

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	March 13, 2025
Dragisa Adzic	
Ottawa, ON	133

SCT File No.: SCT-7004-20

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

RESPONSE TO DECLARATION OF CLAIM
Pursuant to Rule 42 of the
Specific Claims Tribunal Rules of Practice and Procedure

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

TO: Westbank First Nation
as represented by Christopher Devlin,
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Victoria, BC V8W 1E1

TO: Okanagan Indian Band
as represented by Claire Truesdale,
Kelsey Rose and Christina Joynt
JFK Law LLP
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I. Overview

1. This specific claim of Westbank First Nation concerns the transfer of the former Arrow Lake Reserve to British Columbia pursuant to Order in Council 1036 following the death of the last remaining member of the Arrow Lake Band. At the time of the transfer, Westbank First Nation existed as one entity with the Okanagan Indian Band (the “Original Okanagan Band”). In the 1960s, the Original Okanagan Band was divided into two bands – Westbank First Nation and Okanagan Indian Band.
2. On February 28, 2025, the Specific Claims Tribunal (the “Tribunal”) granted Westbank First Nation’s application for party status to Okanagan Indian Band’s claim filed at the Tribunal in SCT File No.: SCT-7004-20. Westbank First Nation’s claim asserts that His Majesty the King in right of Canada (“Canada”) should have taken steps to amalgamate the Original Okanagan Band and the Arrow Lake Band without delay, so that the former Arrow Lake Reserve would not be transferred to British Columbia. They assert breaches of legal and fiduciary obligations by Canada in relation to an asserted failure of Canada to amalgamate the Original Okanagan Band and the Arrow Lakes Band.
3. Westbank First Nation asserts that Annie Joseph and the Original Okanagan Band sought to amalgamate the Arrow Lake Band with the Original Okanagan Band, and Canada breached, or failed to comply with, a lawful obligation, statute, or fiduciary duty regarding the proposed amalgamation when Canada transferred the administration and control of the former Arrow Lake Reserve and some of the assets of the Arrow Lake Band to British Columbia in 1956.
4. Based on the evidence, Canada is unable to accept Westbank First Nation’s assertions regarding the proposed amalgamation, including that the former Arrow Lake Reserve and its assets should not have been returned to British Columbia under the terms of Order in Council 1036. Canada asserts that it complied with its

- lawful obligations, statutory duties, and fiduciary duties in considering the proposed amalgamation.
5. Canada is committed to the principles of reconciliation, and to the Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples. Canada affirms the relationship between the resolution of specific claims and the broader goal of reconciliation between First Nations and Canada, and 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").
 6. Canada notes that the documentary evidence refers to both the Arrow Lake Band and the Arrow Lakes Band. Likewise, the documentary evidence refers to both the Arrow Lake Reserve and the Arrow Lakes Reserve. As such, these terms in this Response are being used interchangeably.

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

7. The Okanagan Indian Band submitted a claim with the Minister of Aboriginal Affairs and Northern Development Canada on or about December 7, 2000 (the "Okanagan Specific Claim").
8. The Okanagan Specific Claim asserted 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 Lake Band with the result that the former Arrow Lake Reserve was not transferred to the Okanagan Indian Band.
9. 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 Okanagan Specific Claim for negotiation on the basis that the Okanagan Specific Claim did not disclose a breach of any fiduciary duty by Canada in not proceeding with the amalgamation.

10. On February 28, 2025, pursuant to section 24 of the *Act*, the Tribunal granted Westbank First Nation claimant status to Okanagan Indian Band's claim filed at the Tribunal in SCT File No.: SCT-7004-20.

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

11. Canada does not accept the validity of each of the grounds as set out in paragraph 7 of Westbank First Nation's Declaration of Claim filed on March 4, 2025 (the "Claim").

12. With respect to the asserted breaches in paragraph 7, further elaborated in paragraphs 28, 31 and 32, Canada states that:

- a. Westbank First Nation does not have standing to seek a remedy on behalf of third parties, including the Arrow Lake Band; and,
- b. Canada denies it has an obligation to compensate Westbank First Nation for asserted breaches of fiduciary duty to the Arrow Lake Band.

13. The Arrow Lake Band is not a party to this Claim, nor is the Arrow Lake Band represented by Westbank First Nation, and Westbank First Nation cannot bring a claim on behalf of the Arrow Lake Band.

14. Canada complied with its statutory duties in force at all relevant times, as well as its fiduciary duties, regarding the proposed amalgamation of the Original Okanagan Band with the Arrow Lake Band.

15. Canada denies that it breached, or failed to comply with, any lawful obligation, statute or fiduciary duty in transferring the administration and control of the former Arrow Lake Reserve to British Columbia in 1956.

IV. Admissions, Denials or No Knowledge (R. 42(d))

16. Canada admits the facts as set out in the following paragraphs of Part III of the Claim: 9, 10, 13, 15, 16, 20, 22, 23 and 24.
17. Canada denies the facts as set out in the following paragraphs of Part III of the Claim: 11, 12, 14, 17, 18, 19, 21, 26 and 27.
18. The facts asserted in the following paragraphs of Part III of the Claim are outside the knowledge of Canada: 8, 25.
19. In response to paragraph 8, Canada admits that the Original Okanagan Band was located in the vicinity of Kelowna and Vernon in British Columbia and that in the 1960s, the Original Okanagan Band was divided into two bands: Westbank First Nation and Okanagan Indian Band. Canada has no knowledge as to when, why, or by whom the Original Okanagan Band was formed.
20. In response to paragraph 11, Canada clarifies that on July 29, 1938, the administration and control of the lands allotted for the Arrow Lake Reserve was transferred from the province of British Columbia to Canada by British Columbia Order-in-Council 1036/1938 to be a reserve under the *Indian Act*.
21. In response to paragraphs 12 and 16, Canada states that in 1946, representatives of Canada concluded that Annie Joseph was the last remaining member of the Arrow Lake Band. Canada clarifies that after Louis Joseph died in 1930, Annie Joseph resided at times on the reserves of the Original Okanagan Band. She lived with her common-law spouse, Joseph Parker, an Original Okanagan Band member, until his death, and with his grandson, George Parker, until her death.
22. In response to paragraph 12, the assertions of relationships are insufficiently particularized for Canada to properly respond to, and as a result, Canada denies the general statement that the members of the Original Okanagan Band, including

- present-day Westbank First Nation members, and Arrow Lakes people are related such that it is relevant to these proceedings.
23. In further response to paragraph 12, Canada has no knowledge of the extent and frequency with which the Original Okanagan Band, including present-day Westbank First Nation members, traveled to the “Arrow Lakes Reserve and surrounding region”. Canada states that the Original Okanagan Band, including present-day Westbank First Nation members, were one of many groups who assert that the Arrow Lakes region is their traditional territory, including: the Sinixt, Ktunaxa, Secwepemc and the Syilx, also known as the Okanagan Nation, of which Westbank First Nation and Okanagan Indian Band are a part.
24. In response to paragraph 14, Canada 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.”
25. In further response to paragraph 14, Canada clarifies that 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.”
26. In response to paragraphs 17, 18, 19, and 21, Canada states that these paragraphs as set out are argument, not fact.
27. In response to paragraphs 22 and 23, Canada clarifies that on January 5, 1956, Canada formally transferred the Arrow Lake Reserve to British Columbia by Order-in-Council P.C. 1956-3.
28. In response to paragraph 24, Canada clarifies that on October 18, 1963, the Minister approved the division of the Original Okanagan Band to form two separate bands, Okanagan Indian Band and Westbank First Nation. In 1964, the Okanagan Indian

Band and Westbank First Nation came to an agreement on the division of the Original Okanagan Band's reserve lands, trust funds and other assets.

29. In response to paragraph 25, Canada has no knowledge when and if the Province transferred lands comprising the former Arrow Lake Reserve to BC Hydro, but it is admitted that in 1969 part of the lands comprising the former Arrow Lake Reserve were flooded by BC Hydro.
30. In response to paragraph 26, Canada denies that it has breached any lawful obligation owing to the Original Okanagan Band to amalgamate it with the Arrow Lake Band or transfer band assets. As such, compensation has neither been paid, nor is owed to the Original Okanagan Band, Okanagan Indian Band, or Westbank First Nation.
31. In response to paragraph 27, Canada states that it has no knowledge regarding the specific years to comprise the "relevant timeframe of the Claim" and that the balance of paragraph 27 sets out argument, not fact.

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

32. In 1938, British Columbia issued Provincial Order in Council 1036, conveying the administration and control of the lands allotted for Indian reserves, including the lands allotted for the Arrow Lake 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.

33. 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 [illegible] to share in the distribution of Capital Funds".

34. 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.

35. 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.

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

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

38. 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.

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

40. 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.

41. 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.

42. 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.

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

44. On September 28, 1955, W.C. Bethune, Acting Superintendent of Reserves and Trusts, notified Commissioner Arneil that the Department was satisfied that the Arrow Lake 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.

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

46. A portion of the Arrow Lake 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))

47. Canada denies the entitlement of relief sought and seeks to have the Claim dismissed in its entirety.

48. Should the Tribunal conclude that this Claim is valid, which is denied, Canada pleads and relies on the *Act*, section 20 with respect to compensation owed.

49. Canada may decide not to seek costs upon the final determination of the Claim but reserves the right to do so.

50. Such further and other relief as this Honourable Tribunal deems just.

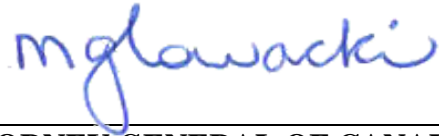
VII. Communication (R. 42(g))

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Dated: March 13, 2025

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