

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

KAWACATOOSE FIRST NATION

Claimant

v.

HIS MAJESTY THE KING IN THE RIGHT OF CANADA

As represented by the Minister of ~~Indian Affairs and Northern Development~~ Crown-Indigenous Relations

Respondent

AMENDED DECLARATION OF CLAIM

Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Amended 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

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building, 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

I. Claimant (R. 41(a))

1. The Claimant, Kawacatoose First Nation, (hereinafter also referred to as the “**Claimant**” or “**First Nation**” or “**Band**” or “**Kawacatoose**” or “**Poorman**” depending on the context) confirms that it is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “*Specific Claims Tribunal Act*”) by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c I-5 (the “*Indian Act*”), as amended, and within the meaning of *Treaty No. 4* (“**Treaty 4**”). The First Nation is located north of Raymore, Saskatchewan.

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

2. The following conditions precedent as set out in subsections 16(1)(b) and (d) 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

...

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;

...

(d) three years have elapsed after the day on which the Minister has notified the First Nation in writing of the Minister’s decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

3. The First Nation originally submitted this claim in two parts. The first related to financial mismanagement which took place at the Touchwood Agency between 1920 and 1924 and was pursued jointly with four (4) other First Nations of the Touchwood Agency: George Gordon First Nation, Fishing Lake First Nation, Day Star First Nation and Muskowekwan First Nation (the “**Touchwood Joint Claim**”).

4. The Touchwood Claimants (then including Kawacatoose) filed a formal Claim Submission with the Department of Indian Affairs and Northern Development in 1993. In 1998, the Touchwood Joint Claim was conditionally accepted for negotiations. In 2000, after additional research, the parties invited the Indian Claims Commission (“**ICC**”) to facilitate the negotiations. The parties were unable to reach a settlement agreement and the negotiations concluded in 2002. In 2003, the Touchwood Claimants formally requested the ICC to conduct an inquiry into the unresolved issues. The Minister made an offer to negotiate on October 16, 2008. On October 17, 2008, the Minister notified the First Nations that the Touchwood Joint Claim was “closed”.

5. Kawacatoose filed a second, separate claim—a claim respecting various alleged breaches by the Respondent relating to its mismanagement of the First Nation’s trust accounts, which are comprised of the capital account (the “**Capital**

Account) and the revenue account (the **“Revenue Account”**). The First Nation filed this claim with the Minister of Indian Affairs and Northern Development (the **“Minister”**), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (**“CIRNAC”** or the **“Department”**), in the Fall of 2014 (the **“Mismanagement Claim”**).

~~4.~~ 6. The Mismanagement Claim was deemed filed with the Specific Claims Branch (the **“SCB”**) on February 23, 2015.

~~5.~~ 7. The deadline for the SCB to assess the Mismanagement Claim and to advise the First Nation as to whether it had been accepted for negotiation on the basis that an outstanding lawful obligation was owed to the First Nation was on February 22, 2018. This deadline passed without Canada advising the First Nation in relation to the same.

8. The Touchwood Claimants filed a Declaration of Claim for the Touchwood Joint Claim with the Specific Claims Tribunal (“SCT”) on or about November 1, 2019 commencing SCT-5009-19. Upon Kawacatoose’s request, the SCT ordered that Kawacatoose was removed as a party in the Touchwood Joint Claim on or about September 8, 2021. The remaining Touchwood Claimants filed an Amended Declaration of Claim removing Kawacatoose as a party and omitting all explicit Kawacatoose-specific allegations.

9. This Amended Declaration of Claim includes all of Kawacatoose’s claims related to the mismanagement of its trust accounts as alleged in both the Touchwood Joint Claim and the Mismanagement Claim.

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

~~6.~~ 10. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (R. 41(d))

~~7.~~ 11. The following are the grounds for the Mismanagement Claim, as provided for in section 14 of the *Specific Claims Tribunal Act*:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

- (a) a failure to fulfil 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) 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; [and,]

- (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))

a) The Surrender Document & The Sale Proceeds

~~8.~~ 12. The First Nation adhered to Treaty 4 on September 15, 1874. Pursuant to the terms of Treaty 4, Indian Reserve No. 88 was established on May 17, 1889 for the use and benefit of the First Nation, with an area of 27,200 acres.

~~9.~~ 13. On April 13, 1918, approximately 8,266 acres of land were taken from Reserve No. 88 (the "**Surrendered Lands**"), pursuant to a surrender for sale agreement (the "**Surrender Document**") between the First Nation and the Respondent. The Surrender Document provided that:

THAT WE, the undersigned Chief and Principal men of Poormans Band of Indians resident on our Reserve in the Touchwood Agency known as Poormans Reserve, No, 88. in the Province of Saskatchewan and Dominion of Canada, for and acting on behalf of the whole people of our said Band in Council as-embled, Do hereby release, remise, surrender, quit claim and yield up unto OUR SOVEREIGN LORD THE KING, his Heirs and Successors forever, ALL AND SINGULAR, that certain parcel or tract of land and premises, situate, lying and being in the Poormans Reserve in the County of and Province of Saskatchewan containing by admeasurement Eight Thousand and Eighty Acres (8080) be the same more or less and being composed of Sections 3-4-9-10-15-16-21-22-27-28-33-and 34 all in Township 29. Range.18. West of the Second Principal Meridian and Fractional Sections Three (3) and Four (4) in Township Thirty (30) Range Eighteen (18) West of the Second Principal Meridian.

TO HAVE AND TO HOLD the same unto His said Majesty The King, his Heirs and Successors forever, in trust to sell the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may be most conducive to our Welfare and that of our people.

AND upon further condition that 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.

AND WE, the said Chief and Principal men of the said Poormans Band of Indians do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the disposal of the aforesaid land.

~~10.~~ 14. In 1919, the Department sold the Surrendered Land to the Soldier Settlement Board of Canada (the “**Soldier Settlement Board**”) in 1919 for \$92,920.00 (the “**Sale Proceeds**”). The terms of the sale provided that the Soldier Settlement Board would pay 20% of the purchase price up front (\$18,584) with the remainder (\$74,336) to be paid upon the actual transfer of the land from the Respondent to the Soldier Settlement Board.

~~11.~~ 15. The Respondent received full payment of the Sale Proceeds on September 24, 1919. The Respondent then deposited the Sale Proceeds into the Capital Account. Letters patent for the lands were issued in the name of the Soldier Settlement Board on April 12, 1920.

~~12.~~ 16. Pursuant to the terms of the Surrender Document, \$100.00 was to be distributed to each member of the First Nation from the Sale Proceeds. Approximately \$15,300 was used to make this distribution. This should have left a balance of approximately \$77,600 (the “**Net Sale Proceeds**”), in accordance with the Surrender Document.

~~13.~~ 17. The Surrender Document stipulated that the Net Sale Proceeds could be expended in two ways:

- (a) Up to fifty percent (50%) of the Net Sale Proceeds could be used to purchase equipment for the First Nation’s use; and,
- (b) The balance was to remain at the credit of the First Nation with the interest earned on these funds to be paid annually to the First Nation.

~~14.~~ 18. Approximately \$8,371 of the Net Sale Proceeds appear to have been used to purchase equipment for the use and benefit of the First Nation (the “**Equipment Expenditure**”). Presuming the Equipment Expenditure is consistent with the terms of the Surrender Document, which the First Nation holds the Respondent to the strict proof thereof, this should have left a balance of approximately \$69,229 (the “**Balance of the Net Sale Proceeds**”) to be deposited in the Capital Account. However, the Balance of the Net Sale Proceeds was expended by the Respondent and ultimately depleted contrary to the terms of the Surrender Document.

~~15.~~ 19. In accordance with the Surrender Document, except for the expenditures specifically authorized by the terms of the Surrender Document, the Net Sale Proceeds were to remain to the First Nation’s credit, with the interest paid to members of the First Nation annually.

~~16.~~ 20. Following the sale of the Surrendered Lands, interest was paid on the balance that remained in the Capital Account from time to time at the rate outlined by the Respondent's legislation and policies in force at the time. The interest was deposited to the Revenue Account. Some, but not all, of the interest credited to the First Nation was distributed to the members of the First Nation from 1919 to 1950.

~~17.~~ 21. At no time between 1919 and 1981 was the balance of funds in the Capital Account equal to the amount that should have been retained, with the possible exception of fiscal year ending March 31, 1920. The Claimant alleges the reason for this discrepancy was due in part to the fact the Net Sale Proceeds were expended contrary to the terms of the Surrender Document.

~~18.~~ 22. There is no evidence that demonstrates that the Respondent discussed expending the Net Sale Proceeds in a manner that deviated from the terms Surrender Document with the First Nation. Further, there is also no evidence that demonstrates that the Respondent obtained the First Nation's consent to use the Net Sale Proceeds in a manner that was not explicitly provided for in the Surrender Document. In other words, there is no evidence to suggest that the First Nation agreed to vary the terms of the Surrender Document or the ensuing trust regarding the expenditure of the Net Sale Proceeds.

b) Expenditures from Kawacatoose's Capital and Revenue Accounts

~~19.~~ 23. The Respondent is responsible for the management and administration of trust funds held for First Nations.

i. Statutory Scheme Governing the Management of Indian Moneys

24. From the earliest legislation dealing with Indians, the Respondent has had authority and/or discretion over the management of Indian moneys.

25. Starting from 1894, legislation distinguished capital funds from Indian moneys generally.

26. Typically, the Respondent created a Capital Account and an Interest or Revenue Account for each band.

~~20.~~ 27. 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.

28. The scheme within the *Indian Act* aimed to protect Band assets. In doing so, Parliament narrowly defined the purposes for which Band funds could be spent and established a process in authorizing the expenditures of Indian moneys.

29. Indian moneys held in trust were deposited into the Consolidated Revenue Fund (“CRF”) and managed as public moneys, in compliance with the *Financial Administration Act* (the “FAA”). Pursuant to section 26 of the FAA, the Crown could not pay moneys out of the CRF without the authority of Parliament. As a result, expenditures made from the Band trust funds held in the CRF had to comply with the provisions of the *Indian Act* respecting the management of Indian moneys.

30. Pursuant to section 38 of the 1906 *Indian Act*, the Governor in Council was authorized to make regulations prohibiting or regulating the sale, barter, exchange, or gift by any Band or Indian in the provinces of Manitoba, Saskatchewan or Alberta of any agricultural produce grown on reserve. In 1910, section 87 of the 1906 *Indian Act* was amended to add subsection (2) which prohibited merchants from entering into binding agreements with Bands or individual Indians without written approval from the Superintendent General of Indian Affairs.

31. Section 89 of the 1906 *Indian Act* gave the Governor in Council broad powers to invest and manage First Nations’ money. Pursuant to section 89(1), the Governor in Council held broad discretion in directing the investment of Indian moneys arising from the disposal of Indian lands, resources, and any other source as well as discretion with respect to “how the payments or assistance to which the Indians are entitled shall be made or given”. Subsection 89(2) allowed the Governor in Council the discretion to manage Indian moneys and to direct such moneys to the management of reserves, lands, property and moneys including for surveys, compensation to Indians for improvements, the building and repair of infrastructure, and school contributions.

32. Section 90(1) of the as amended 1906 *Indian Act* authorized the Governor in Council, provided they have the consent of the First Nation, the ability to direct Indian capital moneys for, *inter alia*, the purchase of cattle, the construction of permanent improvements on reserve, or other works that “will be of permanent value to the band, or will, when completed, properly represent capital”.

33. Section 90(2) of the as amended 1906 *Indian Act* granted further powers to the Governor in Council to make expenditures without the consent of the First Nation if the Superintendent General felt that “such refusal [by the First Nation] is detrimental to the progress or welfare of the band”.

34. Section 90(3) of the as amended 1906 *Indian Act* provided further authority to the Superintendent General to expend capital funds of the First Nation to improve and maintain uncultivated reserve land.

35. Pursuant to section 91 of the 1906 *Indian Act*, the “proceeds arising from the sale or lease of any Indian lands, or from the timber, hay, stone, minerals or other

valuables thereon, or on a reserve, shall be paid to the Minister of Finance to the credit of the Indian Fund” (i.e., the CRF).

36. Instructions issued to the Indian Agents in 1913 explained that sections 89 and 90 controlled the management of Capital accounts and that an Order in Council was required for all expenditures.

ii. Mismanagement by Indian Agents

37. The Indian Agent is charged with a number of reserves and bands in a particular agency organized by the Government of Canada. The Indian Agent had a great deal of responsibility and power, for he was usually the local justice of the peace, and all the Indians in his Agency had to go through him to buy or sell farm goods or to travel off the reserve.

38. The Indian Agents had the authority to issue orders to merchants for goods and services on credit, and to charge the expenditures to Band accounts. This authority, known as the “Order System”, was created pursuant to section 38 of the 1906 *Indian Act*, to facilitate and regulate the purchase of necessities by individual Band members on credit. Indian Agents received order forms from the Department. These order forms were issued to merchants in exchange for goods and services, on what merchants understood as credit.

39. The Agency would typically employ a Clerk to assist the Agent, especially with transactional bookkeeping.

40. The Inspector was charged with traveling from agency to agency within his inspectorate to audit the books and to report on the administration of the Agency.

41. The Indian Commissioner, based in Regina, oversaw all agencies and inspectorates.

42. Touchwood Indian Agent H. Martineau was appointed on or about July 26, 1899. Agent Martineau was suspended or resigned due to mismanagement of funds and was replaced as Indian Agent by William Murison.

43. In 1912, William Murison was suspended and then reinstated as the Indian Agent for the Touchwood Indian Agency.

44. Agent Murison, after being promoted to Inspector, was replaced as the Agent for the Touchwood Indian Agency by John B. Hardinge who served as acting Agent starting on or about June 6, 1920 and was subsequently appointed as Agent on or about November 23, 1922.

45. Details about Agent Hardinge’s actions during his tenure are much better known and includes the mismanagement and misappropriation of the Claimant’s

moneys, abuse of the Order System, and created a substantial debt with local merchants in contravention of Departmental directives.

46. In April 1923, Inspector M. Christianson visited the Touchwood Agency to investigate complaints that Agent Hardinge had made about his accounting clerk. During Inspector Christianson's investigation, he discovered that Agent Hardinge had not been following proper accounting procedures for the Agency's books. Hardinge was reprimanded by Indian Commissioner W.M. Graham.

47. In September 1923, Graham sent Inspector Christianson to make a general inspection of the Agency. Christianson found that the "manner in which the financial administration of the agency has been handled is the most terrible mix-up that could be imagined". Christianson determined that Hardinge engaged in the following non-exhaustive list of fraud and mismanagement during his tenure with the Touchwood Agency:

- (a) Interfered with the account ledgers to make the numbers match or to balance the ledgers;
- (b) Diverted interest payments to the First Nations such that they were credited to the First Nation's account but were not actually paid out to the First Nation;
- (c) Routinely tampered with the Capital and Revenue accounts;
- (d) Abused a store account by issuing payments to merchants from Band funds;
- (e) Diverted individual members' funds to pay debts regardless of whether they benefited from the loans or not and without their knowledge or any authorization;
- (f) Substantially increased the indebtedness of the Touchwood Agency through purchasing goods and services from local merchants on credit, and various other means of revenue diversion; and,
- (g) Defrauded the Touchwood Agency by trading in equipment for inferior new equipment at a greater cost.

48. On or about October 4, 1923, Hardinge tendered his resignation.

49. On or about December 3, 1923, Inspector Christianson advised the Secretary of the Department of Indian Affairs, Duncan Campbell Scott, that to date, he had identified at least \$60,000 to \$77,000 in debt incurred at the Touchwood Agency over and above the amounts paid through loans from band trust accounts. In his letter, Inspector Christianson noted that a portion of the amounts identified were "guaranteed or not by the former Agents" highlighting that questions related to the (mis)management of trust funds appears to not be limited to Agent Hardinge.

50. On or about January 8, 1924, chartered accountant, E.S. Biggs, was hired to conduct a review of the Touchwood Agency. On or about June 6, 1924, Biggs

submitted his report which outlined the deficiencies in the various accounts at the Touchwood Agency as a result of the actions of Hardinge.

51. The Department refused to honour any of the debts incurred by Hardinge; instead placing the onus of the debt on the Touchwood Bands and their members. The Department did not reimburse any of the interest payments or other money that Hardinge had diverted—this includes moneys from Agency-level accounts that cannot be specifically attributed to any band within the Touchwood Agency.

~~21.~~ 52. Despite the Respondent's obligations pursuant to the various *Indian Acts*, and the policies in place throughout the relevant period, as a matter of practice, the Respondent improperly expended funds from the Capital Account and Revenue Account.

53. As a preliminary matter, few if any Orders in Council have been found to have authorized any expenditures other than some loans to members, contrary to the provisions of the *Indian Act* and contrary to departmental policies. Further, there is no evidence that Band consent was properly given when it was required.

54. Additionally, upon the review of the Band Council resolutions (“BCRs”) held by the Respondent, questions have arisen over the validity and propriety of their execution—as have been raised by various courts in Canada in different circumstances. When viewed through the issues raised related to the Touchwood Indian Agents' management of funds (particularly of Hardinge), the questions about the validity and propriety of BCRs are reasonable.

55. Moreover, a great many of the expenditures from the Kawacatoose Capital and Revenue accounts did not satisfy the criteria established in the *Indian Act* in terms of their purpose and/or recipient during the period in question. These include expenditures for loans to individual members, equipment and fencing, housing inspections, medical services, payments to charities, relief and medical services, unspecified accounting adjustments and a broad range of expenditures of which the purpose is unclear or miscellaneous.

56. Many additional expenditures were made that were in fact related to the Crown's obligations under Treaty 4 and, as a result, were required to be paid for by Crown monies and not at the First Nation's expense. This includes expenditures on land improvements related to agriculture, anything relating to farming implements and machinery, and cattle.

~~22. Over the years many expenditures of the Indian moneys held by the Respondent for the First Nation were made by the Respondent.~~

~~23.~~ 57. More specifically, the The greatest expenditures from the Capital Account were for payments of member debts, accounting transfers, machinery and implements, improvements, a cordwood project, and horses in the amount of approximately \$92,904.

~~24.~~ 58. The greatest expenditures from the Revenue Account were for accounting adjustments, relief, interest distributions to members, farming, medical costs, and loans to members ~~in the amount of approximately \$164,378.~~

~~25.~~ Such expenditures are contrary to the explicit provisions of the *Indian Act*, as amended, and the Department's policies in place from 1896 to 1981. Further, no Orders in Council have been found to have authorized the above expenditures, contrary to the provisions of the *Indian Act* and contrary to Departmental policies.

~~26.~~ The details of the deposits to and the expenditures from the First Nation's Capital and Revenue Accounts have been provided to the Respondent in the First Nation's Specific Claim Submission and supporting documents and will be detailed for the Tribunal in the hearing of this matter and when the Respondent is called to account for same.

59. Kawacatoose has commissioned an expert to identify, isolate and categorize all of the losses that Kawacatoose has suffered through agency-wide mismanagement and over the course of multiple Indian Agents. This includes review of expenditures from both the Capital and Revenue accounts and the validity of the BCRs purportedly executed in support of some of the aforementioned expenditures.

60. Kawacatoose has suffered considerable financial losses arising from the mismanagement of the Touchwood Agency—particularly during the period Hardinge was charged with its affairs. Losses will include Kawacatoose's repayments of improperly incurred debts and diversion of funds, including at least \$9,000 withdrawn from the Kawacatoose (then Poorman Band) Capital Account in late 1924 to repay debts incurred by Agent Hardinge. Losses will also include payments which Kawacatoose was owed but never paid, such as from land distribution and interest payments, grain revenues and individual funds. Losses may also include improper loans extended to Kawacatoose, such as a \$13,601.45 loan from their Capital Account sanctioned by an Order in Council dated May 9, 1922.

VI. The Basis in Law on which the Respondent is said to have Failed to Meet or Otherwise Breached a Lawful Obligation

a) Depletion of Net Sale Proceeds in Breach of the Terms of the Surrender Document

~~27.~~ 61. The First Nation submits that by authorizing and directing the expenditure of the Net Sale Proceeds contrary to the Surrender Document, the Crown owes outstanding and/or breached its lawful obligations to the First Nation for the following reasons:

- (a) Breach of Treaty – The First Nation claims the Respondent breached the terms of Treaty No. 4 as it failed to keep the Net Sale Proceeds secure and safe, and to ensure that the proceeds increased over time as

contemplated under the terms of the Surrender Document and required by the Terms of Treaty No. 4;

- (b) Breach of Trust – The First Nation claims that a trust was created pursuant to the terms of the Surrender Document under which the Respondent became the Trustee of the Net Sale Proceeds. The Respondent has breached that trust as a result of the management and expenditure of the Net Sale Proceeds contrary to the terms of the trust created by the Surrender Document; and,
- (c) Breach of Fiduciary Duty – The Respondent nonetheless owed a fiduciary or trust-like duties to the First Nation to administer the Net Sale Proceeds in accordance with the terms of the Surrender Document, which duties the Respondent breached as a result of its management and expenditure of the Net Sale Proceeds contrary to the terms of the Surrender Document; and,

~~28. The First Nation claims the Respondent has breached the provisions of the various *Indian Acts* in place from time to time in the management and expenditure of funds the Crown held under its administration for the First Nation.~~

~~29. 62.~~ The First Nation claims the Respondent was responsible under the terms of the Surrender Document, of the various *Indian Acts* and other federal legislation in force from time to time and of Orders in Council passed from time to time to invest the funds and/or to pay interest on the funds credited to the First Nation. The First Nation claims the Respondent breached its fiduciary obligations to invest the First Nation's funds and requests an accounting from the Crown on how its funds were invested and if the amount of interest that should have been paid was in fact paid.

~~30. 63.~~ The First Nation claims that the Net Sale Proceeds should have been maintained and increased, provided the Equipment Expenditure was consistent with the provisions of the Surrender Document, and should still be maintained and increased by the Respondent to the benefit of the First Nation. The funds should have and should still be invested for the benefit of the First Nation with compound interest paid to the First Nation annually.

~~31. 64.~~ The First Nation claims the value of the wrongfully expended Net Sale Proceeds be returned to the First Nation with compound interest from the date of the breach until present.

b) Expenditures from the Capital Account and the Revenue Account Breached the Respondent's Legal & Fiduciary Obligations

~~32. 65.~~ The First Nation claims the Crown has breached the provision of the various *Indian Acts* in place from time to time, by virtue of the expenditures of the First Nation's funds from the Capital and Revenue Accounts. If, as noted above, the Crown has breached its lawful obligations regarding the expenditure of the Net Sale Proceeds, then this part of the claim relates only to the expenditure of the funds deposited to the

Capital and Revenue Accounts that do not represent the Net Sale Proceeds. However, if it is concluded that the Crown has not breached its lawful obligations relating to its management of the Net Sale Proceeds this part of the claim relates to all of the funds deposited to the Capital and Revenue Accounts, including the Net Sale Proceeds.

~~33. 66.~~ The Respondent owes statutory and fiduciary duties to the First Nation to properly administer the funds held in the Capital Account and Revenue Account held by the Respondent for the First Nation's benefit. ~~The statutory duties arise from the provisions of the *Indian Act*, as amended.~~ It breached those obligations as follows:

~~34.~~ ~~The First Nation submits that by failing to comply with the provisions of the *Indian Act* regarding the management and administration of Indian moneys, the Respondent breached its legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to the First Nation from 1896 to 1981.~~

35. (a) Breach of Statute – Despite the Respondent's knowledge of its duties and obligations relating to expenditures of funds held on behalf of First Nations, it directed expenditures from the Capital Account and Revenue Account on items not authorized or permitted by the *Indian Act* and did not obtain the necessary authority or approvals to make such expenditures, contrary to the provisions of the *Indian Act* from 1896 to 1981; and,

(b) Breach of Fiduciary Duty – The Respondent breached its fiduciary duties to the Claimants through its improper administration of the Touchwood Agency—particularly from 1920 to 1924 during Agent Hardinge's tenure—including the self-interested actions of its Indian agents and the Respondent's subsequent action to address the circumstances created by its Indian agents' conduct. In particular, the Respondent:

i. Failed to ensure that payments and moneys intended for each First Nation were accounted for and by failing to replace payments which it knew or ought to have known were diverted and misappropriated; and,

ii. Failed to properly administer the Touchwood Agency to the detriment of the Claimant's financial and economic interests.

~~36. 67.~~ Therefore, the First Nation claims that the Respondent breached the statutory obligations under provisions of the *Indian Act* when authorizing and directing the expenditure of Indian moneys from the Capital Account and the Revenue Account from 1896 to 1981.

~~37.~~ ~~The First Nation claims that the Respondent did not discharge its fiduciary duty to act in the best interest of the First Nation with respect to expenditures from the Capital Account and the Revenue Account by allowing its self interest to conflict with~~

~~and prevail over its obligations to the First Nation. This is conduct that ultimately benefited the Respondent and third parties rather than the First Nation.~~

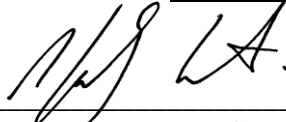
~~38. 68.~~ The First Nation claims the value of the funds improperly expended from the Capital Account and Revenue Account be returned to the First Nation, with compound interest from the date of the breach to present.

VII. RELIEF SOUGHT

~~39. 69.~~ In light of the foregoing, the First Nation seeks the following relief:

- (a) Damages for the loss of moneys wrongfully expended from the Kawacatoose Capital and Revenue accounts from 1896 to 1981, including interest that should have been earned thereon;
- (b) Damages for the loans and payments made by the Claimants in satisfaction of debt incurred and monies misappropriated by Indian Agent Hardinge and any other Touchwood Indian agents;
- ~~(b)-(c)~~ (c) Damages for the Respondent's breach of the terms of Treaty 4, breach of the Surrender Document, breach of its trust obligations, breach of its fiduciary ~~or trust-like~~ obligations and of the terms of the various *Indian Acts* and policies in place from time to time;
- ~~(e)-(d)~~ (d) Equitable interest calculated from the date of the breach(es) to the date of the judgment or award;
- ~~(d)-(e)~~ (e) Costs of this proceeding, and in the Specific Claims Process, on a solicitor-client basis; and,
- ~~(e)-(f)~~ (f) Such other damages and compensation as this Honourable Tribunal deems just.

Dated this ~~29 25th~~ day of ~~May 2019~~ February 2025 at the City of ~~Calgary~~ Saskatoon in the Province of ~~Alberta~~ Saskatchewan.



Donald E. Worme, K.C., IPC
Mark Ebert

SEMAGANIS WORME LEGAL
Barristers & Solicitors
#150 – 103 C Packham Avenue
Asimakaniseekan Askiy
Saskatoon, SK S7N 4K5
Telephone: (306) 664-7175
Fax: (306) 664-7176
Email: dworme@swlegal.ca and mebert@swlegal.ca

~~Maurice Law Barristers & Solicitors~~

~~#300, 602—12th Avenue, SW~~

~~Calgary Alberta T2R 1M7~~

~~Phone: (403) 266 1201~~

~~Fax: (403) 266 2701~~

~~Email: rlake@mauricelaw.com~~

~~Our file: 412.01~~

Ryan M. Lake

Rita Dagenais

Nisha Sikka

Lawyers for the Claimant