

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

BEARDY’S & OKEMASIS BAND #96 AND #97

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENdicATIONS PARTICULIÈRES	D É P O S É
	April 3, 2018	
	Guillaume Phaneuf	
Ottawa, ON		1

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA  
as represented by the Minister of Indian Affairs and Northern Development

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*.

April 3, 3018

\_\_\_\_\_  
Date

Guillaume Phaneuf

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Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
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**I. Claimant (R. 41(a))**

1. The Claimant, the Beardy's & Okemasis Band #96 and #97 (hereinafter also referred to as the "First Nation") confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, and within the meaning of *Treaty No. 6* (hereinafter "Treaty 6"). The First Nation is located near Duck Lake in the Province of Saskatchewan.

**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; ...

3. The First Nation originally filed a claim respecting various alleged breaches by Canada relating to its failure to provide benefits promised under Treaty 6 as well as other breaches of Canada's treaty, legal, trust, fiduciary, and equitable obligations, with the Minister of Indian Affairs and Northern Development on October 16, 2008 (hereinafter referred to as the "Treaty 6 Benefits Claim" or the "Claim").
4. By letter dated September 23, 2011, the Senior Assistant Deputy Minister of Indian and Northern Affairs Canada wrote to the First Nation, advising that Canada would not accept the Treaty 6 Benefits Claim for negotiation under the Specific Claims Policy.
5. The provisions of paragraph 16(1)(a) of the *Specific Claims Tribunal Act* are satisfied because the Minister notified the First Nation in writing of its decision not to negotiate the Claim.

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

6. The First Nation does not seek compensation in excess of \$150 million for the Treaty 6 Benefits Claim.

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

7. The following are the grounds for the 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:

- (a) a failure to fulfil 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;

...

8. In particular, the Crown has failed to fulfill its legal obligation to provide treaty benefits to the First Nation pursuant to the terms of Treaty 6.

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

**(A) *Treaty 6 and the Crown's Promise to Provide Treaty Benefits (1876)***

9. In 1876, the Crown and the Plains and Wood Cree Indians in what is now central Saskatchewan entered into Treaty 6. Among other things, the treaty provided for the surrender of aboriginal title to 121,000 square miles of land in exchange for various promises and treaty benefits to be provided by the Crown.
10. On August 28, 1876, at Fort Carlton, *Kah-ma-wis-tah-wa-sit* (Beardy) and *Sas-way-pew* (Cut Nose) adhered to the terms of Treaty 6 previously entered into between Treaty Commissioners on behalf of the Crown and other First Nations. Cut Nose was the predecessor of Okemasis who later became Chief of the band that assumed his name. The Beardy's and Okemasis bands were separate bands with separate paylists until at least 1953. The Claimant is the successor in interest to the Beardy's and Okemasis bands who respectively became parties to, and are therefore entitled to, the benefits of Treaty 6.
11. The written terms of Treaty 6 contain explicit promises and benefits to be provided by the Crown including, *inter alia*, the following:

...to lay aside reserves for farming lands, due respect being had to the lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.

...

...with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, She hereby, through Her Commissioners, makes them a present of twelve dollars for each man, woman and child belonging to the Bands here represented, in extinguishment of all claims heretofore preferred.

...

It is further agreed between Her Majesty and the said Indians, that the sum of \$1,500.00 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 herein, of Her Majesty's Indian Agent having the supervision of this treaty.

...

...that the following articles shall be supplied to any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land, that is to say: Four hoes for every family actually cultivating; also, two spades per family as aforesaid; one plough for every three families, as aforesaid; one harrow for every three families, as aforesaid; two scythes and one whetstone, and two hay forks and two reaping hooks, for every family as aforesaid, and also two axes; and also one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone and one auger for each Band; and also for each Chief for the use of his Band, one chest of ordinary carpenter's tools; also, one for each Band, enough wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such Band; also for each Band four oxen, one bull and six cows; also, one boar and two sows, and one handmill when any Band shall raise sufficient grain therefor. All the aforesaid articles to be given once and for all for the encouragement of the practice agriculture among the Indians.

...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 treaty, a suitable flag and medal, and also as soon as convenient, one horse, harness and waggon.

That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.

That during the next three years, after two or more of the reserves hereby agreed to be set apart to the Indians shall have been agreed upon and surveyed, there shall be granted to the Indians included under the Chiefs adhering to the treaty at Carlton, each spring, the sum of one thousand dollars, to be expended for them by Her Majesty's Indian Agents, in the purchase of provisions for the use of such Band as are actually settled on the reserves and are engaged in cultivating the soil, to assist them in such cultivation.

That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.

That with regard to the Indians included under the Chiefs adhering to the treaty at Fort Pitt, and to those under Chiefs within the treaty limits who may hereafter give their adhesion thereto (exclusively, however, of the Indians of the Carlton region), there shall, during three years, after two or more reserves shall have been agreed upon and surveyed be distributed each spring among the Bands cultivating the soil on such reserves, by Her Majesty's Chief Indian Agent for this treaty, in his discretion, a sum not exceeding one thousand dollars, in the purchase of provisions for the use of such members of the Band as are actually settled on the reserves and engaged in the cultivation of the soil, to assist and encourage them in such cultivation.

That in lieu of waggons, if they desire it and declare their option to that effect, there shall be given to each of the Chiefs adhering hereto at Fort Pitt or elsewhere hereafter (exclusively of those in the Carlton district), in recognition of this treaty, as soon as the same can be conveniently transported, two carts with iron bushings and tires.

**(B) *The Crown's Promise of Agricultural Assistance and Attempted Agrarian Conversion by the Treaty 6 Indians and the Beardy's and Okemasis Bands***

12. Subsequent to the Claimant's adhesions to Treaty 6, the Crown's Treaty Commissioners recognized that the Cree signatories were eager to commence cultivation of reserve land. The Commissioners emphasized to the Crown the importance of providing the bands with the livestock and agricultural implements promised under treaty without delay.
13. Some of the Claimant's members began gardening as early as 1876.
14. On June 26, 1878, the "Chief of Duck Lake Indian Tribe" sent a petition to the "Governor General of Canada and British America" requesting that a reserve be surveyed at Duck Lake. In 1879, three years after the Claimant adhered to Treaty, Chief Beardy protested to the Crown that the Band had not received the agricultural benefits owed under the treaty.
15. In 1879, Dominion Surveyor Reid surveyed lands for Beardy's Band, and by 1880, some members of Cut Nose's Band were given permission to remain on the lands.
16. In the autumn of 1881, nearly five years after adhering to Treaty 6, Chief Beardy expressed his dissatisfaction and concern with the Crown's failure to provide the Band with agricultural implements and benefits owed under Treaty 6.
17. By Order-in-Council dated February 1884, Okemasis was appointed Chief instead of Cut Nose.
18. In 1884, the Claimant began to experience difficulty in conversion to an agriculture-based economy and agricultural production due to a lack of proper machinery, implements, and storage facilities. In this same year, a group of Cree Chiefs expressed to the Crown a number of grievances regarding the provision of Treaty 6 benefits including, *inter alia*:
  - a. the insufficient number of cattle provided;
  - b. the poor quality of the livestock received;
  - c. the poor quality of the wagons received; and
  - d. the lack of agricultural implements provided, including some implements not provided that were interdependent with items that were provided, rendering the provided item useless for agricultural purposes.
19. In March 1885, the Riel or Northwest Rebellion (hereinafter the "Rebellion") broke out when the Métis declared a provisional government at Batoche, located in close proximity to the Beardy's Indian Reserve located near Duck Lake.

20. Notwithstanding the absence of any evidence that the Claimant had any significant involvement in the Rebellion, the Crown, without justification in law, punished the Claimant by levying against them the replacement cost of their agricultural implements, tools and livestock that were lost or damaged as a result of this event.
21. The Crown further punished the entire membership of both Bands as part of a larger plan by which the Department of Indian Affairs introduced a number of coercive measures without legal authority to do so. These measures included the confiscation of all guns, ammunition, horses, cattle, carts, wagons, harnesses, and even treaty medals from the Indians, as well as withholding rations and relief during times of starvation and pestilence.
22. The Beardy's Reserve was resurveyed in 1887 to include additional land, and "INDIAN RESERVES NOS 96 AND 97 (UNDIVIDED)" were asided by Order in Council P.C. 1151 on May 17, 1889. The confirmed Reserve contained 44 square miles (28,160 acres) for the bands of Chiefs Beardy and Okemasis.
23. Thirteen years after entering Treaty, the Claimant was still not provided with the full complement of agricultural benefits promised under Treaty 6. Further, and notwithstanding the shortfall of Treaty 6 benefits, Department of Indian Affairs reports and records indicate that throughout the 1890's to the early 1900's, on numerous occasions the Claimant attempted to bolster their agricultural pursuits through use of their own monies as a source of financing for the purchase of livestock, agricultural implements and provisions.
24. During this crucial period of transition by bands from a traditional lifestyle to an agrarian economy, Canada developed and implemented a number of ill-fated policies for the Indian populations that had a profoundly negative effect upon the ability of bands to transition to an agricultural economy. These policies persisted for decades starting in the late 1870's, and included, *inter alia*, the Home Farm Program, the Permit System, the Pass System, the Cattle on Loan/Birtle System, subdivision of reserve land policy (referred to as the Severalty Policy), and the Peasant Farming policy.
25. The Permit System, in particular, dissuaded the pursuit of agricultural endeavours for Indians. The Permit System was legislated under the *Indian Act*, and required that Indians obtain a signed permit from an Indian Agent prior to buying or selling any goods. In many cases, permits were denied to Indians or contained limiting conditions ensuring little to no profit for the Indian farmer. In addition, before a merchant could sell goods to Indians, a special license had to be obtained from the Department of Indian Affairs.
26. The Permit System was gradually rendered ineffective in the 1950s/1960s as bands began to adopt elected forms of government, acquired more authority over their property and economic transactions, and eventually superseded the Indian Agent. The Permit System was quietly repealed in December 2014 by a private member bill amending various sections of the *Indian Act*.
27. The Claimant did not receive the full complement of agricultural assistance promised under Treaty 6. What little assistance provided was rendered ineffective or useless due to poor

quality of implements, tools and livestock, lack of complementary or necessarily linked tools and implements, and the Crown's punitive agricultural policies.

**(C) *The Crown's Promise of Ammunition and Twine***

28. The Claimant did not receive its share of the yearly distribution of \$1500 in ammunition and twine for nets, for the use and benefit of the Indians.

29. Records indicate that the amount of ammunition and twine that was provided to the bands in the Carlton Agency for the years 1898 to 1925 fluctuated over the years, but remained significantly less than \$1 per head. This indicates that the Claimant did not receive the amount of ammunition and twine promised under Treaty 6, particularly because as later adherents to Treaty 6, the Beardy's and Okemasis Bands were entitled to a new and distinct expenditure from that provided to the original Treaty 6 signatories.

30. Further, the material quality of the meagre amounts of ammunition and twine actually provided by Canada was inadequate to be of any substantive utility for the activities of the Indians for whose use and benefit it was contemplated.

**(D) *The Crown's Promise of Three Years of Additional Agricultural Provisions***

31. The Claimant did not receive their share of the distribution of \$1000 in agricultural provisions under Treaty 6. In addition, the Crown did not meet its promise to provide aid in the event of any pestilence or general famine.

32. The provisions the Claimant may have received, if any, were not sufficient to fulfill Canada's obligations pursuant to the famine and pestilence clause under Treaty 6, and were certainly not sufficient to fulfill the intent of the promise of three years of provisions, which was to provide support for bands in the transition to an agricultural economy.

**(E) *The Crown's Promise of a Twelve Dollar Present***

33. Treaty 6 provides for a present of twelve dollars for each man, woman and child belonging to the bands who adhered to Treaty 6. Some members who received their first annuity payment with the Claimant did not receive the twelve-dollar payment owed to them under the terms of Treaty 6.

**(F) *Suits and Medals***

34. Treaty 6 provides for a suitable suit of clothing every three years for the Chief and up to four subordinate officers, along with a suitable flag and medal for each Chief in recognition of the closing of the treaty.

35. Chief Beardy and Chief Okemasis were both declared disloyal in 1885, and were stripped of their Treaty 6 medals. The Claimant did not have a Chief again until 1937.

36. Chief Beardy had four Headmen, and Chief Okemasis had one Headman. All Headmen were deposed in 1885. The Claimant did not have any headmen until 1937 when two were appointed.
37. The Claimant did not receive the suitable suits of clothing promised under Treaty 6 from 1885 to 1937.

**VI. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation:**

38. The Treaty 6 Benefits Claim is brought on the grounds that Canada breached its treaty, legal, trust, fiduciary and/or equitable obligations to the Claimant in its failure to fulfil the written promises of Treaty 6 for the provision of agricultural and other benefits, including:
  - a. the insufficient provision of agricultural implements, tools, livestock, and seed for the cultivation and encouragement of agriculture;
  - b. the insufficient provision of the Claimant's share of the annual provision of ammunition and twine;
  - c. the insufficient provision of the Claimant's share of the \$1000 worth of provisions to assist in annual cultivation for the first three years after two or more reserves were surveyed;
  - d. the insufficient payment of the present of twelve dollars to each man, woman and child who received the first treaty payment with the Claimant;
  - e. the non-provision of suitable suits of clothing for a chief and up to four subordinate officers in the years following the Rebellion;
  - f. the confiscation of the Treaty 6 medals from the Claimant; and
  - g. the failure to provide assistance to the Claimant during times of famine and pestilence, and the failure to provide medicine chests.
39. The written terms of Treaty 6 do not represent the full extent of the Crown's treaty promises. The Crown's treaty obligation was primarily to support the Claimant in converting to an agricultural economy. Not only has Canada failed to provide treaty benefits, the Claimant was misled by Canada in respect of its solemn and sacred promises to support and assist the Claimant in the effective exercise of the various benefits and rights that were being recognized and protected under Treaty 6.
40. In addition to failing to provide the treaty benefits as written in the text of Treaty 6, Canada breached its treaty, legal, trust, fiduciary and/or equitable obligations to the Claimant by:
  - a. impeding and limiting the collective's economic transition and correlated self-sufficiency by imposing economically punitive and protectionist measures preventing the fulfilment of the spirit and intent of Treaty 6;

- b. providing livestock, implements, tools, and provisions that were of inferior or inadequate quality for the purposes of providing assistance to the Claimant in the transition to an agricultural economy;
  - c. levying replacement fees for agricultural implements destroyed in the Rebellion based on the Claimant's alleged violation of Treaty 6; and
  - d. encouraging and promoting the Claimant and its members to expend personal funds to purchase tools, implements, livestock, and seed that should have been provided by the Crown pursuant to the terms of Treaty 6.
41. The Claimant pleads and specifically relies upon the established principles of treaty interpretation and the Honour of the Crown, including but not limited to those enunciated by the Supreme Court of Canada in *R v Marshall*, 2005 SCC 43, to the effect that treaties should be liberally construed, treaty rights are not frozen at the date of the treaty, and must be updated and implemented in a manner consistent with equivalent modern practices.
42. The Claimant further pleads that to the extent that Canada misadministered or failed to keep important records related to the provision of Treaty 6 benefits, such misadministration leads to a presumption in favour of the Claimant.
43. The Claimant further pleads that the Honour of the Crown was at stake when negotiating and implementing the terms of Treaty 6. The Crown failed to uphold its honourable obligations when it failed to honour its treaty promises, both express and implied, oral and written.

## **VII. Relief Sought**

44. In light of the foregoing, the Claimant seeks the following relief:
- a. in lieu of an order for specific performance of the treaty obligations, the Claimant seeks equitable compensation for the Crown's breach of its treaty, honourable, fiduciary and equitable duties, to be based on the value of the modern equivalent of the treaty benefits as of the date of payment of compensation or such other date as the Tribunal considers just;
  - b. in the alternative, compensation for the loss of use of the promised, but as yet undelivered Treaty 6 benefits;
  - c. compensation for the Crown's other various breaches in relation to the treaty benefits promise, including:
    - i. compensation for the replacement costs paid by the Claimant for the loss of livestock and agricultural implements and other treaty benefits lost or destroyed as a result of the 1885 Rebellion;

- ii. compensation for the funds expended by the Claimant to purchase implements that should have been provided by Canada under Treaty 6; and
  - iii. compensation for treaty benefits that were provided, but of inferior or inadequate quality for the purposes of assisting the Claimant in the transition to an agricultural economy.
- d. costs on a solicitor-client basis;
  - e. equitable interest; and
  - f. such other damages or compensation as this Honourable Tribunal deems just.

Dated this 2<sup>nd</sup> day of April, 2018, at the City of Calgary in the Province of Alberta.

**MAURICE LAW**



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