

SPECIFIC CLAIMS TRIBUNAL

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I	PARTICULIÈRES	E
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E	July 8, 2021	O
D	Alexandre Bois	S
Ottawa, ON		6

B E T W E E N:

COTE FIRST NATION

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

As represented by the Minister of Crown-Indigenous Relations and Northern Affairs

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: Cote First Nation
As represented by
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Overview

1. The Respondent, Her Majesty the Queen in right of Canada (Canada) is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership. This commitment exists within the context of litigation and beyond. Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.
3. The claim relates to whether Canada mismanaged moneys in Cote First Nation's capital and revenue accounts, including land surrender sale proceeds following the expropriation and surrender of portions of Indian Reserve No. 64 (IR 64) in the early twentieth century. Canada admits it has statutory and fiduciary duties to properly manage the funds in Cote First Nation's capital and revenue accounts in accordance with the *Indian Act*.
4. Canada states a document titled "Cote First Nation 1905, 1907, 1913 and 1914 Surrenders Settlement Agreement," effective May 27, 2012 (Settlement Agreement), releases Canada from Cote First Nation's claims that it mismanaged trust account funds connected to proceeds from historical surrenders of IR 64 lands in 1905, 1907, 1913 and 1914.
5. Canada does not admit allegations of mismanagement of funds from other sources, including proceeds received from a 1903 expropriation and 1904 surrender.
6. Cote First Nation has filed separate claims with the Tribunal in relation to an expropriation of IR 64 lands in 1903 (SCT-5003-14) and a surrender of IR 64 lands in 1904 (SCT-5004-14). Canada intends to work with Cote First Nation toward the negotiated resolution of those claims. Canada reserves its right to amend this Response pending the outcome of these negotiations.

Status of Claim

7. Canada admits the requirements in paragraph 16(1)(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (*SCTA*) are satisfied, as stated in paragraphs 2-5 of the Declaration of Claim. Pertinent facts are as follows:
 - a. Cote First Nation's claim was received by the Minister of Indian Affairs and Northern Development, now the Minister of Crown-Indigenous Relations and Northern Affairs (the Minister), on January 12, 2018;
 - b. The claim alleged capital and revenue account mismanagement;
 - c. The claim was deemed filed with the Minister on May 30, 2018; and
 - d. The Minister notified Cote First Nation in writing that it declined to negotiate the claim on February 12, 2021.
8. Canada acknowledges that Cote First Nation is not seeking compensation in excess of \$150 million for the purposes of this claim, as stated in paragraph 6 of the Declaration of Claim.

Canada's Position Regarding the Validity of the Claim

9. In response to paragraph 7 of the Declaration of Claim and to the Declaration of Claim as a whole, given the application of the Settlement Agreement, the facts do not establish a valid claim for mismanagement of trust accounts connected to proceeds from surrenders of IR 64 lands in 1905, 1907, 1913 and 1914.
10. Canada does not admit allegations of mismanagement of funds connected to proceeds received from a 1903 expropriation, 1904 surrender and other sources and continues to research this aspect of the claim. Should new information come to light, Canada will amend this Response accordingly.
11. The facts do not support a claim to solicitor-client costs as requested in paragraph 42(d) of the Declaration of Claim.

Canada's Position Regarding Allegations of Fact

12. Canada admits that Cote First Nation is a signatory to Treaty 4, a band within the meaning of the *Indian Act*, RSC 1985, c I-5 (*Indian Act*) and a First Nation within the meaning of the *SCTA*, as stated in paragraphs 1 and 8 of the Declaration of Claim. Canada also admits that Cote First Nation's reserve lands are situated in the Province of Saskatchewan and IR 64 was established on May 17, 1889, with an area of 36,160 acres. Chief Gabriel Cote signed Treaty 4 on behalf of Cote First Nation on September 15, 1874 at Qu'Appelle, Saskatchewan.
13. In response to paragraph 9 of the Declaration of Claim, Canada states IR 64 was reduced in size between 1903 and 1914 through a series of surrenders and an expropriation. Canada does not admit that the surrenders or the expropriation were illegal. Canada admits that claims regarding surrenders taken in 1905, 1907, 1913 and 1914 were settled via the Settlement Agreement in 2012. Canada states that the Settlement Agreement did not comment on the legality of the surrenders or include any concession of liability by any party.
14. Canada admits the facts stated in paragraphs 10 and 11 of the Declaration of Claim.
15. In response to paragraphs 12, 13 and 36 of the Declaration of Claim, Canada states it has statutory and fiduciary duties to properly manage First Nations' capital and revenue accounts, and that the provisions of the *Indian Act* and related regulations and policies provide how Canada is to manage and expend monies from these accounts.
16. Canada admits monies were deposited into Cote First Nation's capital and revenue accounts following the expropriation in 1903 and the surrenders in 1904, 1905, 1907, 1913 and 1914, as stated in paragraph 16 of the Declaration of Claim.
17. Canada does not admit the facts pled in paragraphs 14, 15, 17-20, 35 and 37-41 of the Declaration of Claim. Insofar as these paragraphs contain claims that Canada mismanaged funds relating to the 1905, 1907, 1913 and 1914 surrenders, Canada states the Settlement Agreement bars those claims. Canada states it appropriately

managed all other funds in Cote First Nation's capital and revenue accounts, in the best interest of Cote First Nation and in accordance with Canada's fiduciary, statutory and other legal obligations.

18. It is unclear how Cote First Nation calculated the approximate figures in paragraphs 19 and 20 of the Declaration of Claim. If the Settlement Agreement does not release Canada from Cote First Nation's claims, Canada will endeavour to work with Cote First Nation to fill any gaps in the evidentiary record and to reach agreement where possible on amounts expended from the capital and revenue accounts and the appropriateness of those expenditures.

Canada's Statement of Facts

19. On September 24, 1874, Chief Gabriel Cote signed Treaty 4 at Qu'Appelle, Saskatchewan on behalf of Cote First Nation.
20. Canada surveyed IR 64 in 1877. Order-in-Council P.C. 1151 confirmed IR 64 on May 17, 1889. IR 64 was located in southeastern Saskatchewan, east of the Assiniboine River, and had an area of 36,160 acres.
21. Portions of IR 64 were expropriated, surrendered and subsequently sold in the early twentieth century. An expropriation occurred in 1903. Surrenders occurred in 1904, 1905, 1907, 1913 and 1914. The expropriation and surrenders generated funds that were deposited into Cote First Nation's capital and revenue accounts and managed by Canada in accordance with the *Indian Act* and related regulations and policies. Surrender monies and sale proceeds were deposited into Cote First Nation's capital account, while interest earned on surrender monies and sale proceeds was deposited into Cote First Nation's revenue account.
22. In 2004, Cote First Nation submitted a claim to the Minister consolidating a series of claims relating to the 1905, 1907, 1913 and 1914 surrenders. The consolidated claim also contained a claim that Canada mismanaged Cote First Nation's lands and trust funds after the surrenders. Canada accepted the consolidated claim for negotiation on April 6, 2006.

23. In 2012, Cote First Nation and Canada concluded the Settlement Agreement. Canada agreed to pay Cote First Nation compensation for the full and final settlement of the consolidated claim. Cote First Nation agreed to surrender its interest in the surrendered lands, and Canada agreed to set aside additional reserve lands for Cote First Nation's use and benefit.
24. The Settlement Agreement contains release provisions that prohibit legal claims against Canada that relate directly to facts, matters, or issues raised in the consolidated claim. In accepting the Settlement Agreement, Cote First Nation released Canada from all claims relating to the 1905, 1907, 1913 and 1914 surrenders. Cote First Nation cannot now assert claims relating to these surrenders in its Declaration of Claim.
25. In the alternative, Canada states that if a breach of the *Indian Act* in connection with expenditures is found, any benefit of the expenditures to Cote First Nation should be set off against any losses found to have occurred. Further, compensation should only be awarded in respect of expenditures for which Cote First Nation did not receive a benefit or received an inadequate benefit.

Canada's Statement of Relief

26. Canada seeks the following relief:
 - a. Dismissal of the Declaration of Claim;
 - b. In the alternative, should it be found that Canada did not properly manage any monies in Cote First Nation's capital or revenue accounts, a calculation of compensation that takes into account compensation Canada has already provided Cote First Nation under the Settlement Agreement, and benefits received by Cote First Nation resulting from expenditures made from the accounts as required by subsection 20(3) of the *SCTA*;
 - c. Costs; and

d. Such further relief as counsel may request and this Honourable Tribunal deems just.

Communication (R. 42(g))

The Respondent's address for the service of documents is:

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Attention: Scott Bell and Jayme Anton

Facsimile number for service is: **(306) 975-4030**

Email address for service is: saskSCT-5001-21-cote@justice.gc.ca

Dated this 8th day of July, 2021.



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