

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

OKANAGAN INDIAN BAND

Claimant

vs. and

WESTBANK FIRST NATION

Claimant

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

Respondent

and

JARRED-MICHAEL ERICKSON, CHAIRMAN OF
COLVILLE CONFEDERATED TRIBES

Intervenor

AMENDED AMENDED DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

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

Date:

Registry Officer

TO: Her-His Majesty the Queen-King in Right of Canada
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I. Claimant (R. 41(a))

1. The Claimant, Okanagan Indian Band, confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22 in the Province of British Columbia, and a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended.

II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

III. Claim Limit (Act, s. 20(1)(b))

3. The Okanagan Indian Band does not seek compensation greater than \$150,000,000.

IV. Grounds (Act, s. 14(1))

4. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

14 (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or of a colony of Great Britain of which at least some portion now forms Canada;

(c) 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;

(d) an illegal lease or disposition by the Crown of reserve lands;

V. Allegations of Fact (R. 41(e))

5. The Arrow Lakes Band was a band situated in the vicinity of the Arrow Lakes in the interior of British Columbia.
6. On October 10, 1902, 243.10 acres of land on the west shore of Arrow Lake, near the town of Burton, was set aside for the Arrow Lakes Band (the “Arrow Lake Reserve”).
7. On November 18, 1902, the Arrow Lake Reserve was confirmed, created as reserve, and transferred to the administration and control of Canada as a reserve under the *Indian Act*, by British Columbia Order-in-Council 1036/1938~~9~~.
8. By the late 1930’s the last remaining member of the Arrow Lakes Band was Annie Joseph. Annie Joseph resided with her relatives on the reserves of the Okanagan Indian Band. Members of the Okanagan Indian Band are related to the Arrow Lakes people and they would travel frequently to the Arrow Lakes region.
- ~~9. In the late 1940’s and the early 1950’s Annie Joseph and the Council of the Okanagan Indian Band became concerned about the future disposition of the Arrow Lakes Reserve. Annie Joseph and the Okanagan Indian Band did not want these lands to cease being reserve land on the passing of Annie Joseph.~~
- ~~10. In a series of conversations, letters, and band council resolutions, Annie Joseph advised the Government of Canada that it was her desire as the last remaining member of the Arrow Lakes Band that the Arrow Lake Reserve be transferred to the Okanagan Indian Band. The Okanagan Indian Band in turn advised the Government of Canada that they were willing to accept these lands as reserve lands.~~

9. On September 27, 1952, R.H.S. Sampson, the Superintendent of the Okanagan Indian Agency wrote to Indian Commissioner W.S. Arniel recommending that the Arrow Lake Band be amalgamated with the Okanagan Indian Bband to prevent the Arrow Lake 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.
10. On November 6, 1952, the Okanagan Indian Band issued a ~~statement signed by the Chief and Council~~ band council resolution in the presence of R.H.S. Sampson consenting to the amalgamation of the Okanagan Indian Band with the Arrow Lakes Band.
11. On April 17, 1953, Annie Joseph, as the sole surviving member of the Arrow Lakes Band, signed a statement, which was witnessed by two individuals, consenting to the amalgamation of the Okanagan Indian Band with the Arrow Lakes Band.
12. At the time that Annie Joseph and the Okanagan Indian Band indicated their desire to amalgamate the two bands (and thereby preserve the Arrow Lakes Reserve as a reserve for the Okanagan Indian 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 a risk that the Arrow Lakes Reserve could revert to British Columbia if Annie Joseph died before the amalgamation was completed.
13. The Department of Indian Affairs -- despite knowing the desire of the Okanagan Indian 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 Okanagan Indian Band, nor did they ever put the decision on amalgamation before the Minister as required by s. 17 of the *Indian Act*.

14. 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 Okanagan Indian Band.
15. 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.
16. Rather than give effect to the amalgamation agreement, requests, and signed statements by the Okanagan Indian Band and Annie Joseph, the Government of Canada refused to transfer the Arrow Lake Reserve to the Okanagan Indian 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~~9~~ upon the death of Annie Joseph, at which time the Arrow Lakes Band would be declared extinct.
17. On January 5, 1956, The Government of Canada, by Order-in-Council PC 1956-35, transferred control, management, and administration of the lands comprising the Arrow Lake Reserve and funds from the sale of a portion of the reserve land to British Columbia.
18. 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."
19. Subsequently, British Columbia transferred part of the lands comprising the Arrow Lake Reserve to BC Hydro and part of the lands were flooded for Hydro-electric generation purposes in 1969.
20. No compensation for the failure to transfer the Arrow Lakes Reserve or band assets to the Okanagan Indian Band has been paid.

21. In 1963, a group of members of the Okanagan Indian Band separated from the Okanagan Indian Band, pursuant to a separation approved by the Minister pursuant to their power under s. 17 of the *Indian Act*. The Minister created a new band under the *Indian Act* for these members, called the Westbank First Nation (“**Westbank**”). The Okanagan Indian Band continued to exist as the same band following the separation.
22. As part of the Westbank members’ separation, some reserve lands held by the Okanagan Indian Band were allocated to the new Westbank band. Westbank received Mission Creek Indian Reserve No. 8, Tsinstikeptum Indian Reserve No. 9, and Tsinstikeptum Indian Reserve No. 10, comprising approximately 2,317.93 acres, while the remaining reserve lands were retained by the Okanagan Indian Band.
23. Westbank also received an agreed per capita share of the then existing assets of the Okanagan Indian Band, including trust funds and accounts receivable.
24. The Okanagan Indian Band, Westbank and the Minister intended the terms of the separation to fully and finally delineate Westbank’s entitlement to the lands and assets of the Okanagan Indian Band. All lands and assets not specifically identified and transferred to Westbank in the separation remained with Okanagan Indian Band which continued to exist as a legal entity.

VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

25. The initiation of the amalgamation process by Superintendent Sampson along with the expressed 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 Okanagan Indian Band and thereby transfer the Arrow Lake Reserve to the Okanagan Indian Band and the expressed willingness of the Okanagan Indian 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 ~~lands~~ Arrow Lakes Reserve and band assets to the Okanagan Indian Band;
- b. An obligation to the Okanagan Indian Band to take steps to confirm the wishes of the band by band vote and other steps towards amalgamating the bands and ~~to effect~~ 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.

26. 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.

27. Canada was under a continuing obligation to the Okanagan Indian ~~B~~band to take steps to give effect to the transfer of the Arrow Lakes Reserve and band assets to it after the death of Annie Joseph.

28. ~~Canada breached these lawful obligations by failing to give effect to the transfer of the Arrow Lake Reserve to the Okanagan Indian Band.~~

29. Canada breached each of its legal obligations to the Okanagan Indian Band by:

- a. failing to take timely and diligent steps to advance the amalgamation process;

- b. failing to adequately consider the interests of the Okanagan Indian 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 Okanagan Indian 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 Okanagan Indian Band, causing the disposition of these lands to British Columbia.

30. By declaring the Arrow Lakes Band extinct before giving effect to that transfer, Canada breached each of its legal obligations to the Okanagan Indian Band by causing the disposition of these lands to British Columbia.

31. As a result of Canada's breach of its lawful obligations to the Arrow Lakes Band and the Okanagan Indian Band, the Okanagan Indian Band has been deprived of:

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

32. The Okanagan Indian Band 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.

33. Any compensation awarded in respect of this claim is payable solely to the Okanagan Indian Band. Westbank has no entitlement to any compensation awarded in respect of this claim.
34. The Okanagan Indian Band was not extinguished by the 1963 separation, nor was it divided into two successor bands. Members of the Okanagan Indian Band separated to form a new band, Westbank, while the Okanagan Indian Band continued as the same legal entity.
35. Westbank's entitlement to the Okanagan Indian Band assets was limited to the reserve lands and assets expressly allocated to it under the terms of the separation. As a matter of law, Westbank did not acquire an interest in any other lands, assets, rights or claims of the Okanagan Indian Band, all of which remained with the Okanagan Indian Band following the separation.
36. Similarly, Westbank's individual members neither retained nor acquired an interest in any other lands, assets, rights or claims of the Okanagan Indian Band. The interest in the Okanagan Indian Band's reserve lands, and any cause of action arising therefrom, is a communal one belonging to the band, not individual members. It does not follow members when they leave the band.

Relief Sought

37. The Okanagan Indian Band seeks the following remedies:
- a. A declaration that it has been deprived of the value and ongoing use and benefit of the Arrow Lake Reserve by virtue of the Crown's breaches of its lawful obligations to the Okanagan Indian 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;
 - ii. compensation for the current, unimproved market value of

the land; 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.

38. The Okanagan Indian Band asks that the Tribunal deny Westbank's claim to any compensation in respect of this claim.

Dated this ~~31~~ 3 day of ~~May, 2023~~ July 2026 at the City of ~~Victoria~~ Vancouver in the Province of British Columbia.



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