

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
May 29, 2019	
Isabelle Bourassa	
Ottawa, ON	1

SCT File No.: SCT - 5004-19

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

KAWACATOOSE FIRST NATION

Claimant

v.

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

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*.

May 29, 2019 \_\_\_\_\_  
 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, Kawacatoose First Nation, (hereinafter also referred to as the “Claimant” or “First Nation” or “Band” or “Poorman” depending on the context) confirms that it is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “*Specific Claims Tribunal Act*”) by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c 1-5 (the “*Indian Act*”), as amended, and within the meaning of *Treaty No. 4* (“Treaty 4”). The First Nation is located north of Raymore, Saskatchewan.

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

2. The following condition precedent as set out in subsection 16(1)(b) of the *Specific Claims Tribunal Act* has 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

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim.

3. The First Nation originally submitted a claim respecting various alleged breaches by the Respondent relating to its mismanagement of the First Nation’s trust accounts, which are comprised of the capital account (the “Capital Account”) and the revenue account (the “Revenue Account”) to the Minister of Indian Affairs and Northern Development (the “Minister”), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC” or the “Department”), in the Fall of 2014 (the “Mismanagement Claim”).

4. The Mismanagement Claim was deemed filed with the Specific Claims Branch (the “SCB”) on February 23, 2015.

5. The deadline for the SCB to assess the Mismanagement Claim and to advise the First Nation as to whether it had been accepted for negotiation on the basis that an outstanding lawful obligation was owed to the First Nation was on February 22, 2018. This deadline passed without Canada advising the First Nation in relation to the same.

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

6. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

**IV. Grounds (R. 41(d))**

7. The following are the grounds for the Mismanagement Claim, as provided for in section 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:

- (a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;
- (b) 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; and
- (c) 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.

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

### a) The Surrender Document & The Sale Proceeds

8. The First Nation adhered to Treaty 4 on September 15, 1874. Pursuant to the terms of Treaty 4, Indian Reserve No. 88 was established on May 17, 1889 for the use and benefit of the First Nation, with an area of 27,200 acres.

9. On April 13, 1918, approximately 8,266 acres of land were taken from Reserve No. 88 (the "Surrendered Lands"), pursuant to a surrender for sale agreement (the "Surrender Document") between the First Nation and the Respondent. The Surrender Document provided that:

THAT WE, the undersigned Chief and Principal men of Poormans Band of Indians resident on our Reserve in the Touchwood Agency known as Poormans Reserve, No. 88. in the Province of Saskatchewan and Dominion of Canada, for and acting on behalf of the whole people of our said Band in Council as-embled, Do hereby release, remise, surrender, quit claim and yield up unto OUR SOVEREIGN LORD THE KING, his Heirs and Successors forever, ALL AND SINGULAR, that certain parcel or tract of land and premises, situate, lying and being in the Poormans Reserve in the County of and Province of Saskatchewan containing by admeasurement Eight Thousand and Eighty Acres (8080) be the same more or less and being composed of Sections 3-4-9-10-15-16-21-22-27-28-33-and 34 all in Township 29. Range.18. West of the Second Principal Meridian and Fractional Sections Three (3) and Four (4) in Township Thirty (30) Range Eighteen (18) West of the Second Principal Meridian.

TO HAVE AND TO HOLD the same unto His said Majesty The King, his Heirs and Successors forever, in trust to sell the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may be most conducive to our Welfare and that of our people.

AND upon further condition that 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.

AND WE, the said Chief and Principal men of the said Poormans Band of Indians do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the disposal of the aforesaid land.

10. In 1919, the Department sold the Surrendered Land to the Soldier Settlement Board of Canada (the "Soldier Settlement Board") in 1919 for \$92,920.00 (the "Sale Proceeds"). The terms of the sale provided that the Soldier Settlement Board would pay 20% of the purchase price up front (\$18,584) with the remainder (\$74,336) to be paid upon the actual transfer of the land from the Respondent to the Soldier Settlement Board.
11. The Respondent received full payment of the Sale Proceeds on September 24, 1919. The Respondent then deposited the Sale Proceeds into the Capital Account. Letters patent for the lands were issued in the name of the Soldier Settlement Board on April 12, 1920.
12. Pursuant to the terms of the Surrender Document, \$100.00 was to be distributed to each member of the First Nation from the Sale Proceeds. Approximately \$15,300 was used to make this distribution. This should have left a balance of approximately \$77,600 (the "Net Sale Proceeds"), in accordance with the Surrender Document.
13. The Surrender Document stipulated that the Net Sale Proceeds could be expended in two ways:
  - (a) Up to fifty percent (50%) of the Net Sale Proceeds could be used to purchase equipment for the First Nation's use; and
  - (b) The balance was to remain at the credit of the First Nation with the interest earned on these funds to be paid annually to the First Nation.
14. Approximately \$8,371 of the Net Sale Proceeds appear to have been used to purchase equipment for the use and benefit of the First Nation (the "Equipment Expenditure"). Presuming the Equipment Expenditure is consistent with the terms of the Surrender Document, which the First Nation holds the Respondent to the strict proof thereof, this should have left a balance of approximately \$69,229 (the "Balance of the Net Sale Proceeds") to be deposited in the Capital Account. However, the Balance of the Net Sale Proceeds was expended by the Respondent and ultimately depleted contrary to the terms of the Surrender Document.
15. In accordance with the Surrender Document, except for the expenditures specifically authorized by the terms of the Surrender Document, the Net Sale Proceeds were to remain to the First Nation's credit, with the interest paid to members of the First Nation annually.
16. Following the sale of the Surrendered Lands, interest was paid on the balance that remained in the Capital Account from time to time at the rate outlined by the Respondent's legislation and policies in force at the time. The interest was deposited to the Revenue Account. Some, but not all, of the interest credited to the First Nation was distributed to the members of the First Nation from 1919 to 1950.

17. At no time between 1919 and 1981 was the balance of funds in the Capital Account equal to the amount that should have been retained, with the possible exception of fiscal year ending March 31, 1920. The Claimant alleges the reason for this discrepancy was due to the fact the Net Sale Proceeds were expended contrary to the terms of the Surrender Document.

18. There is no evidence that demonstrates that the Respondent discussed expending the Net Sale Proceeds in a manner that deviated from the terms Surrender Document with the First Nation. Further, there is also no evidence that demonstrates that the Respondent obtained the First Nation's consent to use the Net Sale Proceeds in a manner that was not explicitly provided for in the Surrender Document. In other words, there is no evidence to suggest that the First Nation agreed to vary the terms of the Surrender Document or the ensuing trust regarding the expenditure of the Net Sale Proceeds.

**b) Expenditures from Kawacatoose's Capital and Revenue Accounts**

19. The Respondent is responsible for the management and administration of trust funds held for First Nations.

20. The provisions of the various *Indian Acts* addressed the expenditure of Indian moneys deposited to a band's Capital and Revenue Accounts that were to be maintained by the Respondent for each band. These provisions addressed what items the Indian moneys deposited to these accounts could be expended on and what authority or approval, i.e. Governor in Council, Band, Band Council, Superintendent General of Indian Affairs or Minister of Indian Affairs, was required before Indian moneys could be expended.

21. Despite the Respondent's obligations pursuant to the various *Indian Acts*, and the policies in place throughout the relevant period, as a matter of practice, the Respondent improperly expended funds from the Capital Account and Revenue Account.

22. Over the years many expenditures of the Indian moneys held by the Respondent for the First Nation were made by the Respondent.

23. The greatest expenditures from the Capital Account were for payments of member debts, accounting transfers, machinery and implements, improvements, a cordwood project, and horses in the amount of approximately \$92,904.

24. The greatest expenditures from the Revenue Account were for accounting adjustments, relief, interest distributions to members, farming, medical costs, and loans to members in the amount of approximately \$164,378.

25. Such expenditures are contrary to the explicit provisions of the *Indian Act*, as amended, and the Department's policies in place from 1896 to 1981. Further, no Orders in Council have been found to have authorized the above expenditures, contrary to the provisions of the *Indian Act* and contrary to Departmental policies.

26. The details of the deposits to and the expenditures from the First Nation's Capital and Revenue Accounts have been provided to the Respondent in the First Nation's Specific Claim Submission and supporting documents and will be detailed for the Tribunal in the hearing of this matter and when the Respondent is called to account for same.

**VI. The Basis in Law on which the Respondent is said to have Failed to Meet or Otherwise Breached a Lawful Obligation**

**a) Depletion of Net Sale Proceeds in Breach of the Terms of the Surrender Document**

27. The First Nation submits that by authorizing and directing the expenditure of the Net Sale Proceeds contrary to the Surrender Document, the Crown owes outstanding lawful obligations to the First Nation for the following reasons:

- (a) Breach of Treaty – The First Nation claims the Respondent breached the terms of Treaty No. 4 as it failed to keep the Net Sale Proceeds secure and safe, and to ensure that the proceeds increased over time as contemplated under the terms of the Surrender Document and required by the Terms of Treaty No. 4;
- (b) Breach of Trust – The First Nation claims that a trust was created pursuant to the terms of the Surrender Document under which the Respondent became the Trustee of the Net Sale Proceeds. The Respondent has breached that trust as a result of the management and expenditure of the Net Sale Proceeds contrary to the terms of the trust created by the Surrender Document;
- (c) Breach of Fiduciary Duty – The Respondent nonetheless owed a fiduciary or trust-like duties to the First Nation to administer the Net Sale Proceeds in accordance with the terms of the Surrender Document, which duties the Respondent breached as a result of its management and expenditure of the Net Sale Proceeds contrary to the terms of the Surrender Document;

28. The First Nation claims the Respondent has breached the provisions of the various *Indian Acts* in place from time to time in the management and expenditure of funds the Crown held under its administration for the First Nation.

29. The First Nation claims the Respondent was responsible under the terms of the Surrender Document, of the various *Indian Acts* and other federal legislation in force from time to time and of Orders in Council passed from time to time to invest the funds and/or to pay interest on the funds credited to the First Nation. The First Nation claims the Respondent breached its fiduciary obligations to invest the First Nation's funds and requests an accounting from the Crown on how its funds were invested and if the amount of interest that should have been paid was in fact paid.

30. The First Nation claims that the Net Sale Proceeds should have been maintained and increased, provided the Equipment Expenditure was consistent with the provisions of the Surrender Document, and should still be maintained and increased by the Respondent to the

benefit of the First Nation. The funds should have and should still be invested for the benefit of the First Nation with compound interest paid to the First Nation annually.

31. The First Nation claims the value of the wrongfully expended Net Sale Proceeds be returned to the First Nation with compound interest from the date of the breach until present.

**b) Expenditures from the Capital Account and the Revenue Account Breached the Respondent's Legal & Fiduciary Obligations**

32. The First Nation claims the Crown has breached the provision of the various *Indian Acts* in place from time to time, by virtue of the expenditures of the First Nation's funds from the Capital and Revenue Accounts. If, as noted above, the Crown has breached its lawful obligations regarding the expenditure of the Net Sale Proceeds, then this part of the claim relates only to the expenditure of the funds deposited to the Capital and Revenue Accounts that do not represent the Net Sale Proceeds. However, if it is concluded that the Crown has not breached its lawful obligations relating to its management of the Net Sale Proceeds this part of the claim relates to all of the funds deposited to the Capital and Revenue Accounts, including the Net Sale Proceeds.

33. The Respondent owes statutory and fiduciary duties to the First Nation to properly administer the funds held in the Capital Account and Revenue Account held by the Respondent for the First Nation's benefit. The statutory duties arise from the provisions of the *Indian Act*, as amended.

34. The First Nation submits that by failing to comply with the provisions of the *Indian Act* regarding the management and administration of Indian moneys, the Respondent breached its legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to the First Nation from 1896 to 1981.

35. Despite the Respondent's knowledge of its duties and obligations relating to expenditures of funds held on behalf of First Nations, it directed expenditures from the Capital Account and Revenue Account on items not authorized or permitted by the *Indian Act* and did not obtain the necessary authority or approvals to make such expenditures, contrary to the provisions of the *Indian Act* from 1896 to 1981.

36. Therefore, the First Nation claims that the Respondent breached the statutory provisions of the *Indian Act* when authorizing and directing the expenditure of Indian moneys from the Capital Account and the Revenue Account from 1896 to 1981.

37. The First Nation claims that the Respondent did not discharge its fiduciary duty to act in the best interest of the First Nation with respect to expenditures from the Capital Account and the Revenue Account by allowing its self-interest to conflict with and prevail over its obligations to the First Nation. This is conduct that ultimately benefited the Respondent and third parties rather than the First Nation.

38. The First Nation claims the value of the funds improperly expended from the Capital Account and Revenue Account be returned to the First Nation, with compound interest from the date of the breach to present.

**VII. RELIEF SOUGHT**

39. In light of the foregoing, the First Nation seeks the following relief:

- (a) Damages for the loss of moneys wrongfully expended, including interest that should have been earned thereon;
- (b) Damages for the Respondent's breach of the terms of Treaty 4, breach of the Surrender Document, breach of its trust obligations, breach of its fiduciary or trust-like obligations of the terms of the various *Indian Acts* and policies in place from time to time;
- (c) Equitable interest calculated from the date of the breach(es) to the date of the judgment or award;
- (d) Costs of this proceeding, and in the Specific Claims Process, on a solicitor-client basis; and
- (e) Such other damages and compensation as this Honourable Tribunal deems just.

Dated this 29 day of May 2019 at the City of Calgary in the Province of Alberta.



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