

SPECIFIC CLAIMS TRIBUNAL		
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SCT-5004-19

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

KAWACATOOSE FIRST NATION

Claimant

v.

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

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: Kawacatoose First Nation
As represented by Ryan M. Lake, Rita Dagenais and Nisha Sikka,
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Overview

1. Canada is committed to fundamentally changing its relationship with Indigenous peoples. Canada aims to achieve reconciliation with Indigenous peoples through a renewed nation-to-nation, government-to-government relationship based on recognition of rights, respect, co-operation and partnership as the foundation for transformative change. In pursuing this commitment, Canada's objectives include upholding the honour of the Crown and respecting and advancing Indigenous self-determination and self-governance.
2. The claim relates to whether Canada mismanaged moneys in Kawacatoose First Nation's capital and revenue accounts, including land surrender sale proceeds following the surrender of 8,080 acres from Indian Reserve No. 88 (IR 88).
3. Canada fulfilled the surrender terms and discharged its fiduciary obligations set out in the land surrender for sale document (surrender document) by selling the land, making the appropriate deductions for management expenses and authorized distributions, and depositing the balance of the sale proceeds into Kawacatoose First Nation's capital account, where interest accumulated and was subsequently transferred into their revenue account.
4. Canada admits it has a statutory duty to properly administer the funds in Kawacatoose First Nation's capital and revenue accounts in accordance with the *Indian Act*. The current evidentiary record does not support a conclusion that Canada breached any treaty, fiduciary or statutory duties in its administration of the sale proceeds or any other funds in Kawacatoose First Nation's capital and revenue accounts.
5. At all times, Canada conducted itself in accordance with the honour of the Crown. In the spirit of reconciliation, Canada will cooperate with Kawacatoose First Nation to obtain more detailed expert and documentary evidence to inform discussions between the parties regarding Canada's management of the capital and revenue accounts.

Status of Claim

6. The requirements in section 16(1)(b) of the *Specific Claims Tribunal Act (SCTA)* are satisfied in that more than 3 years have elapsed without the Minister rendering a decision on whether to negotiate; details are set out in paragraph 10.

Canada's Position with Respect to Validity of the Claim

7. Canada cannot agree that the facts establish a valid claim under the *SCTA* based on the current incomplete evidentiary record. However, Canada will work cooperatively with Kawacatoose First Nation to obtain more detailed documentary and expert evidence, fill evidentiary gaps, and explore potential areas of agreement.

Canada's Position with Respect to Allegations of Fact

8. In response to paragraphs 1 and 8 of the Declaration of Claim, Canada admits that Kawacatoose First Nation is an adherent 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*. Canada also admits that Kawacatoose First Nation's reserve lands and governance structure are situated in the Province of Saskatchewan and IR 88 was established on May 17, 1889, with an area of 27,200 acres. Kawacatoose First Nation adhered to Treaty 4 on September 25, 1877, not September 15, 1874, as stated in the Declaration of Claim.
9. Canada admits fulfillment of the s. 16(1)(b) conditions precedent of the *SCTA* and that the grounds for the claim are set out in s. 14(1)(a) (b) and (c) of the *SCTA*, as pled in paragraphs 2 and 7 of the Declaration of Claim.
10. As pled in paragraphs 3, 4, and 5 of the Declaration of Claim, Canada admits:
 - a. Kawacatoose First Nation submitted the specific claim to the Specific Claims Branch (SCB) on September 19, 2014;

- b. The specific claim alleged capital and revenue account mismanagement;
 - c. Kawacatoose First Nation's claim was deemed filed with the Minister on February 23, 2015; and,
 - d. The deadline has passed for the Minister to advise the Kawacatoose First Nation whether the claim has been accepted for negotiations.
11. Canada acknowledges that for the purposes of this claim, Kawacatoose First Nation is not seeking compensation in excess of \$150 million, as pled in paragraph 6 of the Declaration of Claim.
 12. In response to paragraph 9 of the Declaration of Claim, Canada confirms 8,080 acres were surrendered, not taken, on April 13, 1918 (surrendered land), and an Order-in-Council approved the surrender.
 13. Canada admits the sale of surrendered land occurred on the terms outlined in paragraphs 10, 11, 12, 13, and 15 of the Declaration of Claim, except to say the surrender required the net sale proceeds to be "placed" to, not remain at, Kawacatoose First Nation's credit. Canada's records indicate that title to the surrendered lands transferred to the Soldier Settlement Board of Canada on August 30, 1919.
 14. Canada admits receipt and deposit of the sale proceeds into Kawacatoose First Nation's capital account as pled in paragraph 11 of the Declaration of Claim. Canada agrees with the statement in paragraph 12 of the Declaration of Claim that after paying the advances to the band members there should have been a balance of approximately \$77,600 of sale proceeds in the capital account.
 15. Canada admits that sale proceeds were used to purchase equipment for the use and benefit of Kawacatoose First Nation, in accordance with the terms of the surrender document, as pled in paragraph 14 of the Declaration of Claim. It is unclear how Kawacatoose First Nation calculated the figures in paragraph 14. Canada will work cooperatively with the Kawacatoose First Nation to obtain more detailed

documentary and expert evidence in order to determine any areas of agreement regarding the amount of sale proceeds used to purchase equipment. As a result, Canada is not in a position to admit or deny those statements.

16. Canada admits that interest was paid on the balance of the sale proceeds in the capital account from time to time, in accordance with the *Indian Act* and Canada's policies. The interest was deposited in the revenue account. The surrender does not require interest distributions to Kawacatoose First Nation's members as pled in paragraph 16 of the Declaration of Claim.
17. In response to paragraph 17 of the Declaration of Claim, at all times Canada retained the balance of sale proceeds in the capital account in accordance with the terms of the surrender document.
18. In response to paragraphs 21, 28, 31, 32, 34, 35, 36 and 37, Canada states that it made all distributions from Kawacatoose First Nation's capital and revenue accounts in compliance with the surrender terms and the *Indian Act*. Canada did not breach any legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to Kawacatoose First Nation relating to management of the capital and revenue accounts at any time.
19. In response to paragraph 18 of the Declaration of Claim, Canada did not require Kawacatoose First Nation's consent to expend sale proceeds for the benefit of the First Nation – Canada complied with the surrender document and the *Indian Act*. Canada admits there is currently no evidence that Kawacatoose First Nation agreed to vary the surrender terms and Canada did not deviate from those terms. The surrender terms pertaining to the expenditure of sale proceeds did not create a trust.
20. In response to paragraphs 19, 20, and 22 of the Declaration of Claim, Canada admits it is responsible for the management and administration of Kawacatoose First Nation's capital and revenue accounts, and that the provisions of the *Indian Act* and related regulations and policies legislated how Canada was to maintain and expend moneys in the capital and revenue accounts. Canada further admits that the *Indian*

Act addressed the various approvals required prior to Canada making particular expenditures. Canada also admits that, over the years, Canada authorized many expenditures from the Kawacatoose First Nation's capital and revenue accounts.

21. It is unclear how Kawacatoose First Nation calculated the approximate figures in paragraphs 23 and 24 of the Declaration of Claim. Canada will cooperate with Kawacatoose First Nation to fill any gaps in the evidentiary record and reach agreement on amounts expended from the capital and revenue accounts.
22. In response to paragraph 25 of the Declaration of Claim, Canada admits that some Orders in Council authorizing certain expenditures appear to be missing from the evidentiary record, and Canada will work cooperatively with the Kawacatoose First Nation to obtain a more detailed and complete record. This will allow more complete analysis of whether the expenditures listed in paragraphs 23 and 24 of the Declaration of Claim were contrary to the *Indian Act* or Canada's policies.
23. In response to paragraph 26 of the Declaration of Claim, Canada acknowledges that Kawacatoose First Nation has supplied some details of the capital and revenue deposits and expenditures used to support its specific claim submission.
24. In response to paragraph 27, Canada states that the management of expenditures of sale proceeds complied with the surrender document, *Indian Act* and Canada's policies. Canada says that the evidence does not support an outstanding lawful obligation to Kawacatoose First Nation for alleged breach of Treaty, breach of trust or breach of fiduciary duty, as pled in paragraph 27 of the Declaration of Claim.
25. In response to paragraph 27(a) of the Declaration of Claim, Treaty 4 is silent on management of proceeds from surrendered land sales. The surrender document contains no reference to Treaty 4. Canada states that it complied with the surrender document in expending the sale proceeds.
26. In response to paragraph 27(b) of the Declaration of Claim, Canada states that once Canada sold the surrendered lands and deposited the sale proceeds into the capital

- account, the sale proceeds became “Indian moneys” governed by the *Indian Act*. Although the 1918 surrender imposed upon Canada fiduciary duties with respect to the surrendered land that were “trust-like” in nature, it did not create a trust over the sale proceeds.
27. In response to paragraph 27(c) of the Declaration of Claim, Canada admits that the surrender document created a fiduciary duty to fulfill the surrender terms. Once Canada sold the surrendered land, made appropriate distributions, and deposited the balance of the sale proceeds into Kawacatoose First Nation’s capital account, Canada fulfilled and discharged all of the fiduciary obligations that the surrender created. Canada denies that it breached any fiduciary obligations in its administration of the sale proceeds.
 28. In response to paragraph 29 of the Declaration of Claim, Canada states it has no fiduciary duty to invest Kawacatoose First Nation’s money or sale proceeds in a particular manner. Canada admits that the balance of the sale proceeds, after all distributions were paid, were to be placed to the credit of Kawacatoose First Nation with interest paid annually, according to the surrender terms. The funds then became “Indian moneys” to be managed according to the *Indian Act*. Canada fulfilled its fiduciary duty by complying with the *Indian Act* in managing Kawacatoose First Nation’s capital and revenue accounts.
 29. Canada has no duty or obligation to invest surrendered land sale proceeds and increase the value, as pled in paragraph 30 of the Declaration of Claim, except by the payment of interest into Kawacatoose’s revenue account on the balance of its capital account as required, according to the surrender terms.
 30. Canada admits that it owes a statutory duty to Kawacatoose First Nation to properly administer the funds in Kawacatoose First Nation’s capital and revenue accounts in accordance with the *Indian Act*, as pled in paragraph 33 of the Declaration of Claim.
 31. In response to paragraph 37 of the Declaration of Claim, at all times Canada acted in the best interest of the Kawacatoose First Nation in managing its trust accounts.

Canada denies any alleged self-interest on Canada's part that conflicted with and prevailed over Canada's obligations to Kawacatoose First Nation.

32. In response to paragraph 38 of the Declaration of Claim, Canada states the current evidentiary record lacks sufficient detail to conclude that Canada improperly expended any funds from the Kawacatoose First Nation's capital and revenue accounts.

Canada's Statement of Facts

33. By Order-in-Council P.C. 1918-1055, the federal government accepted the surrender for sale dated April 13, 1918, of IR 88 lands by Poorman's Band, (now known as Kawacatoose First Nation.) The surrender document which accompanied Order in Council P.C. 1918-1915 included the following instructions regarding the use of the surrender proceeds:

...all moneys received from the sale thereof shall, after deducting the usual proportion for expenses of management, be distributed as follows:

1. The sum of One Hundred Dollars (100.00) to be paid to each and every member of our Band at the time the surrender is approved by the Government.
 2. Fifty (50) per cent of the purchase price may be used to purchase equipment for our use at the discretion of the Department of Indian Affairs.
 3. The balance to be placed at the credit of our Band and interest thereon paid annually in the usual way.
34. On August 30, 1919, Order-in-Council P.C. 23-1832 approved sale of the surrendered lands to the Soldier Settlement Board of Canada for \$92,920.00.
 35. Canada fully discharged the surrender terms, making appropriate deductions and distributions and depositing the remainder of the sale proceeds into Kawacatoose First Nation's capital account. All funds deposited into the account plus interest earned on it in Kawacatoose First Nation's revenue account became "Indian

moneys” to be managed in accordance with the *Indian Act* and related regulations and policies.

36. Canada maintained Kawacatoose First Nation’s accounts, which contained the remainder of sale proceeds and other moneys, in compliance with the *Indian Act* for the benefit of Kawacatoose First Nation.
37. In 1991, the surrender of IR 88 became the subject of a settlement agreement between Canada and Kawacatoose First Nation. Kawacatoose First Nation received substantial compensation for the 1918 surrender. Kawacatoose First Nation released Canada from liability arising out of or relating to IR 88 lands.
38. The settlement agreement defined the settled claim as excluding the “allegation or representation that the proceeds of the sale were misappropriated.”

Canada’s Statement of the Relief

39. Canada seeks the following relief:
 - a. Dismissal of the claim;
 - b. In the alternative, should any expenditure be found to lack proper authorization or be otherwise inappropriate, Canada relies upon s. 20(3) of the *SCTA* and seeks to set off the value of the benefit received by the Kawacatoose First Nation from any compensation deemed owing;
 - c. Costs; and

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

Communication (R. 42(g))

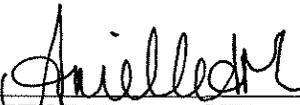
The Respondent's address for the service of documents is:

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Attention: Lauri Miller and Arielle Morgan

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Dated this 3rd day of September 2019.



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