FILE NO.: SCT-3001-22
CITATION: 2025 SCTC 2
DATE: 20250502

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
SAGAMOK ANISHNAWBEK FIRST NATION Claimant (Respondent)	Christopher Albinati and Laura Sharp, for the Claimant (Respondent)
– and –	
HIS MAJESTY THE KING IN RIGHT OF CANADA As represented by the Minister of Crown-Indigenous Relations Respondent (Applicant)	Daniel Luxat, Elizabeth Chan and Claudia Tsang, for the Respondent (Applicant)
	HEARD: March 27, 2025

REASONS ON APPLICATION

Honourable Victoria Chiappetta, Chairperson

NOTE: This document is subject to editorial revision before its reproduction in final form.

Cases Cited:

Nowegijick v The Queen, [1983] 1 SCR 29; *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 SCR 83; *Onion Lake Cree Nation et al v His Majesty the King in Right of Canada*, 2024 SCTC 6.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, ss 2, 14, 20.

Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, ss 91, 92, 109.

Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119.

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I. OVERVIEW

[1] The Respondent, His Majesty the King in Right of Canada (Canada), has brought an Application for Leave and Notice of Application (Application) to amend its Response to the Declaration of Claim. The Claimant, Sagamok Anishnawbek First Nation (Sagamok), alleges in its Declaration of Claim that, in implementing the Robinson-Huron Treaty (1850), the Crown breached a fiduciary obligation to reserve a 10-square-mile parcel of land known as the "La Cloche Tract." Canada's Response to the Declaration of Claim was served and filed on March 24, 2023. In that Response, Canada denies that the Crown owed or breached a fiduciary duty to include the La Cloche Tract in the Claimant's reserve.

[2] The Parties agree that, given the pre-Confederation timeframe, if the wrong was committed as alleged, it was committed by the Imperial Crown. The proposed amendments to Canada's Response speak to the federal Crown's potential compensatory liability for the alleged wrong committed by the Imperial Crown.

[3] By Order dated June 13, 2023, the Claim was bifurcated into two separate stages. The first stage will determine the validity of the Claim. Only if the Claim is found to be valid, will a second stage be held to determine the amount of compensation owed.

[4] The process of reconciliation is best served when Indigenous Peoples and Canada work together to resolve past injustices through consensus. Litigation in any forum is not preferable as it presents the parties as adversaries, is costly and time-consuming. Conflicts should be resolved through litigation as a last resort, only if adjudication by a third party is necessary.

[5] In my view, for reasons set out below, it is premature to resolve the conflict presented by Canada's Application at this time, before validity of the Claim is determined. Rather, the process of reconciliation is best served by adjudicating the issues presented by the Application during the compensation stage of the Claim, if such a stage is necessary. This is also consistent with the Order bifurcating the Claim and the most efficient use of the Parties' time and resources. As will be explained below, it is possible that the conflict will be addressed in full by the Tribunal's findings on validity, such that this Application will be unnecessary and that the present conflict will be rendered moot.

[6] It is for this reason that the Application should be adjourned to be heard, if necessary, after the decision on validity is rendered.

II. ANALYSIS

A. The Proposed Amendments

[7] The Respondent's proposed amendments in the draft Amended Response are found at paragraphs 11 and 53 to 57. They speak to the pre-Confederation nature of the Claim and the role of the Province of Ontario. Paragraph 11 provides a general overview of the argument:

> ~~10.~~11. Moreover, and as detailed below, the obligation or liability alleged by Sagamok did not become the responsibility of Canada within the meaning of s. 14(2) of the *Specific Claims Tribunal Act*. Rather, that liability or obligation, if it exists, became the responsibility of the Province of Ontario. [emphasis in original; draft Amended Response (Schedule A to the Application)]

[8] To put the Parties' positions in context, I will set out the statutory provisions relevant to the Application.

[9] Subsection 14(2) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*], reads:

> **Extended meaning of *Crown* – obligations**
>
> **(2)** For the purpose of applying paragraphs (1)(a) to (c) in respect of any legal obligation that was to be performed in an area within Canada's present boundaries before that area became part of Canada, a reference to the Crown includes the Sovereign of Great Britain and its colonies to the extent that the legal obligation or any liability relating to its breach or non-fulfilment became – or would, apart from any rule or doctrine that had the effect of limiting claims or prescribing rights against the Crown because of passage of time or delay, have become – the responsibility of the Crown in right of Canada.

[10] According to the Respondent, because the La Cloche Tract was surrendered to the Imperial Crown by way of the Robinson-Huron Treaty, section 109 of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act, 1867*], transferred control of the tract to the Province of Ontario (draft Amended Response (Schedule A to the Application) at para. 53). Section 109 reads:

> **Property in Lands, Mines, etc.**
>
> **109** All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which

> the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

[11] If the La Cloche Tract was surrendered to the Imperial Crown prior to Confederation, and transferred to the Province of Ontario, it would fall under subsection 92(5) of the *Constitution Act, 1867*, which reads:

> **Subjects of exclusive Provincial Legislation**
>
> **92** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
>
> …
>
> **5.** The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

[12] The Claimant argues that the Robinson-Huron Treaty reserved the La Cloche Tract to the Sagamok Anishnawbek First Nation, and therefore the land falls under federal responsibility by way of subsection 91(24) of the *Constitution Act, 1867*, which reads:

> **Legislative Authority of Parliament of Canada**
>
> **91** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
>
> …
>
> **24.** Indians, and Lands reserved for the Indians.

[13] The Respondent relies on subsection 14(2) of the *SCTA*, and proposes to amend its Response to plead that because the La Cloche Tract was not considered part of the Sagamok reserve as of the Treaty in 1850, it was transferred to the Province of Ontario under section 109 when the *Constitution Act* came into effect in 1867. This means that any "liability or obligation, if it exists, became the responsibility of the Province of Ontario" as of 1867. The Respondent goes further and alleges that, because the Claimant has "submitted a claim under Ontario's land claims process" and "Ontario accepted Sagamok's claim for negotiation," Ontario has "recognized and acknowledged" its liability (draft Amended Response (Schedule A to the Application) at paras. 54–55).

[14] The proposed amendments speak to the compensatory liability of the federal Crown, an issue to be determined during the compensation stage of the Claim. The Respondent also seeks to amend its Response to plead that until the results of the negotiations between the Claimant and the Province of Ontario are known, it is impossible to determine the nature of Sagamok's Claim. For example, if the Province of Ontario returns the land, then there may be a claim for loss of use for the period where Sagamok did not have use of the land; if, however, the Province of Ontario does not ultimately return the land, there may be a claim for failure to provide the land *and* loss of use. Furthermore, no matter the nature of the claim being made against Canada, if the Province of Ontario is liable or partly liable, then under paragraph 20(1)(i) of the *SCTA*, the Crown in Right of Canada is only responsible for compensation to the extent that it is liable, and no further. These proposed amendments, as well, relate to the compensation stage of the Claim.

B. The Application is Premature

[15] As noted above, the Tribunal granted an Order bifurcating the Claim such that it is proceeding in two stages. First, the Tribunal will determine if the Claim is valid. Only if the Claim is valid will the Tribunal proceed to consider if the Crown in Right of Canada bears any compensatory liability.

[16] Central to the issue of validity is whether the Robinson-Huron Treaty assigned ownership of the La Cloche Tract to the Claimant. The Claimant pleads that the Treaty text is "vague" and ambiguous with regard to the assignment of La Cloche Tract. In *Nowegijick v The Queen*, [1983] 1 SCR 29 at p. 36, the Supreme Court of Canada wrote that "treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians." Sagamok relies on this principle and pleads that the ambiguity that exists must be interpreted in favour of the Claimant such that the La Cloche Tract was included in the Sagamok reserve as of 1850.

[17] The Respondent pleads that the Treaty clearly identifies the eastern boundary of the reservation as being the western limit of the Hudson Bay Company trading post, which means that, as of 1850, the La Cloche Tract lies outside and to the east of the Sagamok reserve described in the Treaty.

[18] The issue of whether the La Cloche Tract was included in the Sagamok reserve as of 1850 will be determined in the decision on validity. In my view, upon this finding, the Application may

no longer be required.

[19] If the finding is made in favour of the Claimant, that as of 1850 the La Cloche Tract was included in the Sagamok reserve, there is good reason to believe that it would have remained part of the reserve as of Confederation in 1867. In that case, because the La Cloche Tract is "Lands reserved for the Indians", pursuant to subsection 91(24) of the *Constitution Act, 1867*, the ownership and jurisdiction of the land would have vested in Canada at Confederation along with the land's liabilities and obligations. The Claimant assumes a validity finding in its favour and argues in its Response to the Application that this is how subsection 14(2) of the *SCTA* applies to the Claim. The Claimant submits that it was the Imperial Crown's breach of the Treaty itself that allowed section 109 of the *Constitution Act, 1867*, to be applied to the La Cloche Tract.

[20] Similarly, if the Tribunal finds in favour of the Respondent at the validity stage that the La Cloche Tract was not included in the Sagamok reserve as of 1850 then, upon Confederation in 1867, pursuant to section 109 of the *Constitution Act, 1867*, ownership and jurisdiction of the La Cloche Tract vested in the newly-created Province of Ontario, along with the land's liabilities and obligations. The Respondent assumes a validity finding in its favour and argues in this Application that because liability with regard to the La Cloche Tract was vested in the Crown in Right of Ontario as of Confederation, the *SCTA* prohibits holding the Crown in Right of Canada liable for the alleged wrong. The Crown points to the definition section of the *SCTA* which, in section 2, defines "Crown" as "Her Majesty in right of Canada." It also points to subsection 14(2) of the *SCTA* which defines when the Crown in Right of Canada will be held liable for a pre-Confederation legal obligation of the Imperial Crown, or the Sovereign of Great Britain. The Respondent argues that because the La Cloche Tract was not part of the reserve in 1850 (an issue to be resolved at the validity stage), it was legally and rightfully assigned to the Province of Ontario in 1867 and any legal obligation or liability relating to it never "became" the responsibility of the Crown in Right of Canada as per the *SCTA*.

[21] For the purposes of this Application, therefore, the Parties assume a fact that has yet to be determined and rely on that fact to defend their respective positions. That fact is the central issue to be determined at the validity stage. Once resolved, it may be determinative of the issues raised in this Application as the Parties' arguments herein presume their respective success at the validity

stage. In all probability, the conflict presented in Canada's Application will be avoided upon a finding by the Tribunal on validity.

[22] Further, adjourning the Application to the compensation stage, if that stage proves to be necessary, preserves the integrity of the Order for bifurcation. As was affirmed in the Supreme Court of Canada's decision in *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 at para. 23, citing *Lac La Ronge Band v Canada (Indian Affairs and Northern Development)*, 2014 SCTC 8 at para. 197 [*Williams Lake*], "[t]he rationale for bifurcating proceedings is to avoid the delay and expense of a compensation phase if it becomes unnecessary." Considering the rationale and the nature of the Claim, the Parties agreed that it was appropriate to bifurcate the proceeding. The amendments proposed by the Respondent speak exclusively to its potential compensatory liability. They assume a finding, not yet made, but which is the focus of the validity portion of the Claim. The findings made during the validity stage are potentially dispositive of the Application. Adjourning the Application to the compensation stage, if that stage proves to be necessary, avoids the delay and expenses that could result from either Party seeking judicial review of a decision on the Application and, if the Application is granted, the delay and expenses required by the Claimant having to respond to the amendments by amending its pleadings and holding a second oral history evidence hearing.

C. The Substance of the Application

[23] As I am of the view that this Application is premature, it is not necessary to resolve the many conflicts raised by the Application at this stage in the proceeding. These conflicts include the Parties' respective applications of the test for leave to amend a pleading (leave should be granted unless (a) it is plain and obvious that the proposed amendments are doomed to fail or (b) the proposed amendments will cause the Claimant non-compensable prejudice—*Onion Lake Cree Nation et al v His Majesty the King in Right of Canada*, 2024 SCTC 6 at paras. 22–24) and the Parties' differing interpretations of the Supreme Court of Canada's analysis in *Williams Lake*, for determining whether a pre-Confederation breach by the Sovereign of Great Britain "became" a responsibility of the Crown in Right of Canada under subsection 14(2) of the *SCTA*.

[24] In my view, however, it is prudent to resolve one of the conflicts raised by the Application at this time. The Respondent argued that subsection 14(2) of the *SCTA* must be specifically pleaded

by the Claimant. It is important to address that argument at this stage as the Respondent has raised it in the context of the Tribunal's jurisdiction.

[25] The Respondent argues that if a claimant wants a pre-Confederation claim to come under the Tribunal's jurisdiction, it must plead how its claim comes under the exception in subsection 14(2) of the *SCTA*. I do not believe that this is correct. The form and content of pleadings at the Tribunal is governed by the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. The Rules make no requirement to specifically plead subsection 14(2).

[26] As noted above, the interpretation and application of subsection 14(2) of the *SCTA* was significantly analyzed in *Williams Lake*. The claim was first determined by the Tribunal. The Declaration of Claim did not specifically plead subsection 14(2). The Tribunal's decision was affirmed by the Supreme Court of Canada.

[27] Moreover, reading the Claim as a whole, the Claimant has pleaded the necessary facts to show how it argues that subsection 14(2) of the *SCTA* is engaged and how it intends to rely upon it. The Respondent has the particulars required to understand the case it has to meet on this issue and respond accordingly.

III. CONCLUSION

[28] For reasons set out above, the Application is adjourned to the compensation stage of the proceeding, if that stage proves to be necessary.

VICTORIA CHIAPPETTA

Honourable Victoria Chiappetta, Chairperson

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TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

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OTTAWA, ONTARIO May 2, 2025

PRESENT: Honourable Victoria Chiappetta

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Claimant (Respondent)

and

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

Respondent (Applicant)

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