

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	June 7, 2021	D É P O S É
Dragisa Adzic		
Ottawa, ON	6	

SCT File No.: SCT-5002-20

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

MAKWA SAHGAIEHCAN FIRST NATION

Claimant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

Respondent

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* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Makwa Sahgaiehcan First Nation
as represented by
Steven Carey and Ryan Lake
Maurice Law
Barristers & Solicitors
300, 602 – 12th Avenue SW
Calgary, AB T2R 1J3
Phone: (403) 266-1201
Fax: (403) 266-2701
Email: scarey@mauricelaw.com
rlake@mauricelaw.com

Overview

1. Canada acknowledges that Makwa Sahgaiehcan First Nation (Makwa First Nation) is an adherent to Treaty 6, is a band within the meaning of the *Indian Act*, and is a First Nation within the meaning of the *Specific Claims Tribunal Act (SCTA)*.
2. Canada acknowledges that under Treaty 6, Canada promised to set aside reserve land for each band, including Makwa First Nation, in the amount of one square mile for each family of five, approximately equal to 128 acres per person. Canada states Makwa First Nation has received the land it was entitled to as set out in Treaty 6, and that Canada has fully discharged any Treaty 6 land entitlement obligations owed to Makwa First Nation.
3. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada undertakes to embody these principles as it assists the Tribunal in its adjudicative function over this Claim.

I. Status of Claim

4. Canada admits the requirements in paragraph 16(1)(a) of the *SCTA* are satisfied, as pled in paragraphs 2 through 4 of the Declaration of Claim (Claim):
 - Makwa First Nation submitted a claim to the Minister of Indigenous and Northern Affairs on December 21, 1998, before the *SCTA* came into force. Canada acknowledged receipt of the claim on August 13, 1999;
 - In a letter dated November 24, 2008, the Makwa First Nation was advised that the Treaty Land Entitlement specific claim had been filed with the Minister as of October 16, 2008, pursuant to the *SCTA*; and,
 - On March 26, 2010, the Minister provided written notification to Makwa First Nation of the decision to not accept the claim for negotiation under Canada's Specific Claims Policy on the basis that there is no outstanding lawful obligation.

II. Canada's position with respect to Validity of the Claim

5. In response to paragraph 6, Canada admits the Claim is properly brought under paragraph 14(1)(a) of the *SCTA* on the grounds that Canada allegedly failed to provide Makwa First Nation with its full treaty land entitlement pursuant to Treaty 6. Canada does not agree that the facts, as pled or at all, establish a valid claim under the *SCTA*.
6. In response to paragraph 20, Canada says that it has complied with its treaty and fiduciary obligations in setting apart Reserve land for the Makwa First Nation. Canada has fully discharged the Treaty 6 land entitlement obligations owed to Makwa First Nation. Makwa First Nation has fully received the land it was entitled to under Treaty 6.

III. Canada's Position with respect to Allegations of Fact

7. In response to paragraph 7 and 22, Canada admits that Treaty 6 was signed at Fort Carlton in August 1876 and at Fort Pitt in September 1876. Canada acknowledges that in exchange for the surrender of 121,000 square miles of land, Treaty 6 sets out various promises and benefits for the signatories. Treaty 6 includes the "reserve clause", which provides a signatory band a treaty land entitlement based on the formula of up to one square mile for each family of five, or, 128 acres per person.
8. In response to paragraph 8, Canada admits that Treaty 6 provides that government officials send a suitable person to determine and set apart the reserves for each band, after consulting with each band as to their preferred location for the reserve.
9. In response to paragraph 9, Canada admits the historical record refers to Makwa First Nation as the "Loon Lake Band" or "Makwa Lake Band" interchangeably. Canada will refer to the historical Makwa First Nation as the "Makwa Lake Band".

10. In response to paragraph 10, Canada acknowledges that the Makwa First Nation lived in an area ceded under Treaty 6, but the geographic location where they lived cannot be confirmed.
11. In further response to paragraph 10, Canada states the historical correspondence concerning the Island Lake Band indicates that they lived in a remote area about forty miles northeast of Onion Lake, and remained there, undisturbed, for many years. Further, correspondence indicates some of them had been present at treaty negotiations at Fort Pitt in 1876, and most had received treaty payments in 1876 and 1877 as members of other bands including Seekaskootch, Weemistikooseahwas (Makoo) and Oonepowhayo. Many of these members did not present themselves again for treaty payments until approximately 1894.
12. In response to paragraph 11, Canada admits that in 1911, Order in Council P.C. 1911-1704 set aside Reserve 161 and 161A for the Island Lake Band, and that members of Makwa Lake First Nation were paid with members of the Island Lake Band.
13. In further response to paragraph 11, Canada has no knowledge of the three individuals and two families allegedly living at Makwa Lake in 1912. Canada has no knowledge of the additional 27 non-treaty individuals who were allegedly reported to be residing at Makwa Lake.
14. In response to paragraph 12, Canada admits Indian Agent Sibbald met with Makwa Lake Band members to discuss the establishment of their reserve. As the number of Makwa Lake and Big Island Lake band members for whom land had to be allotted was difficult to determine, it was decided that the reserves would not be surveyed in 1914, but land was temporarily set apart for the eventual selection of reserves. Canada further admits that Makwa Lake Band members were first paid treaty annuities on their own list in 1914 as the "Loon Lake Band". The 1914 Paylist

records for the “Loon Lake Band” showed there were 39 persons paid. Prior to then, most members had been listed and paid as members of the Island Lake Band.

15. In response to paragraphs 13 and 21, Canada admits Surveyor Roberston was instructed to survey reserves for Makwa Lake Band members in April 1915, and on July 2 and 3, 1915, annuities were paid to the members of the Makwa Lake Band. Canada has determined the Treaty Land Entitlement (TLE) population in 1915 to be 29 individuals. Canada says Donald F. Robertson surveyed two reserves between August 23 and August 28, 1915, for Makwa Lake Band, and indicated the the 1914 list was used to survey Reserve 129 and 129A. Reserve 129 contained 4,491.2 acres, and Reserve 129A contained 638 acres, for a total of 5,129.2 acres.
16. In response to paragraph 14, Canada admits Reserve 129 and 129A were confirmed by Order-in-Council P.C. 1919-294, and amended by Order-in-Council 1919-722.
17. In response to paragraphs 15, 16 and 17, Canada admits Surveyor Robertson noted that he met with 77 non-treaty Indians who resided at Makwa Lake, and that his attempt to persuade them of the benefits that would accrue if they took treaty was unsuccessful. He concluded his letter with a suggestion that the Department of Indian Affairs (DIA) hold land for them, as he thought in a few years they would join treaty. Canada currently has insufficient knowledge to admit or deny that the DIA recommended the remaining non-treaty Indians at Makwa Lake take treaty. Canada acknowledges that in 1929, a majority of the non-treaty Indians in the vicinity of Loon Lake adhered to Treaty.
18. In response to paragraph 18, Canada admits that in 1930 Reserve 129B was surveyed and set aside for the Makwa Lake Band. Reserve 129B contains 9,243.7 acres and was confirmed by Order in Council P.C. 1930-1776.
19. In response to paragraph 19, Canada agrees that several families' names were added to the Makwa Lake Band paylists in 1936 and were recorded as “admitted”.

20. In response to paragraphs 23, 24 and 25, Canada admits that Reserve 129, 129A, and 129B provided a total of 14,372.9 acres. Canada states that the historical record indicates the total eligible population of Makwa First Nation was 91 persons and the land received was enough for 112 people. There is a surplus of 2724.9 acres.

IV. Canada's Statement of Facts

21. Treaty 6 promises that Canada will lay aside reserves for the benefit of the signatories to the Treaty "provided, all such reserves shall not exceed in all one square mile for each family of five" which is equivalent to 128 acres per individual.
22. When the land for Island Lake Band was being surveyed, Canada's officials acknowledged that the land was for those individuals living at Island Lake as well as those living at Loon Lake and Big Island Lake. When it was found that none of those individuals residing at Big Island Lake nor those at Loon Lake would move to Island Lake, a portion of Island Lake reserve was surrendered in 1914 for those individuals.
23. The Makwa Lake Band peoples lived at Loon Lake and were first paid treaty annuities on their own list in 1914, as the "Loon Lake Band". Most members of the "Loon Lake Band" had, prior to then, been listed and paid as members of the Island Lake Band. The 1914 Paylist records for the "Loon Lake Band" showed there were 39 persons paid. The 1915 annuity paylist had a population of 28 individuals – this included people who were originally excluded (exclusions) and people who were counted twice (double counts). Ultimately, Canada determined the 1915 TLE population to be 29 individuals. 1915 annuities were paid on July 2 and 3, 1915.
24. On April 27, 1915, a letter was sent instructing Donald F. Robertson, D.L.S. to survey reserves at Makwa Lake for the persons residing there. On August 23 to August 28, 1915, Robertson surveyed Reserve 129 and 129A. Reserve 129 contained 4,491.2 acres and Reserve 129A contained 638 acres, for a total of

5,129.2 acres. Reserves 129 and 129A were confirmed by Order-in-Council 1915-294 and later amended by Order-in-Council 1930-722.

25. Roberston indicated that the 1914 Paylist showed that there were 39 persons paid when he surveyed the land in Reserves 129 and 129A. He described the land as “average quality”. Robertson would have had access to the 1915 paylists which were nearest in time to the survey.
26. Canada’s historical records indicated that there were still about 77 non-treaty individuals living in the area. By 1929, DIA had not been able to get all of the non-treaty peoples together to sign an adhesion to Treaty. DIA was hopeful that certain non-treaty peoples would join treaty in the near future and had withheld land from settlement. On August 5, 1930, Order-in-Council 1930-1776 set aside Reserve 129B, containing 9,243.7 acres.
27. The annuity payroll dated July 2 and 3, 1915, being the payroll closest in time to the date of first survey, is the most appropriate payroll from which to begin the assessment of the Makwa First Nation’s eligible TLE membership. The 1915 annuity payroll identified an eligible TLE membership of 29 individuals, including those classified as “Arrears” and “Absentees”. Additionally, 62 individuals joined the First Nation after the date of first survey and are classified as eligible “late additions” in accordance with departmental policy. Therefore, the eligible TLE population is 91 individuals.
28. Reserves No. 129, 129A and 129B together contain a total of 14,372.9 acres. This land is sufficient for 112 individuals. No shortfall exists.

V. Relief

29. Canada seeks the following relief:
 - a. Dismissal of the claim;

- b. Costs; and
- c. Such further relief as this Honourable Tribunal deems just.

VI. Communication


30. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Patricia Warwick/Candace Almightyvoice

31. Facsimile number for service is: (306) 975-4030

32. Email address for service is: saskSCT-5002-20-makwa@justice.gc.ca

Dated this 7th day of June, 2021.


ATTORNEY GENERAL OF CANADA
Department of Justice
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Fax: (306) 975-4030

Per: Patricia Warwick and Candace Almightyvoice
Tel: (306) 518-0731/(306)518-0807
E-mail address: Patricia.Warwick@justice.gc.ca
Candace.Almightyvoice@justice.gc.ca

Counsel for the Respondent