

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**KAHKEWISTAHAW FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	December 19, 2011	D E P O S E
Guillaume Phaneuf		
Ottawa, ON	1	

**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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**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*.

Date: December 19, 2011

**Guillaume Phaneuf**

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(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Assistant Deputy Attorney General, Litigation, Justice Canada  
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**I. Claimant (R. 41(a))**

1. The Claimant, Kahkewistahaw First Nation, confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*. The Claimant is located in the Province of Saskatchewan.

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

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have 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

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

...

3. This claim relates to the management and expenditure of trust funds and/or Indian moneys of the Claimant which were held by the Respondent on behalf of the Claimant. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on December 23, 2004.

4. In a letter dated March 26, 2010, the Claimant was advised by the Respondent that it was the decision of the Minister not to accept the claim for negotiation on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

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

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

**IV. Grounds (Act, s. 14(1))**

6. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

(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;

(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))**

7. The Claimant adhered to Treaty No. 4 on September 15, 1874. Pursuant to the terms of Treaty No. 4, the surveys of both of the Kahkewistahaw Reserve No. 72 and Reserve No. 72A were completed for the use and benefit of the First Nation. Reserve No. 72 contained some 46,720 acres and Reserve No. 72A contained some 96 acres.

8. In 1907, approximately 33,281 acres of land were taken from Kahkewistahaw Reserve No. 72 pursuant to a surrender for sale.

9. Under the surrender document, the Crown was to hold the 33,281 acres of land taken from Kahkewistahaw Reserve No. 72 in 1907 “in trust to sell the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may deem most conducive to” the Claimant and “upon the further condition that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management” were to be used for the following purposes:

(a) one-tenth of the purchase price was to be distributed to the members of the Claimant;

- (b) Owners of improved land and buildings on the lands taken were to be compensated
- (c) The balance of the sale proceeds were to be placed to the credit of the First Nation and "interest thereon paid" to the Claimant "in the usual way."

10. No documentation has been located that indicates the Crown ever discussed with the First Nation the prospect of spending the proceeds from the sale of the land taken from the Kahkewistahaw Reserve No. 72 in 1907 on anything other than those listed in the surrender document or that the Claimant ever agreed to vary the terms of the trust set out in the surrender document relating to the expenditure of the proceeds received from the sale of the lands.

*Sale Proceeds*

11. The land was sold by the Crown at two auction sales. The terms of the sale were cash or 1/10<sup>th</sup> cash and the balance to be paid in nine (9) equal annual installments with interest at 5%. A total of \$350,336.07 (the "Sale Proceeds") was received from the sale of the land. Principal payments from the sale of the land, which were deposited to Kahkewistahaw's Capital Account, in the amount of \$251,264.45 were received and interest payments from the sale of the land, which were deposited to Kahkewistahaw's Revenue Account, were received in the amount of \$99,071.62.

*Distributions to Members*

12. Two distributions from the Sale Proceeds, totaling \$19,082.00, were made to the members as required by the terms of the surrender document. The first distribution was made at the time of the surrender, which amounted to \$8,930.00. The second distribution was made in March of 1909, which amounted to \$10,152.00.

13. Beginning in the 1909-1910 fiscal year and in most fiscal years thereafter, until the 1959-1960 fiscal year, interest distributions were made to the members on a per capita basis. No further interest distributions were made following the 1959-1960 fiscal year.

14. Distribution were made to members of the Claimant who had improvements on the land taken from the Claimant in 1907 in the amount of \$970.00.

*Depletion of the Sale Proceeds*

15. Between 1922 and 1952, the Kahkewistahaw Capital Account balance was maintained at the approximate level of \$200,000.00. Thereafter, the account balance rapidly declined.

16. By 1968, the Kahkewistahaw Capital Account balance was a mere \$1,000.00.

17. The Kahkewistahaw Revenue Account annual balances ranged from approximately \$70,000.00 in 1926-1927 to approximately \$500.00 in 1935-1936 and from approximately \$36,000.00 in 1946-1947 to approximately \$500.00 in 1950-1951.

*Expenditures from Kahkewistahaw's Capital and Revenue Accounts*

18. 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.

19. Beginning in 1894, when the first Indian moneys were credited to the Claimant's Revenue Account, numerous funds were credited to the Kahkewistahaw Capital and Revenue Account. This included, but is not limited to, the Sale Proceeds.

20. Over the years many expenditures of the Indian moneys held by the Respondent for the Claimant were made by the Respondent.

21. The leading sources of expenditures from the Kahkewistahaw Capital Account were expenditures on housing, agriculture, roads and expenditures to pay the costs of members leaving the First Nation.

22. The leading sources of expenditures from the Kahkewistahaw Revenue Account were expenditures on housing, agriculture, relief, and interest distributions to members.

23. The details of the deposits to and the expenditures from the Claimant's Capital and Revenue Accounts have been provided to the Respondent in the Claimant's Specific Claim Submission and supporting documents and will be detailed for the Tribunal in the hearing of this matter.

***Deposits to the credit of the Accounts of other Indian bands***

24. The sum of \$8,998.72 was mistakenly deposited by the Crown to the credit of the accounts of both the Cowessess and Ochapowace band. These funds represent proceeds from both the sale of the lands taken from Kahkewistahaw Reserve No. 72 in 1907 and land lease payments.

***Interest Payments***

25. Under various pieces of Federal legislation, in place from time to time, the Respondent was required to pay the Claimant interest on funds on deposit in the Capital and Revenue Accounts.

**VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:**

26. The Claimant claims that under the terms of the surrender document a trust was created. Under this trust the Sale Proceeds, less any amounts that were authorized to be expended under the terms of the surrender document, were to be maintained by the Respondent for the First Nation with any interest earned on these funds to be paid to the First Nation in the usual way. In the alternative the Claimant claims that the Respondent had a fiduciary or trust-like obligation to protect the Sale Proceeds and to ensure they were expended in accordance with the terms of the surrender document. As such the Claimant claims that the amount of \$330,284.07 (\$350,336.07 less the \$19,080.00 used to make the distributions to the members and the \$970.00 paid to the members with improvements) should have been maintained and should still be

maintained by the Respondent for the Claimant's benefit. These funds should have been invested and should still be invested, with the interest earned paid to the Claimant in the usual way. The Claimant claims that the Respondent breached the terms of this trust and/or breached its fiduciary or trust-like obligations owed to the Claimant by allowing the Sale Proceeds to be wrongfully expended and eventually depleted. The Claimant claims the return of the \$330,336.07 plus lost interest.

27. The Claimant claims that the Respondent wrongfully expended the Sale Proceeds and other of the Claimants Indian moneys deposited to the Capital and Revenue Accounts, maintained by the Respondent for the Claimant, in breach of the terms of Treaty No. 4, in breach of the Respondents trust, fiduciary or trust-like obligations and in breach of the terms of the *Indian Act*.

28. The Claimant claims that funds on deposit in the Capital and Revenue Accounts were expended on items not authorized by the various *Indian Acts* in place from time to time or that the necessary authority and/or approvals required before the funds could be expended were not provided or obtained. The Claimant claims the return of the funds wrongfully spent plus interest.

29. The Claimant claims that the Respondent failed to consult with the Claimant on the handling and expenditure of the funds being held by the Respondent for the Claimant's benefit.

30. The Claimant claims that the Respondent breached its fiduciary or trust-like obligations by allowing its self-interests to conflict with and prevail over their obligations to the Claimant.

31. The Claimant claims that funds belonging to the Claimant were wrongfully deposited by the Respondent to the credit of other Indian bands. The Claimant claims the return of these funds plus interest.

32. The Claimant claims that the Respondent failed to pay all of the interest required to be paid on the amounts on deposit in the Capital and Revenue Accounts from time to time as required by the terms of the Federal legislation in place from

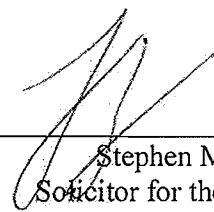
time to time. The Claimant claims the amount of deficit in the interest, in an amount to be proved at the hearing of this matter, plus interest on this amount.

**VII. Relief Sought**

33. The Claimant seeks compensation for the following:

- (a) Damages for the loss of the moneys wrongfully expended, including interest that should have been earned thereon;
- (b) Damages for the Respondent's breach of the terms of Treaty No. 4, breach of the surrender document, breach of its trust obligations, breach of its fiduciary or trust-like obligations and breach of the terms of the various *Indian Acts* in place from time to time;
- (c) Equitable interest; and
- (d) Such other damages, compensation or costs as this Honourable Tribunal may award.

Dated this 19<sup>th</sup> day of December, 2011.



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