

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

OKANAGAN INDIAN BAND

Claimant

and

WESTBANK FIRST NATION

Claimant

and

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

Respondent

DECLARATION OF CLAIM

Specific Claims Tribunal Rules of Practice and Procedure

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act*, SC 2008, c 22, and the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.

Date

Registry Officer

TO: Okanagan Indian Band
As represented by Claire Truesdale, Kelsey Rose, and Christina Joynt
JFK Law LLP
260, 200 Granville Street
Vancouver, BC. V6C 1S4

AND TO: His Majesty the King in Right of Canada
As represented by Monina Glowacki and Joshua Ingram
Department of Justice Canada
900-840 Howe St.
Vancouver, BC. V6Z 2S9

I. Introduction

1. The Claimant, Westbank First Nation (“**Westbank**”), meets the definition of “First Nation” pursuant to section 2(c) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (the “**SCTA**”) as a former band “by virtue of an Act or agreement mentioned in the schedule” who has not released the right to bring a specific claim. Westbank is a First Nation with a Self-Government Agreement mentioned in the Schedule to the *SCTA*, meeting this threshold criteria.
2. The conditions precedent set out in section 16(1)(a) of the *SCTA* have been fulfilled by the Claimant, Okanagan Indian Band (“**OKIB**”), as set out in paragraph 2 of OKIB’s Amended Declaration of Claim, filed June 1, 2023.
3. Subsequent to the filing of OKIB’s Amended Declaration of Claim, the Specific Claims Tribunal (the “**Tribunal**”) notified Westbank under section 22 of the *SCTA* that a decision on OKIB’s claim may significantly affect the legal interests of Westbank.
4. On October 7, 2024, Westbank applied to be added as a claimant and a hearing was held by videoconference before Justice Diane MacDonald on February 13, 2025.
5. On February 28, 2025, Justice MacDonald ordered that Westbank be added as a Claimant in this proceeding and that Westbank file a Declaration of Claim on or before March 6, 2025.
6. As required by section 41 of the *SCTA*, Westbank does not seek compensation greater than \$150,000,000.

II. Grounds

7. Westbank’s Declaration of Claim is based on the following enumerated grounds pursuant to section 14(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22:
 - a. a breach of legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to the Indians or land reserved for Indians – of

Canada or of a colony of Great Britain of which at least some portion now forms Canada;

- b. a breach of a legal obligation arising from the Crown's provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation; and
- c. an illegal lease or disposition by the Crown of reserve lands.

III. Allegations of Fact

- 8. Based on the arrangements made by reserve commissioners and Indian Agents in the 1800s, the two Claimants, Westbank First Nation and the Okanagan Indian Band, were initially assembled into a single band under the name "Okanagan Indian Band" (the "**Original Okanagan Band**") in the vicinity of Kelowna and Vernon in British Columbia's interior.
- 9. The Arrow Lakes Band was a band situated in the vicinity of the Arrow Lakes in British Columbia's interior.
- 10. In 1902, 255 acres of land on the west shore of the Lower Arrow Lake, near the town of Burton, were allotted as a reserve for the Arrow Lakes Band (the "**Arrow Lakes Reserve**").
- 11. On July 29, 1938, the Arrow Lakes Reserve was transferred to the administration and control of Canada as a reserve under the *Indian Act* by British Columbia Order-in-Council 1036/1938.
- 12. By the late 1930's, the last remaining registered member of the Arrow Lakes Band was Annie Joseph. Annie Joseph resided with her relatives on the reserves of the Original Okanagan Band. Members of the Original Okanagan Band, including present-day Westbank members, are related to the Arrow Lakes people and they would travel frequently to the Arrow Lakes Reserve and surrounding region.

13. On June 15, 1943, 11.9 acres of the Arrow Lakes Reserve was sold to the Province of British Columbia pursuant to Order-in-Council 4866, leaving a remaining 243.1 acres.
14. By letter dated September 27, 1952, R.H.S. Sampson, the Superintendent of the Okanagan Indian Agency wrote to Indian Commissioner W.S. Arneil recommending that the Arrow Lakes Band be amalgamated with the Original Okanagan Band to prevent the Arrow Lakes Reserve from reverting back to the province upon Annie Joseph's death. On October 14, 1952, Ottawa replied that such an amalgamation could only occur once resolutions from each band consenting to the amalgamation were obtained.
15. On November 6, 1952, the Original Okanagan Band issued a band council resolution in the presence of R.H.S. Sampson consenting to the amalgamation of the Original Okanagan Band with the Arrow Lakes Band.
16. On April 17, 1953, Annie Joseph, as the sole surviving registered member of the Arrow Lakes Band, signed a statement, which was witnessed by two individuals, consenting to the amalgamation of the Original Okanagan Band with the Arrow Lakes Band.
17. At the time that Annie Joseph and the Original Okanagan Band indicated their desire to amalgamate the two bands (and thereby preserve the Arrow Lakes Reserve as a reserve for the Original Okanagan Band), the officials for the Department of Indian Affairs knew:
 - a. that Annie Joseph was of an advanced age and in danger of death; and
 - b. that there was risk that the Arrow Lakes Reserve could revert to British Columbia if Annie Joseph died before the amalgamation was completed.
18. The Department of Indian Affairs – despite knowing the desire of the Original Okanagan Band and the Arrow Lakes Band to merge and bearing responsibility for advancing the process of amalgamation – delayed in advancing the amalgamation process and took no meaningful steps to move it forward. In particular, they did not

take steps to obtain a band vote from the Original Okanagan Band, nor did they ever put the decision on amalgamation before the Minister as required by s. 17 of the *Indian Act*.

19. The officials with the Department of Indian Affairs responsible for the process of amalgamation engaged in their own process of considering whether or not there were factors that weighed against proceeding with the amalgamation, including factors that related to Canada's relationship to British Columbia. They did not discuss any of these considerations or other factors with Annie Joseph or with the Original Okanagan Band.
20. Annie Joseph died on October 1, 1953. On September 28, 1955, the Government of Canada declared the Arrow Lakes Band to be extinct in a letter to W.S. Arneil, Indian Commissioner for British Columbia.
21. Rather than give effect to the amalgamation agreement, requests, and signed statements by the Original Okanagan Band and Annie Joseph, the Government of Canada refused to transfer the Arrow Lakes Reserve to the Original Okanagan Band. Its ultimate reason for this refusal was that it was of the opinion that the land should revert to British Columbia under the terms of Order-in-Council 1036/1938 upon the death of Annie Joseph, at which time the Arrow Lakes Band would be declared extinct.
22. On January 5, 1956, the Government of Canada, by Order-in-Council PC 1956-3, transferred control, management, and administration of the lands comprising the Arrow Lakes Reserve and funds from the sale of a portion of the reserve land to British Columbia.
23. On January 31, 1956, the Government of Canada transferred the remaining Arrow Lake Band's trust funds to an account that set the funds aside for the benefit of the "Indians of British Columbia."
24. On October 18, 1963, Westbank and OKIB were deemed to be independent Indian bands.

25. Subsequently, British Columbia transferred part of the lands formerly comprising the Arrow Lakes Reserve to BC Hydro and part of those lands were flooded for hydro-electric generation purposes in 1969.
26. No compensation for the failure to transfer the Arrow Lakes Reserve or band assets to the Original Okanagan Band has been paid.
27. During the relevant timeframe of the Claim, the Claimants were all members of one single band – the Original Okanagan Band – and shared an interest in the proposed amalgamation between the Arrow Lakes Band and the Original Okanagan Band.

IV. The basis in law on which the Crown is said to have failed to meet or otherwise breached a lawful obligation

28. The initiation of the amalgamation process by Superintendent Sampson along with the express desire of Annie Joseph (who at that time constituted the entirety of the Arrow Lakes Indian Band) to amalgamate the Arrow Lakes Band and the Original Okanagan Band, thereby transferring the Arrow Lakes Reserve to the Original Okanagan Band, and the corresponding express willingness of the Original Okanagan Band to amalgamate and accept the transfer of these lands, gave rise to lawful obligations on the part of the Government of Canada, in particular:
 - a. an obligation to the Arrow Lakes Band to give effect to its express desire to amalgamate the bands and to transfer the Arrow Lakes Reserve and band assets to the Original Okanagan Band;
 - b. an obligation to the Original Okanagan Band to take steps to confirm the wishes of the band by band vote and other steps towards amalgamating the bands and effecting the transfer of the lands to them;
 - c. an obligation to take timely and diligent steps to give effect to the amalgamation of the bands and thereby give effect to the transfer of the Arrow Lakes Band reserve and band assets;

- d. an obligation to both bands to act in their best interests, with loyalty and good faith, provide full disclosure, exercise reasonable diligence, protect them from improvident transactions and to act in accordance with the *Indian Act*; and
- e. an obligation to both bands to consult with them, and to respect their decisions to amalgamate.

29. The Government of Canada was under no contrary duty to British Columbia to allow the Arrow Lakes Band to become extinct so as to allow the land to revert to British Columbia.

30. Canada was under a continuing obligation to the Original Okanagan Band to take steps to effect the transfer of the Arrow Lakes Reserve and band assets to it after the death of Annie Joseph.

31. Canada breached each of its legal obligations to the Original Okanagan Band by:

- a. failing to take timely and diligent steps to advance the amalgamation process;
- b. failing to adequately consider the interests of the Original Okanagan Band and the Arrow Lakes Band;
- c. putting its own interests and the interests of the Province of British Columbia ahead of the interests of the Original Okanagan Band;
- d. failing to give effect to the bands' wishes to dispose of the Arrow Lakes Reserve by means of amalgamation;
- e. failing to further consult with the two bands regarding the proposed amalgamation;

- f. failing to act in accordance with the *Indian Act* by not following the s. 17 amalgamation process and refusing the amalgamation without putting the decision to the Minister; and
- g. declaring the Arrow Lakes Band extinct before taking steps to give effect to the amalgamation and transfer of the Arrow Lakes Reserve and band assets to the Original Okanagan Band, causing the disposition of these lands to British Columbia.

32. As a result of Canada's breach of its lawful obligations to the Arrow Lakes Band and the Original Okanagan Band, Westbank and OKIB have been deprived of:

- a. the Arrow Lakes Reserve and the ongoing use and benefit of that reserve; and
- b. the capital funds in the Arrow Lakes Band account.

33. Westbank is entitled to equitable compensation for being deprived of the land and the ongoing use and benefit of the land and the capital funds in the Arrow Lakes Band account.

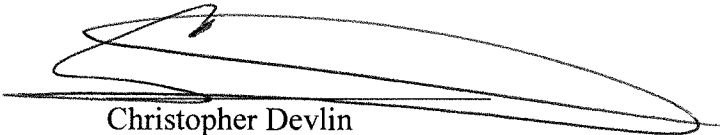
Relief Sought

34. Westbank seeks the following remedies:

- a. a declaration that it has been deprived of the value and ongoing use and benefit of the Arrow Lakes Reserve by virtue of the Crown's breaches of its lawful obligations to Westbank First Nation as one of the two successor First Nations of the Original Okanagan Band as described above;
- b. damages and equitable compensation based on these losses, pursuant to ss. 20(1)(c),(f),(g), and (h) including:
 - i. compensation for being deprived of the benefit and use of the land, to be allocated between Westbank and OKIB;

- ii. compensation for the current, unimproved market value of the land, to be allocated between Westbank and OKIB; and
 - iii. compensation for being deprived of the capital funds remaining in the Arrow Lakes Band's account adjusted for inflation and interest;
- c. the costs of this proceeding, and in the Specific Claims Process, on a substantial indemnity basis pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, s. 110; and
 - d. such other damages or compensation as this Honourable Tribunal deems just.

Dated this 4th day of March, 2025.



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