

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	July 15, 2026
Dragisa Adzic	
Ottawa, ON	1

SCT File No.: SCT- 4002-26

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

KINONJEOSHTEGON 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

TREATY 5 ANNUITY AND OTHER BENEFITS INDEXING

(Rule 41 of the *Specific Claims Tribunal Rules of Practice and Procedure*)

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

July 15, 2026

Date

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Registry Officer

TO:

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I. CLAIMANT (R. 41(A))

1. The Claimant, Kinonjeoshtegon First Nation (“**Kinonjeoshtegon**” or the “**First Nation**”), is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “**SCTA**”), as it is a “band” within the meaning of the *Indian Act*, RSC 1985, c I-5.

2. Kinonjeoshtegon is a band of Chippewa Indigenous Peoples in the Interlake Region of Manitoba. The Claimant was originally known as the Jackhead Band. By way of band council resolution, on June 16, 1999, the name of the Band was changed to Kinonjeoshtegon First Nation.

3. Kinonjeoshtegon First Nation adhered Treaty 5 on July 26, 1876.

II. CONDITIONS PRECEDENT (R. 41(C))

4. The following conditions precedent as set out in s. 16(1) of the SCTA 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;

5. Kinonjeoshtegon submitted the Treaty 5 Annuity Indexing Specific Claim Submission (the “**Claim Submission**”), which was received by the Minister of Crown-Indigenous Relations and Northern Affairs Canada (“**CIRNAC**”) on March 24, 2025. The Claim Submission relates to the Crown’s failure to index or augment the value of ammunition and twine, Chief and Headmen salaries, Chief and Headmen triennial suits of clothing, and the annual annuity payments of \$5 to be paid “per head yearly” as set out in Treaty 5 (together, the “**Annuity Provisions**”).

6. Canada advised by letter dated March 24, 2026 of the decision of the Minister not to negotiate the Claim.

III. CLAIM LIMIT (ACT, S. 20(1)(B))

7. For the purposes of this Claim, the Claimant does not seek compensation in excess of \$150 million.

IV. GROUNDS (ACT, S. 14(1))

8. The Claimant submits that the Claim is based on the following grounds pursuant to s. 14(1) of the SCTA:

(a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown; [...]

(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;

9. The Crown's failure to index the Annuity Provisions to offset the impacts of inflation at the time of Treaty has left the Claimant with a significantly different set of assets than what was promised under Treaty. For example, it is indisputable that the purchasing power of \$5 in 2026 is vastly different than it was in 1876 (when the Claimant adhered to Treaty 5). The Crown's failure to index the Annuity Payments for inflation, or any other reasonable measure, constitutes a failure to fulfill a legal obligation to provide assets under Treaty, as well as a breach of a legal obligation in relation to the Crown's administration of Indian moneys or other assets of the First Nation.

V. ALLEGATIONS OF FACT (R. 41(E))

A. History of Treaty Annuity Payments

10. The annuity system was developed as a new way for the Crown to acquire Indian lands after the War of 1812. Prior to the war, land cession agreements had typically involved a single payment from the Imperial Treasury to the band or bands

selling their lands. Following the War of 1812 and several other conflicts during this period in which Britain was engaged, the British Crown had accumulated significant debt. The British Crown therefore desired to avoid large capital payments for land cessions, and began implementing the system of perpetual annual payments in exchange for Aboriginal lands.

11. This system avoided the larger capital cost of a single payment, and was based on the theory that once lands were sold to third parties, the sales income would cover the annuity payments. This method transferred the costs of acquiring Aboriginal lands from the British Government to Upper Canada.

12. In the pre-confederation Treaties, annuity payments were an important component of the compensation paid to Indigenous peoples under Treaty. Crown officials viewed the annuity payments as a significant contribution to the livelihood of the Indigenous signatories.

13. Following the union of Upper and Lower Canada in 1841, Governor-General Sir Charles Bagot appointed three commissioners to undertake “a comprehensive assessment of Indian affairs in the united colonies.” The Bagot Commission paid considerable attention to the subject of annuity payments, noting that initially the payments were often paid in goods rather than cash. This practice eventually changed, with each band being credited with the annuity, and then department officials directed the expenditures. This change opened the annuity system to abuse. The Bagot Commission reported that accurate accounts were not kept and often became overdrawn.

14. Annuity payments were originally paid out of the Imperial grant, but in 1834 the procedure changed, and the payments were made from the Provincial Territorial Revenue Fund. Due to an oversight, the 1841 *Act of Union* contained no provision for annuity payments. A legal opinion was obtained and an order in council was passed to ensure that the payments would be covered eventually by proceeds from Crown revenues, or by a special vote of the provincial legislature.

15. The Bagot Commission recommended that all future annuity payments be made by the Receiver General with the approval of the Governor General. The Commissioner of Crown Lands was to give the Receiver General all money accruing from Crown Revenues, to be deposited in an account called the “Indian Annuity Fund.” The Bagot Commission further recommended that at the beginning of each year, the Receiver General credit each band with its annuity payments, and keep the Indian Department informed of all balances and advances. Any warrants for expenditures had to be sanctioned by the band’s Chief, resident agent, or visiting officer, and approved by the Governor General. The Chiefs were to be given a yearly explanation of how their annuities were spent. It was recommended that no payments be made in cash. The Commission’s report was implemented, having been met with approval by Indian Affairs and the relevant Chiefs.

16. The annuity payments forming part of the Numbered Treaties were understood by the Crown to be paid as compensation for the loss of land. Commitments made to First Nations pursuant to the Numbered Treaties were to serve as compensation for the surrender of Indian title, as required by the Imperial Parliament in the *Rupert’s Land Order*. Both the government negotiators and Indigenous signatories to the Numbered Treaties placed a great importance on the maintenance of livelihoods. The annuities, combined with the assurances that hunting could continue off reserve, and that assistance would be provided for agricultural and educational pursuits, were significant substantive points in the negotiations and all of them were intended to meaningfully contribute to the First Nation signatories abilities to provide a livelihood for themselves.

17. Indian Commissioner Wemyss Simpson, who was present at the negotiations of Treaty 1 and 2, reported that the aggregate sum of the Annuity Payments for a family was usually sufficient to provide many comforts for his family. Annuity Payments were not based on any specific calculation of the land or resources, but were based on a total family income sufficient for necessities.

18. At the time of Treaty 5, the annuity payments were sufficient to provide a

family with enough income to purchase the necessary equipment to maintain a livelihood. The Indigenous signatories to all of the numbered Treaties viewed the annual payments as an important component of the Treaty commitment.

B. The Claimant's Adherence to Treaty 5

19. On September 20, 1875 at Beren's River and September 24, 1875 at Norway House, the Crown, through its representatives, Commissioners Alexander Morris and the Honourable James McKay, entered into Treaty No. 5 with the Saulteaux and Swampy Cree tribes of Indians.

20. On July 26, 1876, the Band of Saulteaux Indians residing at or near the Big Island and other islands in Lake Winnipeg signed Treaty No. 5, with Sang-gwa-wa-ka-pow signing Treaty No. 5 on behalf of the Claimant, who at the time, was known as the Jackhead Band.

21. Pursuant to Treaty No. 5, the Crown promised to provide the Claimant with certain benefits. The relevant provisions of Treaty No. 5 are set out below:

It is further agreed... that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, **pay to each Indian person the sum of five dollars per head yearly.**

It is further agreed between Her Majesty and the said Indians that the sum of five hundred dollars per annum shall be yearly and every year expended by Her Majesty in the purchase of ammunition, and twine for nets, for the use of the said Indians, in manner following, that is to say: in the reasonable discretion as regards the distribution thereof among the Indians inhabiting the several reserves or otherwise included therein of Her Majesty's Indian Agent have the supervision of this treaty.

...

It is further agreed between Her Majesty and the said Indians **that each Chief duly recognized as such shall receive an annual salary of twenty-five dollars per annum, and each subordinate officer, not exceeding three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive, once every three years, a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal.**

[emphasis added]

22. The Crown made these promises, among others, in exchange for the cession of an interest in 100,000 square miles. The area of land covered by Treaty No. 5 was later expanded as a result of adhesions between 1908 and 1910.

23. The promises from the Crown contained in the treaties were consideration for the cession of interest in the land.

24. The common intention between the parties was that the Treaty relationship would last forever. The Treaty promises were never intended to be frozen in time. With respect to the Annuity Provisions in particular, the purpose and intent was to provide the Claimant with sums or benefits equivalent to the purchasing power of those sums stated in the Annuity Provisions.

C. The Crown's Failure to Index the Annuity Payments

25. It is undisputed that the Crown has failed to index or augment the annuity payments and ammunition and twine benefits for inflation or any other reasonable measure. For example, the purchasing power of \$5 in 2026 is vastly different than the purchasing power of \$5 in 1876. The effects of inflation have drastically reduced the \$5 annuity payments, which were once capable of providing a family's necessities for a year, to practically nothing.

26. Further, although Chief and Headmen salaries and triennial suits of clothing

are currently adjusted for inflation, the Claimant claims that the Crown has historically failed to index the value of these benefits.

VI. THE BASIS IN LAW ON WHICH THE CROWN IS SAID TO HAVE FAILED TO MEET OR OTHERWISE BREACHED A LAWFUL OBLIGATION

27. The Crown's failure to index or augment the Annuity Provisions for inflation or any other reasonable measure is a breach of Treaty 5, including the duty to diligently implement the Treaty promise. The breach of Treaty 5 constitutes dishonourable conduct by the Crown, as well as a breach of fiduciary duty.

A. Breach of Treaty

28. The purpose of Treaties is to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty, and to define Aboriginal rights guaranteed by s. 35 of the *Constitution Act, 1982*.

29. Kinonjeoshtegon pleads and specifically relies on the established principles of Treaty interpretation and the honour of the Crown, including that the honour of the Crown governs Treaty-making and implementation, the Crown must avoid the appearance of sharp dealing, and the Crown must act in a manner that accomplishes the intended purposes of its Treaty promises.

30. The words of the Annuity Provisions must be considered against the historical background and context of Treaty 5. However, Treaty rights are not frozen at the date of signature and must be updated to provide for their modern exercise. Treaty 5 must be interpreted in a modern way throughout time, given that the land ceded in the Treaty has not been returned to Kinonjeoshtegon.

31. The historical record and the background to Treaty 5 negotiations clearly favour the interpretation that the Annuity Provisions provide a "real" value such that the purchasing power of the sum promised remains at least equally valuable throughout time. This interpretation recognizes the intention that the annual payments promised under the Numbered Treaties would provide families of signatory First

Nations with sufficient income to sustain a livelihood.

32. The parties did not intend for the Annuity Provisions to serve as symbolic tokens or nominal amounts. The flags and medals promise in Treaty 5 already satisfied any symbolic purpose desired by the parties when entering into the Treaty.

33. Rather, the purpose of the Annuity Provisions was to provide Kinonjeoshtegon with sums and benefits necessary to sustain a livelihood, equivalent to at least the purchasing power of those sums stated in the Annuity Provisions. Without the promised and required indexation for inflation or any other reasonable economic measure, the Annuity Provisions now provide an insignificant sum or benefit, and their entire purpose has been substantially frustrated.

34. The Crown has a duty to act in an honourable and timely way to pursue the purpose behind the Treaty promise. Despite this duty, the Annuity Provisions have not been adjusted for inflation or any other reasonable measure, and the promise to provide sums for a sustainable livelihood remains frustrated. The Crown's breach of its duty of diligent fulfillment amounts to a breach of Treaty 5.

B. Breach of Fiduciary Duty

35. The Crown's failure to index the Annuity Provisions of Treaty 5 for inflation, or any other reasonable measure, constitutes a breach of the fiduciary duty it owed to Kinonjeoshtegon.

36. Kinonjeoshtegon pleads and specifically relies on the established principles that the relationship between the Crown and Indigenous peoples is fiduciary in nature and that the existence of a fiduciary obligation imposes certain standards on the Crown, including acting in the best interest of Kinonjeoshtegon in the provision of the Annuity Provisions.

37. A Treaty promise satisfies both legal tests for when a fiduciary duty arises, namely that a fiduciary obligation may arise:

- a. from the Crown's discretionary control over a specific or cognizable

Aboriginal interest; and/or

- b. where the general conditions for a private law *ad hoc* fiduciary relationship are satisfied (i.e., where the Crown has undertaken to exercise its discretionary control over a legal or substantial practical interest in the alleged beneficiary's best interest).

38. First, the benefits of the Annuity Provisions constitute a collective asset of Kinonjeoshtegon, in which it had a specific Aboriginal interest as a result of Treaty 5. Further, by signing Treaty 5, the Crown undertook discretionary control over the provision of these benefits. As a result, a fiduciary duty arises.

39. Second, by agreeing to provide the Annuity Provisions, the Crown undertook to act in the best interest of Kinonjeoshtegon and that a legal or substantial practical interest of the beneficiary or beneficiaries stood to be adversely affected by the Crown's unilateral exercise of discretion or control over the provision or non-provision of benefits and administration of the Annuities Provisions.

40. The common intention between the parties was that the Treaty relationship would last forever. The Treaty promises were never intended to be frozen in time. With respect to the Annuity Provisions in particular, the purpose and intent was to provide Kinonjeoshtegon with sums or benefits equivalent to the amount required to earn a livelihood or at least the purchasing power of those sums stated in the Annuity Provisions.

41. Despite the parties' common intention, the Crown failed to index the Annuity Provisions in line with inflation or any other reasonable economic measure. The Crown's failure to fulfill the Annuity Provisions by providing sums sufficient to sustain a livelihood amounts to a breach of the Crown's fiduciary duties.

VII. RELIEF SOUGHT

42. The Claimant seeks the following relief:

- a. in lieu of an order for specific performance of the treaty obligation, the

payment of equitable compensation for Canada's breach of its Treaty obligations and fiduciary duties resulting from the Crown's failure to fulfill the Annuity Provisions of Treaty 5 by indexing the Annuity Provisions for inflation or any other reasonable measure, including compound interest;

- b. equitable interest or restitution on historical losses suffered by Kinonjeoshtegon;
- c. such other damages or compensation as this Honourable Tribunal deems appropriate; and
- d. costs in relation to the specific claims process.

Dated July 15, 2026

 for:

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