

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES
March 18, 2020	
Isabelle Bourassa	
Ottawa, ON	1

SCT File No: SCT-5012-19

**SPECIFIC CLAIMS TRIBUNAL**

**B E T W E E N:**

**MUSKOWEKWAN FIRST NATION**

Claimant

v.

**HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA**  
As represented by the Minister of Crown-Indigenous Relations

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*.

Mach 20, 2020

\_\_\_\_\_  
Date

Isabelle Bourassa

\_\_\_\_\_  
Registry Officer

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

1. The Claimant, the Muskowekwan First Nation (the “First Nation”), is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “Act”), by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c 1-5, as amended, and within the meaning of Treaty No. 4 (“Treaty 4”).
2. The First Nation’s reserve, Indian Reserve No. 85 (“IR 85”), is located about 130 km northeast of Regina in the Province of Saskatchewan.
3. The Claimant is the successor in interest to the band which signed Treaty 4 on September 15, 1874, under the leadership of Chief Ka-kee-na-wup.

**II. Conditions Precedent (R. 41(c))**

4. 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; ...

5. The First Nation filed a claim with the Minister of Indian Affairs and Northern Development in September 1992 in respect of various alleged breaches of the Respondent’s legal duties (“Canada” or the “Crown”) in relation to two alleged land surrenders, one taken in 1910 and the other in 1920. The First Nation made supplementary legal submissions in August 1994, July 1996, July and August 1997, and September 1999. In May 1997, Canada advised the First Nation that Canada would not negotiate the Claim.
6. In December 2003, the Indian Claims Commission (“ICC”) agreed to hold an inquiry in relation to the Claim.
7. In January 2008, while the inquiry was still in process, Canada agreed to negotiate two aspects of the Claim: the sale of the lands to the Lestock School District below the assessed value, and the unlawful application of the *Farmers’ Creditors Arrangement Act* (“FCAA”).
8. In March 2009, the ICC issued its report, finding that Canada had breached its pre-surrender fiduciary duty to the First Nation regarding both surrenders.
9. On November 2, 2009, the Crown advised the First Nation that it did not accept the ICC’s findings and would not negotiate the Claim.
10. After the First Nation did not respond to the January 2008 offer to negotiate the Claim in part, the Crown’s file on the Claim was “closed” on March 13, 2013.

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

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

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

12. 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:

...

- (d) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation — pertaining to Indians or lands reserved for Indians — of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;
- (e) 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;
- (f) an illegal lease or disposition by the Crown of reserve lands;
- (g) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

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

13. On February 8, 1906, the Grand Trunk Pacific Railway Company (“GTP”) applied to the Department of Indian Affairs (“DIA”) to construct its railway line and station grounds through the Muskowekwan Reserve. Two days later, Frank Pedley, Deputy Superintendent General of Indian Affairs (“DSGIA”) authorized Indian Agent Murison “to take the surrender, in accordance with the provisions of the *Indian Act*.”
14. Some months after GTP’s request and before it was granted the right of way for the railway line and station grounds, GTP also applied to the DIA to purchase 640 acres on IR 85 for a townsite next to its station grounds. The Band was not informed that another request for additional land for a townsite had been made.
15. By Order in Council dated May 12, 1906, 164.8 acres of the reserve were granted to the GTP for a right of way and station grounds.
16. The DIA had previously objected to the establishment of townsites within the boundaries of Indian reserves as a matter of policy. In 1904, Clifford Sifton, Minister of Indian Affairs and of the Interior, stated, “there are serious objections to allowing townsites to be located upon Indian Reserves. Not only should the Department resist the location of townsites upon

the reserves but if possible the location in the immediate neighbourhood of a reserve should be discouraged.”

17. Nevertheless, within eight days of the GTP’s application for a townsite within IR 85, the DIA prepared a description for surrender. The Band presented a request through Agent Murison that the location of the proposed townsite on the reserve be moved one and a half miles west so it “would not cut up their reserve so badly...” The DIA rejected the First Nation’s request after GTP responded that the site could not be moved, due to “unsuitable grades.”
18. The GTP finally applied on January 24, 1907, for the northwest quarter of section 6 in range 14 or, alternatively, only that part of the quarter section lying north of the right of way for its townsite. On February 16, 1907, Agent Murison met with the “Band in Council” who agreed to surrender the whole of NW 6 for \$25 per acre conditional upon an immediate cash payment of 10% of the purchase price and an annual distribution of the interest money.
19. On September 14, 1908, Agent Murison reported that the Muskowekwan Band again offered to surrender the whole of NW 6 provided they are paid the purchase money in cash. The DIA informed Agent Murison that the *Indian Act* only allowed a maximum cash payment of 50% of the purchase price.
20. In December 1908, Inspector of Indian Agencies W.M. Graham proposed to Frank Pedley that the Band “be induced to surrender the whole of their reserve” and amalgamate with Poorman’s Band. At a meeting held on October 16, 1909, the Muskowekwan Band overwhelmingly rejected the proposed surrender and amalgamation.
21. On March 7, 1910, the Muskowekwan Band surrendered for sale the northwest quarter of section 6 containing approximately 160 acres. The terms of the surrender were as follows: the Band was to receive 10% of the sale price of the land, valued at \$25.00 per acre, at the time of surrender, with the balance to be paid yearly in payments of not less than 10%. The land was to be offered for sale at public auction after it was subdivided into lots. All monies, less usual management expenses, were to be placed to the Band’s credit, with interest paid in the usual way.
22. The surrender document appears to have been signed by Chief Muscovequan and six other Band members, and witnessed by Agent Murison and Justice of the Peace Lindsburgh. The affidavit of execution, also dated March 7, 1910, appears to have been sworn by Agent Murison and the Chief before the same justice of the peace.

23. On March 16, 1910, the DIA forwarded a cheque of \$400.00 to Agent Murison to be distributed to Band members in accordance with the terms of the surrender. The surrender was subsequently approved by Order in Council PC 572 dated April 1, 1910.
24. As noted, the surrender document stated that the lands were surrendered “in trust to sell at public auction in lots after subdivision thereof.” A portion of the land was surveyed in 1910; however, the south portion of the land surrendered, comprising just under 79 acres, was not surveyed until 1936.
25. The first public auction was held in November 1910. The terms of the sale gave purchasers a four-year period to complete the purchase but the average term of a sale from the date of surrender to the issuance of the letters patent was approximately 18 years.
26. Of the total 258 sales, only 117 were by public auction. The balance was leased, given away, or sold privately.
27. Canada donated 2.73 acres to the Province of Saskatchewan to be set aside as a park. On August 20, 1936, Order in Council PC 2057 confirmed the transfer of this parcel known as “Block XV” to the Province.
28. Canada also transferred 1.08 acres of reserve land to the Province of Saskatchewan for use by the Lestock School District for the nominal sum of \$50.00. The agreement was reached in December 1911 but payment was not received until two decades later, in October 1930. Letters Patent were issued December 13, 1930.
29. In March 1912, Agent Murison advised the DIA that the Band wished to surrender two rows of sections from the east side of the reserve adjacent to the new townsite plus the balance of Section 6, totalling 5,565 acres, to be sold for a minimum value of \$8.00 per acre. No action was taken at this time.
30. In January 1913, Chief Inspector of Indian Agencies Glen Campbell wrote to the Secretary of the DIA stating that the Band had sent a petition to the DIA asking permission to surrender some of their land. No action was taken following this request.
31. In March 1913, the Secretary-Treasurer of the Lestock Village Council forwarded a petition signed by 118 citizens to the Minister of the Interior, requesting that the DIA sell the eastern part of IR 85 to allow for the Village’s growth. The DIA prepared a legal description and terms of surrender, which were the same as those contained in the Band’s 1912 proposal for surrender. There is nothing further in the historical record regarding this surrender proposal.

32. On February 8, 1915, 21 members of the Band signed a petition addressed to Deputy Superintendent General, Duncan Campbell Scott, stating they wished to sell nine sections of the reserve "...as we are in need of Finances to improve our Reserve... all our farming land lays outside of this part we are wishing to dispose of... the land should be worth at least from nine dollars to twelve dollars per acre according to class or more if you could procure it for us." No action was taken at this time.
33. Beginning in June 1915 and for several years subsequent, the Village of Lestock complained to the DIA that it was struggling to collect property taxes in order to keep the school open because many of the lot purchasers were either in arrears with respect to payment for their lots or refused to apply for the land patent for their parcels once payments were completed. The DIA took no action to ensure arrears were paid.
34. In March 1918, another petition from 42 Village residents and nearby farmers was sent to the Minister of the Interior stating they were seriously handicapped in the conduct of their public affairs, as they had no accessible property in the Village except for a few lots sold. The petitioners requested that all of IR 85 lying within range 14 (the easternmost 11 and three-quarter sections of the reserve) be sold at public auction. The petition was forwarded to newly-appointed Commissioner W.M. Graham, who had just been promoted from his former role as Inspector of Indian Agencies for South Saskatchewan Inspectorate on February 16, 1918.
35. The March 1918 petition coincided with a new government initiative during the First World War to cultivate "unused" Indian reserve land in the prairie provinces to increase food production in order to aid the war effort. W.M. Graham had recently developed the "Greater Production" scheme, which encouraged individual Indians to increase crop production and to lease reserve lands to non-Indian farmers.
36. On April 30, 1918, the "Chief and Principal Men" of the Muskowekwan Band signed a surrender for lease of approximately 6,000 acres from the eastern end of IR 85 for a term of five years.
37. In May 1918, the Premier and Minister of Education for Saskatchewan, W.M. Martin, wrote to DSGIA Duncan Scott regarding the financial difficulties of the Lestock school district, urging the disposition of Indian lands adjoining the Village, "in order to make them available for taxation." Martin reiterated this request to Scott in February 1919.
38. Also in May 1918, 29 Village residents petitioned Prime Minister Borden to sell the 12 eastern sections of the reserve instead of leasing out the land. This was followed by two letters from Frank Crawford, Secretary of the Village Council, to the DIA encouraging the land surrenders, dated August 1918.

39. In August 1919, a delegation from Lestock met with Duncan C. Scott, Deputy Superintendent General, to again press their concerns.
40. On August 8, 1919, Duncan C. Scott wrote to W.M. Graham, Commissioner, conveying once again the serious situation in which the Town of Lestock finds itself. He asks Graham “to consider the possibility of obtaining a surrender of a portion of the Muscowequan Reserve either for Soldiers Settlement or for sale in the usual way.”
41. On August 12, 1919, Graham responded to Scott stating that “... this land will not be acceptable to the Soldier Settlement Board for Soldier Settlement purposes, and even if a surrender was got for sale...I do not think that the land could be readily disposed of.”
42. Scott replied on September 2, 1919 saying that, even if the land were not suitable for soldier settlement, “it would be well to have the surrender taken in any event. The situation there appears to be a very serious one and we must try to relieve it if at all possible...”
43. Pressure for DIA action continued. On September 29, 1919, local Member of Parliament J. Fred Johnston wrote to Scott asking “when the people of the District may expect some action in the matter.”
44. On March 5, 1920, the Band submitted a final petition to the DIA requesting the sale of the eastern two rows of sections of IR 85, stating “[w]e want money to buy farm equipment such as horses, harness and plows. Very few have power to farm and a big majority have nothing to farm with...” The petition appears to contain 26 signatures, including those of Chief Desjarlais and two Headmen.
45. The Soldier Settlement Board informed the DIA on October 1, 1920 that “the Board is not anticipating at present the acquirement of further tracts of Indians Lands” and did not intend to purchase any of the Muskowekwan lands.
46. For the years 1919-1920, the Band had \$6,621.67 in its capital account and \$3,068.69 in its interest account. In 1920-1921, these amounts were \$8,012.22 and \$3,861.51 respectively, enough to purchase whatever farming equipment Band members required.
47. On October 14, 1920, Commissioner W.M. Graham obtained a second surrender for sale of approximately 7,485 acres including road allowances from IR 85, which covered the eastern three rows of sections. The surrender terms stipulated that the sales were to be made by public auction and that all moneys received from the sale be placed to their credit and interest paid in the usual way.

48. The surrender document contains nine signatures, including those of Chief Desjarlais and Headmen Sam Akan and Windigo. The document bears the signature of 5 witnesses, including Commissioner Graham and former Indian Agent Murison. The voters list prepared by Commissioner Graham records the names of 29 voters in favour of the surrender and six voters as absentees.
49. The Crown approved the surrender of 7,485 acres on November 4, 1920, by Order in Council PC 2680. The surrendered area contained additional acreage for which the First Nation was not compensated.
50. Although the surrender was for sale of the land, the DIA leased several parcels to neighboring farmers. The DIA did not ensure that fair market rent was obtained for the leases and, on a number of occasions, did not collect all the amounts owing.
51. In 1921, Indian Agent Harding received an offer for the portion of the quarter section south of the railway tracks (71 acres) from Mr. Prefontaine of Lestock for more than \$30.00 per acre. The Crown refused the offer so that others would have an opportunity to purchase the land at some future point in time.
52. The Village of Lestock asked the DIA for its “lowest possible” price for this quarter section. The DIA responded with a price of \$21.00 per acre even though the land had been valued at \$25.00 per acre. The Village did not purchase the land at that time, allowing it to remain unsold until 1936.
53. In 1934, Canada enacted *The Farmers’ Creditors Arrangement Act* (the “FCAA”). This legislation was used to extinguish a significant portion of purchasers’ debts on Muskowekwan land sales, both principal and interest. Some outstanding loan balances were reduced by as much as 79%.

**VI. The basis in law on which the Crown is said to have failed to meet or otherwise breached a lawful obligation**

54. The Crown breached its fiduciary and honourable obligations to the First Nation with respect to both surrenders and the subsequent land sales.
55. With respect to the 1910 surrender:
  - (i) The Crown failed to advise and discuss with the First Nation the consequences that would result from the GTP’s request for additional lands for a townsite in addition to its request for a right of way until months after the Crown had already granted the right of way to the GTP. The First Nation was not informed of the likely consequences of having both a right of way

and a townsite located on its reserve lands. The Claimant did not give its free and informed consent to the surrender.

- (ii) The Crown failed to follow its own clear policies against permitting townsites to be located on or adjacent to reserve lands resulting in damages to the Claimant.
- (iii) The Crown failed to act in the best interests of the Band, favouring the interests of the GTP and settlers over those of the Claimant.
- (iv) The Crown failed to comply with the terms of the surrender by failing to survey 79 acres for 26 years, depriving the Claimant of the benefit of the land and the sales for that period of time.
- (v) The Crown failed to sell all of the lots by public auction, contrary to the terms of the surrender.
- (vi) The Crown transferred 2.73 acres to the Province of Saskatchewan for purposes of a park for no consideration, contrary to the terms of the surrender.
- (vii) The Crown sold 1.08 acres to the Province of Saskatchewan for less than fair market value and allowed nearly two decades to pass before receiving payment.
- (viii) The Crown withheld from sale more than 71 acres of land south of the railway tracks, despite offers for purchase of the lands for above market value. The Crown offered these lands to the Village of Lestock for under market value. The lands remained unsold for nearly two decades.

56. With respect to the 1920 surrender:

- (i) The Crown failed to inform the Claimant of its various options to raise revenue to purchase farm equipment, other than by way of absolute surrender, and failed to advise the Claimant that had considerable funds in its capital and interest accounts that could have been utilized for this purpose.
- (ii) The Crown failed to explore options to take a lesser interest in the reserve, and failed to preserve mines and minerals for the benefit of the Claimant.
- (iii) The Crown took additional acreage that was not contemplated in the surrender document, and failed to compensate the Claimant for the acreage actually surrendered.

- (iv) At all times the Crown favoured and prioritized the interests of settlers over the best interests of the Band in response to political pressures from the Village of Lestock and other elected representatives.
- (v) The Crown unlawfully subjected the surrendered lands sold under the terms of the *Indian Act* to the *FCAA* to the detriment of the Claimant.
- (vi) Although the surrender was for sale of the land, the Crown leased many parcels, did not ensure fair market rents were obtained, and did not collect amounts owing.

## **VII. Relief Sought**

57. In light of the foregoing, the First Nation seeks:

- (i) Equitable compensation for the current unimproved market value of the of land surrendered in 1910 and 1920;
- (ii) Equitable compensation for the loss of use for land surrendered in 1910 and 1920 from the date of the respective takings to the date of judgment;
- (iii) Equitable compensation for the Crown's mismanagement of land sales after both the 1910 and 1920 surrenders, including its failure to sell the land in a timely fashion and in accordance with the terms of the surrenders, and the Crown's failure to collect sale proceeds in a manner consistent with the Crown's fiduciary and honourable obligations;
- (iv) Equitable compensation for the Crown's failure to ensure the lands surrendered in 1910 and 1920 were sold at fair market value;
- (v) Costs on a solicitor-client basis; and
- (vi) Such other compensation as this Honourable Tribunal deems just.

Dated this 18<sup>th</sup> day of March, 2020, at the City of Calgary in the Province of Alberta.

**MAURICE LAW**

  
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