

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	October 1, 2025
Dragisa Adzic	
Ottawa, ON	3

SCT File No.: SCT-7002-25

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

‘NAMGIS FIRST NATION

Claimant

and

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

Respondent

RESPONSE
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: ‘Namgis First Nation
As represented by:
Stan H. Ashcroft
Ashcroft & Company
Barristers & Solicitors
#205 – 1544 Marine Drive
West Vancouver, BC V7V 1H8
Fax: 604-913-1622
Email: stan@ashcroftlaw.com, assistant@ashcroftlaw.com, and ashcroftco@ashcroftlaw.com

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OVERVIEW

1. Canada largely accepts the validity of this claim by the ‘Namgis First Nation and will work toward fair compensation for ‘Namgis in relation to the land at issue.
2. ‘Namgis First Nation is situated on northern Vancouver Island in British Columbia.
3. This Claim by ‘Namgis concerns their application to the Royal Commission on Indian Affairs for the Province of British Columbia established in 1912. The Commission was empowered to establish new reserves if they determined that more land was required by any particular Band.
4. In 1914 ‘Namgis applied to the Commission for about 100 acres of additional reserve land adjacent to Nimpkish River which empties into Nimpkish Lake (the “Nimpkish Land”). The evidence of Chief Lageuse before the Commission was that there was an old permanent village on the Nimpkish Land and that it was a “valued site”.
5. Before the Commission on June 24, 1914, Indian Agent Halliday did not recommend that the Nimpkish Land be added to the reserve as it “was so isolated that it would never be used.” On June 14, 1916, the Commission issued its decision declining to recommend that the Nimpkish Land be added to the reserve as it was “not reasonably required”.
6. Canada admits that Canada had a fiduciary duty in relation to the Nimpkish Land. Canada also admits that that fiduciary duty was breached by Agent Halliday’s failure to recommend that the Nimpkish Land be added to the reserve. Canada will work cooperatively toward ensuring that ‘Namgis receives fair compensation for the Nimpkish Land, either through the Specific Claims Tribunal, or through negotiation or mediation.

I. CONDITIONS PRECEDENT

R. 42(a)

7. The Claim was accepted for negotiation on March 18, 2015. Despite the parties' efforts since then the Claim has yet to be resolved, fulfilling the condition precedent required by subsection 16(1)(d) of the *Specific Claims Tribunal Act* (SCTA) thereby allowing the Claim to be filed.

II. VALIDITY OF CLAIM

R. 42(b) and (c)

8. Canada accepts the validity of the claim asserted in paragraph 16 (a) of the Claim. Canada admits that, in the circumstances of this case, Canada had a fiduciary duty in relation to the Nimpkish Land. Canada also admits that that fiduciary duty was breached by Agent Halliday's failure to recommend that the Nimpkish Land be added to the reserve.

9. Canada does not accept the validity of the remaining claims at paragraphs 16 (b) and (c) in relation to Agent Halliday's conduct before the Commission.

III. COMPENSATION

R. 42(c)

10. Although Canada does not accept the validity of the claims at paragraphs 16(b) and (c) of the Claim, Canada does accept the validity of the claim at paragraph 16(a) and will work cooperatively toward ensuring that 'Namgis is fairly compensated for the Nimpkish Land, either through the Specific Claims Tribunal, or through negotiation or mediation.

11. Paragraph 20(1)(c) of the SCTA may provide the basis for the Tribunal to award compensation subject to any applicable deduction or set-off from such compensation calculated in accordance with subsection 20(3) of the SCTA.

**IV. RESPONSE TO PART V OF THE DECLARATION OF CLAIM –
ALLEGATIONS OF FACT**

R. 42(d)

12. Canada admits ‘Namgis’ allegations of fact in Part V of the Claim as follows.

13. In response to paragraph 9 of the Claim, Canada admits that “The McKenna McBride Commission on Indian Affairs for British Columbia (the “Commission”) was established by Agreement dated September 24, 1912, between the Dominion and British Columbia governments. The purpose of the Agreement was “to settle all differences between the Governments of the Dominion and the Province respecting Indian lands...in the Province of British Columbia”.”

14. In response to paragraph 10 of the Claim, Canada admits that “On October 25, 1913 Deputy Superintendent General of Indian Affairs Duncan C. Scott gave instructions to Indian Agents as follows:

TO INDIAN AGENTS, -

These instructions are issued in brief and practical form as an aid to the efficient management of the agencies under the care of Indian Agents in Canada. For detailed instructions on particular points and for further information, application should be made to headquarters.

The officers of the Department are reminded of their responsibilities as guardians of the Indians entrusted to their immediate care. It is felt that the very nature of this relation should have the effect of calling forth an Agent’s most conscientious endeavours.

While the duty of an Agent is first of all to protect the interests of the Indians under this charge, the rights of citizens should be respected and the courtesy which is due to the public should always be observed.

NA, RG-10, Vol. 11023, File 604”

15. In response to paragraph 11 of the Claim, Canada admits that “In a letter from Indian Agent Halliday of the Kwawkewith Agency (“Halliday”) to J.G.H. Bergeron, Secretary of the Commission for British Columbia, Halliday stated, in relation to the ‘Namgis reserves:

“...It will be noticed that many of the reserves are very small and that the whole acreage of the Agency is very unevenly divided between the different tribes..”

1. Alert Bay This reserve is situated on Cormorant Island on Alert Bay. There are three wharves here. The reserve comprises 46.25 acres and the village of the Nimkeesh Indian is here. It is also the headquarters of the Indian Agent. The land is fair but mostly heavily timbered.
2. Graveyard On the waterfront at Alert Bay.
3. Cheslakee This reserve is situated at the mouth of the Nimpkish River and distant about two miles from Alert Bay. It can be reached by launch. The area is 302.87 acres. It is useful as a fishing station but the soil is fair.
4. Arccwyee This reserve of 41.3 acres is situated in a sharp bend of the Nimpkish River about 2.5 miles from its mouth and could be reached by canoe. It is heavily timbered excepting a narrow strip close to the river. Very little of it is of any use for agricultural purposes.
5. Otsawlas This reserve of 53.25 acres is on another bend of the Nimpkish River near its source in Nimpkish Lake. There is a fishing village located on it where the winter fish are caught and cured. It is more useful for fishing purposes than agricultural land.

16. In response to paragraph 12 of the Claim, Canada admits that “On June 2, 1914, the Commission met with ‘Namgis at Alert Bay. At that time, ‘Namgis presented seven applications for additional reserves to the Commissioners.”

17. In response to paragraph 13 of the Claim, Canada admits that “Of those seven, four were rejected on the grounds that the lands were already alienated. Of the remaining three, on the recommendation of the Indian Agent, William Halliday (“Agent Halliday”) the Nimpkish Lake lands were not made reserve lands for the use and benefit of ‘Namgis.”

18. In response to paragraph 14 of the Claim, Canada admits that “Chief Lageuse’s evidence before the Commission regarding the application for the Nimpkish River lands can be summarized as follows:

- (a) There was an old Indian house there.
- (b) It takes two days' poling up the river that empties into the lake to reach this area.
- (c) It is an old village site of the Band which had not been permanently occupied for approximately fifty years.
- (d) The land had been cleared by the Band.
- (e) The Band wished to obtain the land for purposes of timber harvesting, hunting, farming, and gardening.”

19. In response to paragraph 15 of the Claim, Canada admits that “On June 14, 1916 the Commission issued its decision regarding the Nimpkish River lands stating:

73. A half mile on each side of Nimpkish river from Kla-anck to Wilkiamayi, 100 acres, two days poling up the river (Kla-anck River apparently same as Nimpkish)...

DECISION OF COMMISSION: Not entertained as not reasonably required...

Report of the Royal Commission on Indian Affairs for the Province of British Columbia
(Victoria: Acme Press, 1916)”

V. RESPONDENT’S STATEMENTS OF FACT

R. 42(e)

McKenna-McBride Commission

20. The Royal Commission on Indian Affairs for the Province of British Columbia was established by an agreement between Canada and BC dated September 24, 1912. The Commission is often referred to as the McKenna-McBride Commission. The purpose of the Commission was “to settle all differences between the Governments of the Dominion and the Province respecting Indian Lands and Indian Affairs generally ... in the Province of British Columbia.” Accordingly, the Commission was empowered by Section 2B of the agreement (set out below) to establish new reserves if they determined that more land was required by any particular Band:

At any place at which the Commissioners shall determine that an insufficient quantity of land has been set aside for the use of the Indians of that locality, the Commissioners shall fix the quantity that ought to be added for the use of such Indians. ...

21. On June 1, 1914, the Commission met with the “principal Tribes of the Kwawkwalth Nation”. The Commission Chairman explained that Indian Agents were appointed and paid by the Dominion Government, and their duty was “to stand by and protect the Indians in all their rights – to visit the Reserves from time to time and see that no one is interfered with them[sic] in their privileges.”

22. On June 2, 1914, the Commission met with Chief Alf Lageuse of the Nimpkish Band, now known as the ‘Namgis First Nation. Chief Lageuse stated that “At the present time, under the circumstances, the people cannot make their living on this land because it is not big enough for the use of my people and myself ... If we have more children this land would not be enough to hold them.”

23. Chief Lageuse identified seven areas of land which ‘Namgis wished to have set aside for their use and benefit. He was examined by the Commission on each of these applications. Of these seven applications four were denied as the lands were already alienated. Of the three remaining applications, two were granted and one was denied.

24. Applications 76 and 77 (Plumper and Pearse Islands) were granted by the Commission consistent with Agent Halliday's recommendations. Application 73 was for the Nimpkish Land, the subject of this Claim. It was denied consistent with Agent Halliday's recommendation.

Chief Lageuse's Testimony

25. On June 2, 1914, Chief Lageuse testified before the Commission that Application 73, the Nimpkish Land, was 100 acres and was required for farming, gardening, timber and hunting. It had once been the site of a permanent village, but had not been occupied for about 50 years:

Q. No. 2 [73] application, is there an Indian house there?

A, Yes.

Q. An old one?

A. Yes.

Q. How long is it since anyone lived there?

A. It takes two days poling up the river that empties into the lake.

MR. COMMISSIONER MCKENNA: It takes eight or nine days poling up the river, and this place takes about two days poling up the river.

Q. How much land do you want there?

A. 100 acres.

Q. What do you want it for?

A. For the land, the timber and the hunting.

Q. Do you intend to farm there, is it wanted for farming purposes?

A. It is for farming and gardening.

Q. You said there was an old village there?

A. Yes, there are signs of it there yet.

Q. Is it an old village of this Tribe?

A. Yes.

Q. Was it cleared?

A. Yes, by the Indians and there is grass there – that is a valued site.

Q. Is it a long time since any Indians occupied that place?

A. Yes, it is quite a while – before I was born. It is about 50 years since we had a permanent village there.

Q. Have they used it in the meantime for any purpose?

A: No.

Indian Agent Halliday's Recommendations

26. On June 24, 1914, Indian Agent Halliday made recommendations to the Commission which were summarized by the Commission as follows:

As for [Application 73, the Nimpkish Land herein], applied for by Chief Willie Harris on the ground that his forefathers had a village there, he would not recommend this application as the land was so isolated that it would never be used....

The recommendation was made that the application for Plumper Islands [Application 76] be granted, with a maximum allowance of 100 acres. The Pierce [sic] Islands [Application 77] had long been used by the Indians as a fishing station, and he recommended that the smaller Islands of the group, lying on the eastern side and containing fifty or sixty acres be granted; these Islands were small and rocky and used only as basis for fishing operations.

Decision of the Commission

27. On June 14, 1916 the Commission issued its decision regarding Application 73, the Nimpkish Land herein, stating:

“[Application 73] 1/2 mile on each side of Nimpkish river from Kla-anck to Wilkiamayi, 100 ac. two days poling up the river (Kla-anck River apparently same as Nimpkish)

...

Decision of Commission: Not entertained as not reasonably required.”

VI. RELIEF SOUGHT

R. 42(f)

28. Canada seeks the following relief:

- a. A determination of the amount of compensation owed to ‘Namgis for the admitted breach of fiduciary duty asserted in paragraph 16(a) of the Claim;

- b. Under s. 20(3) of the SCTA, a deduction from the amount of compensation of the value of any benefit received by 'Namgis in relation to the subject matter of this Claim brought forward to its current value;
- c. Dismissal of the assertions of breach of fiduciary duty at paragraphs 16 (b) and (c) of the Claim;
- d. Canada may decide not to seek costs upon the final determination of the proceedings, however it reserves the right to seek such costs;
- e. Such further relief as this Honourable Tribunal deems just.

Dated: October 1, 2025



Signature of
 Respondent lawyer for Respondent
Isabel Jackson
Department of Justice Canada
British Columbia Regional Office

Respondent's address for service: Department of Justice
900-840 Howe Street
Vancouver, BC V6Z 2S9
Attention: Isabel Jackson

Fax number for service: 604-666-2710

Email address for service: please send to all of:

isabel.jackson@justice.gc.ca
cheryl.lee@justice.gc.ca