

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D É P O S É
	November 1, 2019	
	Isabelle Bourassa	
Ottawa, ON	1	

SCT File No.: SCT - 5009-19

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

DAY STAR FIRST NATION, FISHING LAKE FIRST NATION, GEORGE GORDON FIRST NATION, KAWACATOOSE FIRST NATION (FORMERLY THE “POORMAN BAND”), and MUSKOWEKWAN FIRST NATION (FORMERLY “MUSCOWEQUAN FIRST NATION”)

Claimants

v.

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

Respondent

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**DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
*Specific Claims Tribunal Rules of Practice and Procedure*

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

November 6, 2019 \_\_\_\_\_  
Date

Isabelle Bourassa \_\_\_\_\_  
Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building, 234 Wellington Street East Tower  
Ottawa, Ontario K1A 0H8  
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**I. Claimant (R. 41(a))**

1. The Claimants consist of current and former members of the Touchwood Agency Tribal Council (the “Touchwood Agency”).
2. The Claimants are comprised of Muskowekwan First Nation (formerly the “Muscowequan First Nation”), George Gordon First Nation, Day Star First Nation, Kawacatoose First Nation (formerly the “Poorman Band”), Fishing Lake First Nation (hereinafter collectively referred to interchangeably as the “First Nations” or “Bands” or “Claimants” depending on the context).
3. The Claimants confirm that they are First Nations within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c.1-5, as amended from time to time (the “Indian Act”), and within the meaning of *Treaty No. 4* (“Treaty 4”).
4. All the Claimants are in the province of Saskatchewan.

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

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

**16(1)** A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(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.

6. The Claimants filed a formal Claim Submission with the Department of Indian Affairs and Northern Development in 1993 detailing the mismanagement of funds and the misappropriation of monies by the Touchwood Agency and Agents of the Government of Canada.

7. In 1998, the Claim was conditionally accepted for negotiations on the grounds that the First Nations had:

sufficiently established that Canada has a lawful obligation within the meaning of the Specific Claims Policy, with regard to the claim. However, further research is required prior to entering into formal negotiations in order to identify the beneficiaries of the claim and to assess the compensation owing to the First Nations.

...

This research will clarify the nature and extent of the financial mismanagement which took place at the Touchwood Agency between 1920 and 1924 and established the extent of the losses which

may or may not have been suffered by the Gordon, Fishing Lake, Day Star, Muskowekwan and Kawacatoose First Nations.

8. In 2000, when the research was completed, the parties invited the Indian Claims Commission (ICC) to facilitate the negotiations.
9. The parties were unable to reach a settlement agreement and the negotiations concluded in 2002.
10. In 2003, the Claimants formally requested the ICC to conduct an inquiry into the unresolved issues.
11. The Minister made an offer to negotiate on October 16, 2008.
12. On October 17, 2008, the Minister, notified the First Nations that the Claim is “closed”.

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

13. The First Nations do not seek compensation in excess of \$150 million for the Claim.

### **IV. Grounds (R. 41 (d))**

14. The following are the grounds for the Claim, as provided for in s.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;
- 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;
- ...
- f) fraud by employees or agents of the Crown in connection with the acquisition, leasing or disposition of reserve lands.

### **V. Statutory Scheme Governing the Management of Indian Moneys of the *Indian Act, 1906***

15. 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.

16. Indian moneys held in trust were deposited into the Consolidated Revenue Fund 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 Consolidated Revenue Fund without authority of Parliament. As a result, expenditures made from Band trust funds held in the Consolidated Revenue Fund had to comply with the provisions of the *Indian Act* respecting the management of Indian Moneys.
17. Pursuant to section 38 of the *Indian Act*, 1906, 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. Section 87(2) of the *Indian Act*, 1906, prohibited merchants from entering into binding agreements with Bands or Indians without written approval from the Superintendent General of Indian Affairs.
18. Section 89 of the *Indian Act*, 1906 gave the Governor in Council broad powers to invest and manage First Nation’s money.
19. 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.” Section 89(2) allowed the Governor in Council to manage Indian moneys and to direct such moneys to manage reserves, lands, property, and moneys including for surveys, compensation to Indians for improvements, the building of infrastructure, and school contributions.
20. Section 90(1) provided the Governor in Council, provided they have the consent of the band, the ability to direct Indian capital moneys for 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.” Moreover, section 90(2) allowed the Governor in Council to make expenditures without the consent of the band if the Superintendent General felt that, “such refusal is detrimental to the progress or welfare of the band,” and s. 90 (3) authorized the Superintendent General to expend capital funds of the band to improve and maintain uncultivated reserve land.
21. Pursuant to section 91 of the *Indian Act*, the proceeds arising from the sale or lease of 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 Consolidated Revenue Fund).
22. Instructions issue to 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.

## **VI. Allegations of Fact (R. 41(e))**

**(a) Background**

23. 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.
24. The agency would typically employ a clerk to assist the Agent, especially with transactional bookkeeping.
25. The Inspector was charged with travelling from agency to agency within his inspectorate to audit the books and to report on the administration of the agency.
26. The Indian Commissioner, based in Regina, oversaw all the agencies and inspectorates.
27. In April 1923, Inspector M. Christianson visited the Touchwood Agency to investigate complaints that Indian Agent John B. Hardinge had made about his accounting clerk. Christianson discovered instead that Agent Hardinge had not been following proper accounting procedures for the agency's books. Hardinge was reprimanded by Indian Commissioner W.M. Graham but no further inquiry was made.
28. In September 1923, Christianson investigated further complaints by Hardinge against the accounting clerk but discovered, after a review of the books, that Hardinge had mismanaged the Bands' accounts and lied about debts that he had incurred. Hardinge was discharged from his job.
29. Monies intended for the five Bands in the Agency, or their individual members, were repeatedly diverted to pay accounts simply to make the books balance, without any authority from either the Indians or headquarters.
30. During Hardinge's administration, band debts skyrocketed. When he took over the Agency in 1920, the total debt was approximately \$15,000, but, one and a half years later, it was at least \$43,000. This debt was retired by loans from the Bands, to be repaid by the individual band members over five years.
31. By 1923, Hardinge had accumulated at least \$60,000 of debt. Although the Department reimbursed some of this debt, representing some of the expenditures for which Hardinge had signed orders, it refused to honour any of Hardinge's other debts or reimburse money that he had stolen, misappropriated or otherwise diverted from the Claimants' accounts. Instead, the Department directed the Bands' to repay the outstanding debts from their own funds.
32. The Claimants have suffered considerable financial losses arising from the mismanagement of the Touchwood Agency throughout the period Hardinge was charged with their affairs.

## **(b) The Order System**

33. The Order System was created pursuant to section 38 of the *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 merchants in exchange for good and services, on what merchants understood as credit.
34. The Order System played a significant role in the accumulation of debt at the Touchwood Agency and, coupled with very few controls regulating the Agency's spending, this system was susceptible to abuses due to the power, control, and complete authority held by Hardinge and other agents of the Government of Canada. Under the Order System, Hardinge had full authority to order the goods and supplies he determined were necessary and to charge the expenditures to Band accounts, individual accounts, the Touchwood Agency itself, or whatever ledger sheet he determined to be most appropriate.
35. The Department was aware of the problems associated to the Order System and the fundamental disconnect between the internal rules of the Department and the practice of its Indian Agents. The Department had recognized these issues as early as February 8, 1893, when, in a Department circular, Indian Agents were asked to make efforts to stop issuing orders. Additionally, in a memo of October 28, 1897, Duncan Scott ("Scott"), the Secretary, Department of Indian Affairs, Ottawa indicated:

“(t)here is no doubt in my mind of the danger of the order system it will lead in many instances to collusion between the Agts & Merchants, but I also see how difficult it is to conduct Indian Business without it.”
36. Department Commissioner, William Graham ("Graham"), acknowledged the potential for problems in a letter dated July 12, 1915:

“Personally, I disapprove of giving Agents these forms, as there is a great danger of the order system being abused. Many Agents would look upon them as authority from the Department to give orders and when this would result in hopeless debt, they would defend themselves by saying they could make good if given time to do so.”
37. Graham initially recommended cutting back the use of the Order System and proposed only using it with great discretion. It was not until October 7, 1921, however, and upon Graham's insistence, that the Department demanded that all order books be returned to Ottawa and the Agents stop using the order forms. Even then, the Order System continued to be used well into 1923 and beyond.

## **(c) Debts of the Touchwood Agency**

38. J. B. Hardinge was hired on June 6, 1920, to act as the Indian Agent of the Touchwood Hills Agency, despite this arrangement not being formalized until December 14, 1922. During his tenure, Hardinge mismanaged the Agency, misappropriated funds, and in contravention of Departmental directives, created a substantial debt with local merchants through the use of the Order System.

39. On February 8, 1922, Hardinge reported to Graham that the Touchwood Agency Bands owed \$37,061.40. Hardinge itemized the debts into categories such as horses, harnesses, implements, lumber, seed, grain, store accounts, and bank accounts. Hardinge reported that he was responsible for \$6,685.50 of the purchases and claimed that he was not aware of the extent of the debt until he had reviewed the records. Hardinge suggested that it would be impossible to liquidate the debt through crop earnings of the Bands and recommended that \$38,000 be advanced from the Band's trust accounts to pay off the indebtedness.
40. Hardinge claimed that the figures he reported to the Department included only those purchases which the Indian Agent had the authority to make. On March 17, 1922, Secretary Scott recommended to the Superintendent General of Indian Affairs, Charles Stewart, that the Touchwood Agency's debts be paid off using Hardinge's figures.
41. Scott also included in his correspondence a system to account for the collection of the debt. He stated that the debt should be acknowledged by each Band member, the account should be certified by the Indian Agent and each member should sign an agreement to repay his advance from the sales of grain or produce. Clearly, the debts were viewed by the Department as belonging to individual Band members and that the loans from the trust accounts were to those individual Band members to pay their debts.
42. The Poorman Band obtained a \$13,601.45 loan from their capital account, sanctioned by an Order in Council dated May 9, 1922, to be repaid in five years, with interest at five per cent. The Fishing Lake Band obtained a \$2,835.29 loan from their interest account. The members of the Day Star, Muscovequan and George Gordon Bands had insufficient funds in their trust accounts to pay their debts. Consequently, a loan to pay the debts of the three bands was arranged from the Fishing Lake interest account, to be repaid by collection from Band members at six percent interest. This amount totalled \$20,624.65. The Department agreed to assume this loan if it remained unpaid at the end of five years. This is an important distinction as none of the other loans was made in the same way.
43. On May 3, 1922, a BCR was signed by Chief Sabotawasis of the Fishing Lake Band authorizing \$20,624.65 to be removed from the Fishing Lake interest account. No other name appears on the document.
44. In the fall of 1922, McLean and A.F. MacKenzie, Acting Assistant Deputy & Secretary, forwarded cheques to Hardinge to be distributed to the indebted merchants.
45. On March 1, 1923, another BCR was signed by Fishing Lake Band to loan an additional \$5,000 from their interest account to the Muscovequan and Gordon Bands. As with the previous loan, this loan was to be repaid by band members within five years with a 6% interest rate. Again, no other mark than Chief Sabotawasis appears on the document.
46. In September 1923, Graham sent Inspector Christianson to make a general inspection of the Agency. Graham reported to the Secretary, Department of Indian Affairs that Christianson found an indebtedness of approximately \$30,000 that had not been recorded

in the Agency books. Graham also reported that a previous financial review of the Agency records showed an unreported debt of \$25,000 that was incurred under the authority of Hardinge.

47. On October 4<sup>th</sup>, 1923 Hardinge tendered his resignation.
48. On October 6<sup>th</sup>, 1923, Christianson left the Touchwood Agency to confer with Commissioner Graham. It was determined that Christianson would return to the Touchwood Agency to conduct a thorough review of the Agency's accounts.
49. Inspector Christianson found unrecorded accounts with merchants in various towns, as far as a hundred miles away. Hardinge failed to report the debts, and even denied their existence until Inspector Christianson brought him face to face with the indebted merchants.
50. In describing Hardinge's actions, 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 discovered that in order to balance the books, Hardinge repeatedly diverted funds intended for the five Touchwood Agency Bands, or their individual members, without any authority from the Bands or the Department.
51. Christianson determined that Hardinge engaged in the following fraud and mismanagement during his tenure with the Touchwood Agency:
  - a. Hardinge interfered with the Ledgers to make the number match. For example, he would borrow money from the bank to hide cash shortages and he used grain receipts at the end of each month to pay off individual Indian accounts as though he made payments out of them, thereby balancing the ledgers;
  - b. Hardinge 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. Hardinge routinely tampered with the Capital and Revenue accounts;
  - d. Hardinge interfered with the Indian store account ("Indian Store Account") which was set up to reduce administration. For instance, in circumstances where Touchwood Band members owed money to a single merchant and had funds to their credit, the moneys owing would be transferred from their accounts into the Indian Store Account and then a single cheque would be issued to the merchant. When Hardinge began experiencing challenges in paying cheques written from his account, he began appropriating money from any and all accounts he had access to, including the Indian Store Account. The result was that many of the Touchwood Band members ended up paying hundreds of dollars to merchants without their knowledge. During Hardinge's regime, \$13,576.37 passed through

the Indian Store Account and most transactions were dealt with in this manner;

- e. Hardinge established a loan account (the “Loan Account”), which he used to pay bank loans. He transferred funds from credit balances of the Touchwood Band members, regardless of whether they benefited from the loans or not. In total, Hardinge transferred \$3,052.09 through the Loan Account;
  - f. Hardinge 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.
  - g. During his tenure, Hardinge accumulated a debt of \$59,959.93. The Department, however, only acknowledged \$31,055.51 in debt, as they refused to recognize claims that were not supported by written documentation executed by Hardinge.
  - h. Hardinge purported to have used \$8,000 of his own personal funds in the management of the Touchwood Agency. He was therefore credited this amount. However, the fact that he had been using his personal account freely in financing the Touchwood Agency by transferring money to it from various sources, including interest payments owed to the Claimants is questionable, and there is no evidence that the \$8,000 in fact belonged to Hardinge.
  - i. Hardinge defrauded the Touchwood Agency by trading in equipment for inferior new equipment at a greater cost, resulting in a loss of around \$6,000 to the Touchwood Agency. Hardinge also took part in transactions where the Claimants paid for work that was never completed or was charged at a grossly inflated price.
52. Merchants understood signed orders by Hardinge to be a form of credit or a guarantee by the Government of Canada. The Department took the view that it operated as a conduit for the transactions and was not responsible for payment of the debts. In a letter to a merchant, dated November 23, 1923, McLean stated:
- “...I beg to say that such transactions as you may have had with the Indians direct or through Mr. Hardinge were not authorized by the Department, and, consequently, no responsibility is assumed with regard to expense incurred, although the Department will do everything possible to assist you in the collection from your Indian debtors of the money due.”
53. The Department refused to honour any of the debts incurred by Hardinge, and instead put 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.
54. On December 3, 1923, Inspector Christianson advised Secretary Scott that to date, he had identified approximately \$77,000.00 in debt incurred at the Touchwood Agency over and above the amounts paid through loans from band trust accounts.

55. In and around January 8, 1924, E. S. Biggs, a chartered accountant, was hired to conduct a review of the Touchwood Agency.
56. In February of 1924, Secretary Scott briefed Minister Charles Stewart on the debts of the Touchwood Agency. Based on information provide by Inspector Christianson and E. S. Biggs. Secretary Scott reported \$52,621.98 in outstanding debts incurred by Hardinge without the authority of the Department. Biggs had discovered evidence of “great confusion in the accounts of individual Indians” which suggested defalcation by Hardinge of \$7,337.08.
57. On June 6, 1924, Biggs submitted his report (the “Biggs Report”) which outlined the deficiencies in the various accounts at the Touchwood Agency as a result of Hardinge. The Biggs Report included three schedules. The first listed the individual Indian accounts and the incomes that should have been credited to individual Indians from grain sales and amounts that Hardinge transferred from one person to another. While the individuals were not listed in reference to their respected Bands, Biggs determined that Hardinge withheld \$2,335.00 in income that should have been credited to individual Band members of the Touchwood Agency bands. The second schedule contained information regarding money Hardinge had taken from the account of a deceased member of Muscowequan. The third schedule listed the total amount of discrepancies, which detailed that as of May 31<sup>st</sup> 1924, the total amount of Touchwood Agency debts was \$55,907.00. On June 24, 1924, Graham forwarded the Biggs Report to Secretary Scott.
58. From October 21<sup>st</sup>, 1924 to October 24<sup>th</sup>, 1924, BCRs were signed in the presence of Moore. \$1,637.15 from the capital account of the Day Star Band; \$9,000.00 from the capital account of the Poorman Band; \$3,489.00 from the capital account of the Muscowequan Band; and \$9,000.00 from the capital account of the Fishing Lake Band.
59. On December 1, 1924, an Order in Council (OIC) was obtained based on the passing of BCRs from Touchwood Agency member Bands for the purpose of liquidating the debt of the individual Band members which resulted from the orders of the Indian Agent.
60. On January 9, 1925, Assistant Deputy McLean forwarded a letter to Commissioner Graham, enclosing cheques totalling \$23,126.15, which represented the funds noted above. Christianson distributed the cheques to the merchants.
61. In April 1925, the Department continued to receive letters from merchants demanding payment for outstanding accounts. The Department reiterated its position that the debts were not theirs and reiterated it would only accept orders that had been authorized by the Indian Agent.
62. On April 17, 1925 Graham sent a letter to Secretary Scott denying the claim of several merchants, and makes the following statement with respect to where the money came from to pay the earlier debts:

“You are aware of the fact that we had to borrow money from the Indians to pay *bona fide* indebtedness, and it was with difficulty we were able to get this money from them as many of them contributed money to pay accounts for which they were not responsible.”

63. As the debt accumulated at the Touchwood Agency, it became more difficult to pay. The indebtedness of the Agency was described in a letter dated April 3, 1929 from J. D. McLean, Assistant Director and Secretary, Department of Indian Affairs Ottawa (“McLean”) to a politician lobbying for payment on behalf of a local merchant:

“The Indians of this agency during the last five years have not even held their own in farming and there have been very few cattle sold, so there has not been very much revenue received by the band and what little they did have has been used to keep them alive. As I have said before, the whole trouble has arisen through having an incompetent agent issuing orders on merchants to supply goods when orders should not have been issued at all.”

64. Based on the First Nation’s capital and interest accounts, Christianson’s report, and correspondence between Department officials, several findings were made in relation to Hardinge’s practice of revenue diversion in a forensic audit of the Touchwood Agency accounts completed by Kroll Lindquist Avey in 2000 (“KLA Report”).
65. Between March 1, 1922 and January 8, 1924, a number of instances were identified where Hardinge diverted funds to the detriment of the First Nations and individual Band members. According to the KLA Report, this loss represents money diverted from land distribution and interest payments, grain revenues and individual funds. These losses total \$11,357.62.
66. The Claimants will introduce a forensic / investigative expert accounting of the totality of diverted / misappropriated moneys and present a complete picture of the total losses suffered by the Claimants at a hearing before the Specific Claims Tribunal.

## **VII. Basis in Law on which the Crown breached its lawful obligations**

### **(a) Breach of the Statutory Scheme Governing the Management of Indian Moneys**

67. The Claimants submit that the Crown expended Indian moneys deposited in the First Nation’s capital and revenue accounts contrary to the provisions of the *Indian Act*.
68. The Claimants submit that the Crown did not adhere to the provisions of the *Indian Act* regarding the administration of Indian Moneys from the capital and revenue accounts. Despite the Respondent’s knowledge of their duties and obligations relating to expenditures of this kind, they directed expenditures contrary to the provisions of the *Indian Act*, on items not authorized or permitted by the *Indian Act* and did not obtain the necessary authority or approvals to make the various expenditures. Therefore, the Respondent breached the statutory provisions of the *Indian Act* when authorizing and directing the expenditures of Indian Moneys from the capital and revenue accounts.

69. The First Nation claims that the moneys illegally expended from their capital and revenue accounts be returned with compounding interest thereon.

**(b) Breach of the Crown's Fiduciary Obligations regarding the Management of Capital and Revenue Accounts**

70. Fiduciary obligations crystalized when the Crown assumed discretionary control over the Claimants' trust funds. At all material times, the Crown held and exercised discretionary control over the Claimants' trust funds, pursuant to the provisions of the *Indian Act*, while the Claimants stood completely vulnerable to the Crown and the unilateral exercise of their powers. The Crown had a fiduciary duty to act in the best interests of the Claimants, place the interests of the Claimants ahead of their own, avoid all conflicts of interest, and fulfill the obligations elucidated in the Indian Act as a person of ordinary prudence in managing their own affairs. The Crown breached their fiduciary duties and trust obligations to the Claimants.

71. The Claimants submit that the Crown did not act in accordance with its duty to act in the best interest of the Claimants with respect to the Indian moneys deposited in the capital and revenue accounts. Crown expenditures from the Claimants' trust accounts demonstrate self-interested conduct and conduct which benefited third parties rather than the Claimants. The Crown exploited their discretionary control and management of the Claimants trust funds by utilizing the funds to discharge merchant debts, benefit individual Band members and for other purposes which did not benefit the Claimants.

72. Sections 89 and 90 of the *Indian Act* reinforced the standard to which the Crown was to discharge their fiduciary obligations with explicit requirements for managing Indian moneys and for what purposes they could be disbursed. The Crown did not meet the requisite standards and thereby breached its fiduciary obligations to the Claimants.

73. The Claimants submit that the Crown breached its duty to avoid conflict of interests and benefited in expending the Claimants trust funds in their pursuit of discharging merchant debts and other third parties.

**(c) The Mismanagement of the Touchwood Agency was a Breach of the Respondent's Fiduciary Obligations**

74. The Respondent breached its fiduciary duties to the Claimants through its improper administration of the Touchwood Agency from 1920 to 1924 including, the fraudulent actions of its Indian Agent and the Respondent's subsequent action to address the circumstances created by its Indian Agent's conduct.

75. The Respondent breached its fiduciary obligations to the Claimants:

- a. By failing 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.
- b. By failing to properly administer the Touchwood Agency to the detriment of the Claimants financial and economic interests.

### **VIII. RELIEF SOUGHT**

76. In light of the foregoing, the Claimant seeks the following relief:
- i. A declaration that the Respondent has lawful obligations to the Claimants arising from its mismanagement of the capital and revenue accounts of the Touchwood Bands;
  - ii. A declaration that J. B. Hardinge was the Respondent's agent during his tenure as Agent for the Touchwood Agency;
  - iii. A declaration that the Respondent unconscionably secured loans and payments from the Claimants' capital and revenue accounts for the purposes of liquidating merchant and other third party debts;
  - iv. Compensation for the following breaches of the Crown's statutory and fiduciary obligations:
    - a. Restitution for the loans and payments made by the Claimants in satisfaction of debt incurred and monies misappropriated by the Respondent;
    - b. Compensation for the fraudulent actions committed by J. B. Hardinge during his tenure as Indian Agent of the Touchwood Agency;
    - c. Damages and equitable compensation based on the present value of the mismanaged monies at the date of judgment;
  - v. Costs of this proceeding, and in the Specific Claims Process, on a substantial indemnity basis; and
  - vi. Such other damages or compensation as this Honourable Tribunal deems just.

All of which is respectfully submitted this 1<sup>st</sup> day of November, 2019.



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