

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
December 14, 2020	
Dragisa Adzic	
Ottawa, ON	6

SCT File No.: SCT-7003-20

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

KITSELAS FIRST NATION

Claimant

v.

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

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: Kitselas First Nation  
As represented by Stan H. Ashcroft, of  
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## **I. Context**

1. The Claimant, the Kitselas First Nation (the “First Nation”), alleges breaches of legal and fiduciary duties by Her Majesty the Queen in Right of Canada (“Crown”) in relation to the reduction of the acreage of Kitselas Indian Reserve 1 (“IR 1”) in 1893. At the request of the First Nation, Indian Reserve 4 also known as Ksh-ish (“IR 4”) was enlarged by 490 acres and in exchange, the acreage of IR 1 was reduced by 640 acres.
2. The Respondent is mandated to respond to this claim by the *Specific Claims Tribunal Rules of Practice and Procedure* (SOR/2011-119) and consistent with the duties and functions of the Crown in right of Canada in the conduct of litigation. The Respondent affirms the relationship between the resolution of specific claims and the broader goal of reconciliation between First Nations and the Crown and adopts the commitment to resolution of specific claims in a “just and timely manner” as set out in the preamble to the *Specific Claims Tribunal Act* (the “Act”).

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

3. The First Nation filed a claim with the Minister of Aboriginal Affairs and Northern Development Canada on or about October 16, 2008 (“Specific Claim”).
4. The Specific Claim alleged that Canada breached statutory and fiduciary obligations by reducing the acreage of IR 1.
5. By letter dated October 21, 2009, the Minister notified the First Nation of the Minister’s decision not to accept the Specific Claim for negotiation on the basis that the Specific Claim did not disclose an outstanding legal obligation on behalf of the Crown with respect to the reduction of IR 1.

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

6. The Crown denies the validity of each of the grounds as set out in paragraph 6 of the Declaration of Claim filed August 21, 2020. (“Declaration of Claim”).

### **IV. Admissions, Denials or No Knowledge (Rule 42(d))**

7. The Crown admits the facts as set out in the following paragraphs of Part V of the Declaration of Claim: 7, 8, 9, 10, 14, 17, and 18.
8. In response to paragraph 11, the Crown admits that Chief Commissioner Vernon approved the October 6, 1891 Minutes of Decision. However, the assertion that this approval was the completion of the reserve process is legal argument rather than fact.
9. In response to paragraph 12, the Crown admits that in September 1893, Commissioner Peter O’Reilly returned to Kitselas canyon. The Crown has no knowledge that Indian Superintendent Vowell advised abandoning the IR 1 village site for IR 4 and that the First Nation built houses on IR 4 according to Vowell’s advice.
10. In response to paragraph 13, the Crown has no knowledge of whether there was confusion among the First Nation regarding the allotment of IR 1 in 1891. The Crown admits that the Claimant has described what William Young said at the meeting with Commissioner O’Reilly on September 12, 1893.
11. In response to the first sentence in paragraph 15, the Crown states that this paragraph is legal argument rather than fact. The Crown admits the rest of paragraph 15 and clarifies that Commissioner O’Reilly asked the First Nation to exchange land from IR 1 for additional lands in IR 4. The Crown also clarifies that the word described as “fault” is illegible on the original document.

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

12. In 1891, Commissioner Peter O'Reilly spent several days in the Kitselas canyon area meeting with representatives of the First Nation to set aside reserves. On October 5, 1891, Commissioner O'Reilly met with Chief Wise and a group of eleven members of the First Nation with Peter Haldane acting as interpreter. After a conversation of approximately two and half hours, Commissioner O'Reilly travelled along the river accompanied by Chief Wise, the interpreter and five other members of the First Nation to examine the reserves requested.
13. The next day, Commissioner O'Reilly allotted several reserves for the First Nation. In particular, he set aside 2110 acres of land for IR 1 and observed a village on this reserve. In response to a request for a new village site, Commissioner O'Reilly set aside IR 4.
14. Commissioner O'Reilly set aside six reserves in 1891 for the First Nation comprising an estimated total of 2910 acres.
15. Commissioner O'Reilly's undated Field Minutes describe IR 1 as follows:

No. 1 Kitselas, contains 2110 acres; it is situated at and includes, the cañon of Kitselas where very valuable fisheries exist.

The land is poor, but little attempt has been made to cultivate. There is an abundance of timber for all purposes. The village, which is on the left bank of the river, contains nine houses, but there is evidence that a much larger settlement formerly existed there.

16. IR 4 was described in the same Field Minutes in the following manner:

No. 4 Ksh ish contains 130 acres, the upper portion of which is light loam, the remainder is wash gravel and sand covered with a thick growth of small hemlock and spruce.

This reserve is made at the request of the Chief and Indians that accompanied him, as they desired to move the village from Kitselas to this place.

17. On February 4, 1892 F.G. Vernon, Chief Commission of Lands and Works approved the Minutes of Decision dated October 6, 1891 for the initial six Kitselas reserves.
18. On July 20, 1892 Commissioner O'Reilly wrote to L. Vankoughnet, Deputy Superintendent General of Indian Affairs to report that, "... on the 5<sup>th</sup> October last I commenced the allotment of reserves for the "Kitselas" Indians..." Commissioner O'Reilly also described the reserves he had allotted and noted that he had allocated Ksh ish (IR 4) at the request of the Chief "as they desired to remove the village from Kitselas to this place."
19. In mid-September 1893, Commissioner O'Reilly returned to the Kitselas area to continue the reserve creation process.
20. Commissioner O'Reilly met with representatives of the First Nation on September 12, 1893. At this meeting, the First Nation asked to exchange land above the canyon for additional land below the canyon for a new town site at Ksh-ish. Commissioner O'Reilly opened the discussion by noting that "I see a number of you who were at the meeting two years ago. At that time, you asked me to give you land above the cañon. I told you that place was worthless but you wanted it and I included it in the reserve. I hear you have found it valueless and that you want to exchange it for land below the cañon." Although Commissioner O'Reilly expressed his preference not to do this exchange, he heard representations from the First Nation who asked for more land at Ksh ish, explained they had built houses there and indicated a willingness to exchange land from IR 1 to enlarge IR 4.
21. Commissioner O'Reilly responded that when he was in Kitselas two years ago he told them he would return and "all who wished to speak to me should meet me...I told them to shew me the best land and three people were with me when I marked the boundaries. William says the land is bad. I cannot help that. I did not come up here to discuss the suitability of the reserves, that is all settled. I have no wish

to alter the boundaries of them. I will not extend Ksh-ish unless you surrender an equal amount of land above the cañon.”

22. Finally, Commissioner O'Reilly agreed to provide additional land in the Kshish area if the First Nation would agree “to surrender an equal area above the cañon.”
23. At the close of the meeting on September 12<sup>th</sup>, Commissioner O'Reilly noted that “Chief George said he was willing to relinquish.” In response, Commissioner O'Reilly advised them to “think it over before my return.”
24. Commissioner O'Reilly returned to the Kitselas area about a week later on September 18<sup>th</sup> to again meet with the First Nation. At this meeting he “enlarged new Town site much to their delight - they having marked off a portion of the old Res. Above the Canion – they gave me three hearty cheers.”
25. Commissioner O'Reilly summarized his visit to the First Nation in a letter to the Deputy Superintendent General of Indian Affairs dated February 10, 1894, explaining that he visited the new town site four miles below Kitselas to find they had already cleared several acres of excellent land and built eight good substantial houses. He explained that, “Under the circumstances, I enlarged Reserve No. 4 by adding 490 acres to it, and the Indians voluntarily surrendered 640 acres, a portion of Reserve No. 1, situated above the cañon, and which was of no value to them.”
26. During this visit, Commissioner O'Reilly also enlarged Reserve No. 2 and created Reserve No. 7.
27. Commissioner O'Reilly cancelled the Minute of Decision dated October 6, 1891 which created IR 1 and replaced it with a new Minute of Decision for IR 1 dated September 18, 1893. He also issued Minute of Decisions for IR 2a which enlarged the existing IR 2, and for IR 4a which enlarged the existing IR 4 and finally issued the Minute of Decision which created IR 7.
28. F.G. Vernon approved the revised Minutes of Decisions on March 6, 1894.

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

50. The Crown seeks a dismissal of all the claims set out in the Declaration of Claim.
51. The Crown pleads and relies on the *Act*, section 20.
52. Such further and other relief as this Honourable Tribunal deems just.

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

Respondent's address for the service:

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Attention:

Fax number address for service: (604) 666-2710

Email address for service: bobby.bharaj@justice.gc.ca

Dated: December 14, 2020

**"Bobby Bharaj"**

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