

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDIGATIONS PARTICULIÈRES	D É P O S É
	February 14, 2020	
	Isabelle Bourassa	
Ottawa, ON		25

BEARDY'S & OKEMASIS BAND #96 AND #97

Claimant

v.

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

Respondent

AMENDED 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 #96 and #97**
As represented by ~~Carly Fox~~ and Steven Carey and Amy Barrington,
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Overview

1. This is Her Majesty the Queen's (the Crown's) Amended Response to the Amended Declaration of Claim (the Amended Claim) filed by Beardy's & Okemasis Band #96 and #97 (the First Nation) with the Specific Claims Tribunal (the Tribunal) on January 30, 2020 April 3, 2018 pursuant to the *Specific Claims Tribunal Act* (the *Act*).
2. The Crown is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. As such, the Crown endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
3. The Crown favours resolving claims made by Indigenous peoples through negotiation and settlement. The Crown will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal.
4. The Crown acknowledges the First Nation is: an adherent to Treaty 6, a band within the meaning of the *Indian Act*, and a First Nation within the meaning of the *Act*.
5. The Crown acknowledges the First Nation's treaty rights, including its right to certain agricultural benefits set out in Treaty 6.
- 2-6. The Amended Claim relates to alleged breaches of treaty, fiduciary, trust and honourable obligations of the agricultural benefits promised to the First Nation pursuant to Treaty 6 and ~~various breaches of trust, fiduciary, legal and equitable obligations owed to the First Nation.~~ To the extent these alleged breaches rely ~~turn~~ on alleged deficiencies in the delivery of certain treaty ~~Treaty~~ benefits, the Crown says it complied with its treaty

obligations. The Crown further says that after entering into Treaty 6, the Crown expended money and provided agricultural implements, seed and livestock to the First Nation to support cultivation of its land and agricultural efforts; and in the early post-Treaty years, the Beardy's and Okemasis Bands who would eventually become the First Nation enjoyed substantial success in their pursuit of agriculture, consistent with a successful discharge of the Crown's treaty obligations.

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

~~3-7.~~ The requirements in section ~~s.~~ 16 of the Act are satisfied in that:

- The Claim was originally submitted to the Minister of Indian Affairs and Northern Development (the Minister) on January 26, 2006 and filed with the Minister of Aboriginal Affairs and Northern Development on October 16, 2008.
- On September 23, 2011 the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

~~4-8.~~ The Crown has complied with its obligation to provide the First Nation with the agricultural benefits promised in Treaty 6. As such, the facts do not establish a valid claim under the Act, as claimed in paragraph 8 of the Amended Claim. ~~The Attorney General must respond to this claim according to the rules of practice applicable to pleadings in a matter of this nature and consistent with her duties and functions in the conduct of litigation for or against the Crown. Canada will pursue reconciliation and is committed to a renewed nation-to-nation relationship with Indigenous Peoples based on recognition of rights, respect, co-operation and partnership. The Attorney General and the Government of Canada~~

~~continue to work in other contexts beyond the courts and tribunals to achieve the fulfilment of those commitments.~~

~~5. The Crown denies the validity of all of the allegations put forth in the Claim and denies it breached any lawful obligation regarding the provision of Treaty 6 benefits.~~

6.9. To the extent the Amended Claim arises out of the same or substantially the same facts on which the Beardy's and Okemasis Band #96 and #97 Specific Claim SCT-5001-11 is based, and specifically paragraphs 20 and 40(e), the Crown pleads and relies upon s.35 of the Act and the doctrine of *res judicata*.

~~7. Regarding paragraph 30, the Crown says that because elements of this claim may be based on activities of an ongoing and variable nature, including Treaty rights pertaining to harvesting, the Crown pleads and relies on ss. 15(1)(g) of the Act, and requires proof that the deficiencies complained of are compensable under the Act.~~

8.10. In the absence of further proof of liability and loss, the Crown is not able to admit that the Claimant has suffered the damages to the extent claimed. ~~However, if such damages are proven, if a breach were to be established, any award of compensation could only be made pursuant to ss. 20(1)(c) of the Act, as the subsequent subparagraphs of paragraph 20 are inapplicable.~~

9.11. The Crown specifically pleads section s. 20(3) of the Act and the application of set-off based on the prior award in SCT-5001-11, and any benefits received by the Claimant from the Crown in relation to the subject matter of this claim.

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

~~10. The Crown will require the Claimant to prove all the facts alleged in this Claim unless otherwise expressly admitted in this Response.~~

~~11-12.~~ The Crown admits the facts set out in the following paragraphs of the Amended Claim: 1, 2, 4, 5, 9, 11, 17, 19 and 22, which facts are set out in more detail below.

~~12-13.~~ The Crown admits that in 1876, it entered Treaty 6 with certain Plains and Wood Cree First Nations in what is now central Saskatchewan. Among other things, Treaty 6 provided for the exchange of Aboriginal title to 121,000 square miles of land for various promises and benefits, as pled in paragraphs 9 and 11 of the Amended Claim. Further to paragraph 9 In particular, the Crown and acknowledges that Treaty 6 was signed at Fort Carlton on August 23 and 28, 1876 and at Fort Pitt on September 9, 1876 by representatives of the Crown and certain Chiefs of the Cree bands inhabiting the region that is now north central Saskatchewan.

~~13. Further to paragraph 11 the Crown acknowledges that the written terms of Treaty 6 contain explicit promises and benefits to be provided by the Crown to the Bands adhering to the Treaty.~~

14. In response to paragraph 10, the Crown says Chief Kah-ma-wis-tah-wa-sit (Beardy) and Sas-way-pew (Cut Nose) were among the joint chiefs who signed Treaty 6 on August 28, 1876. The Crown further says that the Beardy's Band and Okemasis Band were administered separately by Canada until at least 1939 (referred to collectively as the Beardy's and Okemasis Bands). Today ~~Canada~~ the Crown identifies the Beardy's and Okemasis Bands as a single First Nation Band. The Crown admits the other facts set out in this paragraph, and in particular that Sas-way-pew

was the predecessor to Okemasis, and that Okemasis became Chief of the band known by his name.

15. The Crown admits the written terms of Treaty 6 contain explicit promises and describe benefits to be provided by the Crown to the bands adhering to the Treaty, as pled in paragraph 11 of the Amended Claim.

16. In response to paragraphs 12 and 13, the Crown says the Beardy's Band commenced farming activities in or about 1878 and the Okemasis Band commenced farming activities in or about 1881.

17. In response to paragraph 14, the Crown acknowledges that in February 1879, Chief Beardy refused to accept treaty annuity payments to protest a perceived failure of the Crown to deliver agricultural benefits provided for in the Treaty. Further, the Crown says Chief Beardy appears to have written the Governor General on or about June 26, 1878 requesting a reserve be surveyed at Duck Lake.

15-18. In response to paragraphs 15, 17 and 22 the Crown says that in July 1879, a reserve was surveyed for Beardy's Band and in the spring of 1880, some of Saswaypew's Sas-way-pew's followers settled on the reserve as well. The reserve was resurveyed in 1887. By Order in Council in February 1884, Okemasis was appointed chief in place of Sas-way-pew. On May 17, 1889 Order in Council P.C. 1151 set aside "INDIAN RESERVES NOS 96 AND 97 (UNDIVIDED)" as a reserve of 44 square miles for Chiefs Beardy and Okemasis.

~~16.~~ In response to paragraphs 8 and 39, the Crown says the benefits provided by Canada to the Beardy's and Okemasis Bands fulfilled its Treaty 6 obligations.

- ~~17. In response to paragraphs 12 and 13, the Crown says that the Beardy's Band commenced farming activities in 1878 and the Okemasis Band began cultivating land in about 1881.~~
- ~~18. In response to paragraph 14, the Crown acknowledges that in February 1879 Chief Beardy refused to accept treaty annuity payments to protest a perceived failure of the Crown to deliver agricultural benefits provided for in the Treaty. The Crown has no knowledge of the remaining facts asserted in this paragraph, and therefore requires proof of same.~~
- ~~20-19.~~ In response to paragraph 16, the Crown says that in 1881 Chief Beardy asked the Department of Indian Affairs to provide what he claimed were outstanding treaty benefits.
20. In response to paragraph 18, the Crown says that in 1883 and 1884 the Beardy's and Okemasis Bands were able to provide for themselves through agriculture. Their agricultural pursuits during these years were generally successful. Also in response to paragraph 18, the Crown admits that in the summer of 1884 several Treaty 6 Chiefs from the Carlton area complained about the fitness of livestock they received for farming and that wagons provided to them were of poor quality. As part of their complaint, the Chiefs asked for new cattle, new wagons and a variety of farming implements. The Crown says that the alleged deficiencies and requests were brought to the attention of the appropriate officials and investigated. Where warranted, poor quality livestock and farming implements were replaced.
21. The Crown admits that in March 1885, the North West Rebellion broke out when Métis, led by Louis Riel, declared a provisional government at Batoche, which is located near the First Nation's reserves, as pled in paragraph 19 of the Amended Claim.

~~21.22.~~ In response to paragraphs 20 and 40(e), the Crown says that the question of Beardy's and Okemasis Bands involvement in the 1885 Northwest Rebellion and the subsequent withholding of annuity payments by the Crown to certain Bbands, including the Beardy's and Okemasis Bands, was adjudicated and decided upon in the Tribunal's decision 2015 SCTC 3. The Crown therefore repeats its its pleading of section s. 35 of the Act and the defence of *res judicata*.

~~22.23.~~ In response to paragraphs 21, ~~35 and 38(f)~~, the Crown admits that after the 1885 North West Rebellion the treaty medals Chiefs Beardy and Okemasis received as Chief upon signing Treaty 6 were confiscated by the Crown. ~~In response to other allegedly coercive measures taken without legal authority, as alleged in paragraph 21, the Crown requires proof of the allegations as they were not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008.~~ In further response to paragraph 21, the Crown is unaware of the material facts relied upon by the First Nation regarding the other coercive measures taken without legal authority. With respect to the remaining items listed in paragraph 21, the Crown says it did not confiscate these materials. In further response to paragraph 21, the Crown says it provided the First Nation with rations following the North West Rebellion. The Crown further puts in issue whether these allegations are compensable under the Act.

~~23.24.~~ In response to paragraphs 23, 30, 31(b) and 31(d) and 40(d), the Crown says that agricultural benefits were provided to the First Nation Claimants in accordance with Treaty 6. In further response to these this paragraphs, the Crown says that in the 1890s and early 20th century the Bands used surplus earnings from agriculture and other economic activities to privately purchase additional livestock and agricultural supplies beyond the requirements of Treaty 6.

25. In response to paragraphs 23, 29(b), 30 and 34, the Crown says it provided the First Nation with access to agricultural instruction. In further response to these paragraphs, the Crown says agricultural instruction was not included in the text of Treaty 6.

~~24-26.~~ In response to the allegations in paragraphs 24 to 26, and 31(a) and 40 (a) regarding implementation of various government policies, the Crown says in the late nineteenth century, and in some cases into the twentieth century, government officials discussed, contemplated and implemented a variety of practices and policies with a view to assisting First Nations in their transition to an agricultural economy. The Crown says it is currently unclear which of these policies and practices were implemented in the Duck Lake area. It is also currently unclear what impact these practices or policies had on the First Nation. ~~requires proof of the allegations as they were not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008.~~

~~25-27.~~ In response to paragraphs 27, 29(a), 30 and 31(c) ~~38(a) and 40(b)~~, the Crown says it provided the agricultural benefits to the Beardy's and Okemasis Bands in compliance with the terms of Treaty 6 and with a view of assisting the First Nation in their transition to an agricultural economy, thus fulfilling the purpose and intent of the obligation. The Crown further says it acted with appropriate diligence to address any issues of quality brought to the attention of federal officials relating to treaty benefits provided to the Beardy's and Okemasis ~~b~~Bands and obligations under Treaty 6 to supply agricultural benefits of adequate quality.

~~26.~~ In response to paragraphs 28 to 30 and ~~38(b)~~, the Crown acknowledges that Treaty 6 provided for an ongoing expenditure of \$1500.00 per year for ammunition and twine to be distributed amongst "*the Indians inhabiting the several reserves*" within the Treaty 6 area based on the reasonable discretion of the Indian Agent. The Crown further says the ammunition

~~and twine provided under the Treaty was of adequate quality, was appropriately distributed and that the Treaty benefit was fully provided.~~

~~27. 28.~~ In response to paragraphs ~~28 and 29(c)~~~~31, 32 and 38(e)~~, the Crown admits that Treaty 6 required Canada to issue provisions totaling \$1000.00 for a period of three years to those bands who had settled on reserves and started farming. The Crown acknowledges that Beardy's and Okemasis Bands settled on reserves shortly after signing Treaty 6 and would have been entitled to these benefits. The benefits were provided to the Beardy's and Okemasis Bands in accordance with the Treaty.

~~28.~~ In response to paragraph ~~33 and 38(d)~~, the Crown admits Treaty 6 provides for a present of \$12.00 for each man, woman and child belonging to the bands who adhered to the Treaty. The Crown requires proof of the allegation that not everyone who was entitled to this benefit received the \$12.00 payment, as it was not raised in the claim originally filed with the Minister of Indian Affairs and Northern Development on October 16, 2008.

~~29.~~ In response to paragraphs ~~34~~, the Crown admits that Treaty 6 provides that each Chief and up to 4 subordinate officers shall receive once every 3 years a suitable suit of clothing and each Chief shall receive, in recognition of the closing of the Treaty, a suitable flag and medal.

~~30.~~ In response to paragraphs ~~35 and 36~~, the Crown admits that Chief Beardy was stripped of his Treaty 6 medals for his alleged participation in the 1885 Northwest Rebellion. The Crown further acknowledges that the Beardy's and Okemasis Bands were not allowed to have Chiefs and councillors from the time of the rebellion until 1936.

~~31.~~ In response to paragraph ~~37 and 38(e)~~, the Crown requires proof of these allegations as they were not raised in the claim originally filed with the

~~Minister of Indian Affairs and Northern Development on October 16, 2008. The Crown puts in issue whether the facts alleged in these paragraphs are compensable under the Act.~~

~~32. In further response to the allegations in paragraph 38(g) regarding alleged failures to provide assistance to the Claimant during times of famine and pestilence and to provide medicine chests, the Crown will require proof of these allegations, and puts in issue whether they are compensable under the Act.~~

~~34.29. In response to paragraphs 32, 34 and 3543, the Crown says it acted honourably when negotiating and implementing Treaty 6, and with respect to providing agricultural benefits set out in Treaty 6 to the First Nation. in respect of ~~Beardy's and Okemasis Bands~~ Canada acted in accordance with the honour of the Crown and in satisfaction of the Crown's obligations under Treaty 6. The Crown further says the honour of the Crown is not an independent cause of action.~~

~~33.30. In response to paragraph 3342, the Crown says while there are gaps in the historical record, there is extensive evidence regarding the provision of treaty benefits, records of monies spent and animals provided to the ~~Beardy's and Okemasis Bands~~. The Crown further says that the existence of gaps in the historical record does not mean the records were not kept, do not exist, or that Treaty benefits were not provided. The Crown says that in historical claims of this nature, due to the prejudicial effect of the passage of time, gaps in the historical record should not necessarily be resolved against the Crown.~~

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

35-31. In addition to the The facts pled in the preceding paragraphs, which the Crown relies upon, the Crown says Treaty 6 was signed at Fort Carleton on August 23 and 28, 1876 and at Fort Pitt on September 9, 1876.

32. Chief Kah-ma-wis-tah-wa-sit (Beardy) and Sas-way-pew (Cut Nose), the predecessor to Chief Okemasis, signed Treaty 6 on August 28, 1876.

33. In July 1879, a reserve was surveyed for Beardy's Band. In spring 1880, some of Sas-way-pew's followers settled on the reserve as well. In 1887, this reserve was re-surveyed, and Order-in-Council P.C. 1151 dated May 17, 1889 set aside Indian Reserves No. 96 and 97 (undivided), as a reserve of 44 square miles for Chiefs Beardy and Okemasis.

34. In or about 1878, the Beardy's Band commenced farming activities.

35. In or about 1881, the Okemasis Band commenced farming activities.

36. Within several years of commencing farming, the Crown had provided both Beardy's and Okemasis' Bands with agricultural assistance and both enjoyed substantial success in their pursuit of agriculture.

37. The Crown says after entering into Treaty 6, the Crown expended money and provided agricultural implements, seed and livestock to the First Nation to support cultivation of its land and agricultural efforts and fulfil the Crown's obligations under Treaty 6.

V. Relief (R. 42(f))

36-38. The Crown seeks the following relief:

- a. to have the claim dismissed;

b. costs; and

c. such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

~~VII.39.~~ The Respondent's address for the service of documents is:

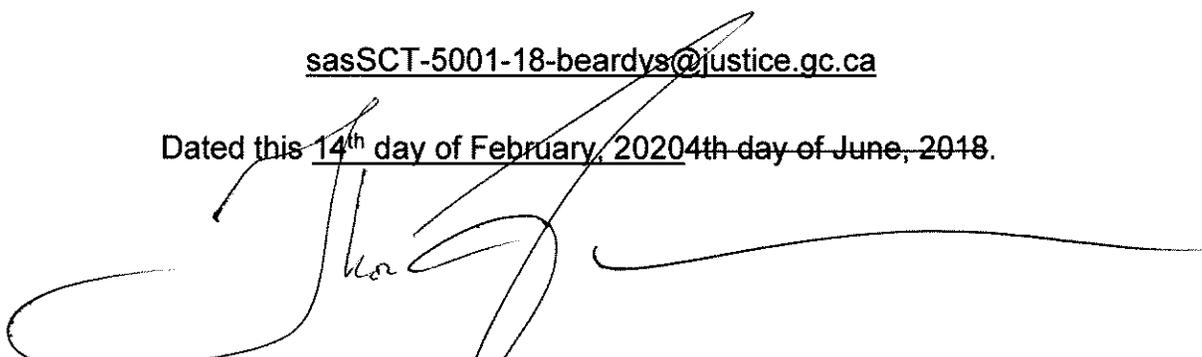
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410-22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
~~10th Floor, 123-2nd Avenue S~~
~~Saskatoon, SK S7K 7E6~~
Attention: Scott T. Bell

~~VIII.40.~~ Facsimile number for service is: (306) 975-4030 ~~(306) 975-5013~~.

~~IX.41.~~ Email address for service is:

sasSCT-5001-18-beardys@justice.gc.ca

Dated this 14th day of February, 2020 ~~4th day of June, 2018~~.



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