

**SCT-5001-13**

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICTIONS PARTICULIÈRES		
F I L E D	November 22, 2013	D É P O S É
Guillaume Phaneuf		
Ottawa, ON	13	

**KAWACATOOSE FIRST NATION, PASQUA FIRST NATION, PIAPOT  
FIRST NATION, MUSCOWPETUNG FIRST NATION, GEORGE  
GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION AND  
DAY STAR FIRST NATION**

CLAIMANTS

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
(as represented by the Minister of Aboriginal Affairs and Northern Development  
Canada)

RESPONDENT

- and -

**LITTLE BLACK BEAR FIRST NATION**

APPLICANT

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**APPLICATION FOR LEAVE and APPLICATION FOR PARTY STATUS  
or INTERVENOR STATUS IN THE ALTERNATIVE**

**Pursuant to Parts 4 and 6 of the Specific Claims Tribunal Rules of  
Practice and Procedure and Sections 24 and 25 of the Specific Claims  
Tribunal Act**

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TO: KAWACATOOSE FIRST NATION, PASQUA FIRST NATION, PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION, GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION and DAY STAR FIRST NATION

As represented by David Knoll  
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AND TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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**APPLICATION FOR LEAVE and APPLICATION FOR PARTY STATUS  
or INTERVENOR STATUS IN THE ALTERNATIVE**

**I. RELIEF SOUGHT (Rule 34(a))**

**TAKE NOTICE** that an application will be made on behalf of the Applicant, LITTLE BLACK BEAR FIRST NATION, before the Specific Claims Tribunal (“the Tribunal), at a time and place to be determined by the Tribunal, for the following relief:

- (a) an Order for leave of the Tribunal to bring an application;
- (b) an Order that the Applicant be granted party status in the within claim;
- OR
- (c) an Order that the Applicant be granted intervenor status in the within claim.

**II. GROUNDS (Rule 34(a))**

**TAKE NOTICE** that this application is brought upon the following grounds:

1. The Declaration of Claim in in this case argues that Canada breached its fiduciary obligations regarding the surrender of approximately 1,408 acres of IR 80A (the Last Mountain Indian Reserve) in 1918.
2. The Declaration of Claim in this case also argues that the 1918 surrender was not obtained in compliance with the terms of Treaty 4, or the surrender provisions of the *Indian Act*, R.S.C. 1906, c. 81.
3. Little Black Bear First Nation was a party to the original claim submission regarding IR 80 (the Last Mountain Indian Reserve). However, in a letter dated February 28, 2012, Canada decided that Little Black Bear First Nation was not a proper beneficiary with regard to this claim and advised Chief Clarence Bellegarde in the letter that it would not negotiate with Little Black Bear First Nation regarding this claim.

4. Treaty No. 4 between Her Majesty the Queen and certain Cree, Saulteaux and other Indians of the Northwest Territories was signed at Qu'Appelle on September 15, 1874. Order In Council 1332/1874 confirmed treaty No. 4. Treaty No. 4 covered a large territory including most of what is known today as the southern part of Saskatchewan, which included the Qu'Appelle Valley and Touchwood Hills areas.
5. Treaty No. 4 contemplated the setting aside of a reserve for the various First Nations that resided in the Treaty No. 4 area. SCT-5001-13 deals with the Last Mountain Reserve I.R. 80A, which was surveyed in 1885 and confirmed in 1889 as a reserve for the Touchwood Hills and Qu'Appelle Indians.
6. In the spring of 1884 John C. Nelson, Dominion Land Surveyor travelled to Long or Last Mountain Lake in order to select a suitable site(s) for Fishing Station(s) for what he referred to as the Touchwood Hills and Qu'Appelle Valley Indians.
7. Nelson proposed that the Fishing Station should be reserved at the mouth of the "Little Arm" River on the Long or Last Mountain Lake. Nelson considered the south side of the lake, which had been previously utilized for fishing and winter camping, to be especially good for hunting ducks and other waterfowl.
8. The "Fishing Station" or "I.R. 80A" consisted of 2.2 square miles (1,408 acres), and was confirmed on May 17, 1889 as part of Order in Council 1151.
9. There is a significant amount of historical documentary evidence suggesting that the Little Black Bear First Nation had an interest in the lands that became I.R. 80A and were ultimately surrendered.

10. For example, in July 1924, Chief Surveyor Donald Robertson reviewed the matter as to who was entitled to share in this reserve. In a letter to the Deputy Minister dated July 21, 1924, Robertson stated:

*Correspondence from Departmental headquarters at the time of selection refers to it as for the Indians in the vicinity of Long or Last Mountain Lake. Strictly speaking, the terms Qu'Appelle Valley Indians would include the File Hills reserves, which are Peepeekeesis, Okanase [sic], Star Blanke, Little Black Bear and also the Crooked Lakes reserves, which are Ochapowace, Kakewistahaw [sic], Cowesses, Sheseep and Sakimay, as well as Assiniboine and Standing Buffalo. All the above reserves are additional to those which apparently the Department has considered were entitled to share the proceeds of the sale of Indian reserve No. 80A [emphasis added].<sup>1</sup>*

11. On May 14, 1915 Inspector Graham had written to the Deputy Superintendent General of Indian Affairs, D.C. Scott, recommending that the surrender of IR 80A not proceed. In making this recommendation, Inspector Graham stated:

*[A]s nearly as I can make out the Indians interested in this reserve are those of the Touchwood Hills Agency, Qu'Appelle Valley, which includes all the Indians of the Qu'Appelle, File Hills and Crooked Lake Agencies, as the latter claim they are interested to the same extent as are the Indians of Qu'Appelle and File Hills. If this is the case there would be about eighteen hundred Indians entitled to share in the proceeds derived from the sale of this reserve.<sup>2</sup>*

12. From these comments we can see that Little Black Bear First Nation has long been considered to be a part of the File Hills Agency and that Inspector Graham viewed the Indian of the File Hills Agency as partial beneficiaries of any proceeds that would result from the surrender of IR 80A.

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<sup>1</sup> Memorandum, Chief Surveyor Robertson to Deputy Minister, 21 July 1924, PAC, RG10, Vol. 8050, File 601/32-0-80A-2.

<sup>2</sup> Inspector Graham to D.S.G.I.A. Scott, 15 May 1914, PAC, RG10, Vol 3813, File 56101.

13. Chief Harry Ball of the Piapot First Nation also considered Little Black Bear First Nation to be part of the group of Indian Bands with a claim to the lands formerly comprising IR 80A. Chief Harry Ball's letter to the Superintendent Reserves and Trusts, Department of Citizenship and Immigration, Indian Affairs dated February 9, 1954 stated, in part:

*When Piapot asked for a fishing reserve for his band and six other bands, namely; Muscowpetung's, Gordon's, Poorman's, Day Star, Muscovequan, and Little Black Bear, from Hayter Reed, who was the Indian Commissioner, he was allotted the 80A Reserve burdening [sic] on Last Mountain Lake [emphasis added].<sup>3</sup>*

14. On May 21, 1954 the Piapot Cree Nation wrote to Minister of Citizenship and Immigration, Walter Harris, regarding the matter of l.R. 80A. In their letter, the First Nation maintained that until recently no one knew that Piapot's interest in l.R. 80A had been surrendered. The letter stated, in part:

*This affair about the Last Mountain fishing reserve had already been put through, but nobody knew it was a surrender until a few years ago.*

*I am sending a list of members, still living, on the Piapot Reserve and each one of them say there was never a band meeting. Fort Qu'Appelle is about forty-five miles away from the Piapot Reserve and it would have been Impossible for the whole band to make the trip for that purpose.*

*Chief Piapot In his later years used to tell me that the Arm River portion was allotted to his band. This is a portion of the land in dispute.*

*Muscowpetung's portion was east adjoining the Piapot portion and takes in the present Regina Beach. Little Black Bear's portion was east of the two. Note: this can be seen in the Land Titles Office, Victoria Ave., Regina. The four Touchwood reserves had theirs across the lake north of Regina Beach.*

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<sup>3</sup> It seems that "burdening" should have been typed as "bordering." Chief Harry Ball to Allen, Superintendent Reserves and Trusts, Department of Citizenship and Immigration, Indian Affairs, 9 February 1954, PAC, Vol. 8050, File 601/43-0-80A-1.

*The Pasqua Band had no share whatever as their own reserve adjoins a lake all along-the north boundary and had their own fishing reserve.*

*In regards to the document signed by M. Christianson about the surrender, so called, why did he persist In coming to the Piapot Reserve afterwards during the months of April, May, and June 1918 to try and get deceased Chief Masqua to sign or put his mark to the document. Our present chief, Harry Ball was the interpreter and I believe you have Ball's statement.*

*As long as the officials of the time, namely; W.M. Graham, Mr. Murison, Mr. Christianson, were living, any inquiries about the lake reserve were sidetracked and no information was available. It was only after they were all dead, we got a copy of the surrender.*

*In one of Mr. Christianson's visits to Chief Masqua the chief told him that he had a map of the fishing reserve, left him by the old chief Piapot. Mr. Christianson was surprised to see the map and he asked Masqua a loan of it, and that was the end of it. His reasons afterwards were it was lost in the Indian Office.*

*So you see in what we are in and we will not accept the documents as final.*

*We were cheated in the first place of eighteen sections from the reserve southeast of Wolseley, which had seventy-two sections to the present reserve of about fifty-four sections more or less. Our present stand remains the same and these are our reasons:*

*1st. The fishing reserve was never surrendered, that is legally, according to the Indian Act, there was no meeting.*

*2nd. The four Touchwood reserves had no rights to the area in dispute, they had their individual fishing areas.*

*3rd. The Pasqua Band had no share whatsoever. 4th. How could one Individual even though a chief sign any document, without the consent of his band [emphasis added].*

15. According to Piapot, Piapot, Muscowpetung and Little Black Bear each had specified portions of I.R. 80A that were side by side; however, Pasqua had no interest, as their reserve proper bordered a lake.

16. On May 25, 1954 Director N.M. Jones prepared a reply to the Chief and Councillors of Piapot. This reply stated, in part:

*You will recall that while discussing the complaints made by Chief Harry Ball concerning the surrender of the above noted Reserve, I pointed out that our investigation had come to a standstill, in that what few records we have on the matter do not disclose the manner in which the surrender was taken. You were interested in securing a copy of the surrender and in particular the declarations made by the Chiefs who signed it and as promised, I am enclosing copies herewith. Chief Ball has been quite consistent in stating that former Chief Musqua did not sign the surrender, although asked to do so several times. You will note that his mark appears on the document, which may or may not mean anything, but what would mean something in any Court is the fact that Musqua's name and mark appear in a declaration alleged to have been made before a Commissioner for Oaths at Fort Qu'Appelle on May 9, 1918. If Chief Ball's statement is correct, it is difficult to understand why Musqua made the declaration, for we have to assume that he was present before the Commissioner when the declaration was made.*

*As mentioned, there is some uncertainty as to what Bands were entitled to have an interest in this Reserve. The Reserve was set aside as a fishing station "for the Indians of the Touchwood Hills and Qu'Appelle [sic] areas" and our first records on the subject show that Poorman's, Day Star, Muscowequan, Gordon's, Piapot, Muscowpetung and Pasqua were the Bands railing within the general nomenclature of the establishment.*

*Who decided this is not clear and it is always possible the decision was wrong, but until someone can establish this fact, we have no alternative but to assume these were the proper Bands. Chief Ball in his last letter to the Minister made various statements as to certain Bands being given certain portions and indicated there was at least on map in existence showing this. Your office investigated these statements and could not confirm them and our letter of August 12, 1954, to the Chief, seeking further information from him, has not been answered.*

*As was pointed out, there is no definite evidence to show either that the surrender was improperly taken or that the wrong Band have been sharing the land, and until we have something more definite to go on, it is not seen what further Investigation can be*



*made by the Department [emphasis added].*<sup>4</sup>

17. In fact, the Crown was required by the *Indian Act* to know who was entitled to the reserve. Only these Indians entitled to I.R. 80A could be present at a meeting and vote on the proposed surrender. Furthermore, for a valid surrender to occur, the Crown needed to know who was entitled to the reserve, since they had to ensure a majority of those Indians entitled to I.R. 80A, was present at the meeting, held for the purpose of voting on the surrender.
  
18. It is clear that there was uncertainty and confusion (which lasted for decades after the purported surrender) over who was entitled to I.R. 80A and who was entitled to be present at a meeting called for the purpose of voting on a surrender of the reserve. Given that the Crown did not know who was entitled to the reserve, they clearly did not know who was properly entitled to vote on a surrender of the reserve or whether a majority was present.
  
19. Even the Crown questioned the propriety of the surrender. In a memorandum dated June 17, 1954, Director Jones acknowledged:

*...It is very difficult to comment on this case because the Indian Affairs Branch file on files covering the period at which the surrender was taken have been lost for some years and we have no records concerning the surrender which would indicate whether it was properly taken or was taken in the manner suggested by Chief Ball, that is, by merely having the Chiefs of the respective Bands sign the surrender. There is suspicion in the minds of our officials that the claim by the Indians may be only too true but it seems next to impossible to substantiate this from our*

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<sup>4</sup> L.L. Brown, Superintendent, Reserves & Trusts to E.S. Jones, Regional Supervisor of Indian Agencies, 1 December 1954, PAC, RG10, Vol. 8050, File 601/34-0-80A-1.

*records for, as stated above, we have none that are material...<sup>5</sup>*

20. The evidence shows that Canada failed to properly manage competing interests and used its position of authority to effect the surrender. The evidence also shows that Canada's process of determining who was entitled to share in the reserve, and hence the proceeds of surrender, was confused and unorganized.
  
21. Oral history evidence as to Little Black Bear's interest in I.R. 80A also exists. This evidence can be summarized as follows:
  - a. Alvin Bellegarde Sr.'s father, Archie Bellegarde, has told Alvin that Little Black Bear had land and fishing rights around the Regina Beach and Last Mountain Lake area. Archie Bellegarde's father was John Bellegarde Sr.;
  - b. Sidney Akapew's father, Bob Akapew, has told Sidney that Little Black Bear had land in and around the Regina Beach area;
  - c. Band Councillor Clarence Akapew's mother, Shorley Akapew, has told Clarence that Little Black Bear had land and fishing rights in and around the Regina Beach area;
  - d. John D. Bellegarde's father, former Chief Wilfred Bellegarde, has told John that Little Black Bear had hay meadows and a place to fish around the Regina Beach area.
  
22. All of this demonstrates that reliance on Canada's version of events would be imprudent, and that it is possible that Little Black Bear's interest in I.R. 80A was overlooked and/or ignored.

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<sup>5</sup> Memorandum to Deputy Minister from H.M. Jones, 17 June 1954, PAC, Vol. 8050, File 601/34-0-80A-1.

### **III. CONSENT (Rule 34(b))**

23. Neither the claimants nor the Respondent has consented to the relief sought herein.

### **IV. RULE 45**

24. The name, address and telephone number of the Applicant and its legal counsel are as follows:

Little Black Bear First Nation  
c/o Maurice Law Barristers & Solicitors  
3026 Taylor Street East  
Saskatoon, SK S7H 4J2  
Telephone: (306) 291-3930 (Jamie Hammersmith) or (403) 266-1201  
(Calgary Office)

25. If the Applicant is granted party or intervenor status, it intendeds to present evidence and legal arguments.

26. The Applicant intends to support the claimants' position regarding the non-validity of the surrender of IR 80A and also the Crown's breach of fiduciary obligations.

27. The Applicant intends to use the English language in these proceedings.

**DATED** at the City of Saskatoon in the Province of Saskatchewan this 22<sup>nd</sup> day of November, 2013.

**MAURICE LAW**

A handwritten signature in black ink, appearing to read 'Jamie Hammersmith', written over a horizontal line.

Per:

**Jamie Hammersmith**

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