

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

KAWACATOOSE FIRST NATION

Claimant

v.

HIS MAJESTY THE KING IN RIGHT OF CANADAAs represented by the Minister of ~~Indian Affairs and Northern Development~~ Crown-Indigenous Relations

Respondent

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

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

TO: Kawacatoose First Nation
As represented by Donald E. Worme, K.C., I.P.C. and Mark Ebert
Semaganis Worme Legal
Barristers & Solicitors
#150 – 103 C Packham Avenue
Asimakaniseekan Askiy
Saskatoon, SK S7N 4K5
Phone: (306) 664-7175
Fax: (306) 664-7176
Email: dworme@swlegal.ca; mebert@swlegal.ca

Overview

1. Canada is committed to fundamentally changing its relationship with Indigenous peoples. Canada aims to achieve reconciliation with Indigenous peoples through a renewed nation-to-nation, government-to-government relationship based on recognition of rights, respect, co-operation and partnership as the foundation for transformative change. In pursuing this commitment, Canada's objectives include upholding the honour of the Crown and respecting and advancing Indigenous self-determination and self-governance. Canada endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.
23. The claim relates to whether Canada mismanaged moneys in Kawacatoose First Nation's capital and revenue accounts, including land surrender sale proceeds following the surrender of 8,080 acres from Indian Reserve No. 88 (IR 88).
34. Canada fulfilled the surrender terms and discharged its fiduciary obligations set out in the land surrender for sale document (surrender document) by selling the land, making the appropriate deductions for management expenses and authorized distributions, and depositing the balance of the sale proceeds into Kawacatoose First Nation's capital account, where interest accumulated and was subsequently transferred into their revenue account.
45. Canada admits it has a statutory duty to properly administer the funds in Kawacatoose First Nation's capital and revenue accounts in accordance with the *Indian Act*. Canada admits it breached its fiduciary duty to Kawacatoose First Nation when the Indian Agent appointed by Canada, John B. Hardinge, mismanaged Touchwood Indian Agency moneys between June 6, 1920 and December 1, 1923. Canada admits it further breached its fiduciary duty to

Kawacatoose First Nation in the manner it addressed Agent Hardinge's mismanagement. Canada did not act to address all debts wrongfully assumed by Kawacatoose First Nation members. To determine the extent of loss resulting from these breaches, Canada requires expert accounting evidence and acknowledges the principles of equitable compensation should guide the assessment. Canada hopes the parties can collaborate effectively to collect this evidence in a timely and cooperative manner.

6. The current evidentiary record does not support a conclusion that Canada otherwise breached any treaty, fiduciary or statutory duties in its administration of the sale proceeds or any other funds in Kawacatoose First Nation's capital and revenue accounts outside the period spanning June 6, 1920 to December 1, 1923.
57. At all times, Canada conducted itself in accordance with the honour of the Crown. In the spirit of reconciliation, Canada will cooperate with Kawacatoose First Nation to obtain more detailed expert and documentary evidence to inform discussions between the parties regarding Canada's management of the capital and revenue accounts.

Status of Claim

68. The requirements in section 16(1)(b) of the *Specific Claims Tribunal Act (SCTA)* are satisfied in that more than 3 years have elapsed without the Minister rendering a decision on whether to negotiate; details are set out in paragraph ~~40~~12.

Canada's Position with Respect to Validity of the Claim

9. Canada admits Kawacatoose First Nation has a valid claim under section 14(1)(c) of the SCTA because Canada breached its fiduciary duty to Kawacatoose First Nation when Agent Hardinge, appointed by Canada, mismanaged Touchwood Agency moneys between 1920 and 1923. Canada admits it further breached its fiduciary duty to Kawacatoose First Nation in the manner it addressed Agent

Hardinge's mismanagement. Canada did not act to address all debts wrongfully assumed by Kawacatoose First Nation members.

710. Canada cannot agree that the facts establish a valid claim under the *SCTA* outside the period spanning June 6, 1920 to December 1, 1923 based on the current incomplete evidentiary record. However, Canada will work cooperatively with Kawacatoose First Nation to obtain more detailed documentary and expert evidence, fill evidentiary gaps, and explore potential areas of agreement.

Canada's Position with Respect to Allegations of Fact

811. In response to paragraphs 1 and 8 12 of the Amended Declaration of Claim, Canada admits that Kawacatoose First Nation is an adherent to Treaty 4, a band within the meaning of the *Indian Act*, RSC 1985, c I-5 (*Indian Act*) and a First Nation within the meaning of the *SCTA*. Canada also admits that Kawacatoose First Nation's reserve lands and governance structure are situated in the Province of Saskatchewan and IR 88 was established on May 17, 1889, with an area of 27,200 acres. Kawacatoose First Nation adhered to Treaty 4 on September 25, 1877, not September 15, 1874, as stated in the Amended Declaration of Claim.

912. Canada admits fulfillment of the s. 16(1)(b) and (d) conditions precedent of the *SCTA* and that the grounds for the claim are set out in s. 14(1)(a) (b) and (c) of the *SCTA*, as pled in paragraphs 2 and 7 11 of the Amended Declaration of Claim. For greater clarity, Canada states s. 16(1)(d) of the *SCTA* is satisfied in relation to the claims incorporated into this proceeding through the Amended Declaration of Claim. Those claims were originally advanced in the SCT-5009-19 Tribunal proceeding.

13. Canada admits paragraphs 3 and 4 of the Amended Declaration of Claim relating to submission and negotiation of a joint claim of financial mismanagement by First Nations historically included in the Touchwood Agency, including Kawacatoose First Nation. Canada further admits paragraph 8 of the Amended Declaration of

Claim relating to the filing and adjudication of Specific Claims Tribunal File No. SCT-5009-19 by the group of First Nations described as the Touchwood Claimants.

~~10~~14. As pled in paragraphs ~~3, 4, and 5-7~~ of the Amended Declaration of Claim, Canada admits:

- a. Kawacatoose First Nation submitted ~~the~~ a specific claim to the Specific Claims Branch (SCB) on September 19, 2014;
- b. The specific claim submitted on September 19, 2014 alleged capital and revenue account mismanagement;
- c. Kawacatoose First Nation's claim alleging capital and revenue account mismanagement was deemed filed with the Minister on February 23, 2015; and,
- d. The deadline has passed for the Minister to advise ~~the~~ Kawacatoose First Nation whether ~~the~~ this claim has been accepted for negotiations.

~~11~~15. Canada acknowledges that for the purposes of this claim, Kawacatoose First Nation is not seeking compensation in excess of \$150 million, as pled in paragraph ~~6~~ 10 of the Amended Declaration of Claim.

The 1918 Soldier Settlement Board of Canada Surrender

~~12~~16. In response to paragraph ~~9~~ 13 of the Amended Declaration of Claim, Canada confirms 8,080 acres were surrendered, not taken, on April 13, 1918 (surrendered land), and an Order-in-Council approved the surrender.

~~13~~17. Canada admits the sale of surrendered land occurred on the terms outlined in paragraphs ~~10, 11, 12, 13, 14-17~~ and ~~15~~ 19 of the Amended Declaration of Claim, except to say the surrender required the net sale proceeds to be “placed” to, not remain at, Kawacatoose First Nation's credit. Canada's records indicate that title to the surrendered lands transferred to the Soldier Settlement Board of Canada on August 30, 1919.

~~14~~18. Canada admits receipt and deposit of the sale proceeds into Kawacatoose First Nation's capital account as pled in paragraph ~~11~~ 15 of the Amended Declaration of Claim. Canada agrees with the statement in paragraph ~~12~~ 16 of the Amended Declaration of Claim that after paying the advances to the band members there should have been a balance of approximately \$77,600 of sale proceeds in the capital account.

~~15~~19. Canada admits that sale proceeds were used to purchase equipment for the use and benefit of Kawacatoose First Nation, in accordance with the terms of the surrender document, as pled in paragraph ~~14~~ 18 of the Amended Declaration of Claim. It is unclear how Kawacatoose First Nation calculated the figures in paragraph ~~14~~ 18. Canada will work cooperatively with ~~the~~ Kawacatoose First Nation to obtain more detailed documentary and expert evidence in order to determine any areas of agreement regarding the amount of sale proceeds used to purchase equipment. As a result, Canada is not in a position to admit or deny those statements.

~~16~~20. Canada admits that interest was paid on the balance of the sale proceeds in the capital account from time to time, in accordance with the *Indian Act* and Canada's policies. The interest was deposited in the revenue account. The surrender does not require interest distributions to Kawacatoose First Nation's members as pled in paragraph ~~16~~ 20 of the Amended Declaration of Claim.

~~17~~21. In response to paragraph ~~17~~ 21 of the Amended Declaration of Claim, at all times Canada retained the balance of sale proceeds in the capital account in accordance with the terms of the surrender document.

~~18~~22. In response to paragraphs ~~21, 28, 31, 32, 34, 35, 36 and 37, 52, 64-66, and 67~~ of the Amended Declaration of Claim, Canada states that it made all distributions from Kawacatoose First Nation's capital and revenue accounts in compliance with the surrender terms and the *Indian Act*, outside the period spanning June 6, 1920 to December 1, 1923, in relation to which Canada has admitted breach of its fiduciary duty to Kawacatoose First Nation. Canada did not breach any legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to Kawacatoose First Nation relating

to management of the capital and revenue accounts at any time outside the period spanning June 6, 1920 to December 1, 1923.

~~19~~23. In response to paragraph ~~18~~ 22 of the Amended Declaration of Claim, Canada did not require Kawacatoose First Nation's consent to expend sale proceeds for the benefit of the First Nation – Canada complied with the surrender document and the *Indian Act*. Canada admits there is currently no evidence that Kawacatoose First Nation agreed to vary the surrender terms and Canada did not deviate from those terms. The surrender terms pertaining to the expenditure of sale proceeds did not create a trust.

Canada's Management of Kawacatoose First Nation's Trust Accounts

~~20~~24. In response to paragraphs ~~19, 20, and 22~~ 23-29 of the Amended Declaration of Claim, Canada admits it is responsible for the management and administration of Kawacatoose First Nation's capital and revenue accounts, and that the provisions of the *Indian Act* and related regulations and policies legislated how Canada was to maintain and expend moneys in the capital and revenue accounts. Canada further admits that the *Indian Act* addressed the various approvals required prior to Canada making particular expenditures. Canada also admits that, over the years, Canada authorized many expenditures from the Kawacatoose First Nation's capital and revenue accounts. Canada does not admit the remaining allegations set out in paragraphs 23 to 29 of the Amended Declaration of Claim.

25. In response to paragraph 30 of the Amended Declaration of Claim, Canada says section 87 of the 1906 *Indian Act* (RSC 1906, c 81), amended in 1910 (SC 1910, c 28, s 2), required approval of the Superintendent General of Indian Affairs for all contracts and agreements dealing with Indian moneys. Section 87 does not specifically refer to merchants or specifically prohibit merchants from dealing with Indigenous peoples. Canada admits the remainder of paragraph 30 of the Amended Declaration of Claim.

26. Canada admits paragraph 31 of the Amended Declaration of Claim relating to the Governor in Council's discretion to manage, invest, and expend Indian moneys for defined purposes under section 89 of the 1906 *Indian Act*.
27. Canada admits paragraph 32 of the Amended Declaration of Claim relating to the Governor in Council's ability to direct the expenditure of capital moneys for defined purposes under section 90(1) of the 1906 *Indian Act*.
28. In response to paragraph 33 of the Amended Declaration of Claim, Canada says section 90(2) of the 1906 *Indian Act* empowered the Governor in Council to direct expenditures of capital moneys without a First Nation's consent only for the purposes set out in section 90(1).
29. In response to paragraph 34 of the Amended Declaration of Claim, Canada says section 90(3) of the 1906 *Indian Act* empowered the Superintendent General of Indian Affairs to direct expenditures of capital moneys to improve and maintain uncultivated reserve land only when a First Nation or individual First Nation member was unable to cultivate the land or neglected to do the same.
30. Canada admits paragraph 35 of the Amended Declaration of Claim in relation to the wording of section 91 of the 1906 *Indian Act*.
31. In response to paragraph 36 of the Amended Declaration of Claim, Canada admits only that instructions were issued to Indian Agents on October 25, 1913. These instructions referred Indian Agents to sections 89 and 90 of the *Indian Act* when considering expenditures from First Nations' capital accounts. The instructions further directed Indian Agents to send all proposed expenditures to the Department for submission to the Governor in Council "for consideration."
- ~~21~~32. ~~It is unclear how Kawacatoose First Nation calculated the approximate figures in paragraphs 23 and 24 of the Declaration of Claim. Canada will cooperate with Kawacatoose First Nation to fill any gaps in the evidentiary record and reach agreement on amounts expended from the capital and revenue accounts.~~

2233.In response to paragraph ~~25~~ 53 of the Amended Declaration of Claim, Canada admits only that some Orders-in-Council authorizing certain expenditures appear to be missing from the evidentiary record, and Canada will work cooperatively with ~~the~~ Kawacatoose First Nation to obtain a more detailed and complete record. This will allow more complete analysis of whether ~~the~~ expenditures, including in the categories listed in paragraphs ~~23 and 24~~ 55-58 of the Amended Declaration of Claim, were contrary to the *Indian Act*, Canada's obligations under Treaty 4, or Canada's policies. Canada says that, apart from Agent Hardinge's mismanagement of Touchwood Agency moneys between 1920 and 1923, expenditures from Kawacatoose First Nation's trust accounts were made with Kawacatoose First Nation's consent and in accordance with the *Indian Act*, Canada's obligations under Treaty 4, and Canada's policies. Canada does not admit paragraphs 55-58 of the Amended Declaration of Claim.

34. In further response to paragraph 56 of the Amended Declaration of Claim, Kawacatoose First Nation has not pled material facts to support its assertion that Canada had obligations under Treaty 4, or that such obligations were unmet. Assessing these assertions requires determining the scope of Canada's treaty obligations and evaluating whether those obligations were fulfilled. If Canada met the asserted treaty obligations, subsequent expenditures for the listed purposes may rightly have been made from Kawacatoose First Nation's trust accounts with the First Nation's consent and in accordance with the *Indian Act* and Canada's policies. Canada maintains it fulfilled all treaty obligations to Kawacatoose First Nation falling within the scope of paragraph 56 of the Amended Declaration of Claim. Canada further states all expenditures related to the specified purposes were made with Kawacatoose First Nation's consent and in compliance with the *Indian Act* and Canada's policies.

35. Canada says paragraphs 54 and 59 of the Amended Declaration of Claim contain no assertions of fact that Canada need admit or deny.

~~23~~ In response to paragraph 26 of the Declaration of Claim, Canada acknowledges that Kawacatoose First Nation has supplied some details of the capital and revenue deposits and expenditures used to support its specific claim submission.

~~24~~36. In response to paragraph ~~27~~ 61 of the Amended Declaration of Claim, Canada states that the management of expenditures of sale proceeds complied with the surrender document, *Indian Act* and Canada's policies. Canada says that the evidence does not support an outstanding lawful obligation to Kawacatoose First Nation for alleged breach of Treaty, breach of trust or breach of fiduciary duty in relation to management of the sale proceeds, as ~~pled in paragraph 27 of the Declaration of Claim~~.

~~25~~37. In response to paragraph ~~27~~ 61(a) of the Amended Declaration of Claim, Treaty 4 is silent on management of proceeds from surrendered land sales. The surrender document contains no reference to Treaty 4. Canada states that it complied with the surrender document in expending the sale proceeds.

~~26~~38. In response to paragraph ~~27~~ 61(b) of the Amended Declaration of Claim, Canada states that once Canada sold the surrendered lands and deposited the sale proceeds into the capital account, the sale proceeds became "Indian moneys" governed by the *Indian Act*. Although the 1918 surrender imposed upon Canada fiduciary duties with respect to the surrendered land that were "trust-like" in nature, it did not create a trust over the sale proceeds.

~~27~~39. In response to paragraph ~~27~~ 61(c) of the Amended Declaration of Claim, Canada admits that the surrender document created a fiduciary duty to fulfill the surrender terms. Once Canada sold the surrendered land, made appropriate distributions, and deposited the balance of the sale proceeds into Kawacatoose First Nation's capital account, Canada fulfilled and discharged all of the fiduciary obligations that the surrender created. Canada denies that it breached any fiduciary obligations in its administration of the sale proceeds.

~~28~~40. In response to paragraph ~~29~~ 62 of the Amended Declaration of Claim, Canada states it has no fiduciary duty to invest Kawacatoose First Nation's money or sale proceeds in a particular manner. Canada admits that the balance of the sale proceeds, after all distributions were paid, were to be placed to the credit of Kawacatoose First Nation with interest paid annually, according to the surrender terms. The funds then became "Indian moneys" to be managed according to the *Indian Act*. Canada fulfilled its fiduciary duty by complying with the *Indian Act* in managing Kawacatoose First Nation's capital and revenue accounts outside the period spanning June 6, 1920 to December 1, 1923.

~~29~~41. Canada has no duty or obligation to invest surrendered land sale proceeds and increase the value, as pled in paragraph ~~30~~ 63 of the Amended Declaration of Claim, except by the payment of interest into Kawacatoose's revenue account on the balance of its capital account as required, according to the surrender terms.

~~30~~42. Canada admits that it owes a statutory duty to Kawacatoose First Nation to properly administer the funds in Kawacatoose First Nation's capital and revenue accounts in accordance with the *Indian Act*, as pled in paragraph ~~33~~ 66 of the Amended Declaration of Claim.

~~31~~. ~~In response to paragraph 37 of the Declaration of Claim, at all times Canada acted in the best interest of the Kawacatoose First Nation in managing its trust accounts. Canada denies any alleged self-interest on Canada's part that conflicted with and prevailed over Canada's obligations to Kawacatoose First Nation.~~

~~32~~43. In response to paragraph ~~38~~ 68 of the Amended Declaration of Claim, Canada states the current evidentiary record lacks sufficient detail to conclude that Canada improperly expended any funds from the Kawacatoose First Nation's capital and revenue accounts outside the period spanning June 6, 1920 to December 1, 1923.

Assertions of Agency Mismanagement by Particular Indian Agents

44. In response to paragraph 37 of the Amended Declaration of Claim, Canada agrees Indian Agents were charged with a number of reserves and bands, in particular Indian Agencies organized by the Department of Indian Affairs (Department), and had the responsibilities and powers set out in the *Indian Act*.
45. In response to paragraph 38 of the Amended Declaration of Claim, Canada agrees section 38 of the *Indian Act* gave the Department the authority to create the Order System, to facilitate and regulate the purchase of necessities by individual First Nation members on credit. Indian Agents received order forms from the Department. These order forms were issued to merchants in exchange for goods and services provided to First Nation members, on what merchants understood as credit.
46. In response to paragraph 39 of the Declaration of Claim, Canada agrees Indian Agencies typically employed clerks to assist Indian Agents, especially with transactional bookkeeping.
47. In response to paragraph 40 of the Amended Declaration of Claim, Canada agrees Inspectors were charged with travelling to Agencies to audit their books and report on the administration of the Agencies.
48. In response to paragraph 41 of the Amended Declaration of Claim, Canada agrees an Indian Commissioner oversaw all Agencies and inspectorates.
49. H. Martineau was appointed Indian Agent of the Touchwood Agency on or about July 26, 1899, as pled in paragraph 42 of the Amended Declaration of Claim. In further response to paragraph 42 of the Amended Declaration of Claim, Canada admits only that William Murison was appointed Indian Agent of the Touchwood Agency on or about December 31, 1904. Canada does not admit the remaining allegations in paragraph 42 of the Amended Declaration of Claim relating to the asserted suspension or resignation of Agent Martineau due to mismanagement of funds.

50. In response to paragraph 43 of the Amended Declaration of Claim, Canada says Agent Murison was suspended as Indian Agent of the Touchwood Agency on or about June 17, 1912. He was subsequently reinstated as Indian Agent for the Touchwood Agency on or about August 1, 1912.
51. In response to paragraph 44 of the Amended Declaration of Claim, Canada says Agent Murison was appointed an Inspector in the Saskatchewan Inspectorate in Regina on or about April 1, 1932. Canada further says John B. Hardinge was hired on or about June 6, 1920 to act as Indian Agent of the Touchwood Agency, and this arrangement was formalized on or about December 14, 1922.
52. In response to paragraph 45 of the Amended Declaration of Claim, Canada agrees Agent Hardinge mismanaged the Touchwood Agency during his tenure and, in contravention of Departmental directives, created a substantial debt with local merchants for items purchased for First Nations through use of the Order System.
53. In response to paragraph 46 of the Amended Declaration of Claim, Canada agrees that in April 1923, Inspector Christianson determined Agent Hardinge failed to follow proper accounting procedures for the Touchwood Agency's books. Indian Commissioner Graham reprimanded Agent Hardinge.
54. In response to paragraph 47 of the Amended Declaration of Claim, Canada admits only the following:
 - a. In September 1923, the Department of Indian Affairs sent Inspector Christianson to make a general inspection of the Touchwood Agency;
 - b. Inspector Christianson discovered that Agent Hardinge had mismanaged the First Nations' accounts and lied about debts he had incurred on behalf of the First Nations;
 - c. Inspector Christianson stated that Agent Hardinge created "the most terrible mix-up that could be imagined";

- d. Inspector Christianson determined Agent Hardinge interfered with the ledgers to make the numbers match;
 - e. Inspector Christianson determined Agent Hardinge incorrectly transferred interest payments to the First Nations such that they were credited to the First Nations' accounts but were not actually paid out to the First Nation members;
 - f. Inspector Christianson determined Hardinge wrongly incurred debt on the Indian store account and appropriated money from other accounts to pay it down, resulting in Touchwood Agency band members unknowingly paying hundreds of dollars to merchants;
 - g. Inspector Christianson determined Hardinge mismanaged the loan account by transferring money from Touchwood Agency band members into the account, regardless of whether the members benefitted from the loans;
 - h. Inspector Christianson determined Agent Hardinge substantially increased the indebtedness of the Touchwood Agency by purchasing goods and services from local merchants on credit; and
 - i. Inspector Christianson determined Agent Hardinge traded equipment for inferior new equipment at a greater cost.
55. In further response to paragraph 47(c) of the Amended Declaration of Claim, Canada does not know if Agent Hardinge tampered with the capital and revenue accounts. As this matter proceeds, Canada will cooperate with Kawacatoose First Nation to fill any gaps in the evidentiary record.
56. Canada does not admit the remaining allegations in paragraph 47 of the Amended Declaration of Claim, including the reference to "other means of revenue diversion" in paragraph 47(f) and the assertion that Agent Hardinge "defrauded" the Touchwood Agency in paragraph 47(g).

57. In response to paragraph 48 of the Amended Declaration of Claim, Canada agrees Agent Hardinge tendered his resignation on October 4, 1923, but says the Department rejected his resignation at that time. After further investigation, the Department dismissed Agent Hardinge on December 1, 1923.
58. In response to paragraph 49 of the Amended Declaration of Claim, Canada admits only that Inspector Christianson wrote a letter to D.C. Scott of the Department on December 3, 1923. The letter identified the following sums relevant to administration of the Touchwood Agency:
- a. “Indebtedness of Indians to Merchants and others” totalling \$60,000.00;
 - b. Indebtedness “[t]o Department for seed grain” totalling \$10,000.00; and
 - c. Funds “[o]wing to Indians in Ledger on illegal transfers” totalling \$7,000.00.

Inspector Christianson clarified “[t]his does not include payments made under the loan by the Department.” He also wrote “[t]here is some doubt as to whether \$10,000.00 of the above amount is guaranteed or not by the former Agents.” Canada does not admit Kawacatoose First Nation’s characterization of Inspector Christianson’s December 9, 1923 correspondence.

59. In response to paragraph 50 of the Amended Declaration of Claim, Canada agrees that on January 8, 1924, the Department hired E.S. Biggs, a chartered accountant, to conduct a review of the Touchwood Agency. Canada also agrees E.S. Biggs submitted his report on June 6, 1924. This report outlined the deficiencies in the various accounts at the Touchwood Agency resulting from Agent Hardinge’s actions.
60. In response to paragraphs 51 and 60 of the Amended Declaration of Claim, Canada admits only the following:
- a. A Band Council Resolution dated April 7, 1922 and an Order-in-Council dated May 9, 1922 approved a loan of approximately \$13,601.45 from

Kawacatoose First Nation's capital account to repay members' individual merchant debt. Members were to repay the loan in five years, with interest at five percent. Based on the current evidentiary record, it appears this loan was not repaid;

- b. The Department used band trust funds to pay Kawacatoose First Nation members' individual merchant debt in January 1925, where there were written orders or signed notes from Agent Hardinge. The amount of debt paid totalled approximately \$9,000.00. Payment was authorized by a Band Council Resolution in October 1924 and an Order-in-Council dated December 1, 1924; and
- c. The Department did not address the remaining merchant debt identified by E.S. Biggs, for which there were verbal orders from Agent Hardinge, written orders from the farming instructor, or no orders.

61. Canada does not admit the remaining allegations in paragraphs 51 and 60 of the Amended Declaration of Claim relating to the alleged particulars of Kawacatoose First Nation's losses from Agent Hardinge's mismanagement of the Touchwood Agency.

62. In further response to paragraph 51 of the Amended Declaration of Claim, Canada acknowledges certain debts and amounts associated with Agency-level accounts cannot be specifically attributed to any particular First Nation in the Touchwood Agency, including Kawacatoose First Nation.

Canada's Statement of Facts

1918 Surrender of IR 88 Lands

3363. By Order-in-Council P.C. 1918-1055, the federal government accepted the surrender for sale dated April 13, 1918, of IR 88 lands by Poorman's Band, (now known as Kawacatoose First Nation-). The surrender document which accompanied

Order-in-Council P.C. 1918-1915 included the following instructions regarding the use of the surrender proceeds:

...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.

~~34~~64. On August 30, 1919, Order-in-Council P.C. 23-1832 approved sale of the surrendered lands to the Soldier Settlement Board of Canada for \$92,920.00.

~~35~~65. Canada fully discharged the surrender terms, making appropriate deductions and distributions and depositing the remainder of the sale proceeds into Kawacatoose First Nation's capital account. All funds deposited into the account plus interest earned on it in Kawacatoose First Nation's revenue account became "Indian moneys" to be managed in accordance with the *Indian Act* and related regulations and policies.

~~36~~66. Canada maintained ~~Kawacatoose First Nation's accounts, which contained the remainder of the~~ sale proceeds and other moneys, in compliance with the *Indian Act* for the benefit of Kawacatoose First Nation.

~~37~~67. In 1991, the surrender of IR 88 became the subject of a settlement agreement between Canada and Kawacatoose First Nation. Kawacatoose First Nation received substantial compensation for the 1918 surrender. Kawacatoose First Nation released Canada from liability arising out of or relating to IR 88 lands.

3868. The settlement agreement defined the settled claim as excluding the “allegation or representation that the proceeds of the sale were misappropriated.”

Mismanagement of the Touchwood Indian Agency

69. John B. Hardinge acted as Indian agent for the Touchwood Agency from June 6, 1920 to the fall of 1923.
70. In the spring of 1922, the Department of Indian Affairs agreed to Agent Hardinge’s request to receive loans from bands’ trust accounts to cover individual band members’ debts to merchants. Kawacatoose First Nation members’ debts were paid via loan of approximately \$13,601.45 from the band’s capital account, to be repaid over a five-year period by individual members, with five percent interest. The loan was authorized by a Band Council Resolution dated April 7, 1922 and an Order-in-Council dated May 9, 1922. Based on the current documentary record, it appears this loan was not repaid.
71. In April 1923, the Department discovered that Agent Hardinge was not recording transactions in accordance with Department regulations. He was reprimanded by Indian Commissioner Graham.
72. In September 1923, Inspector Christianson investigated the Touchwood Agency books and interviewed merchants in the area. He discovered that Agent Hardinge had failed to record the Touchwood Agency’s debts. Agent Hardinge lied to Inspector Christianson throughout the investigation. As a result, the Department fired Agent Hardinge on December 1, 1923.
73. In December 1923, with the Department’s support, Inspector Christianson conducted a thorough investigation into the administration of the Touchwood Agency during Agent Hardinge’s tenure. He and an assistant spent two weeks reviewing the Touchwood Agency’s books and were able to make some general conclusions regarding Agent Hardinge’s mismanagement.

74. In January 1924, the Department hired a chartered accountant named E.S. Biggs to provide a professional review of the Touchwood Agency's books. E.S. Biggs completed his report the following June. He found Agent Hardinge had breached procedures by:
- a. Incorrectly transferring interest payments and farming revenue intended for bands and band members in order to make the books balance, in the amount of \$2,335.00;
 - b. Allowing \$55,907.00 of Touchwood Agency indebtedness to merchants to accrue through use of the Order System; and
 - c. Trading in equipment for inferior new equipment at a greater cost and paying for work that was incomplete.
75. In January 1925, the Department used band trust funds to pay individual band members' merchant debts, where there were written orders or signed notes from Agent Hardinge. Merchant debts totalling \$9,000.00 owed by Kawacatoose First Nation members were repaid in this manner. The advance was authorized by a Band Council Resolution in October 1924 and an Order-in-Council dated December 1, 1924.
76. The Department did not address the remaining merchant debt identified by E.S. Biggs, for which there were verbal orders from Agent Hardinge, written orders from farming instructors, or no orders. In the spring of 1925, merchants continued their efforts to collect on these outstanding amounts.

Canada's Statement of the Relief

3977. Canada seeks the following relief:

- a. A consent order of partial validity in relation to Agent Hardinge's

mismanagement of the Touchwood Agency between June 6, 1920 and December 1, 1923, once related losses by Kawacatoose First Nation have been established;

- a**b**. Dismissal of the remainder of the claim;
- b**c**. In the alternative, should any trust account expenditure be found to lack proper authorization or be otherwise inappropriate, Canada relies upon s. 20(3) of the *SCTA* and seeks to set off the value of the benefit received by ~~the~~ Kawacatoose First Nation from any compensation deemed owing;
- e**d**. Costs; and
- e**e**. Such further relief as counsel may request and this Honourable Tribunal deems just.

Communication (R. 42(g))

The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
~~Saskatoon~~ Vendasta Square
410 – 22nd Street East, 4th floor, Suite 410
Saskatoon, SK S7K 5T6
Attention: ~~Lauri Miller and Arielle Morgan~~ Jayme Anton and William Kuchapski

Facsimile number for service is: **(306) 975-4030.**

Email address for service is: saskSCT-5004-19-Kawaca@justice.gc.ca

Original Response ~~D~~ dated this “3rd” day of September 2019.

“Arielle M”
ATTORNEY GENERAL OF CANADA

Department of Justice
Prairie Regional Office (Saskatoon)
Saskatoon Square
410 – 22nd Street East, 4th floor, Suite 410
Saskatoon, SK S7K 5T6

Fax: (306) 975-4030

Per: Lauri Miller and Arielle Morgan

Tel: (306) 518-0747 / (306) 518-0764

E-mail address:

saskSCT-5004-19-Kawaca@justice.gc.ca

Counsel for the Respondent.

Amended Response dated this 22nd day of August, 2025.



ATTORNEY GENERAL OF CANADA

Department of Justice
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6

Fax: (306) 975-4030

Per: Jayme Anton & William Kuchapski

Tel: (306) 203-6564 / (306) 491-3913

E-mail address:

saskSCT-5004-19-Kawaca@justice.gc.ca

Counsel for the Respondent.