

SPECIFIC CLAIMS TRIBUNAL

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

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	August 26, 2013	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	6	

RESPONSE
Pursuant to Rule 42 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Response is filed under the provisions of the *Specific Claims Tribunal Act* (the “*Act*”) and the Specific Claims Tribunal Rules of Practice and Procedure.

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Solicitors for the Claimant

I. Status of Claim (R. 42(a))

1. The Alexander First Nation (“AFN”) submitted a claim to the Minister of Indian Affairs and Northern Development (the “Minister”), asserting, among other things, that the Crown breached a legal obligation by wrongfully expending trust funds to provide assistance to AFN members. Such assistance should have been, instead, provided pursuant to Treaty 6.
2. The Minister notified the AFN in writing on August 19, 2011 of his decision not to accept the claim for negotiation.

II. Validity (R. 42(b) and (c))

3. The Crown’s understanding is that the Declaration of Claim only includes a claim based on s. 14(1)(c) of the *Act* alleging a breach of a legal obligation arising from the Crown’s administration of Indian moneys of the AFN. Based on this understanding, the Crown’s response is set out in paragraphs 5 to 44.
4. In the event that the Crown’s understanding of the claim is incorrect and to the extent that the Declaration of Claim includes a claim based on section 14(1)(a) of the *Act* alleging a failure to fulfill a legal obligation of the Crown to provide medical assistance pursuant to the Medicine Chest clause of Treaty No. 6 or relief pursuant to the Relief Clause of Treaty No. 6, or both, to AFN, paragraphs 45-48 are pleaded in further response.
5. The Crown does not accept the validity of the claim set out in the Declaration of Claim.
6. The Crown denies that it breached a legal obligation arising from the Crown’s administration of Indian moneys or other assets of the AFN.

7. In the alternative, if the Tribunal should find AFN's Claim to be valid, paragraphs 20(1)(b) and (c) of the *Act* may provide a basis for the Tribunal to award compensation in respect of the Claim. None of sections 20(1)(e) to (h) of the *Act* provide the basis for the Tribunal to award compensation.
8. Further, and in the alternative, the Crown specifically pleads section 20(3) of the *Act* and the application of set-off.

III. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))

9. Unless expressly admitted or accepted in this Response, the Crown denies each and every fact alleged in AFN's Claim and puts the Claimant to the strict proof thereof.
10. Without restricting the generality of paragraph 9 of this Response, the Crown denies all of paragraphs 15, 22(b), 22(f), 22(k) and 23.
11. The Crown admits the facts set out in paragraphs 8, 10 and 20 of the Claim.
12. The Crown states that with respect to paragraphs 21, and 28 to 33, the statements made are legal argument.
13. In response to paragraph 9, the Crown admits Treaty No. 6 contains the Relief and Medicine Chest clauses subject to the correction that the Medicine Chest clause should state "discretion" and not "direction". The Crown states that the AFN did not just cede their traditional lands, and refers to the wording of Treaty 6.
14. In response to paragraph 11, the Crown admits that the Relief Clause and Medicine Chest Clause were added to the written treaty.

15. In response to paragraph 12, the Crown states that with respect to the “Relief Clause”, during treaty negotiations, Chiefs requested aid in case of troubles seen and unforeseen, in case of any extremity, famine or calamity. Further, the Crown admits that during the treaty negotiations the Chiefs expressly requested to be supplied with medicines free of cost.
16. In response to the first sentence of paragraph 13, the Crown states that during the treaty negotiations, Alexander Morris (“Morris”), one of the Commissioners appointed to negotiate Treaty No. 6, in attempting to assure the Chiefs that a relief clause was not required to be included in the treaty, provided examples of the Queen’s generosity in providing aid in extraordinary circumstances and in situations of unforeseen calamity even though aid was not promised in a treaty. Morris asked the Chiefs to trust in the Queen’s generosity and assured them that the Queen would provide assistance in extraordinary circumstances. The Crown states that after further discussion, in ultimately advising what he could or could not agree to include in the treaty, Morris made the statements that are contained in the long indented quote in the second sentence of paragraph 13.
17. In response to paragraph 14, the Crown states that Morris advised the Minister of the Interior that the food question was the turning point with regard to the treaty and the Commissioners were in full conviction that if they had not assured the Indians that they could look for help only in the case of a national calamity befalling them, the Treaty would not have been made.
18. In response to paragraph 16, the Crown states that Indian Reserve No. 134 (the “Reserve”) was surveyed in August and September 1880 for the AFN and confirmed by Order-in-Council on May 17, 1889.
19. In response to paragraph 17, the Crown states that in December 1905, the AFN surrendered 9,518 acres of the Reserve to Canada in trust to dispose of upon such

terms as the Government of Canada may deem most conducive to the welfare of the Band and its people.

20. In response to paragraph 18, the Crown states that the funds from the sale of the 9,518 surrendered acres were deposited in and interest thereon credited to the AFN's band funds account ("Band Funds").
21. In response to paragraph 19 the Crown states that the statements made are subject to settlement privilege and should be struck from the Declaration of Claim.
22. The Crown admits paragraph 22(a) but states that as of August 20, 1910, at least 10 children on the Reserve had died since the Treaty payments had been made that year; however, the Crown has no knowledge of whether the children had all died from measles. The Crown also has no knowledge of whom the doctor charged for the medicine.
23. In response to paragraph 22(c), the Crown states that as of January 31, 1914, there was sickness in 7 families on the Reserve. The Crown admits in February 1914, the Indian Agent requested the farm instructor to make arrangements for the vaccination of all members of the AFN who had not been vaccinated within the past 3 years.
24. In response to paragraph 22(d), the Crown admits the existence of a report of Zeph Lizee.
25. In response to paragraph 22(e) the Crown admits that as of November 1918, there had been 114 cases of the Spanish Influenza on the Reserve and 17 deaths caused by it; however, the Crown states that by that time, the AFN was well on the road to recovery. The Crown admits that owing to the sickness, no agricultural work was done for the first part of November 1918; however, the Crown states that

threshing commenced on November 20 and all the Indians were engaged in the threshing.

26. In response to paragraph 22(g), the Crown states that on March 26, 1925, 21 members of the AFN were on rations.
27. In response to paragraph 22(h), the Crown states that during the month of February 1927, there had been considerable sickness on the Reserve.
28. In response to paragraph 22(i), the Crown states that during the month of January 1928, the health of the Indians on the whole had been very good. The Crown states that during the months of December 1928 and January 1929, there had been a great deal of sickness on the Reserve, but by the end of January 1929, all had recovered and the health of the Indians was very good.
29. In response to paragraph 22(i), the Crown states that from December 1928 to August 1929, and throughout the Great Depression there was intermittent loss of or scarcity of work off the Reserve.
30. In response to paragraph 22(j), the Crown states that in January 1933, eight families on the Reserve who were not farming required relief in the way of flour and tea and that the farmers required flour and tea during their spring work. The Crown states that as of January 19, 1934, there was no one on the Reserve that had required relief that winter.
31. In response to the whole of paragraph 22, the Crown states that the facts pleaded are insufficient to trigger an obligation on the part of the Crown under the Relief Clause.

32. In response to paragraph 24, the Crown admits that at various times between 1907 and 1950, the Crown expended funds from the AFN's Band Funds to supply members of the AFN with food, medical services, drugs or other relief.
33. In response to paragraph 25 the Crown admits only that as a general rule, the policy of the Government of Canada sought to promote self-sufficiency of First Nations. The Crown states that the second sentence is argument and conjecture and the Crown is not required to admit or deny.
34. In response to paragraph 26, the Crown states that it is argument and conjecture and the Crown is not required to admit or deny.
35. In response to the first sentence of paragraph 27, the Crown states that it is argument and conjecture, and the Crown is not required to admit or deny. The Crown denies the rest of the paragraph.

IV. Statements of Fact (R. 42(a))

36. In 1876, the Crown and the Plains and Wood Cree Indians 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.
37. Treaty No. 6 contains the Relief Clause and Medicine Chest Clause.
38. Indian Reserve No. 134 (the "Reserve") was surveyed in August and September 1880 for the AFN and confirmed by Order-in-Council on May 17, 1889.
39. In December 1905, the AFN surrendered 9,518 acres of the Reserve to Canada in trust to dispose of upon such terms as the Government of Canada may deem most conducive to the welfare of the Band and its people.

40. The 1905 surrender provided that out of the proceeds of the sale of the surrendered land and the investment thereof a reasonable proportion of the cost of maintaining the sick, old and disabled members of the Band should be paid.
41. Funds from the sale of the 9,518 surrendered acres were deposited in and interest therein credited to the AFN's Band Funds.
42. At various times between 1907 and 1950, the Crown expended funds from the AFN's Band Funds to supply members of the AFN with food, medical services, drugs or other relief.
43. At various times between 1905 and 1950, the Crown expended public funds to supply members of the AFN with food, medical services, drugs or other relief.
44. Section 92(d) of the 1906 *Indian Act*, and as amended from time to time, provided that the Superintendent General may, whenever sick or disabled, or aged or destitute Indians are not provided for by the band of which they are members, furnish sufficient aid from the funds of the band for the relief of such sick, disabled, aged or destitute Indians.
45. If the Declaration of Claim does include a claim based on s. 14(1)(a) of the *Act*, the Crown additionally pleads the following.
46. To the extent they were owed, the Crown has supplied AFN with medical assistance pursuant to Treaty No. 6.
47. To the extent it was owed, the Crown has supplied AFN with relief in times of pestilence or general famine pursuant to Treaty No. 6.
48. Alternatively or additionally, the Crown has provided AFN with medical assistance and relief, apart from the Crown's Treaty obligations.

V. Relief (R. 42(1))

49. The Crown seeks the following relief:

- a. To have the Claim dismissed in its entirety;
- b. In the alternative, should any expenditure be found to lack proper authorization or be otherwise inappropriate, the Crown relies upon s.20(3) of the *Specific Claims Tribunal Act* and seeks to set off the value of the benefit received by the Claimant from any compensation deemed owing;
- c. Costs; and
- d. Such further relief as counsel may request and this Honourable Tribunal deems just.

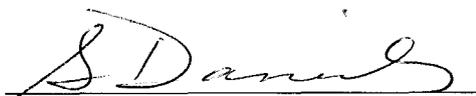
VI. Communication (R. 42(g))

50. E-mail addresses for the service of documents on the Respondent:

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Dated this 26th day of August, 2013.

William F. Pentney
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Per: 
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