

**SPECIFIC CLAIMS TRIBUNAL**

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F I L E D	D É P O S É
June 6, 2013	
Guillaume Phaneuf	
Ottawa, ON	1

B E T W E E N:

MIKISEW CREE 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*.

June 6, 2013

Date

Guillaume Phaneuf  
Registry Officer

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

1. The Claimant, the Mikisew Cree First Nation (the “First Nation” or “Mikisew”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act* and a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended. The First Nation is located 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 a final settlement agreement.

3. The First Nation filed a claim with the Specific Claims Branch in 1993 alleging that the Crown owes an outstanding lawful obligation resulting from its failure to provide any agricultural benefits owed to Mikisew pursuant to the terms of *Treaty No. 8* (hereafter “Treaty 8”) (the “Agricultural Benefits Claim”).
4. In a letter dated December 16, 1996, the Deputy Assistant Minister of Indian Affairs and Northern Development informed Mikisew that it had “sufficiently established that Canada has a lawful obligation” and offered to accept the Agricultural Benefits Claim for negotiation of a settlement under the Specific Claims Policy.
5. Mikisew and the Crown entered into settlement negotiations beginning in 1999. The First Nation was notified pursuant to s. 42(1) of the *Specific Claims Tribunal Act* that the Minister was deemed to have accepted the Agricultural Benefits Claim for negotiation as of October 16, 2008.
6. More than 3 years have passed since the Agricultural Benefits Claim was deemed to have been accepted for negotiation, however, the claim has not yet been resolved and a final settlement agreement has not been concluded.

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

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

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

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

**14(1)** Subject to sections 15 and 16, a First Nation may file with the Tribunal 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;
9. In particular, the Crown has failed to fulfill its legal obligation to provide any Agricultural Benefits to Mikisew pursuant to the terms of Treaty 8.

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

10. The Mikisew Cree adhered to Treaty 8 on July 13, 1899 and is entitled to the benefits as promised by the Crown under the terms of Treaty 8.
11. The terms of Treaty 8 set out the Crown's promise to provide the Mikisew Cree with specific agricultural benefits to assist in their transition from a hunting, fishing and trapping economy to an agricultural lifestyle through which the members could earn and maintain a moderate livelihood. In particular, the text of Treaty 8 sets out an "Agricultural Benefits" clause which 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 hand-saws, 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 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; ...

12. Beginning in 1922, Mikisew petitioned the Crown to set aside reserve lands for its use and benefit. Despite repeated requests by Mikisew, the Crown did not set aside any reserve lands for the use and benefit of Mikisew until 1988.
13. In 1993, Mikisew filed a claim under Canada's Specific Claims Policy on the grounds that none of the Agricultural Benefits owed to Mikisew pursuant to the terms of Treaty 8 had ever been provided by the Crown. Mikisew requested that Canada promptly fulfill its outstanding treaty obligation by providing the Agricultural Benefits in a contemporary manner and form acceptable to the First Nation.

**VI. Legal Basis of the Agricultural Benefits Claim**

14. The Crown's failure to provide any Agricultural Benefits results in a breach of the clear and unambiguous terms of Treaty 8, and a corresponding breach of the Crown's legal, honourable, equitable and fiduciary duties.
15. The Crown has not provided any of the Agricultural Benefits that it promised to provide under Treaty 8 to Mikisew, its leaders and/or its members as the case may be. Those Agricultural Benefits are summarized as follows:
  - (a) ten axes, five hand-saws, five augers, one grindstone and the necessary files and whetstones for the use of the Band;
  - (b) two hoes, one spade, one scythe and two hay forks for each family settled;
  - (c) one plow and one harrow for every three families settled;
  - (d) one cow for every family settled;
  - (e) one bull for the chief;
  - (f) one mowing machine and one reaper for the use of the Band when required;
  - (g) two horses or a yoke of oxen for the use of the Band; and
  - (h) seed (in particular, potatoes, barley, oats and wheat; if and as suited to the locality of the reserve) and provisions for one month in the spring for several years while planting such seeds;
  - (i) Further, for families who preferred to raise stock instead of cultivating the soil:

- i. two cows for every family of five (and like proportion for smaller and larger families); and
  - ii. two bulls and two mowing machines for the Chief when required.
- 16. Mikisew 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 S.C.C. 43, to the effect 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.
- 17. The Crown has not disputed liability in relation to the Agricultural Benefits Claim but the parties were unable to reach agreement on quantification of compensation.

**VII. Relief Sought**

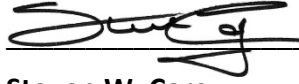
- 18. In light of the foregoing, the First Nation seeks the following relief:
  - (a) in lieu of an order for specific performance of the treaty obligation, equitable compensation for Canada's breach of its treaty, honourable, fiduciary and equitable duties to be based on:
    - i. the value of the modern equivalent of the Agricultural Benefits as at the date of payment of compensation to Mikisew or such other date as the Tribunal considers just;
    - ii. in the alternative, the value of the modern equivalent of the Agricultural Benefits as of 1988 when a reserve was first set apart for Mikisew plus compensation for loss of income arising from the Crown's failure to provide any Agricultural Benefits as promised under the terms of Treaty 8 from 1988 to the date of judgment of the Tribunal;
  - (b) costs on a solicitor-client basis resulting from the Crown's bad faith conduct during settlement negotiations; and
  - (c) such other relief as this Honourable Tribunal deems appropriate.

Dated this 6<sup>th</sup> day of June, 2013 at the City of Calgary in the Province of Alberta.



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