

Federal Court



Cour fédérale

**Ottawa, June 12, 2019** – A Judgment was issued today by the Honourable Russel W. Zinn of the Federal Court in file T-238-80:

**IN THE MATTER OF JIM SHOT BOTH SIDES et al v HER MAJESTY THE QUEEN**

**Translation of Summary into Blackfoot**

With the release of a decision on May 24 in file T-146-19, the Court took another step in making Court decisions more accessible – a summary was prepared in the Cree and Dené languages. The Court is following that same approach with release of today’s decision, which will be accompanied by a summary in Blackfoot. The Court thanks the language keeper who is assisting with preparation of this translation.

**Summary of Judgment**

**Summary:** The Blood Tribe claims that its current reserve in Southern Alberta is not as large as it was entitled to receive under the terms of Treaty 7. The current reserve is 547.5 square miles, making it the largest Indian Reserve in Canada. It is located from the confluence of the St. Mary and Belly River (Oldman River) in the north east and consists of the land between those rivers to a southern boundary 14 miles north of the Canada-USA border, just north of Cardston, Alberta.

The Blood Tribe advanced claims to three alternative sized reserves. The first and largest is the Blood Tribe’s Big Claim, which the tribe says is the reserve Chief Red Crow intended it to have. The Big Claim territory extends west of the current Blood reserve to the former Kootenai River (now the Waterton River) and south to the Canada-US border.

Alternatively, the Blood Tribe says that Canada established its reserve by a survey done in 1882, which marked out 650 square miles of land with a southern boundary that was 9 miles north of the Canada-USA border. The southern boundary of that reserve was changed in an 1883 survey to the present reserve. The Blood Tribe says that the reduction in reserve size was not done in accordance with the requirements in *The Indian Act, 1880*, and is illegal.

In the further alternative, the Blood Tribe says that Canada never fulfilled its obligation under Treaty 7 to provide it with a reserve equal to one square mile of land for every family of 5. This is its Treaty Land Entitlement (TLE) claim and it says that its population at the time of Treaty 7 entitled it to a reserve of some 728 square miles, based on the number of Blood Tribe members receiving Treaty annuities in 1881.

The Blood Tribe says that Canada breached this treaty promise, failed in its fiduciary duty to honestly and accurately implement the treaty promises relating to the reserve size, and acted illegally in removing more than 100 square miles from the reserve established by the 1882 survey.

Canada denies all claims, and says that if any claims are proven, they are time-barred by virtue of *The Limitation of Actions Act* which provides that such suits must be brought within six years of the discovery of the events giving rise to the legal claim or the date with reasonable diligence they could have been discovered.

This trial was restricted to the issue of whether the Blood Tribe proved that Canada has any liability to it with respect to the claims it asserts. If so, then there will be a subsequent trial dealing with the remedy for any such liability.

The Court found that the Blood Tribe had not proved the Big Claim on the balance of probabilities, and dismissed that part of its action. The Court found that the Blood Tribe reserve had been created by the 1882 survey and that Canada illegally removed land when it established the smaller reserve according to the 1883 survey. The Court also found that the population of the Blood Tribe at the time of Treaty 7 was 3,550, entitling the Blood Tribe to a reserve of 710 square miles. Accordingly, it was held that the current reserve established by Canada was not in accord with the TLE. As a result, the Court also found that Canada breached its fiduciary duty to the Blood Tribe when it established the reserve.

The Court found that all of these claims but one was time-barred under *The Limitation of Actions Act* because the Blood Tribe knew or ought reasonably to have discovered the material facts giving rise to the claims, well prior to the commencement of this suit in 1980.

However, the Court found that the claim for breach of treaty was not time-barred. The Court held that the limitation period on actions for breach of treaty did not commence until April 17, 1982, when section 35 of the *Constitution Act, 1982*, came into force. That section provides that “existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” The Court found that prior to section 35 coming into force, First Nations could not sue Canada for a breach of treaty and therefore no limitation period runs until the cause of action of breach of treaty is actionable. As this action was commenced in 1980, the limitation period was not exceeded and the claim for breach of treaty was not time-barred.

As a consequence, the Court dismissed all claims against Canada, except the claim that Canada breached Treaty 7 in failing to provide the Blood Tribe with a reserve of 710 square miles, as promised.

The trial will continue at a future date to hear evidence and submissions on the remedy for this breach of treaty.

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A copy of the decision can be obtained via the Web site of the Federal Court: <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/407748/index.do>

An audio recording of this summary in Blackfoot will be available as soon as possible on the Court website at: <https://www.fct-cf.gc.ca/en/pages/media/webcast>