

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

BIRCH NARROWS FIRST NATION and
BUFFALO RIVER DENE NATION

Claimants

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations and Northern Affairs 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*.

September 28, 2021

(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant (R.41(a))

1. The Claimants Birch Narrows First Nation (BNFN) and Buffalo River Dene Nation (BRDN) (collectively, the “First Nations”) are First Nations within the meaning of s.2(a) of the *Specific Claims Tribunal Act*, and their reserves are situated in the Province of Saskatchewan.
2. The Clear Lake Band adhered to Treaty 10 in 1906 and BNFN and BRDN are successors to the Clear Lake Band as a result of the band’s division in 1972.

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

3. The specific claim meets the filing condition set out in section 16(1)(a) of the *Specific Claims Tribunal Act (SCTA)*:
... the claim has been previously filed with the Minister and the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim...
4. The First Nations’ Treaty Land Entitlement claim dated 15 January 2001 was received by Indian Affairs and Northern Development on or about 8 February 2001.
5. The *SCTA* came into force on 16 October 2008 and the First Nations’ Treaty Land Entitlement claim was filed with the Minister as of 16 October 2008.
6. Chiefs Debbie Billett and Robert Sylvester were informed that the Minister had decided not to accept the First Nations’ Treaty Land Entitlement Claim for negotiation by letter dated 26 March 2010.

III. Claim Limit (R.41(f))

7. The Claimants do not seek compensation in excess of \$150 million.

IV. Grounds (R.41(d))

8. This specific claim is filed on the grounds set out in section 14(1)(a) of the *SCTA*:
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...
9. Specifically, the Crown failed to provide the Claimants with all of the lands they are entitled to under Treaty no. 10.

V. Fact (R.41(e))

10. The Claimants adhered to Treaty no. 10 in 1906 as the Clear Lake Band.

11. The Claimants are entitled to the benefits solemnly promised by the Crown in Treaty no. 10, including the promise to set aside 128 acres of reserve land per person.

Surveying and Setting Aside Reserve Lands

12. The Clear Lake Band requested that reserve lands be set aside from them, at latest, in 1921.
13. WA McMaster was appointed to survey reserve lands for the Clear Lake Band in the spring of 1923. He was informed of his appointment by letter dated 26 May 1923 and acknowledged his appointment on or about 31 May 1923.
14. WA McMaster commenced surveying reserve lands on or about 27 June 1923 and completed his surveys by 8 September 1923.
15. WA McMaster surveyed three reserves for the Clear Lake Band:
 - a. 26,450 acres as Peter Pond no. 193;
 - b. 395 acres as Churchill Lake no. 193A; and
 - c. 231 acres as Turnor Lake no. 193B.
16. These three reserves were set aside for the Clear Lake Band by Orders-in-Council dated 23 January 1930.
17. An additional 3.78 acres was set aside for the Claimants (at that time called the Peter Pond Lake Band) by Order-in-Council dated 23 July 1965.
18. In 1972 the Peter Pond Lake Band was divided into the Peter Pond Lake Band (now BRDN) and Turnor Lake Band (now BNFN). BRDN and BNFN split their existing 27,079.78 acres of reserve land. No additional reserve lands were set aside.

Treaty Land Entitlement Population

19. 210 people were paid Treaty annuities as members of the Clear Lake Band on or about 17 June 1922. An additional three members were absent for the payment of annuities.
20. 206 people were paid Treaty annuities as members of the Clear Lake Band on or about 27 June 1923. One additional member was absent for the payment of annuities.
21. After WA McMaster's surveys there were a number of late adherents to the Clear Lake Band.
22. From the date of the surveys through 1965 there were, at least, 29 new adherents (individuals who had not yet taken Treaty) and landless transfers (individuals who had transferred from other bands, but who had not yet been included in any other band's TLE calculations), including marriages (individuals who had joined the band through marriage, but had not been counted elsewhere in a TLE calculation).

VI. Legal Basis

23. The Crown breached its Treaty obligation to the Claimants by failing to provide them with their full entitlement to Treaty land.
24. The Claimants plead and rely upon the established principles of Treaty interpretation including that the honour of the Crown governs Treaty implementation, the Crown must avoid the appearance of sharp dealing, and the Crown must act in a manner that accomplishes the intended purposes of its Treaty promises.
25. In *Lac La Ronge Indian Band v Canada*, 2001 SKCA 109 the Saskatchewan Court of Appeal established that, for the purpose of determining Treaty land entitlement populations, “the overriding principle is that each living Indian will be counted once for the purpose of land entitlement.” The Claimant submits that discrimination on the basis of gender in the determination of a Treaty land entitlement population is contrary to law.
26. The Claimants’ Treaty land entitlement population at the date of first survey as adjusted for new adherents and landless transfers is, at least, 236: at least 207 at the date of survey adjusted to account for at least 29 new adherents and landless transfers. As such, the Claimants were entitled to at least 30,208 acres under the terms of Treat no. 10 and have a TLE shortfall of at least 3,128.22 acres.

VII. Relief Sought

27. The First Nations seek the following relief:
 - a. Equitable compensation for loss of use of the TLE shortfall;
 - b. Compensation for the value of the outstanding land entitlement;
 - c. Such other compensation the Tribunal deems just; and
 - d. Costs.

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