SCT File No.: SCT - **1001-12**

SPECIFIC CLAIMS TRIBUNAL

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FILED
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES
June 20, 2014
Nicholas Young
DÉPOSÉ
Ottawa, ON
23

B E T W E E N:

MADAWASKA MALISEET FIRST NATION

Claimant

v.

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

Respondent

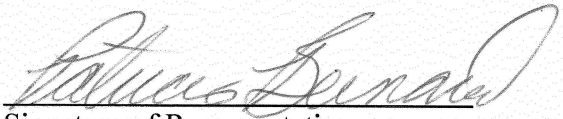
Application of the Claimant pursuant to Rule 29 of the *Specific Claims Tribunal Rules of Practice and Procedure* and the Endorsement of the Honourable W.L.Whalen dated May 1, 2014.

The Claimant makes this Application requesting to amend their Declaration of Claim, more specifically, to include an expanded legal argument regarding breach of the Crown's fiduciary duty to create a reserve as an alternative argument.

1. The Claimant filed the original claim to the Minister of Indian Affairs and Northern Development on April 16, 1998.
2. On January 13, 2009, the Minister of Indian Affairs and Northern Development notified the Claimant that the claim was rejected for negotiations.
3. The legal arguments presented for the original claim were based on a breach of the Crown's fiduciary duty with respect to the alienation of parcels of reserve lands, and a failure to protect those lands.

4. The Claimant wishes to expand the Crown's breach of fiduciary duty argument to include failure to create a reserve as an alternative argument should the Tribunal find that a reserve was not created.
5. Due to the Crown's lengthy delays in reviewing the original claim, the law governing many of the matters within the claim evolved over time. It has now been over 16 years since the original claim was submitted.
6. The Crown's duty to set aside reserves has been clarified since the original claim was filed, and the claimant has the right to the benefits of such clarifications. The duty to providently set aside reserved land is implicit in the general fiduciary obligation of the Crown.
7. Case law has recognized an underlying or implicit fiduciary duty in the circumstances of this claim. Moreover, recognizing the intent of the *Specific Claims Tribunal Act*, the Tribunal may allow this expanded breach of Fiduciary Duty "to secure the just, timely and cost-effective resolution of specific claims while taking the cultural diversity and distinctive character of specific claims into account." (Rule 2)
8. The claimant submits that this is not a new factual basis for the claim, but merely an expanded legal basis, since no new factual data or documents are required to be submitted for this argument. The Crown will not suffer any prejudice as a result of this expanded legal basis.
9. The claimant respectfully requests that the Tribunal allow the claimant's Declaration of Claim to be amended to include an expanded legal argument regarding the Crown's breach of a fiduciary duty to create a reserve.

All of which is respectfully submitted this 19th day of June , 2014



Signature of Representative

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