

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	August 19, 2011	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	5	

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

BEARDY'S & OKEMASIS BAND #96 AND #97

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Aboriginal Affairs and Northern Development Canada

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: BEARDY'S & OKEMASIS BAND
As represented by Ron S. Maurice, of
Maurice Law Barristers and Solicitors
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File: 106.02

I. Status of Claim (R. 42(a))

1. This claim was submitted in 2001 under the Specific Claims Policy. It was considered and determined that it did not fall within the Policy. This determination was made prior to the coming into force of the *Specific Claims Tribunal Act* (“*Act*”). This claim has never been filed with the Minister as required by section 16(1) of the *Act*.
2. Further, and in the alternative, if this claim has been filed with the Minister, the Minister notified the Claimant of his decision not to negotiate the claim on June 17, 2008, as it did not fall within the Policy. This determination was made prior to the coming into force of the *Act*. This claim can therefore not be filed with the Specific Claims Tribunal pursuant to section 43 of the *Act*.

II. Validity (R. 42(b) and (c))

3. The Crown’s position is that this is not a valid claim under the *Act*.

Jurisdiction

4. The Crown’s position is that the Specific Claims Tribunal does not have the jurisdiction to hear this claim under the *Act*.

(a) Annuities

5. This claim is a claim for annuities and does not fall within the jurisdiction provided by section 14 of the *Act*.
6. Under the Specific Claims Policy the focus is, and always has been, the resolution of specific claims which relate to land and other First Nation assets. Claims regarding annuity payments were never accepted for negotiation under the Policy because they did not relate to such a loss by a First Nation. Instead, annuities were payments to individual band members.
7. The *Act* maintains this focus on lands, assets and treaty provisions related to lands and assets. The purpose of the *Act* is to deal with specific claims, as identified under the

Specific Claims Policy, in a timely and efficient manner. The *Act* is not intended to expand the definition of a specific claim.

8. The *Act* has therefore been drafted in a manner so as not to include claims for annuity payments under the grounds for a claim set out in section 14.
9. Annuity payments are not a loss that the Claimant can claim as “its losses” pursuant to section 14(1) of the *Act*. Annuity payments are, instead, payments owed to individual band members.
10. A claim for annuities also does not fall under any of the other grounds for a claim set out in sections 14(1), (a), (b), (c), (d), (e) and (f) of the *Act*.

(b) Prematurity

11. This claim is premature and therefore the Specific Claims Tribunal does not have the jurisdiction to hear this claim as a result of sections 16 and 43 of the *Act*. This claim was considered and it was determined that it did not fall within the Specific Claims Policy. This determination was made prior to the coming into force of the *Act* on October 16, 2008.
12. In particular, the Claimant submitted this claim for “the wrongful denial of annuity payments” to it by Canada after “the Rebellion of 1885” under the Specific Claims Policy on December 6, 2001.
13. In a letter dated July 4, 2005, the Specific Claims Branch wrote the Claimant to advise that it had completed a report and document collection related to this claim and that the Specific Claims Branch was continuing internal consultations with respect to the issues arising from this claim.
14. In a letter dated June 17, 2008, the Specific Claims Branch returned the claim to the Claimant and informed it that the claim did not “fall within the scope of the Specific Claims Policy.” The Claimant could not recover the alleged losses relating to the annuity payments under the Specific Claims Policy because any damages would be owed to individual band members as opposed to the Claimant, itself.

15. Because this claim was considered, and it was determined that it did not fall within the Specific Claims Policy, and this determination was made prior to the coming into force of the *Act*, it has never been filed with the Minister as required by section 16(1) of the *Act*.
16. Further and in the alternative, if this claim has been filed with the Minister, the Minister notified the Claimant of his decision not to negotiate the claim on June 17, 2008, prior to the coming into force of the *Act*. This claim can therefore not be filed with the Specific Claims Tribunal pursuant to section 43 of the *Act*.

Merits

17. Further, and in the alternative, the Crown had the legal authority to suspend the \$5 per year Treaty annuity payments pursuant to, *inter alia*, its executive, legislative, prerogative and other constitutional powers.
18. The Crown therefore denies that Canada breached any treaty, legal, trust, fiduciary and/or equitable obligations to the Claimant as alleged or otherwise.
19. The Crown's position, in relation to this claim, is that none of the paragraphs in section 20(1)(e) to (h) of the *Act* provides any basis for the Tribunal to award compensation.

III. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))

20. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Declaration of Claim and puts the Claimant to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts in the following paragraphs of the Declaration of Claim: 2, 9, 14, 16, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40.
21. The Crown admits the facts set out in the following paragraphs of the Declaration of Claim: 6 (although the date of the letter is November 10, 2008), 10, 11, 12, 13, and 15.
22. The Crown has no knowledge of the facts set out in the following paragraphs of the Declaration of Claim: 17, 19, and 20.

23. In response to paragraph 19 of the Declaration of Claim, the Crown admits that annuity payments were withheld from certain members of the Beardy's Band and certain members of the Okemasis Band between 1885 and 1888. However, the Crown is unable at this time to admit whether the number of individual band members, and the amount of annuities withheld, is as alleged by the Claimant.

IV. Statements of Fact (R. 42(e))

24. The Crown entered into Treaty 6 with the Plains and Wood Cree and other Tribes of Indians in 1876. Treaty 6 provided the Indians with various promises and benefits, including the promise to "pay each Indian person the sum of \$5 per head yearly."
25. On August 28, 1876, near Fort Carlton, the Crown's Commissioners met with the Willow Cree bands of Indians at which time they adhered to Treaty 6.
26. In March 1885, Louis Riel declared a provisional government and thereafter began the North-West Rebellion.
27. In response to the North-West Rebellion, the Crown suspended the \$5 per year Treaty annuity payments to certain individual members of the Claimant between 1885 and 1888. Treaty annuities were gradually restored and by 1889 had been completely restored.

V. Relief (R. 42(f))

28. If the Tribunal has jurisdiction over this claim at this time, which is not admitted, the Crown seeks to have the claim dismissed in its entirety;
29. Costs; and,
30. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

31. Respondent’s address for service of documents:

Department of Justice (Canada)
Prairies Regional Office (Saskatoon)
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Daniel J. Kuhlen

32. Facsimile number address for service: (306) 975-6780

33. E-mail address for service: saspecclaimtribbo@justice.gc.ca

Dated: August 18, 2011



Daniel J. Kuhlen, Crown Counsel
Signature of Lawyer for the Respondent



for: David J. Smith
Signature of Lawyer for the Respondent

Myles Kirvan,
Deputy Attorney General
Per: Daniel J. Kuhlen and David J. Smith
Department of Justice
Prairies Regional Office (Saskatoon)