

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
	June 4, 2018	
	Stephanie Duffy	
Ottawa, ON		6

**BEARDY'S & OKEMASIS BAND #96 AND #97**

Claimant

v.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Indian Affairs and Northern Development

Respondent

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

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

TO: Beardy's & Okemasis Band #96 and #97  
As represented by Carly Fox and Steven Carey,  
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Barristers & Solicitors  
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## **Overview**

1. This is the Crown's Response to the Declaration of Claim (the Claim) filed by Beardy's & Okemasis Band #96 and #97 (the First Nation) with the Specific Claims Tribunal (the Tribunal) on April 3, 2018 pursuant to the *Specific Claims Tribunal Act* (the Act).
  
2. The Claim relates to alleged breaches of Treaty 6 and various breaches of trust, fiduciary, legal and equitable obligations owed to the First Nation. To the extent these turn on alleged deficiencies in the delivery of certain Treaty benefits, the Crown says it complied with its treaty obligations. The Crown further says that in the early post-Treaty years, the Beardy's and Okemasis Bands who would eventually become the First Nation enjoyed substantial success in their pursuit of agriculture, consistent with a successful discharge of the Crown's treaty obligations.

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

3. The requirements in section 16 of the Act are satisfied in that:
  - The Claim was originally submitted to the Minister of Indian Affairs and Northern Development (the Minister) on January 26, 2006 and filed with the Minister of Aboriginal Affairs and Northern Development on October 16, 2008.
  
  - On September 23, 2011 the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

4. The Attorney General must respond to this claim according to the rules of practice applicable to pleadings in a matter of this nature and consistent

with her duties and functions in the conduct of litigation for or against the Crown. Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, co-operation and partnership. The Attorney General and the Government of Canada continue to work in other contexts beyond the courts and tribunals to achieve the fulfilment of those commitments.

5. The Crown denies the validity of all of the allegations put forth in the Claim and denies it breached any lawful obligation regarding the provision of Treaty 6 benefits.
6. To the extent the Claim arises out of the same or substantially the same facts on which the Beardy's and Okemasis Band #96 and #97 Specific Claim SCT-5001-11 is based, and specifically paragraphs 20 and 40(c), the Crown pleads and relies upon s.35 of the Act and the doctrine of *res judicata*.
7. Regarding paragraph 30, the Crown says that because elements of this claim may be based on activities of an ongoing and variable nature, including Treaty rights pertaining to harvesting, the Crown pleads and relies on ss. 15(1)(g) of the Act, and requires proof that the deficiencies complained of are compensable under the Act.
8. In the absence of further proof, the Crown is not able to admit that the Claimant has suffered damages to the extent claimed, regarding the alleged failures or deficiencies in the provision of benefits claimed. However, if such damages are proven, any award of compensation could only be made pursuant to ss. 20(1)(c) of the Act, as the subsequent subparagraphs of paragraph 20 are inapplicable.

9. The Crown specifically pleads section 20(3) of the *Act* and the application of set-off based on the prior award in SCT-5001-11, and any benefits received by the Claimant from the Crown in relation to the subject matter of this claim.
- III. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))**
10. The Crown will require the Claimant to prove all the facts alleged in this Claim unless otherwise expressly admitted in this Response.
  11. The Crown admits the facts set out in the following paragraphs of the Claim: 1, 2, 4, 5, 9, 11, 17, 19 and 22.
  12. Further to paragraph 9, the Crown and acknowledges that Treaty 6 was signed at Fort Carlton on August 23 and 28, 1876 and at Fort Pitt on September 9, 1876 by representatives of the Crown and certain Chiefs of the Cree bands inhabiting the region that is now north central Saskatchewan.
  13. Further to paragraph 11 the Crown acknowledges that the written terms of Treaty 6 contain explicit promises and benefits to be provided by the Crown to the Bands adhering to the Treaty.
  14. In response to paragraph 10, the Crown says Chief Kah-ma-wis-tah-wa-sit (Beardy) and Sas-way-pew (Cut Nose) were among the joint chiefs who signed Treaty 6 on August 28, 1876. The Crown further says that the Beardy's Band and Okemasis Band were administered separately by Canada until at least 1939 (referred to collectively as the Beardy's and Okemasis Bands). Today Canada identifies the Beardy's and Okemasis Bands as a single Band. The Crown admits the other facts set out in this paragraph.

15. In response to paragraphs 15, the Crown says that in July 1879, a reserve was surveyed for Beardy's Band and in the spring of 1880, some of Saswaypew's followers settled on the reserve as well. The reserve was resurveyed in 1887. By Order in Council in February 1884, Okemasis was appointed chief in place of Sas-way-pew. On May 17, 1889 Order in Council P.C. 1151 set aside "INDIAN RESERVES NOS 96 AND 97 (UNDIVIDED)" as a reserve of 44 square miles for Chiefs Beardy and Okemasis.
16. In response to paragraphs 8 and 39, the Crown says the benefits provided by Canada to the Beardy's and Okemasis Bands fulfilled its Treaty 6 obligations.
17. In response to paragraphs 12 and 13, the Crown says that the Beardy's Band commenced farming activities in 1878 and the Okemasis Band began cultivating land in about 1881.
18. In response to paragraph 14, the Crown acknowledges that in February 1879 Chief Beardy refused to accept treaty annuity payments to protest a perceived failure of the Crown to deliver agricultural benefits provided for in the Treaty. The Crown has no knowledge of the remaining facts asserted in this paragraph, and therefore requires proof of same.
19. In response to paragraph 16, the Crown says that in 1881 Chief Beardy asked the Department of Indian Affairs to provide what he claimed were outstanding treaty benefits.
20. In response to paragraph 18, the Crown says that in 1883 and 1884 the Beardy's and Okemasis Bands were able to provide for themselves through agriculture. Their agricultural pursuits during these years were generally successful. Also in response to paragraph 18, the Crown admits that in the summer of 1884 several Treaty 6 Chiefs from the Carlton area

complained about the fitness of livestock they received for farming and that wagons provided to them were of poor quality. As part of their complaint, the Chiefs asked for new cattle, new wagons and a variety of farming implements. The Crown says that the alleged deficiencies and requests were brought to the attention of the appropriate officials and investigated. Where warranted, poor quality livestock and farming implements were replaced.

21. In response to paragraphs 20 and 40(c), the Crown says that the question of Beardy's and Okemasis Bands involvement in the 1885 Northwest Rebellion and the subsequent withholding of annuity payments by the Crown to certain Bands, including the Beardy's and Okemasis Bands, was adjudicated and decided upon in the Tribunal's decision 2015 SCTC 3. The Crown therefore repeats it's pleading of section 35 of the Act and the defence of *res judicata*.
22. In response to paragraphs 21, 35 and 38(f), the Crown admits that after the 1885 North West Rebellion the medals Chief Beardy received as Chief upon signing Treaty 6 were confiscated by the Crown. In response to other allegedly coercive measures taken without legal authority, as alleged in paragraph 21, the Crown requires proof of the allegations as they were not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008. The Crown further puts in issue whether these allegations are compensable under the Act.
23. In response to paragraphs 23 and 40(d), the Crown says that agricultural benefits were provided to the Claimants in accordance with Treaty 6. In further response to this paragraph the Crown says that in the 1890s and early 20<sup>th</sup> century the Bands used surplus earnings from agriculture and other economic activities to privately purchase additional livestock and agricultural supplies beyond the requirements of Treaty 6.

24. In response to the allegations in paragraphs 24 to 26 and 40 (a) regarding implementation of various government policies, the Crown requires proof of the allegations as they were not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008.
25. In response to paragraphs 27, 38(a) and 40(b), the Crown says it provided the agricultural benefits to the Beardy's and Okemasis Bands in compliance with the terms of Treaty 6. The Crown further says it acted with appropriate diligence to address any issues of quality brought to the attention of federal officials relating to treaty benefits provided to the Beardy's and Okemasis bands and obligations under Treaty 6 to supply agricultural benefits of adequate quality.
26. In response to paragraphs 28 to 30 and 38(b), the Crown acknowledges that Treaty 6 provided for an ongoing expenditure of \$1500.00 per year for ammunition and twine to be distributed amongst "*the Indians inhabiting the several reserves*" within the Treaty 6 area based on the reasonable discretion of the Indian Agent. The Crown further says the ammunition and twine provided under the Treaty was of adequate quality, was appropriately distributed and that the Treaty benefit was fully provided.
27. In response to paragraphs 31, 32 and 38(c), the Crown admits that Treaty 6 required Canada to issue provisions totaling \$1000.00 for a period of three years to those bands who had settled on reserves and started farming. The Crown acknowledges that Beardy's and Okemasis Bands settled on reserves shortly after signing Treaty 6 and would have been entitled to these benefits. The benefits were provided to the Beardy's and Okemasis Bands in accordance with the Treaty.
28. In response to paragraph 33 and 38(d), the Crown admits Treaty 6 provides for a present of \$12.00 for each man, woman and child belonging

- to the bands who adhered to the Treaty. The Crown requires proof of the allegation that not everyone who was entitled to this benefit received the \$12.00 payment, as it was not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008.
29. In response to paragraphs 34, the Crown admits that Treaty 6 provides that each Chief and up to 4 subordinate officers shall receive once every 3 years a suitable suit of clothing and each Chief shall receive, in recognition of the closing of the Treaty, a suitable flag and medal.
  30. In response to paragraphs 35 and 36, the Crown admits that Chief Beardy was stripped of his Treaty 6 medals for his alleged participation in the 1885 Northwest Rebellion. The Crown further acknowledges that the Beardy's and Okemasis Bands were not allowed to have Chiefs and councillors from the time of the rebellion until 1936.
  31. In response to paragraph 37 and 38(e), the Crown requires proof of these allegations as they were not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008. The Crown puts in issue whether the facts alleged in these paragraphs are compensable under the Act.
  32. In further response to the allegations in paragraph 38(g) regarding alleged failures to provide assistance to the Claimant during times of famine and pestilence and to provide medicine chests, the Crown will require proof of these allegations, and puts in issue whether they are compensable under the Act.
  33. In response to paragraph 42, the Crown says while there are gaps in the historical record, there is extensive evidence regarding the provision of treaty benefits, records of monies spent and animals provided to the Beardy's and Okemasis Bands. The Crown further says that the existence

of gaps in the historical record does not mean the records were not kept, do not exist, or that Treaty benefits were not provided. The Crown says that in historical claims of this nature, due to the prejudicial effect of the passage of time, gaps in the historical record should not necessarily be resolved against the Crown.

34. In response to paragraph 43, the Crown says when negotiating and implementing Treaty 6 in respect of Beardy's and Okemasis Bands Canada acted in accordance with the honour of the Crown and in satisfaction of the Crown's obligations under Treaty 6.

**IV. Statements of Fact (R. 42(e))**

35. The facts pled and relied on by the Crown are set out in the preceding paragraphs.

**V. Relief (R. 42(f))**

36. The Crown seeks the following relief:
- a. to have the claim dismissed;
  - b. costs; and
  - c. such further relief as this Honourable Tribunal deems just.

**VI. Communication (R. 42(g))**

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

Department of Justice (Canada)  
Prairie Regional Office (Saskatoon)  
10<sup>th</sup> Floor, 123-2<sup>nd</sup> Avenue S  
Saskatoon, SK S7K 7E6  
Attention: Scott T. Bell

VIII. Facsimile number for service is (306) 975-5013.

IX. Email address for service is:

[sasSCT-5001-18-beardys@justice.gc.ca](mailto:sasSCT-5001-18-beardys@justice.gc.ca)

Dated this 4th day of June, 2018.



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