

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

OKANAGAN INDIAN BAND

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D E P O S É
April 14, 2021	
Guillaume Phaneuf	
Ottawa, ON	6

Claimant

v.

HER MAJESTY THE QUEEN IN 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: Okanagan Indian Band  
As represented by Robert Janes, QC, of  
JFK Law Corporation  
816 – 1175 Douglas Street  
Victoria, BC V8W 2E1  
Email: rjanes@jfkclaw.ca

## **I. Context**

1. The Claimant, Okanagan Indian Band, alleges breaches of legal and fiduciary obligations by Her Majesty the Queen in right of Canada (“Crown”) in relation to an alleged failure of the Crown to not amalgamate the Okanagan Indian Band and the Arrow Lakes Band.
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 Okanagan Indian Band submitted a claim with the Minister of Aboriginal Affairs and Northern Development Canada on or about December 7, 2000 (“Specific Claim”).
4. The Specific Claim alleged that Canada breached its fiduciary duty of care to the Okanagan Indian Band when it failed to amalgamate the Okanagan Indian Band with the Arrow Lakes Band with the result that the Arrow Lakes Reserve was not transferred to the Okanagan Indian Band.
5. By letter dated December 3, 2010, Patrick Borbey, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, notified the Okanagan Indian Band of the Minister’s decision not to accept the Specific Claim for negotiation on the basis that the Specific Claim did not disclose a breach of any fiduciary duty by the Crown in not proceeding with the amalgamation.

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

6. The Crown denies the validity of each of the grounds as set out in paragraph 4 of the Declaration of Claim filed December 30, 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: 5, 12, 13 and 14.
8. In response to paragraph 6, the Crown clarifies that the Arrow Lakes Reserve was allotted on October 10, 1902 by Indian Reserve Commissioner Vowell.
9. In response to paragraph 7, the Crown clarifies that the Arrow Lakes Reserve was created in 1902, and British Columbia Order in Council 1036 conveyed the title to Indian reserve lands, including the Arrow Lakes Reserve, from the province of British Columbia to Canada on July 29, 1938.
10. In response to paragraph 8, the Crown admits that by the late 1930’s Annie Joseph was the last remaining member of the Arrow Lakes Band. The Crown clarifies that Annie Joseph resided on the reserves of the Okanagan Indian Band initially with Joseph Parker, an Okanagan Indian Band member, and then with Louie Ernest, a member of the Lower Kootenay Reserve.
11. In response to paragraph 9, the Crown has no knowledge of when Annie Joseph and the Band became concerned about the future disposition of the Arrow Lakes Reserve.
12. In response to paragraph 10, the Crown has no knowledge of any conversations, letters and band council resolutions, as alleged, apart from the facts admitted and as set out in paragraphs 12 and 13 of the Declaration of Claim.

13. In response to paragraph 11, the Crown clarifies that on September 27, 1952 Superintendent R.H.S. Sampson, the Superintendent of the Okanagan Indian Agency, wrote to Indian Commissioner W.S. Arneil “that it would be wise to amalgamate the Arrow Lakes Band with the Okanagan Band, thereby preserving the Arrow Lakes Reserve with its timber resources, for the Indians.” On October 14, 1952, A.G. Leslie replied, “that before any action can be taken towards the amalgamation of these two Bands it will be necessary that resolutions be obtained from each consenting to such amalgamation.”
14. In response to paragraph 15, the Crown states that this is argument not fact.
15. In response to paragraph 16, the Crown clarifies that on January 5, 1956 Canada formally transferred the Arrow Lakes Reserve to British Columbia by Order-in-Council P.C. 1956-3.
16. In response to paragraph 17, the Crown has no knowledge when and if the Province transferred lands comprising the former Arrow Lakes Reserve to BC Hydro, but it is admitted that in 1969 part of the lands comprising the former Arrow Lakes Reserve were flooded by BC Hydro.
17. In response to paragraph 18, the Crown denies that it has breached any lawful obligation owing to the Okanagan Indian Band to amalgamate it with the Arrow Lakes Band. As such, no compensation is owing to or has been paid to the Okanagan Indian Band.

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

18. In 1938, British Columbia issued Provincial Order in Council 1036, conveying the title of Indian reserve lands, including the Arrow Lakes Reserve, from the Province to Canada. One of the conditions of this conveyance was that:

...in the event of any Indian tribe or band in British Columbia at some future time becoming extinct that any lands hereby conveyed for such tribe or

band, and not sold or disposed of as heretofore provided, or any unexpended fund being the proceeds of any such sale, shall be conveyed or repaid to the grantor.

19. On March 5, 1946, Indian Agent J.V. Boys was advised by letter signed by Inspector Coleman on behalf of D.M. McKay that "... the Department considers that Annie Joseph, widow of Louis Joseph, is the sole surviving member of the Band [eligible] to share in the distribution of Capital Funds".

20. On September 27, 1952, R.H.S. Sampson, the Superintendent of the Okanagan Indian Agency, wrote to W.S. Arneil, the Indian Commissioner for B.C., requesting departmental consideration for an amalgamation:

...By authority of the Department's letter of 2nd [sic] March, 1946, file 5-10-1 to your office, it was recognized that the only surviving member of this Band is Mrs. Annie Joseph, age 74, who has lived for at least forty years on Okanagan I.R.#1 and Priest's Valley I.R. #6.

It is my understanding that there is an existing provision that in the event of an Indian Band becoming extinct, any reserve formerly occupied by that Band reverts to the province. Owing to Mrs. Joseph's advanced age, it has occurred to me that it would be wise to amalgamate the Arrow Lakes Band with the Okanagan Band, thereby preserving the Arrow Lakes Reserve with its timber resources for the Indians. This could apparently be accomplished under subsection (b) of Section 17 of the Act.

It is considered that Mrs. Joseph, who has occupied, and is recognized as having life interest in a piece of land on one of the Okanagan reserves, would be willing to give her consent to such an amalgamation. This proposition has also been previously discussed with the Okanagan Band Council, and they are prepared to recommend it.

May this matter be given consideration by the Department, and if they concur with my suggestion, send instructions about the preparation of the documents necessary for an amalgamation.

21. On October 14, 1952, A.G. Leslie, of the Indian Affairs Branch of the Department, responded to Superintendent Sampson that:

...before any action can be taken towards the amalgamation of these two Bands it will be necessary that resolutions be obtained from each consenting to such amalgamation.

22. On November 6, 1952, the Okanagan Indian Band Council passed a resolution that consented to the amalgamation of the Arrow Lakes Band with the Okanagan Indian Band. The resolution was signed by Chief Pierre Louie, three Band councilors, and Indian Agent Sampson.

23. On April 17, 1953, Annie Joseph signed a document consenting to the amalgamation of the Arrow Lakes Band with the Okanagan Indian Band. This document appears to be signed by two witnesses, and an interpreter.

24. On June 23, 1953, L.L. Brown, Superintendent of Reserves and Trusts in the Indian Affairs Branch of the Department, replied to Superintendent Sampson:

... The aforementioned proposal has been considered at some length and there are one or more disturbing factors about it that we do not like. It appears that the amalgamation has been proposed solely to prevent this reserve from reverting to the jurisdiction of the Provincial Government if and when the Arrow Lakes Band becomes extinct, which, of course, has purposely circumvented the provisions of our agreement with the province. In view of recent developments with regard to our attempts to acquire additional lands from the Province, we feel that this would be an inopportune time to deliberately attempt to by-pass a right of the Province.

It would further appear that the Okanagan Band would be the only ones benefitting from the amalgamation, in that they would be getting a reasonably valuable tract of land. Geographically speaking, it would not appear to be good administration to allow the Okanagan Band to own a reserve so far removed from their present places of abode.

Certainly, Mrs. Joseph would gain nothing from the amalgamation unless, of course, if she surrendered the reserve for sale and it was purchased at a reasonable price by the Okanagan Band and the sale proceeds or the greater portion thereof turned over to Mrs. Joseph, either in a lump sum or by placing the same in a Savings Account which could be drawn on as required.

25. On July 2, 1953, Commissioner Arneil informed Superintendent Sampson that he was “inclined to agree with the Department’s viewpoint...”

26. On September 9, 1953, Superintendent Sampson responded to Commissioner Arneil that the Department’s assumption that the amalgamation had been proposed

solely for preventing the reserve reverting to the jurisdiction of the Provincial Government was “quite correct”, but noted that:

When consideration is given to the huge tracts of land cut off from Indian Reserves some years ago, and the areas of the existing reserves which the Province is demanding for highway rights-of-way purposes, [it] makes one inclined to feel justified in retaining hold of any existing reserves.

27. Superintendent Sampson also agreed and noted that:

...the Arrow Lakes Reserve is about 83 miles distant from Vernon over a very poor road...[Administration] of this reserve under the Okanagan Band would not be practical...Mrs. Annie Joseph is at present in very poor health and the doctor does not consider she will live very long.

28. On October 2, 1953, Commissioner Arneil informed Superintendent Sampson that:

...there are many arguments both for and against an attempt to prevent the reversion of Indian reserve lands to the Province and at this time I am prepared to accept the Department's views without question.

29. A few days later, Superintendent Sampson reported to Commissioner Arneil that Annie Joseph had passed away on October 1, 1953.

30. On September 28, 1955, W.C. Bethune, Acting Superintendent of Reserves and Trusts, notified Commissioner Arneil that the Department was satisfied that the Arrow Lakes Band had become extinct and proposed transferring the reserve land and the monies derived from the sale of the land to the Province under the terms of Provincial Order in Council 1036.

31. The Government of Canada, by Order-in-Council PC 1956-5, transferred control, management, and administration of the lands comprising the Arrow Lakes Reserve to British Columbia.

32. A portion of the Arrow Lakes Reserve was flooded in 1969. This flooding was authorized by a permit issued on May 1, 1969 by the Department of Lands, Forests and Water Resources to the British Columbia Hydro and Power Authority.

**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:

Department of Justice Canada  
900 – 840 Howe Street  
Vancouver, BC V6Z 2S9

Attention: Aaron Dewitt

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

Email address for service: [aaron.dewitt@justice.gc.ca](mailto:aaron.dewitt@justice.gc.ca)

Dated: April 14, 2021



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**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
British Columbia Regional Office  
900 – 840 Howe Street  
Vancouver, BC V6Z 2S9  
Fax: 604-666-2710

**Per: Aaron Dewitt**

Tel: 604-506-3142  
Email: [aaron.dewitt@justice.gc.ca](mailto:aaron.dewitt@justice.gc.ca)

Solicitor/counsel for the Respondent