

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES
December 30, 2020	
Isabelle Bourassa	
Ottawa, ON	1

SCT File No.: SCT - 7004-20

**SPECIFIC CLAIMS TRIBUNAL**

**B E T W E E N:**

**OKANAGAN INDIAN BAND**

Claimant

v.

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

Respondent

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

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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*.

DATE:

December 30, 2020

Isabelle Bourassa

Registry Officer

TO: Her Majesty the Queen in Right of Canada  
Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building 234 Wellington Street East tower  
Ottawa, Ontario K1A 0H8  
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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:

- (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 1036/1939.
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.
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.
11. 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 band 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.
12. On November 6, 1952, the Okanagan Indian Band issued a statement signed by the Chief and Council in the presence of R.H.S. Sampson consenting to the amalgamation of the Okanagan Indian Band with the Arrow Lakes Band.
  13. 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.
  14. 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
  15. 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 1036/1939 upon the death of Annie Joseph, at which time the Arrow Lakes Band would be declared extinct.
  16. On January 5, 1956, 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.
  17. 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.

18. No compensation for the failure to transfer the Arrow Lake Reserve to the Okanagan Indian Band has been paid.

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

19. 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 to the Okanagan Indian Band;
- b. An obligation to the Okanagan Indian Band to amalgamate the bands and to effect the transfer of the lands to them.

20. 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.

21. Canada was under a continuing obligation to the Okanagan Indian band to give effect to the transfer of the Arrow Lake Reserve after the death of Annie Joseph.

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

23. 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.

24. As a result of Canada's breach of its lawful obligations to the Okanagan Indian Band, the Band has been deprived of the Arrow Lake Reserve and the ongoing use and benefit of that reserve.

25. The Okanagan Indian Band is entitled to equitable compensation for being deprived of the land and the ongoing use and benefit of the land.

***Relief Sought***

26. 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, including compensation for being deprived of the benefit and use of the land;
- 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.
- d. Such other damages or compensation as this Honourable Tribunal deems just.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020, at the City of Victoria in the Province of British Columbia.

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