

SPECIFIC CLAIMS TRIBUNAL

BETWEEN

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
January 21, 2016	
David Burnside	
Ottawa, ON	20

KINISTIN SAULTEAUX NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Indian Affairs and Northern Development Canada

Respondent

AMENDED DECLARATION OF CLAIM

Pursuant to Rule 41 of the

Specific Claims Tribunal Rules of Practice and Procedure

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*.

Amended Date: January 20, 2016

Date: May 21, 2014

Nicholas Young
(Registry Officer)

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

1. The Claimant, Kinistin Saulteaux Nation is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, and has reserves located in the Province of Saskatchewan.

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

2. The conditions precedent in filing a claim with the Specific Claims Tribunal as set out in s. 16(1)(a) of the *Specific Claims Tribunal Act* are fulfilled and apply to the within claim.

III. Claim Limit (Act, s20(1)(b))

3. For purposes of this claim, the Claimant does not seek compensation in excess of 150 million dollars.

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

4. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:
 - a. Pursuant to s. 14(1)(a) of the *Specific Claims Tribunal Act*, a failure to fulfill 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. Pursuant to s. 14(1)(b) of the *Specific Claims Tribunal Act*, 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 which at least some portion now forms part of Canada;
 - c. Pursuant to s. 14(1)(c) of the *Specific Claims Tribunal Act*, 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;

- d. Pursuant to s. 14(1)(d) of the *Specific Claims Tribunal Act*, an illegal lease or disposition by the Crown of reserve lands; or
- e. Pursuant to s. 14(1)(e) of the *Specific Claims Tribunal Act*, a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

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

Reserve Creation of the Promised Lands

- 5. The Claimant adhered to Treaty No. 4 on or about August 24, 1886 along with two other groups, being the Yellow Quill Group and Nut Lake Group, as part of one band of Indians under the name Yellow Quill Band. All three groups lived at different localities and the Claimant did not mix with the other two groups.
- 6. The Respondent set aside two Reserves for the Yellow Quill and Nut Lake Groups being L.R. 89 situated on the northwest side of Fishing Lake and L.R. 90 situated on the eastern side of Nut Lake, respectively.
- 7. In July 1897, August 1897 and May 28, 1898 the Claimant made it known to the Respondent that the Claimant pursuant to its Treaty Rights to land, wanted its own reserve lands being lands that the Claimant occupied which occupation was approximately for the previous 40 to 50 years and based on such requests, the Respondent on June 21, 1898 recommended setting aside a reserve for the Claimant on the "present settlement" of the Claimant ("Promised Lands") and in or about September 27, 1898 the Respondent through the Minister of the Department of Indian Affairs approved the proposed reserve and gave instructions

for the necessary survey of the Promised Lands to enable the preparation of an Order in Council to have the Promised Lands set apart as a reserve for the Claimant.

8. On September 27, 1898 the Respondent, Department of Indian Affairs advised the Department of the Interior of the decision to create a reserve of the Promised Lands and in response the Department of the Interior indicated the townships were yet to be surveyed and the reservation could only be noted in a general way and undertook on receipt of the survey to update their maps.
9. On May 10, 1900, the Respondent issued instructions for the survey of the Promised Lands which survey commenced on June 30, 1900 and was completed on July 14, 1900 ("**Date of First Survey**") and the associated surveyor's report was filed with the Respondent on July 17, 1900, and the Respondent confirmed the Promised Lands as a reserve by Order in Council 1893 on October 22, 1901.
10. The Claimant says that once the Respondent, through the Department of Indian Affairs, agreed to set aside the Promised Lands as a reserve for the Claimant on September 27, 1898, the Promised Lands became a "*reserve*" within the meaning of section 2(k) of the *Indian Act, 1886*. In the alternative, the Date of First Survey of the Promised Lands is the reserve creation date of the Promised Lands. In the further alternative, the Claimant says that the reserve creation date of the Promised Lands is the date of the Order in Council 1893 being October 22, 1901 ("**Reserve Creation Date**").

**Acts or Omissions of the Respondent
Through the Department of the Interior**

11. In spite of the September 27, 1898 decision of the Respondent, through the Department of Indian Affairs, as aforesaid and communication to the then Department of the Interior to set aside the Promised Lands as a reserve for the Claimant and the pending survey, the Respondent, through the Department of the

Interior, on or about July 19, 1899 issued a Crown Timber Permit to Thomas Sanderson ("**Sanderson**") with an expiry date of May 1, 1900 which permit covered unsurveyed lands that overlapped the Promised Lands ("**Sanderson Permit**").

12. Once the Respondent, through the Department of Indian Affairs, agreed to set aside the Promised Lands as a reserve for the Claimant on September 27, 1898, the Promised Lands became subject to the *Indian Act, 1886*, and pursuant to section 54 of the Act the jurisdiction to grant licences to cut trees on the Promised Lands was given to the Superintendent General of Indian Affairs appointed by the Respondent ("**the Superintendent General**"), and therefore the Respondent, Department of the Interior, had no legal authority to grant the Sanderson Permit to the extent such permit included part of the Promised Lands.
13. The Sanderson Permit as granted by the Respondent, through the Department of the Interior as the same affected the Promised Lands, which lands were a reserve within the meaning of the *Indian Act, 1886*, and all renewals, replacement agreements, transfers and assignments of the Sanderson Permit were illegal and void and the activities of Sanderson and his successors amounted to trespass on the Promised Lands.
14. The Respondent wrongfully allowed Sanderson to establish a saw mill and a store on the Promised Lands in or about 1900 and allowed operation of the same by unknown operators without an associated license or permit or alternatively, the establishment of a sawmill was a condition attached to the illegal Sanderson Permit and therefore such sawmill was correspondingly illegal.
15. The Sanderson Permit and subsequent renewals resulted in extensive timber and logging operations and the establishment of sawmill operations and store operations on the Promised Lands, which alienated the Promised Lands over the numerous objections of the Claimant.

16. Even though the Respondent, through the Department of the Interior, had no jurisdiction due to the Promised Lands being a reserve, the Department of the Interior exercised jurisdiction, and in so doing had the purported power to attach conditions to the Sanderson Permit, and the Respondent did not attach any conditions to the Sanderson Permit that would reasonably protect the Promised Lands from the alienation associated with the timber and logging operations, as well as from sawmill operations and store operations.
17. The Department of the Interior regulations governing licenses and permits to cut timber on Dominion Lands in the Northwest Territories and which applied to the Sanderson Permit was passed by Order in Council on July 1, 1898 ("**DOI Regulations**"). Sanderson was required, at his own expense and as a precondition to cutting any timber under the Sanderson Permit, to first engage a qualified Dominion Lands Surveyor under the instructions of the Surveyor General and to survey the area covered by the Sanderson Permit and deposit on record to the Department of Interior the plan and field notes of said survey (Section 4). Such requirement was not met and therefore the act of Sanderson cutting timber on the lands covered by the Sanderson Permit including the Promised Lands was illegal and void and the activities of Sanderson and his successors amounted to trespass on the Promised Lands.
18. The Respondent, through the Department of the Interior, by allowing Sanderson to cut timber on the Promised Lands without a license from the Superintendent General or alternatively without requiring Sanderson to comply with the survey requirements and further allowing the establishment and operation of a sawmill and store without a license or permit, caused or permitted the Promised Lands to be alienated or damaged through timber and logging activities under the Sanderson Permit, and the sawmill and store operations without a permit, and such acts or omissions permitted Sanderson and his successors to trespass on the

Promised Lands to conduct such activities and operations and the Respondent thereby caused damage and injury to the Claimant.

19. The Respondent, through the Department of the Interior, in the course of its administration of the said illegal timber and logging operations of Sanderson on the Promised Lands failed to exercise due diligence and failed to cause Sanderson to comply with or otherwise implement mandatory provisions of the DOI Regulations governing the granting of yearly licenses and permits to cut timber on Dominion Lands, including:

- a. The failure of the Respondent to apply the rates as required that Sawmill operators, under the DOI Regulations were to pay. As a sawmill operator, Sanderson was also required to pay Crown dues at the rate of \$50/Mfbm on sawn lumber plus \$50/Mfbm in lieu of bonus and ground rent (section 17) instead of the lower amounts paid by Sanderson under a permit being a bonus per square mile plus proper ground rent, royalty and stumpage dues;
- b. The failure of the Respondent to require the licensee to pay the proper bonus per square mile and proper ground rent and royalty and stumpage;
- c. The failure of the Respondent to exercise due diligence and to obtain, in a timely manner the proper payment of dues and penalties from Sanderson;
- d. The failure of the Respondent to obtain a proper and timely accounting from Sanderson as to his timber and logging activities;
- e. The failure of the Respondent to provide effective management of the timber and logging operations of Sanderson and his successors thereby allowing Sanderson and his successors to significantly under-report the amount of timber extracted from the Promised Lands;

- f. The failure of the Respondent to require the licensee to engage a Dominion Land Surveyor at the expense of Sanderson to survey the area covered by the Sanderson Permit, as foreshadowed, concerning non-surveyed land and prior to cutting any timber under the Sanderson Permit;
- g. The failure of the Respondent to take reasonable steps and thereby wrongfully and without authority allowed the Sanderson Permit to continue when a portion of the berth was known as required for settlement or public purposes or ought to have been known;
- h. The failure of the Respondent to treat the Sanderson Permit as expired as of its expiry date of May 1, 1900 and permitting Sanderson to continue timber and logging, and continue sawmill and store operations on the Promised Lands after the expiry date of the Sanderson Permit without a valid permit being either renewed or a new permit being issued;

and thereby the Respondent caused injury and damage to the Claimant.

Acts or Omissions of the Respondent
After the Reserve Creation Date

- 20. As of the Reserve Creation Date, the Promised Land became reserve lands within the meaning of the *Indian Act, 1886* ("Reserve Lands").
- 21. After the Reserve Creation Date, the Respondent, through the Department of Indian Affairs, did or omitted to do the following with respect to the Reserve Lands even though the Respondent had the power to do so:
 - a. Did not promptly assume jurisdiction under the terms of the *Indian Act, 1886* from and after the Reserve Creation Date;

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- b. Did not cause the illegal timber and logging operations of Sanderson to cease;
- c. Did not treat the illegal Sanderson Permit as at an end as of the Reserve Creation Date;
- d. Over the objections of the Claimant, the Respondent wrongfully allowed Sanderson to continue to operate on the Reserve Lands under the illegal Sanderson Permit issued by the Respondent, through the Department of the Interior, and continue to allow the illegal sawmill and store operations on the Reserve Lands without a valid permit;
- e. Allowed timber and logging operations and sawmill and store operations on the Reserve Lands without a lawful surrender as required under section 26, 38, and 39 of the *Indian Act, 1886* and without a lease being issued under the *Indian Act, 1886*; and
- f. The Respondent proceeded over multiple years to issue multiple renewals and consents to assignments or transfers of timber and logging permits originally granted to Sanderson by the Respondent, through the Department of the Interior or the Department of Indian Affairs, without valid permits being obtained and without a lawful surrender being provided by the Claimant;

and as a result of the above acts or omissions, or any one of them, the Respondent enabled Sanderson and his successors to trespass on the Reserve Lands contrary to section 21 of the *Indian Act, 1886* which trespass caused injury and damages to the Claimant.

22. After the Reserve Creation Date, the Respondent, through the Department of Indian Affairs, permitted Sanderson or other persons unknown to the Claimant to

maintain and operate a sawmill, of which the Respondent was aware of as early as July 6, 1900, and a store for sawmill workers on the Reserve Lands without a lawful surrender as required under section 26, 38 and 39 of the *Indian Act, 1886*, and without a valid lease being issued under the *Indian Act, 1886* and without any rent or other compensation being paid by the owners and operators of such sawmill and store to the credit of the Claimant.

23. After the Reserve Creation Date, the Respondent failed to properly manage the Reserve Lands as to the illegal timber and logging operations, and sawmill and store operations.
24. After the Reserve Creation Date, the Respondent permitted the timber and logging operations, and sawmill and store operations, all of Sanderson or third parties known or ought to have been known by the Respondent and thereby alienated the Reserve Lands. The Respondent perpetuated the alienation of the Reserve Lands through the issuance of renewals and consents to assignments of logging permits originally granted to Sanderson by the Respondent, through the Department of the Interior and the continued operation of the sawmill and the store without a permit, all of which was done in circumstances where there was no valid initial licence or permit for the timber and logging operations, and sawmill and store operations.
25. After the Reserve Creation Date, the Respondent, through the Department of the Interior, continued the Sanderson Permit over the objections of the Respondent, Department of Indian Affairs, which permit would have otherwise expired on May 1, 1900, and in so doing preferred the "lumber needs of the settlers" over the terms of treaty between the Respondent and the Claimant and the Respondent intentionally permitted the alienation of the Sanderson Permit on the Reserve Lands.
26. The Respondent, through the Department of the Interior, issued a second timber permit to Sanderson on February 4, 1901 covering the same lands as the original

permit which contained the Reserve Lands in spite of the knowledge of the Respondent, Department of Indian Affairs and the Department of the Interior, of the existence of the survey of the Reserve Lands and in spite of an Order in Council dated January 3, 1901 directing that the Reserve Lands be withdrawn from the Sanderson berth. The Respondent, through the Department of Indian Affairs, on February 25, 1901 stated that it would not interfere with the second timber permit to Sanderson issued in violation of the said Order in Council. The Respondent thereby violated its own specific directive to stop the alienation and perpetuated the already illegal activities and trespass of Sanderson and his successors and other unknown operators on the Reserve Lands contrary to section 21 of the *Indian Act, 1886* and thereby caused injury and damage to the Claimant.

27. The Respondent, through the Department of Indian Affairs, in the course of its administration of the Reserve Lands, which administration commenced on the Reserve Creation Date, failed to enforce or otherwise implement sections 26, 38, 39, 54, 55, 57 and 58 being mandatory provisions of the *Indian Act, 1886* as to the issuance of licences and permits and management and sale of timber, and the Respondent failed to act with reasonable diligence, and in the best interest of the Claimant, to protect the proprietary interest of the Claimant in the Reserve Lands by moving decisively and proactively to enforce or otherwise implement such statutory authorities available to it relating to illegal timber and logging operations of Sanderson and his successors and illegal sawmill and store operations, and in particular:

- a. The Respondent issued a Department of Indian Affairs timber permit to Sanderson for which there was no equivalent authorized Department of Indian Affairs tenure regulation and therefore illegal, being a tenure for more than one year and without an annual renewal assuming compliance with the timber regulations;

- b. The Respondent failed to enforce or otherwise implement the licensing and permitting provisions of sections 26, 38 and 39 of the *Indian Act, 1886* by not obtaining a surrender from the Claimant for the timber and logging operations under the Sanderson Permit, and by not requiring a licence or permit as to the sawmill and store located on the Reserve Lands and the Respondent thereby effectively enabled the alienation of the Reserve Lands;
- c. The Respondent failed to implement the penalty provisions under section 26 and 61 of the *Indian Act, 1886*, and thereby caused injury and damage to the Claimant;
- d. Section 54 of the *Indian Act, 1886* gave the Respondent a wide power to create special conditions and restrictions attached to the Sanderson Permit, which power was not used by the Respondent to protect the interests of the Claimant and the Respondent thereby failed to protect the interests of the Claimant against alienation of the Reserve Lands;
- e. As of the Reserve Creation Date, the illegal Sanderson Permit issued by the Respondent, through the Department of the Interior, ceased to have effect assuming it had any effect at all, and such permit was not replaced by a permit under the *Indian Act, 1886* and therefore the Respondent, Department of Indian Affairs was allowing Sanderson to trespass on the Reserve Lands as of the Reserve Creation Date contrary to section 21 of the *Indian Act, 1886* and all timber cut by Sanderson from that point in time was without a permit and subject to penalty and seizure, which penalty and seizure did not occur;
- f. Section 55 of the *Indian Act, 1886* set 12 months as the maximum term of a timber licence, and the Sanderson Permit ended May 1, 1900, and the Respondent did not treat the Sanderson Permit as terminated on its 12

month anniversary date but allowed timber and logging operations of Sanderson to continue;

- g. The Respondent by allowing Sanderson to continue timber and logging operations on the Reserve Lands without a valid permit and without a permit for sawmill and store operations on the Reserve Lands was party to a trespass of Sanderson on the Reserve Lands or others unknown to the Claimant contrary to section 21 of the *Indian Act, 1886*;
- h. The Respondent failed to protect the interests of the Claimant against alienation of the Reserve Lands by the Respondent not having a valid permit in place for timber and logging operations and sawmill and store operations on the Reserve Lands as of the Reserve Creation Date;
- i. Section 57 of the *Indian Act, 1886* required Sanderson and his successors to provide specific returns to the Superintendent General as to the logging operations sworn under oath and failure to do the same would render the licence holder to have cut without authority which would cause section 26 and 61 of the *Indian Act, 1886* to apply, being penalties of \$20 and \$3 per tree respectively. The Respondent did not act decisively and proactively to take advantage of such statutory authority and failed to implement such penalty; and
- j. Section 58 of the *Indian Act, 1886* gave the Respondent power to set liability for the payment of dues, and the Respondent failed to do so when Sanderson failed to produce his records as to timber and logging operations as required under the *Indian Act, 1886* and as a result the Respondent did not exercise due diligence and did not act as an independent trustee for the Claimant and failed to set a proper liability amount for the payment of dues by Sanderson and his successors but rather gave the benefit of the doubt to Sanderson and his successors as to payment of dues;

and as a result of the above acts or omissions, or any one of them, the Respondent caused or perpetuated injury and damage to the Claimant.

28. The Respondent did not properly manage or exercise proper oversight as to the activities under the illegal Sanderson Permit and its successors resulting in Sanderson and his successors significantly under-reporting the quantity and quality of timber logged on the Reserve Lands and thereby caused further injury and damage to the Claimant.
29. The Respondent in the course of its administration of the timber and logging operations of Sanderson and his successors failed to take reasonable steps to manage the timber and logging operations so as to compel Sanderson and his successors to maximize the number of cuts and yields on the Reserve Lands through good forestry management practices and thereby caused added injury and damage to the Claimant.

Fiduciary Duty

30. Once the Respondent undertook to set aside the Promised Lands as a reserve for the Claimant, the Respondent owed a fiduciary duty to the Claimant as to such lands, whether acting through the Department of Indian Affairs or the Department of the Interior or otherwise, to take all reasonable steps to insure that the Reserve Lands were not alienated by acts or omissions of the Respondent and to engage in honourable dealings to foster and protect the Aboriginal rights of the Claimant and the treaty obligations of the Crown as to the Claimant ("**Fiduciary Duty**").
31. The Respondent by deciding to permit Sanderson to carry on timber and logging operations on the Reserve Lands put the interests of settlers in the area and the interest of Sanderson ahead of the pre-existing Aboriginal rights and treaty rights of the Claimant and thereby alienated the Reserve Lands and the Respondent

thereby breached its Fiduciary Duty to the Claimant to foster and protect the Aboriginal rights and treaty rights of the Claimant and thereby caused injury and damage to the Claimant.

32. The Respondent breached its Fiduciary Duty to the Claimant by intentionally or negligently doing or omitting to do any one or more of the following resulting in alienation of the Reserve Lands through illegal timber and logging operations, and sawmill and store operations on the Reserve Lands and thereby caused injury and damage to the Claimant arising from:

- a. The Respondent, through the Department of the Interior, failed to exercise due diligence in granting the Sanderson Permit in the same area as the Promised Lands knowing that the description of the Reserve Lands had yet to be determined by a survey, and the Respondent granted the Sanderson Permit in circumstances where the Respondent knew or ought to have known that the Sanderson Permit would or reasonably could include parts of the Reserve Lands;
- b. The Respondent, through the Department of Indian Affairs and the Department of the Interior, took no steps to determine whether the lands covered by the Sanderson Permit were occupied by the Claimant prior to issuing the Sanderson Permit which reasonable efforts would have revealed the actual occupation of the Promised Lands by the Claimant which formed part of the lands covered by the Sanderson Permit;
- c. The Respondent, through the Department of the Interior, negligently proceeded to issue the Sanderson Permit without first notifying the Department of Indian Affairs when it would have been prudent to do so given the lack of survey information of the Reserve Lands, and the Respondent, Department of Indian Affairs, was negligent in not requiring

such notification which would reasonably have revealed the requirement for additional due diligence to protect the Reserve Lands from alienation;

- d. The Respondent, through the Department of the Interior, failed to require Sanderson to first survey the lands proposed to be covered by the Sanderson Permit as required under the DOI Regulations which survey or survey activities would have reasonably revealed the overlap of the Sanderson Permit with the Reserve Lands before commencement of timber and logging operations, and sawmill and store operations of or through Sanderson;
- e. The Respondent, Department of the Interior, in circumstances where it was prudent to do so, failed to attach conditions to the tender for the Sanderson Permit to the effect that the associated permit may be adversely affected by reserve creation activities in the area;
- f. Upon learning of the overlap of the Sanderson Permit with the Reserve Lands, the Respondent, through the Department of the Interior, instead of taking immediate corrective measures such as cancellation of the Sanderson Permit or engaging in some type of exchange of timber rights with Sanderson or take some other remedial action, the Respondent, Department of the Interior, allowed Sanderson to continue timber and logging operations, and sawmill and store operations on the Reserve Lands;
- g. The Respondent, through the Department of Indian Affairs and the Department of the Interior, did not take reasonable steps to determine overlaps of the Sanderson Permit with the Reserve Lands, even though there was evidence of actual use and occupation of the Reserve Lands by the Claimant which overlapped the Sanderson Timber Berth;

- h. The Respondent, through the Department of the Interior and the Department of Indian Affairs, did not halt the logging operations under the Sanderson Permit on the Reserve Lands when it had the statutory power to do so and did not halt the construction and /or operation of the sawmill and store located on the Reserve Lands when the Respondent first learned of the overlap of the Sanderson Permit with the Reserve Lands;
- i. The Respondent, through the Department of the Interior and the Department of Indian Affairs, failed or neglected to terminate the illegal Sanderson Permit in circumstances where the Respondent had the ability and legal authority to do so and perpetuated and continued the alienation of the Reserve Lands by such omission and by subsequent renewals, replacements, transfers and assignments of the illegal Sanderson Permit, which alienated the Reserve Lands from the date of the Sanderson Permit to about 1922;
- J. The decision of the Respondent to set aside the Promised Lands as a reserve for the Claimant effectively designated such lands for a "public purpose" within the meaning of the then DOI Regulations and as a result the Sanderson Permit issued under the DOI Regulations had no right of renewal and could be terminated by the Respondent, through the Department of the Interior, and regardless the Respondent , through the Department of the Interior, continued or renewed the illegal Sanderson Permit;
- k. The Respondent passed an Order in Council dated January 3, 1901 requiring that the Reserve Lands be withdrawn from the Sanderson berth and in spite of such Order in Council the Reserve Lands were **not withdrawn** and the Respondent, through the Department of the Interior,

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renewed the Sanderson Permit, as a result the illegal Sanderson Permit was further made void pursuant to said Order in Council;

- l. As of the Reserve Creation Date, the Department of the Interior had no administrative jurisdiction over the Reserve Lands but the administrative jurisdiction rested with the Department of Indian Affairs and in spite of the same the Department of Indian Affairs did not proceed to promptly exercise lawful authority and protect the interests of the Claimant in the Reserve Lands; and
- m. The respondent failed to enforce or otherwise implement sections 26, 38, 39, 54, S.S. 57 and 58 being mandatory provisions of the *Indian Act, 1886* as to the issuance of licences and permits and management and sale of timber concerning the Reserve Lands with particulars contained in this claim.

Duty to Consult

33. The Claimant ~~had Aboriginal rights~~ claims an interest in the Promised Lands and Reserve Lands based on actual use and occupation of the Promised Lands and Reserve Lands, and by expectation and agreement with the Respondent ~~had a Treaty No. 4 right~~ to have such lands made into a reserve for the Claimant prior to the issuance of the Sanderson Permit. The Respondent owed a duty to the Claimant including to consult with the Claimant prior to the issuance of the Sanderson Permit, which duty first arose when the Respondent first intended to grant the Sanderson Permit in circumstances where the Respondent had knowledge, real or constructive, of the potential or existence of the ~~Aboriginal rights~~ claim or interest title or treaty rights of the Claimant covering lands containing or possibly containing lands occupied by the Claimant and the contemplated conduct of the Respondent of issuing the Sanderson Permit and where the issuance of the Sanderson Permit might adversely affect such ~~rights~~ interest of the Claimant. The

Respondent failed to so consult the Claimant. As a result of the omission of the Respondent to consult and accommodate the interest of the Claimant, the Reserve Lands became alienated and the Claimant has suffered damage and injury.

34. The Claimant ~~had the right to rely~~ relied on the honour of the Crown to not alienate the Promised Lands and Reserve Lands from and after the date the Respondent decided to make a reserve of the Promised Lands for the Claimant.

VI. The Basis in Law on which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation

35. Based on the allegations of fact in the within claim, the Respondent **failed to fulfill a legal obligation of the Crown to provide lands** under treaty to the Claimant without alienation or damage, being the failure of the Crown through act or omission to cause the Promised Lands to be made into a reserve for the Claimant under Treaty No. 4 without alienation or damage after agreeing to set aside such lands for the Claimant.
36. Based on the allegations of fact in the within claim, the Respondent breached a **legislated legal obligation of the Crown pertaining to Indians or lands reserved for Indians**, as follows:
- a. The Respondent breached section 54 of the *Indian Act, 1886* which limited the jurisdiction of the Respondent to grant licences to cut trees on the Reserve Lands to the Superintendent General and instead the Respondent, through the Department of the Interior, granted licences to Sanderson both before and after the Reserve Creation Date, and therefore the Sanderson Permit was null and void and illegal;
 - b. The Respondent breached section 26, 38 and 39 of the *Indian Act, 1886* by not obtaining a surrender from the Claimant as to logging, sawmill and store operations on the Reserve Lands rendering the logging, sawmill and

store operations on the Reserve Lands null and void and illegal;

- c. The Respondent, in the course of its administration of the timber and logging operations of Sanderson, failed to comply with sections 54, 55, 57 and 58 being mandatory provisions of the *Indian Act, 1886* as to the management and sale of timber, and the Respondent had a fiduciary duty to act reasonably and with due diligence, as well as in the best interest of the Claimant, to protect the proprietary interest of the Respondent in the Reserve Lands by moving decisively and proactively to take advantage of such statutory authorities available to it, with particulars set out in this claim;
- d. The Respondent permitted Sanderson to operate a sawmill and store on the Reserve Lands without issuing any purported licence granting such right in violation of sections 26, 38 and 39 of the *Indian Act, 1886*;
- e. The Respondent breached a legal obligation of the Crown under the DOI Regulations, which required that prior to cutting any timber under the Sanderson Permit, Sanderson was to first engage a Dominion Lands Surveyor to survey the area covered by the Sanderson Permit. Sanderson did not provide such survey and consequently cutting of timber conducted under the Sanderson Permit was illegal, but the Respondent took **no effective steps to remedy such wrong; and**
- f. The respondent breached other legal obligations of the Crown under the DOI Regulations, which would have enabled the Crown to terminate the illegal Sanderson Permit and sawmill and store operations in a timely manner.

37. Based on the allegations of fact in the within claim, the Respondent breached **its legal obligation arising from the Crown's provision or non-provision of reserved 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, and in particular:

- a. As to the matter of the fiduciary duty of the Respondent to the Claimant, being a lawful obligation, whether acting through the Department of Indian Affairs or the Department of the Interior or otherwise, the Respondent failed to take all reasonable steps to insure that the Reserve Lands, both before and after the Reserve Creation Date, were not alienated by acts or omissions of the Respondent which acts and omissions of alienation are particularized in this claim;
- b. As to the administration by the Respondent of the Reserve Lands, Indian moneys or other assets of the First Nation, the Respondent, wrongfully allowed timber and logging operations, and sawmill and store operations on the Reserve Lands, both before and after the Reserve Creation Date, engaged in issuing, maintaining, enabling assignments and/or renewals of instruments which purportedly permitted such timber and logging and sawmill and store operations, failed to reasonably administer such that the Reserve Lands and Indian moneys derived therefrom with particulars contained in this claim and failed to implement or to cause Sanderson to comply with mandatory provisions of the regulations governing the administration of yearly licenses and permits to cut timber on the Reserve Lands.

38. Based on the allegations of fact in the within claim, the Sanderson Permit and all interests that flowed from it amounted to an illegal lease or disposition by the Crown of Reserve Lands because the Respondent failed to satisfy its legislated legal obligations, its Fiduciary Duty, and its common law duty to consult the Claimant prior to issuing the Sanderson Permit with particulars provided in this claim.

39. Based on the allegations of fact in the within claim, the **Respondent failed to provide adequate compensation for Reserve lands taken or damaged** by the Crown or any of its agencies under legal authority.

V II. Relief Sought

40. The Claimant seeks the following relief:

- a. An order declaring that the Sanderson Permit and all of its assignments and renewals and any other purported permits covering the Reserve Lands both before and after the Reserve Creation Date were illegal and void due to the failure of the Crown satisfying its legal obligations and declaring that the Claimant has suffered injury and damages as a result;
- b. An order declaring that the Respondent owed a fiduciary duty to the Claimant and such fiduciary duty was breached by the acts and omissions of the Respondent and declaring that the Claimant has suffered injury and damages as a result;
- c. An order declaring that the Respondent owned a duty to consult with the Claimant, which duty was breached by the acts and omissions of the Respondent and declaring that the Claimant has suffered injury and damages as a result;
- d. An order declaring that the Respondent failed to fulfill its legal obligation in the administration of Reserve Lands, Indian moneys or other assets of the Claimant through the acts or omissions of the respondent and declaring that the claimant has suffered injury and damages as a result;
- e. Damages for the failure of the Respondent to fulfill its legal obligations, by virtue of the Respondent entering into an illegal lease or disposition(s), for the Respondent alienating the Reserve Lands, both before and after the

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Reserve Creation Date, for the breach of the fiduciary duty of the Respondent owed to the Claimant, for failure of the Respondent in satisfying the duty to consult, and for failure to fulfill the duty of the Respondent to protect the interests of the Claimant by preventing alienation of the Reserve Lands occurring, both before and after the Reserve Creation Date, and failure to properly administer the Reserve Lands both before and after the Reserve Creation Date;


- f. Compensation from the Respondent for the loss of use of the Reserve Lands, both before and after the Reserve Creation Date, being that portion included in the Sanderson Permit determined as of today, including loss of use for hunting, fishing and trapping and traditional and cultural activities associated with the use of the forested area and the loss of the timber on the Reserve Lands, the loss of use of the Reserve Lands, both before and after the Reserve Creation Date, associated with the existence and operation of the sawmill and store operations;
- g. Interest on any compensation awarded as a result of the above; and
- h. Costs

Dated this 21st day of May, 2014

"John R. Lojek"
Signature of Solicitor for the Claimant
John R. Lojek, B. Comm., LL.B.

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Amended this 20th day of January, 2016


Signature of Solicitor of the
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