

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

**OKANESE FIRST NATION**

Claimant

v.

**HIS MAJESTY THE KING 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: Okanese First Nation  
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## **I. Overview**

1. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. While Canada did not accept this claim for negotiation under the Specific Claims Policy, Canada will pursue all appropriate forms of resolution as the Tribunal process proceeds.
3. Canada acknowledges Okanese First Nation is an adherent to Treaty No. 4 (“Treaty 4”), is a Band within the meaning of the *Indian Act*, RSC 1985, c I-5, and is a First Nation within the meaning of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“SCTA”).
4. Canada satisfied all treaty, fiduciary, and honourable duties and obligations owed to Okanese First Nation regarding reserve selection and use, including in surveying and setting aside reserve lands in the 1870s and 1880s.
5. The lands surveyed in October 1876 and referred to by Okanese First Nation as Indian Reserve No. 58, or IR 58, were never set aside or constituted as a reserve for Okanese First Nation. As such, Canada was not obligated to obtain a surrender or consent from Okanese First Nation before utilizing those lands for other purposes.
6. Indian Reserve No. 82 (“IR 82”) was confirmed for Okanese First Nation in 1889. Okanese First Nation settled on IR 82 and began utilizing the lands in September 1880. Okanese First Nation did not indicate any dissatisfaction with their reserve at that time, or suggest they had already received a different reserve.
7. Okanese First Nation and Canada resolved any claims concerning compensation for a shortfall of reserve lands in 1993. On May 7, 1993 Okanese First Nation and Canada entered into a Band Specific Agreement and Treaty Land Entitlement Trust

Agreement (“TLE Settlement”). Pursuant to the TLE Settlement, Okanese First Nation received \$4,069,921.10 and released Canada from all liability relating to Canada’s treaty land entitlement obligations to Okanese First Nation.

8. Any compensation awarded to Okanese First Nation following adjudication of this claim must account for the monies received by Okanese First Nation pursuant to the TLE Settlement, as well as the benefit of Okanese First Nation’s occupation and use of IR 82 from 1880 to the present.

## **II. Status of Claim**

9. Paragraph 16(1)(a) of the *SCTA* is satisfied. On June 18, 2024, the Minister of Crown-Indigenous Relations (the “Minister”) notified Okanese First Nation in writing of his decision not to negotiate the claim.

## **III. Canada’s Position with Respect to Validity of the Claim (R. 42(b) and (c))**

10. Canada does not agree that the facts establish a valid claim under the *SCTA* based on the current evidentiary record. However, Canada will work cooperatively with Okanese First Nation to obtain more detailed documentary and expert evidence, fill evidentiary gaps, and explore potential areas of agreement.
11. Contrary to Okanese First Nation’s assertion in paragraph 43 of the Declaration of Claim (the “Claim”), Canada did not breach any treaty, fiduciary, or honourable duty to Okanese First Nation in relation to the subject matter of the Claim.
12. Canada never created a reserve for Okanese First Nation on the north side of the Qu’Appelle River, near Crooked Lake, Saskatchewan. The lands surveyed in that location in October 1876 were never set aside or constituted as a reserve for Okanese First Nation. Accordingly, the lands referred to by Okanese First Nation as IR 58 were not a reserve, contrary to the assertions in paragraph 44 of the Claim. Accordingly, Canada was not obligated to obtain a surrender or consent from Okanese First Nation before utilizing those lands for other purposes, contrary to the

assertions in paragraphs 46-47 of the Claim. Canada does not admit paragraphs 44 or 46-47 of the Claim.

13. Based on the current evidentiary record, Okanese First Nation did not reside on or near the lands it refers to as IR 58 at any point material to this claim, contrary to the assertions in paragraph 45 of the Claim.
14. Canada does not admit breaching any obligations to Okanese First Nation as asserted in paragraphs 48 through 50 of the Claim and has no knowledge of the factual assertions made in those paragraphs.

#### **IV. Canada's Position with Respect to Allegations of Fact**

15. Regarding paragraphs 1 and 9 of the Claim, Canada admits Okanese First Nation is an adherent to Treaty 4, a "band" within the meaning of the *Indian Act*, and a "First Nation" within the meaning of the *SCTA*. Canada also admits that Okanese First Nation's reserve lands and governance structure are situated in the Province of Saskatchewan: in the File Hills near Fort Qu'Appelle, Saskatchewan. Okanese First Nation adhered to Treaty 4 on September 9, 1875.
16. Canada admits fulfillment of the paragraph 16(1)(a) condition precedent of the *SCTA*, and that the grounds for the Claim are set out in paragraphs 14(1)(b) to (e) of the *SCTA*, as pled in paragraphs 2 and 6 of the Claim.
17. In response to paragraphs 3 and 4 of the Claim, Canada says:
  - a. Okanese submitted a specific claim to the Specific Claims Branch on February 1, 2021. The specific claim was deemed filed with the Minister of Crown-Indigenous Relations on July 27, 2021;
  - b. The specific claim alleged Canada improperly alienated reserve lands referred to by Okanese First Nation as Indian Reserve No. 58 or IR 58, and thereby breached treaty, fiduciary, and honourable obligations owed to Okanese First Nation; and

- c. The Minister notified Okanese First Nation in writing of his decision not to negotiate the claim on June 19, 2024.
18. In response to paragraph 5 of the Claim, Canada acknowledges paragraph 20(1)(b) of the *SCTA* sets a limit of \$150 million in total compensation for each specific claim. However, the Claim does not explain the meaning of “each Specific Claim” as stated in paragraph 5, particularize the total number of specific claims for which compensation is sought, or clarify the nature of each of those specific claims and how they relate to each other.
19. In response to paragraph 7 of the Claim, Canada admits only that David Laird, Minister of the Interior, and W.J. Christie were appointed Treaty Commissioners by Orders-in-Council P.C. 944 and P.C. 972 on July 23, 1874. Canada states the Commissioners’ task was to conclude treaties with the Indigenous peoples residing in the Northwest Territories.
20. In response to paragraph 8 of the Claim, Canada admits only that thirteen chiefs signed Treaty 4 on September 15, 1874, and that Chief Okanese did not sign Treaty 4 on September 15, 1874.
21. In response to paragraph 9 of the Claim, Canada says Order-in-Council P.C. 702, dated July 9, 1875, recommended the appointment of W.J. Christie to seek the adhesion of First Nations that had not signed Treaty 4. Canada admits the remaining facts in paragraph 9 of the Claim relating to the September 9, 1875 adhesions to Treaty 4.
22. Canada admits the facts set out in paragraph 10 of the Claim relating to Christie’s instructions in the July 8, 1875 Order-in-Council.
23. In response to paragraph 11 of the Claim, Canada says J.S. Dennis, Surveyor General, Dominion Lands Office, Department of the Interior, wrote a memorandum containing suggestions regarding the selection and survey of reserves under Treaty 4. Canada admits only that Dennis recommended reserves be surveyed and marked as soon as possible after their selection by the Indian Commissioner and affected

First Nations. Canada does not admit the remainder of paragraph 11 of the Claim, but says Dennis suggested the interests of First Nations be considered when selecting reserves, which may involve the inclusion of river or lake frontage in reserves.

24. Canada admits the facts set out in paragraph 12 of the Claim relating to Dennis's suggestions for reserve selection and survey.
25. In response to paragraph 13 of the Claim, Canada says Chief Okanese and his band met with the Treaty Commissioners at Qu'Appelle Lakes prior to their adhesion to Treaty 4 in 1875, not in 1885. Okanese First Nation did not select reserve lands in 1875. Canada further says Okanese First Nation received ammunition and twine at Fort Ellice in August 1876.
26. Canada has no knowledge of the June 28, 1876 instructions to Indian Agent Angus McKay referred to in paragraph 14 of the Claim.
27. In response to paragraph 15 of the Claim, Canada says a Crown delegation, including McKay and William Wagner, Dominion Land Surveyor, met with First Nations that had signed Treaty 4, as well as First Nations that had not yet adhered to Treaty 4, at Qu'Appelle Lakes in September 1876. Canada admits these meetings involved the payment of annuities under Treaty 4 as well as reserve selection. Canada further admits Chief Okanese was present at Qu'Appelle Lakes at this time.
28. In response to paragraph 16 of the Claim, Canada admits only that Wagner and McKay consulted several chiefs on September 5, 1876 regarding reserve location. Canada does not admit these consultations included Chief Okanese or that Okanese First Nation agreed to a reserve location on September 5, 1876.
29. Canada admits the facts set out in paragraph 17 of the Claim relating to McKay's October 14, 1876 report to the Superintendent General of Indian Affairs.
30. In response to paragraph 18 of the Claim, Canada says Wagner began surveying a reserve for Okanese First Nation on October 25, 1876. Wagner completed the

survey on October 27, 1876. Canada admits the surveyed lands were located on the north side of the Qu'Appelle River, near Crooked Lake.

31. Canada admits the facts set out in paragraph 19 of the Claim relating to Wagner's description of the surveyed lands and the subsequent correction of the total area to 21,529 acres.
32. Canada admits the facts set out in paragraph 20 of the Claim, except that McKay's report described in paragraph 20 is dated October 14, 1876, not October 31, 1876.
33. Canada denies the assertions set out in paragraph 21 of the Claim and says the following:
  - a. There was not an Order-in-Council confirming a reserve surveyed for Okanese First Nation in October 1876, referred to by Okanese First Nation as IR 58.
  - b. While the surveyed lands were described by Department of Indian Affairs officials in multiple documents, the Department of Indian Affairs did not acknowledge or accept the status of the surveyed lands as reserve lands.
34. Canada admits the facts set out in paragraph 22 of the Claim relating to McKay's report of October 14, 1876, but confirms the correct spelling of the Indian Agent's name is McKay, not Mackay.
35. Canada currently has insufficient information to admit or deny the assertions in paragraph 23 of the Claim. The assertions in paragraph 23 were not raised in Okanese First Nation's specific claim submission, and Canada must conduct additional research to evaluate them.
36. In further response to paragraph 23, Canada says Okanese First Nation filed a separate specific claim with the Minister on December 13, 2022, asserting Canada failed to provide agricultural benefits pursuant to Treaty 4. This separate specific claim is currently in the research phase, and the Minister has not yet informed Okanese First Nation of his decision whether to offer to negotiate the claim.

37. As Canada obtains more information, Canada will review its position on the assertions in paragraph 23 of the Claim and amend this Response, or seek direction or other remedies from the Tribunal, as appropriate.
38. Canada denies the assertions set out in paragraph 24 of the Claim relating to Okanese First Nation's alleged occupation of the lands Okanese First Nation refers to as IR 58. In further response to paragraph 24, Canada admits the Okanese band received treaty payments at Qu'Appelle Lakes in 1877 and 1878. Canada also admits that six Okanese families were paid at Qu'Appelle Lakes in 1879, while the remaining fourteen families were paid at Fort Walsh. Canada currently has insufficient information to admit or deny the Okanese band was paid at Qu'Appelle Lakes in 1880. As this claim proceeds and Canada obtains more information, Canada will review its position on this assertion and amend this Response as appropriate.
39. With respect to paragraph 25 of the Claim, Canada acknowledges First Nations in the Qu'Appelle Valley faced challenges in the late 1870s due to the decline of the buffalo. Canada currently has insufficient information to admit or deny it refused aid to Indigenous peoples unless Indigenous peoples "settle[d] and work[ed]" on reserves, or that Okanese First Nation became dependent on federal aid to survive from the late 1870s onward. As this claim proceeds and Canada obtains more information, Canada will review its position on these assertions and amend this Response as appropriate.
40. In response to paragraphs 26-28 of the Claim, Canada admits only the following:
  - a. Allan Poyntz Patrick, Dominion Topographical Surveyor, performed work surveying reserve lands for Okanese First Nation in the File Hills in 1880.
  - b. John C. Nelson, Dominion Land Surveyor, completed the survey of Okanese First Nation's reserve lands in the File Hills in 1885 or 1886.

- c. Order-in-Council P.C. 1151, dated May 17, 1889, confirmed IR 82 for Okanese First Nation, comprising an area of 14,310.7 acres or 22.36 square miles.
41. Canada denies the remaining assertions set out in paragraphs 26-28 of the Claim relating to the survey and setting aside of IR 82 for Okanese First Nation.
42. In response to paragraph 29 of the Claim, Canada admits only that Okanese First Nation moved to the lands that would become IR 82 in the File Hills in or about September 1880. Canada further admits that A. McDonald, Indian Agent, wrote in his July 6, 1883 report to the Superintendent General of Indian Affairs that Okanese First Nation's lands in the File Hills contained lakes and marshes which prevented the cultivation of large fields. Canada denies the remaining assertions in paragraph 29 relating to Canada's alleged compulsion of Okanese First Nation's settlement on IR 82.
43. Canada admits the facts set out in paragraph 30 of the Claim relating to the content of the Department of Indian Affairs's 1881 Annual Report.
44. Canada currently has insufficient information to admit or deny the assertions in paragraphs 31-41 of the Claim. The assertions in paragraphs 31-41 were not raised in Okanese First Nation's specific claim submission, and Canada must conduct additional research to evaluate them. As this claim proceeds and Canada obtains more information, Canada will review its position on the assertions in paragraphs 31-41 of the Claim and amend this Response as appropriate.
45. Canada admits the facts set out in paragraph 42 of the Claim relating to 1969 and 1973 additions to IR 82, except that the 1992 Schedule of Indian Bands, Reserves and Settlements lists the total area of IR 82 as 6,267.4 hectares, or approximately 15,487 acres.

## V. Canada's Statements of Fact

46. Treaty 4 was signed at the Qu'Appelle Lakes on September 15, 1874. Chief Okanese adhered to Treaty 4 on behalf of Okanese First Nation on September 9, 1875. At that time, Okanese First Nation relied chiefly on the buffalo for their subsistence, and did not indicate a desire to begin farming or a desired location for a reserve.
47. In 1876, Indian Agent Angus McKay reiterated that Okanese First Nation was not likely to settle on-reserve for the next couple of years. However, William Wagner, Dominion Land Surveyor, surveyed lands for Okanese First Nation near Crooked Lake, Saskatchewan from October 25 to 27, 1876. These lands were assigned the reference number 58, and comprised 21,529 acres. They are incorrectly referred to by Okanese First Nation as Indian Reserve No. 58 or IR 58. The surveyed lands were never set aside for Okanese First Nation or formally constituted as a reserve. Okanese First Nation never occupied or utilized the surveyed lands. Accordingly, they were not a reserve within the meaning of the *Indian Act*.
48. In September 1880, Okanese First Nation settled at the File Hills. In December 1880, Allan Poyntz Patrick, Dominion Topographical Surveyor, began surveying reserves at the File Hills for Okanese First Nation and other First Nations. At that time, Okanese First Nation had already begun to utilize the land. Although the reserve boundaries were not formalized in December 1880, the File Hills chiefs assured Patrick they were satisfied with the boundaries Patrick had set out. Prior to filing this Claim, Okanese First Nation has not expressed any dissatisfaction or concern with its reserve in the File Hills, which was formally confirmed as Indian Reserve No. 82 ("IR 82") by Order-in-Council P.C. 1151 on May 17, 1889. Furthermore, prior to filing this Claim, Okanese First Nation has not asserted they received or utilized a reserve at Crooked Lake prior to settling on IR 82 in the File Hills.
49. On September 22, 1992, Canada entered into a Treaty Land Entitlement Framework Agreement ("TLE Framework Agreement") with Saskatchewan and twenty-six

First Nations, including Okanese First Nation. The purpose of the TLE Framework Agreement was to recognize and fulfill outstanding treaty land entitlement obligations. As part of this process, Canada and Okanese First Nation agreed on the following:

- a. The year when their reserve was first surveyed (being 1880);
  - b. An adjusted population of Okanese First Nation in the year of first survey (being 162);
  - c. The amount of reserve land Okanese First Nation was entitled to under treaty (being 20,736 acres);
  - d. The amount of reserve land Okanese First Nation received up to 1955 (being 13,830.4 acres);
  - e. The amount and percentage proportion of shortfall acres when compared with Okanese First Nation's treaty land entitlement (being 6,905.6 acres, a shortfall of 33.3% of entitlement); and
  - f. The amount of reserve land Okanese First Nation received after 1955 (being 581.93 acres).
50. The TLE Framework Agreement included a formula by which the March 1991 population of Okanese First Nation was used to calculate an additional amount of reserve land to which Okanese First Nation could be entitled.
51. Okanese First Nation received \$4,069,921.10 in compensation as part of the above process. As noted above, the TLE Settlement was signed by Canada and Okanese First Nation on May 7, 1993. As part of the TLE Settlement, Okanese First Nation released Canada from all claims relating to treaty land entitlement in consideration of the compensation received.

## **VI. Relief**

52. Canada seeks the following relief:

- a. Dismissal of the Claim;
- b. In the alternative, should the Tribunal determine Canada breached any treaty, fiduciary, or honourable obligation owed to Okanese First Nation, Canada relies upon subsection 20(3) of the *SCTA* and seeks to set off the following amounts from any compensation deemed owing:
  - i. The value of the benefit received by Okanese First Nation in the 1993 TLE Settlement; and
  - ii. The value of Okanese First Nation's beneficial occupation and use of IR 82 from 1880 to the present; and
- c. Such further relief as counsel may request and this Honourable Tribunal deem just.

53. Canada may decide not to seek costs upon the final determination of the proceedings, but reserves the right to seek such costs.

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


54. The Respondent's address for the service of documents is:

Department of Justice (Canada)  
Prairie Regional Office (Saskatoon)  
410 – 22nd Street East, Suite 410  
Saskatoon, SK S7K 5T6  
Attention: James Olchoway and Jayme Anton

55. The facsimile number for service is: (306) 975-4030

56. The e-mail address for service is: [Okanese\\_FN\\_SCT-5002-24\\_Team@justice.gc.ca](mailto:Okanese_FN_SCT-5002-24_Team@justice.gc.ca)

Dated this 7th day of October, 2024.

  
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