidemic had gripped the reserve. There were 114 cases out of a population of approximately 140 and 17 deaths. Further, no agricultural work could be done for the first part of the month due to the epidemic. Food expenditures increased as a result.
- f) Unfortunately, very little is known about the condition of the First Nation from 1919 to 1924, although it is known that there were extreme food shortages in 1920 and 1925, that food expenditures from the trusts accounts were extremely high from 1916 to 1929, and that medical and drug costs were also extremely high from 1922 to 1929. An expert assessment of this pattern notes that it is consistent with the aftermath of several years of general and epidemic illness.
- g) Twelve families, out of a population of approximately 135, were also on rations in 1925.
- h) The winter of 1926-27 was difficult as a result of a poor farming season. There was also “considerable sickness amongst band members.”
- i) After a brief period of recovery, a great deal of sickness returned by December 1928, and no work was available off reserve from 1928 into 1929, which had a significant impact on the First Nation’s well-being. This intermittent loss of outside work continued through the subsequent years of the Great Depression, and 1929 was plagued by drought and fire, thus adversely impacting upon crops and feed.
- j) Conditions continued to worsen throughout the early 1930s. Both working and farming families were suffering and in need of food.

- k) By 1938 and 1939, a significant proportion of the population (nearly one fifth) was again destitute.
23. No information regarding the condition of the First Nation from 1940 to 1950 has been located; although trust fund expenditures for food and relief during this period were extremely high, indicating continuing severe hardship and widespread need.

**(D) Misuse of Alexander First Nation Trust Funds**

24. In total, Crown officials expended \$46,884.25 from the First Nation's trust funds for food, medical services, drugs, funerals, clothing and other relief between 1905 and 1950.
25. As a general rule, the policy of the Government of Canada sought to promote self-sufficiency of First Nations, and therefore, Indian Agents were instructed to provide relief and medical expenses only to destitute Indians where absolutely necessary. As a result, it can be assumed that trust fund expenditures from 1905 to 1950 are a conservative reflection of the conditions affecting the First Nation at the relevant time.
26. At no time did federal officials consider any of the Crown's Treaty 6 obligations in considering whether to use AFN trust funds or public moneys to pay for relief or medical expenses to AFN members.
27. Thus, Crown officials were not directed to consider whether any trust expenditures involved such obligations. There is also no indication of concurrent federal government expenditures of public funds to combat the rampant and chronic famine and destitution being experienced by AFN during this time.

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

28. The Crown owes statutory and fiduciary duties to AFN to properly administer the trust funds held for its benefit by the Crown. At all material times, the Crown held and exercised power over AFN's trust funds pursuant to the provisions of the *Indian Act* relating to "Indian moneys" in force from time to time, while the First Nation stood in a position of complete vulnerability to the Crown and to the unilateral exercise of its powers.

*Indian Act*, R.S.C. 1886, c.43, ss. 69-74; *Indian Act*, R.S.C. 1906, c.81, ss. 87-92; *Indian Act*, R.S.C. 1927, c. 98, ss. 90-95.

29. AFN submits that the Crown was obligated, in administering trust funds of AFN, to ensure that expenditures that were required to be borne by the Crown under the terms of Treaty 6 were not taken from the funds that were held by the Crown in trust for AFN.

30. In particular, it was the duty of the Crown to consider the scope and nature of its obligations under the Medicine Chest Clause and the Relief Clause and that public funds, and not from the trust funds beneficially owned by AFN, were used to meet medical and relief expenditures.

31. AFN further submits that in exercising its duties of a trustee with respect to the trust funds, the Crown was obligated to give a large and liberal interpretation of the Medicine Chest Clause and the Relief Clause, as AFN members would have understood those clauses.

32. AFN submits that the Crown breached the following duties in withdrawing moneys from the First Nation's trust funds in order to provide relief and medical assistance to the First Nation during the years 1905 to 1950:

- l) the duty to comply with the terms of Treaty 6, and in particular the Medicine Chest Clause and the Relief Clause while administering trust funds held on behalf of the First Nation;
  - m) the duty to manage the First Nation's trust funds in the best interests of the First Nation;
  - n) the duty to act as a prudent and competent trustee or fiduciary;
  - o) the duty to prefer the First Nation's interests over its own financial interests; and
  - p) the duty to exercise appropriate diligence to protect and preserve the First Nation's rights, interests and property.
33. As the Crown is responsible at law for the acts and omissions of its officials and ministers, the First Nation submits that it is entitled to equitable compensation for the following losses:
- a) repayment of the principal amounts improperly expended by the Crown in the aggregate amount of \$46,884.25; and
  - b) loss of use of the investment value or opportunity cost of the moneys wrongfully expended since the time of each initial disbursement from the First Nation's trust funds, in the form of compound interest; and
  - c) any costs of these proceedings above and beyond what may be funded by Canada; and
  - d) any other compensation that this Honourable Tribunal may deem just.

Dated this 22<sup>nd</sup> day of May, 2013



Robert J. Potts, Barrister & Solicitor  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, Ontario M5C 3G5  
Telephone: (416) 593-3952  
Facsimile: (416) 593-5437  
E-mail: bpotts@blaney.com



Alan Pratt, Barrister & Solicitor  
Alan Pratt Law Firm  
P.O. Box 100, Dunrobin, Ontario  
K0A 1T0  
Telephone: (613) 832-1261  
Facsimile: (613) 832-0856  
E-mail: alan@prattlaw.ca