

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

AUNDECK OMNI KANING

Claimant

v.

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

Respondent[s]

DECLARATION OF CLAIM
Pursuant to 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*.

[DATE] August 7, 2012

Amy Clark

(Registry Officer)

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| F I L E D | SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES | D É P O S É |
| | August 7, 2012 Amy Clark | |
| Ottawa, ON | | 1 |

I. Claimant (R. 41(a))

1. The Claimant, Aundeck Omni Kaning, confirms that it is a First Nation within the meaning of s. 2 (a) of the *Specific Claims Tribunal Act*, in the Province of Ontario.

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:

The Minister has notified the First Nation in writing of his decision not to negotiate the claim.

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

3. For the purposes of the claim, the Claimant does not seek compensation in an amount over \$150 million.

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*:
 - (b) a breach of a legal obligation of the Crown under the *Indian Act*.

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

- 5.1 George Abotossaway, also known as George Thompson, was a member of the Ojibways of Sucker Creek, known today as the Aundeck Omni Kaning First Nation.
- 5.2 George Abotossaway was enfranchised in 1914 pursuant to the Indian Act.

- 5.3 After his enfranchisement, George Abotossaway had two children. These children were not members of the Ojibways of Sucker Creek, since their father was not an Indian at the time they were born.
- 5.4 When the Government of Canada paid George Abotossaway his per capita share of the Ojibways of Sucker Creek band trust funds, it also paid him \$559.63 in respect of the two children born after his enfranchisement. The payment of \$559.63 was made from Ojibways of Sucker Creek trust funds.
- 5.5 Senior Assistant Deputy Minister of Indian Affairs Patrick Borbey, on November 21, 2011, wrote to Chief Craig Abotossaway of Aundeck Omni Kaning, acknowledging that the payment of the \$559.63 “was not authorized by law, and thus Canada breached its fiduciary duty.”
- 5.6 Patrick Borbey’s letter of November 21, 2011 accepted the claim for negotiation.
- 5.7 There were no negotiations.
- 5.8 On March 28, 2012, Brendan Blom, an Assistant Negotiator in the Specific Claims Branch of the Department of Indian Affairs and Northern Development, sent an offer to settle the claim to Chief Patsy Corbiere. The offer included the statement that “if we do not receive a Band Council Resolution [accepting this offer] by June 28, 2012, this settlement offer will expire and the file will be closed.”
- 5.9 Aundeck Omni Kaning’s counsel, in conversation with Brendan Blom, was told that this was a final offer and that there was no room for any negotiation.
- 5.10 The final offer was based on the “practice” of the Specific Claims Branch in cases of breach of fiduciary obligation, to calculate the amount owing by

applying the Consumer Price Index to 80% of the amount, and applying compound interest, at Indian Affairs trust fund rates, to 20% of the amount.

- 5.11 The Council did not accept the offer by June 28, 2012.
- 5.12 Michelle Adkins, Director of Negotiations Operations in the Specific Claims Branch of the Department of Indian Affairs and Northern Development, notified Chief Patsy Corbiere by letter dated July 24, 2012, that it would not negotiate the claim. The letter stated that “the status of your claim in the Specific Claims Database has been updated to “closed.”
- 5.13 Since the offer of March 28, 2012 was final and non-negotiable, and since there were in fact no negotiations, that date may be taken as the date giving rise to this application to the Specific Claims Tribunal.

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

- 6.1 The payment of band trust funds to non-members was a breach of Her Majesty’s legal obligations under the *Indian Act*.
- 6.2 The payment of band trust funds to non-members was a breach of Her Majesty’s fiduciary obligations to the Ojibways of Aundeck Omni Kaning.
- 6.3 The making of a final, take-it-or-leave-it offer, coupled with a refusal to negotiate and the closing of the file, was a breach of Her Majesty’s treaty and lawful obligation to resolve matters in good faith and on a government-to-government basis, as well as a breach of the honour of the Crown.

- 6.4 The final offer was not based on legal principles and did not reflect the state of the law in Ontario or Canada, nor did it reflect the stated policies of the Government of Canada, which assert that compensation in claims shall be “based on legal principles.”

Dated this 6th day of August, 2012

A handwritten signature in black ink, appearing to read 'Paul Williams', is written over a horizontal line. The signature is cursive and somewhat stylized.

Signature of Solicitor

Paul Williams
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