

**SPECIFIC CLAIMS TRIBUNAL**

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
	October 14, 2015	
	Amy Clark	
Ottawa, ON		1

B E T W E E N:

STURGEON LAKE CREE NATION

Claimant

v.

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

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*.

October 14, 2015

Date

Amy Clark

(Registry Officer)

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

1. The Claimant, STURGEON LAKE CREE NATION (the “**First Nation**”), 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. I-5, as amended.
2. The First Nation is located in the Province of Alberta, with Reserve land directly east of Valleyview, AB, north of Edmonton. The First Nation has some 3000 members, which is a larger population than some similarly situated non-First Nation communities, including Valleyview.
3. The Respondent, HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development, is referred to herein as “**Canada**” or “**the Crown**”.

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

4. 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;

5. The First Nation filed a claim with the Specific Claims Branch on May 5, 2010, alleging that the Crown owes an outstanding lawful obligation resulting from its failure to provide economic benefits in the form of agricultural provisions owed to the First Nation pursuant to the terms of Treaty No. 8 (hereinafter “**Treaty 8**”) (the “Agricultural Benefits Claim”).

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

6. The First Nation does not seek compensation in excess of \$150 million for the Agricultural Benefits Claim.

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

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

14.(1) Subject to section 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;

8. In particular, the Crown has failed to fulfill its legal obligation to provide Agricultural Benefits (as defined below) to the First Nation pursuant to the terms of Treaty 8.

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

9. The First Nation entered into Treaty 8 in 1899, and also adhered to Treaty 8 in 1900. The First Nation is entitled to the benefits as promised by the Crown pursuant to the terms of Treaty 8. The Commissioners who negotiated Treaty 8 on behalf of Canada with the First Nation had the authority to bind Canada with their oral promises made at the time of negotiating and concluding Treaty 8. In and around the time of the negotiating and signing of Treaty 8, the First Nations and their members were not generally literate in the spoken or written English language, and as such, they relied on interpreters to convey to them the meaning of the oral promises and representations and the text of Treaty 8. Further, they made this known to the Commissioners negotiating Treaty 8 with them.

10. The text of Treaty 8, below, and the oral promises and representations made around the time of entering into Treaty, and around the time the First Nation's Reserves were surveyed, which promises form part of Treaty 8, set out the Crown's promise to provide the First Nation, its leaders and its members (as the case may be) with specific agricultural benefits (the text of Treaty 8 as set out below along with the

related oral promises and representations concerning agricultural benefits owing to the First Nation, its leaders and its members (as the case may be) are hereinafter collectively referred to as “**Agricultural Benefits**”) to assist and supplement their economy with an agricultural lifestyle, and through which the members could earn and maintain a livelihood. The text of Treaty 8 which sets out the clause related to Agricultural Benefits reads as follows:

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five handsaws, 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 barrow, and to the Chief, for the use of his band, two horses or a yoke of oxen, and for each Band potatoes, barley, 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 seed; and to every family one cow, and every Chief one bull, and one mowing machine and one reaper for the use of this 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 formed part of the Agricultural Benefits promises, and was acknowledged by Canada, that the First Nation and its members need not immediately select reserve lands (either in common or in severalty) and need not immediately receive their Agricultural Benefits; rather, they could settle on reserves and receive the Agricultural Benefits to which they were entitled when they were ready to transition (in whole or in part) from a livelihood based on hunting and fishing to one based on agriculture. The First Nation chose to delay receipt of its Agricultural Benefits for a period of time, and Canada acknowledged and agreed to this.

12. The First Nation did not receive Agricultural Benefits from Canada in the form promised under Treaty 8, and Canada was well aware of this. Contained within the promises to provide Agricultural Benefits was a promise to teach the First Nation and its members in the ways of agriculture, and this promise was contemplated and understood by Canada. These promises were made with the intent of allowing the First Nation to establish an economic and societal base in agriculture upon which it could sustain itself over the past 115 years at a level enjoyed by other Canadians.
13. Many members of the First Nation in fact moved away or married out of the First Nation as a direct result of the breaches described herein. This has caused the First Nation significant loss on a societal and community level – disrupting continuity and economic development.
14. The First Nation, its leaders and members did signify, express or implied, their choice to grow crops and/or raise livestock. This was known to Canada.
15. In the alternative, the prosecution of this Claim in 1997 in the Court of Queen’s Bench of Alberta, and thereafter in the Specific Claims process, does signify the First Nation’s and its leaders’ and members’ choice to grow crops and raise livestock.
16. First in 2007, and again in 2010, the First Nation filed a claim under Canada’s Specific Claims Policy on the grounds that none of the Agricultural Benefits owed to the First Nation pursuant to the terms of Treaty 8 had been provided by Canada. The First Nation requested that Canada fulfill its outstanding treaty obligation by providing the Agricultural Benefits in a modern context and form acceptable to the First Nation, and damages in their place.
17. Some of the lands provided by Canada to the First Nation for its Reserves were suitable for agricultural purposes or to raise livestock, and some were not. These facts were known or ought to have been known to Canada.
18. During the negotiations for Treaty 8, the Treaty Commissioners, on behalf of the Crown, repeatedly represented to the First Nation that the provision of land

pursuant to the terms of Treaty 8 was an ongoing obligation of Canada, and specifically, that the fulfillment of this provision would be done in the future as required.

19. In a memorandum dated 7 January 1891, the Superintendent General of Indian Affairs, Edgar Dewdney, recommended to the Privy Council of Canada that treaty negotiations would be necessary. Dewdney states:

“The undersigned begs to report that owing to the discovery, in the District of Athabaska and in the Mackenzie River Country that immense quantities of petroleum exist within certain areas of those regions, .... **appear to render it advisable that a treaty, or treaties, should be made with the Indians who claim those regions as their hunting grounds, with a view to the extinguishments of the Indian title** ... [emphasis added]

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

20. The Crown has not provided the Agricultural Benefits that it promised in Treaty 8 to the First Nation, its leaders and/or its members, as the case may be.
21. The Crown’s failure to provide Agricultural Benefits is a breach of the express and implied terms of Treaty 8, and a breach of the oral promises made at the time of Treaty, and a breach of the Crown’s legal, honourable, equitable, and fiduciary duties and honour of the Crown.
22. Further, Canada had a duty to consult and work with the First Nation to ensure the benefits promised under Treaty 8 were capable of being utilized by the First Nation. This is based on, among other things: the text of Treaty 8; the express oral promises and representations made to the First Nation at the time of making Treaty, implied in the terms of Treaty 8; the Honour of the Crown; Canada’s obligations to the British Crown when it took legal title to the land in Treaty 8 territory; and in the performance of its fiduciary duties. This includes, but is not limited to: consulting with the First Nation on its selection of land to ensure the land was suitable for agricultural pursuits; consulting with and providing training to the First Nation

about agricultural practices; and monitoring and providing insurance for its crops and livestock.

23. Promises made by Canada to First Nations in the context of a Treaty can be presumed to have been made in good faith with the intent of fulfilling them for the betterment of the First Nation. Give a man a cow and he will eat for the winter; give a man a cow and teach him to raise cattle, he will eat for eternity. The good faith and presumed intention of the promise for Agricultural Benefits was to allow the First Nation to eat for eternity. Canada's failure to provide suitable land and cattle, and teach the First Nation in the ways of agriculture, was a breach of the promise of Agricultural Benefits.
24. This is similar to the breach of Treaty in the *Nunavut Tunngavik Incorporated v Canada (Attorney General)*, 2014 NUCA 2, decision from the Nunavut Court of Appeal. There, Canada promised in a modern Treaty to provide the design, selection and implementation of monitoring for the ecosystem and socio-economic environment. Canada took the position that it could monitor, if and when it deemed necessary, without consideration for the First Nations' best interests. Nunavut argued that a promise to monitor is meaningless without diligence and the infrastructure needed to implement the monitoring. In the end, even Canada saw this as a hollow promise without performance in the First Nations' best interests, and admitted in the Court of Appeal hearing that it had breached the Treaty.
25. The First Nation pleads and specifically relies upon the established principles of treaty interpretation and the honour of the Crown, including but not limited to those enunciated by the Supreme Court of Canada in *R. v. Marshall*, 2005 SCC 43, that treaties should be liberally construed, treaty rights are not frozen at the date of the treaty, and must be updated and implemented in a manner consistent with equivalent modern practices.
26. The breaches by Canada described herein have prevented the First Nation from developing an economic base upon which it could sustain itself at a level enjoyed by other Canadians. As such, the First Nation has suffered losses to its economy in

addition to the cost to replace the Agricultural Benefits for more than 100 years, and seeks compensation therefor.

27. The Crown has not disputed liability in relation to the Agricultural Benefits claim.
28. In the alternative, the Treaty Commissioners appointed by the Crown to negotiate Treaty 8 knew or ought to have known that some of the lands within Treaty 8, including the lands traditionally occupied and used by the First Nation, were unsuitable for agriculture or livestock. Accordingly, the Crown's promise to provide Agricultural Benefits to the First Nation whose potential reserve lands were not suitable for agriculture or ranching would render this promise meaningless, yet was offered by the Crown as valuable consideration for – and was intended by the Crown to extract the surrender of Aboriginal title to – the vast area and minerals covered by Treaty 8.
29. Canada had specific knowledge of the vast mineral wealth within the Treaty 8 territory, including the oil sands. Canada entered into Treaty 8 with the First Nation with the intent to divest the First Nation of this wealth before it was known to them.
30. As a result, Canada made and continues to make substantial financial gains in the billions of dollars from the mineral rights in Treaty 8 territory. The promises made to the First Nation in and around the making of Treaty 8 were intended to be commensurate in value to the mineral wealth surrendered, in order to form true and valuable consideration of the nature able to support the enforcement of Treaty 8 at law. If that was not Canada's intent, then Canada did not intend Treaty 8 to be a binding agreement. An agreement without true and valuable consideration is not enforced at law. Taken in the context of the duties owed to the First Nation by Canada as expressed herein, fiduciary, constitutional or otherwise, there is even greater reason to interpret the Agricultural Benefits within Treaty 8 as commensurate in value to the land and minerals surrendered.
31. At law, a fiduciary who negotiates with his or her beneficiary for the surrender of land for its own use has the obligation to ensure fair and reasonable compensation



- for the beneficiary. We submit that this includes the Agricultural Benefits valued at the modern equivalent, land suitable for agriculture and an agricultural economy, or damages in lieu thereof, in the full sense and value as argued by the First Nation in this Claim.
32. The First Nation relied upon the good faith and honour of the Crown when negotiating the terms of Treaty 8 and, in particular, relied upon the Crown's promise to provide Agricultural Benefits or a comparable level of economic benefits to assist the First Nation in making a transition from a traditional livelihood. To the extent that the reserve lands provided by the Crown to the First Nation were not suitable for agriculture, since the Crown knew or ought to have known that the First Nation could not take up agriculture as contemplated by Treaty 8, and they had no skills, training or experience in that pursuit, and yet the Crown promised to provide such Agricultural Benefits, this conduct would be unconscionable and would result in equitable fraud if Canada were to refuse to fulfill its Treaty promise to provide Agricultural Benefits unconditionally, or to provide a comparable level of economic benefits or damages, by relying on a narrow and restrictive interpretation of the terms of Treaty 8, or by alleging some pre-conditions to the performance of these promises. The result would be to use the Treaty as an instrument of fraud.
33. Canada is not allowed at law to rely upon a precondition to performance of a term of Treaty 8, which precondition was made impossible to meet due to Canada's own breach of Treaty or breach of duty in not providing reserve lands suitable for agriculture to the First Nation. A fiduciary, or a contracting party, cannot promise to give a man land for the purposes of farming and to raise cattle, and then refuse the cattle because the land that was given was not suitable for agriculture.
34. Further to the allegations made in the preceding paragraphs herein, and in the result, the Crown obtained a surrender of Aboriginal title over the area covered by Treaty 8 through misrepresentation and breach of the trust or fiduciary relationship and obligations existing between the Crown and the First Nation at all material times,

and the Crown is therefore obligated to compensate the First Nation in damages for these breaches.

35. Furthermore, the Crown has been unjustly enriched by not expending the monies required to provide the Agricultural Benefits to the First Nation. The First Nation suffered a corresponding deprivation in not receiving the Agricultural Benefits and in not developing an agricultural economy and is therefore entitled to all appropriate equitable remedies, including compensation for the modern equivalent of the Crown's promise to provide Agricultural Benefits, damages for the loss of an agricultural economy due to the failure to provide those Agricultural Benefits, and an accounting or disgorgement of profits of the Crown.
36. In the alternative, Canada's failure to provide Agricultural Benefits and assist the First Nation in developing its agricultural economy is a plain breach of the written and oral terms of Treaty 8, and as such Canada is obligated to restore the First Nation to where it would have been without such breach, or pay damages in lieu thereof.
37. Due to the First Nation's members' inability to read the Treaty document or speak or understand English, the First Nation's representatives relied upon the oral representations made by the Treaty Commissioners and other spokespeople on behalf of Canada, as communicated to the First Nation's representatives by interpreters.
38. The oral representations made by the Treaty Commissioners, interpreters and other spokespeople, on behalf of Canada, form part of the Treaty or constitute a collateral agreement or Treaty.
39. These actions were dishonourable and not in keeping with the standard of care of a fiduciary. As a fiduciary, in protecting the interests of its beneficiary, the Crown should have acted as a reasonably prudent person managing its own affairs.
40. Canada failed to disclose material facts to the First Nation which is a breach of the duties described herein.


41. Provision of the Agricultural Benefits promised in Treaty 8 is a continuing fiduciary obligation of the Crown that the Crown continues to breach. The First Nation has suffered damages for economic loss and breach of promise arising from the breach of the Agricultural Benefits provisions, in an amount to be proven at trial.
42. Further and in the alternative, Canadian law recognizes the duty to act honestly owed by contracting parties in performance of their contracts. The First Nation says that Canada breached this duty by, among other things: failing to provide the First Nation with land for reserves that was suitable for agricultural use or the use of raising livestock; and failing to provide the First Nation with the Agricultural Benefits.

**VII. Relief Sought**

43. In light of the foregoing, the First Nation seeks the following relief:
  - (a) In lieu of an order for specific performance of the Agricultural Benefits treaty obligation to the First Nation, its leaders and its members (as the case may be), equitable and legal compensation to be based on the modern equivalent of the Agricultural Benefits as at the date of payment of compensation to the First Nation, or such other date as the Tribunal considers just;
  - (b) Damages or compensation for all losses, costs and expenses associated with the loss of the First Nation's agricultural economy caused by the delay in excess of 100 years by Canada in fulfilling its Treaty obligations and failure to provide the Agricultural Benefits as promised pursuant to the terms of Treaty 8, including the economic and societal cost to the First Nation, in an amount to be proven at trial;
  - (c) Damages for the unjust enrichment of Canada as a result of Canada not fulfilling its Treaty obligations and failing to provide the Agricultural Benefits to the First Nation, its leaders and its members (as the case may

- be), or an accounting or disgorgement of profits due to said unjust enrichment, in an amount to be proven at trial;
- (d) Damages for breach of fiduciary, constitutional and contractual duties and Honour of the Crown by Canada, in an amount to be proven at trial;
  - (e) Interest pursuant to the *Judgment Interest Act*, RSA 2000, c. J-1, the *Judicature Act*, RSA 2000, c. J-2, or in equity;
  - (f) Costs on a full indemnity basis resulting from the Crown's bad faith conduct during settlement negotiations and failing to negotiate despite the statutory duty to do so; and
  - (g) Such other relief as this Honourable Tribunal deems appropriate.

Dated this 14<sup>th</sup> day of October, 2015.

  
Signature of Representative/Solicitor

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