

**SPECIFIC CLAIMS TRIBUNAL**

B E T W E E N:

F I L E D	SPECIFIC CLAIMS TRIBUNAL	D É P O S É
	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
	February 29, 2012	
	Guillaume Phaneuf	
	Ottawa, ON	6

KAHKEWISTAHAW FIRST NATION

Claimant

v.

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

Respondent

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**RESPONSE**  
**Pursuant to Rule 42 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

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This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: Kahkewistahaw First Nation  
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**I. Status of Claim (R. 42(a))**

1. Kahkewistahaw First Nation (the “Claimant”) submitted a specific claim to the Minister of Indian Affairs and Northern Development (the “Minister”) on 23 December 2004. The claim alleged a breach of trust, trust-like and fiduciary obligations and breach of the terms of the *Indian Act* in the management and expenditure of Indian moneys, including the sale proceeds from lands surrendered for sale in 1907 (the “Sale Proceeds”).
2. In reply to paragraph 4 of the Declaration of Claim (the “Claim”), the fact that the specific claim was not accepted for negotiation is admitted. Beyond the fact that the specific claim was not accepted for negotiation, the contents of the Minister’s letter of 26 March 2010 are irrelevant and privileged.
3. The Claimant filed the Claim with the Specific Claims Tribunal on 19 December 2011.

**II. Validity (R. 42(b) and (c))**

4. The Crown does not accept the validity of the Claim. Specifically, the Crown denies:
  - a. any breach of a lawful obligation pertaining to Indians or lands reserved for Indians under the *Indian Act* or any other legislation; and
  - b. any breach of a lawful obligation arising from a fiduciary obligation, the administration of reserve lands, or the administration of Indian moneys or other assets of the Claimant.
5. The Crown does not accept the validity of the Claim or that the Claimant has suffered any damages.

**III. Allegations of Fact – Declaration of Claim (R. 41(e)): Admission, denial or no knowledge (R. 42(d))**

6. Unless expressly admitted, the Crown denies each and every allegation of fact or law in the Claim and puts the Claimant to the strict proof thereof.
7. The Crown admits the facts set out in paragraphs 7, 8, 9, 12, 13, 20, and 23 of the Claim.
8. In response to paragraph 10, the Crown states that knowledge of the documents located by the Claimant, and the content of those documents, lies solely with the Claimant.
9. The Crown denies the allegations in paragraphs 11, 19, 21, 22, 24, 26, 27, 28, 29, 30, 31, and 32 of the Claim.
10. In response to paragraph 11, and the Claim generally, there was no legal distinction between capital moneys and revenue moneys in the treatment of Indian moneys under the *Indian Act* prior to the *Indian Act*, S.C. 1951, c.29, s. 62. Prior to 1951, separate accounts were maintained for capital and revenue (interest) moneys; however, this was for administrative purposes not due to a statutory requirement.
11. In response to paragraph 14, the Crown states that the land in question was surrendered and not taken.
12. In response to paragraphs 15, 16, and 17, the Crown denies that the Claimant's historic revenue and capital account balances are relevant to the Claim.
13. Paragraphs 18 and 25 are conclusions of law that the Crown is not required to either admit or deny.
14. In response to paragraph 23, the Crown admits only that information regarding deposits and expenditures relating to the Claimant's Indian moneys was provided in the Claimant's Specific Claim Submission.

15. In response to paragraphs 24 and 31, the Crown further states that any incorrect payment of moneys belonging to the Claimant to another First Nation, which is not admitted, was corrected.
16. In response to paragraph 26, the Crown further states that the Sale Proceeds were Indian moneys to be managed in accordance with the *Indian Act* provisions in force at the relevant time. The surrender documents did not impose any additional obligations on the Crown in managing the Sale Proceeds beyond those found in the *Indian Act*. The Crown further denies that there is any duty to invest Indian moneys.
17. In regard to paragraph 27, and the Claim generally, the Crown further states that none of the Claimant's Indian moneys, including the Sale Proceeds, have been wrongfully expended. The Crown further states that the alleged breach of Treaty No. 4 was not raised in the 23 December 2004 submission to the Minister and the Tribunal is without jurisdiction in respect of this aspect of the claim by operation of s. 16 of the *Specific Claims Tribunal Act*.
18. In regard to paragraphs 28 and 29, and the Claim generally, the Crown further states that any expenditure of the Claimant's Indian moneys was made in accordance, and authorized by, the Indian moneys provisions of the *Indian Act* in force at the relevant time.
19. In regard to paragraph 30, the Crown further denies any self-interest or conflict with respect to its obligations to the Claimant. The Crown further states that this allegation was not raised in the 23 December 2004 submission to the Minister and the Tribunal is without jurisdiction in respect of this aspect of the claim by operation of s. 16 of the *Specific Claims Tribunal Act*.

**IV. Statements of Fact (R. 42(a))**

20. On 28 January 1907, the Claimant surrendered 33,281 acres of land from IR72. The land was surveyed and offered for sale at public auctions in November 1908 and April 1910.

21. This surrender became the subject of a specific claim when, on 2 March 1989, the Claimant submitted a claim under the Specific Claims Policy seeking recognition and compensation for the losses occasioned as a result of the 1907 surrender.
22. The claim was accepted for negotiation on 18 December 1997. A settlement agreement was reached on 26 September 2002. On 25 November 2002, the members of the Claimant Band voted to accept the settlement.
23. At Article 1.1(h), the settlement agreement defined the claim as:

“Claim” means any and all the facts, matters and issues arising or resulting, directly or indirectly, from or set forth in, the specific claim submitted by the First Nation to Canada in March, 1989, including all supplemental submissions relating thereto alleging, amongst other things, that the 1907 surrender of a portion (approximately 33,281 acres) of Indian Reserve No. 72 was null and void, invalid, unconscionable, did not comply with the *Indian Act*, violated the requirements of Treaty 4, and violated the legal obligations of the Crown. For greater certainty, “Claim” does not mean the facts, matters or issues arising or resulting from any allegation of the First Nations that Canada mismanaged, misappropriated or wrongfully spent in any way, the proceeds from the sale of the Lands included in the 1907 surrender, or any other claim that the First Nation may have that does not relate to the 1907 surrender...

24. Pursuant to the settlement agreement, the Claimant received \$94,650,000.00 compensation for the 1907 surrender. The Claimant released the Crown from liability over the 1907 surrender.
25. At Article 5.3 the release exempted any claim with respect to “the mismanagement, misappropriation or wrongful spending of the proceeds from the sale of the Lands included in the 1907 surrender or any other money to be maintained and administered by Canada on behalf of the First Nation under the terms of the *Indian Act*, in place from time to time, or otherwise”.

26. The only outstanding issue from the 1907 surrender is the management and expenditure of the Sale Proceeds.
27. The terms of the surrender pertaining to the Sale Proceeds state: “all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management and sufficient for payment to the Indians of one-tenth of the purchase price, be placed to our credit and interest thereon paid us in the usual way.”
28. After approved deductions were made, the Claimant received Sale Proceeds in the amount of \$349,417.83. The Sale Proceeds were maintained by the Department of Indian Affairs for the Claimant and thereafter treated as Indian moneys.
29. Following the surrender, various expenditures were made from the Indian moneys credited to the Claimant. Not all of the expenditures are attributable to the Sale Proceeds.
30. All Indian moneys belonging to the Claimant, including the Sale Proceeds, were properly expended in accordance with the *Indian Act* in force at the relevant time. These expenditures were either made for the benefit of the Claimant or to fulfill a statutory obligation under the *Indian Act*.
31. The expenditures made for the Claimant’s benefit include, *inter alia*: housing, relief and rations, roadway construction and improvement, and agricultural improvements and stock.

**V. Relief (R. 42(f))**

32. The Crown seeks the following relief:
  - a. To have the Claim dismissed in its entirety;
  - b. In the alternative, should any expenditure be found to lack proper authorization or be otherwise inappropriate, the Crown relies upon s.

20(3) of the *Specific Claims Tribunal Act* and seeks to set off the value of the benefit received by the Claimant from any compensation deemed owing;

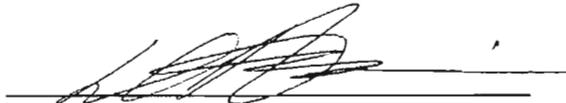
- c. Costs;
- d. Such further relief as counsel may request and this Honourable Tribunal deems just.

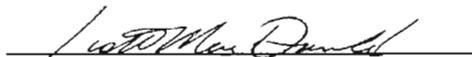
**VI. Communication (R. 42(g))**

33. E-mail address for the service of documents on the Respondent:

saskSCT-5004-11-kahk@justice.gc.ca

Dated this 29<sup>th</sup> day of February, 2012.

  
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**Donna Harris, Crown Counsel**

  
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**Scott MacDonald, Crown Counsel**

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