

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
March 18, 2022	Dragisa Adzic
Ottawa, ON	53

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 RIGHT OF CANADA  
as represented by the  
Minister of ~~Indian Affairs and Northern Development~~ Crown-Indigenous Relations

Respondent

- and -

KAWACATOOSE FIRST NATION (FORMERLY THE “POORMAN BAND”)

Intervenor

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

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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: Day Star First Nation, et al.  
as represented by:

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## Overview

1. Canada admits that it breached its fiduciary duty to the Claimant First Nations when the Indian Agent appointed by Canada mismanaged band moneys between 1920 and 1923. Canada admits it further breached its fiduciary duty to the Claimant First Nations in the manner it addressed the Agent's mismanagement. In certain cases these actions may have caused loss to the First Nations. Canada admits that the claim is valid on this basis.
2. Canada requires expert accounting evidence to determine the amount of loss arising from the breaches, and says that the principles of equitable compensation apply to assessing the loss. Canada hopes that the parties can work together to gather this evidence in an efficient and cooperative manner.
3. Canada is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation and partnership; and endeavors to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
4. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement and will pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.

### **I. Parties to the claim**

5. Day Star First Nation, Fishing Lake First Nation, George Gordon First Nation, ~~Kawacatoose First Nation (formerly the Poorman Band)~~, and Muskowekwan First Nation (formerly the Muscovequan First Nation) will be referred to as "the First Nations". The Respondent is Her Majesty the Queen in Right of Canada, as represented by the Minister of ~~Indian Affairs and Northern Development~~ Crown-Indigenous Relations, and will be referred to as "Canada".

6. Canada acknowledges that the First Nations are adherents or signatories to Treaty 4, are bands within the meaning of the *Indian Act*, and are First Nations within the meaning of the *Specific Claims Tribunal Act (SCTA)*. As such, Canada acknowledges that the First Nations hold certain Aboriginal and Treaty rights. Canada further acknowledges that the First Nations were all members of the Touchwood Agency at the relevant time.

## **II. Status of claim / Minister's decision to negotiate**

7. In response to paragraphs 5 through 12 of the Declaration of Claim, Canada agrees the requirements in s. 16 of the *SCTA* are satisfied.
8. The First Nations filed a claim with the Minister of the Department of Indian Affairs and Northern Development (the Minister) in 1993, regarding the mismanagement of the Touchwood Agency band funds under Indian Agent Hardinge.
9. The Minister conditionally accepted the claim for negotiations in March, 1998.
10. As the parties were unable to reach a settlement, negotiations concluded in 2002.
11. On April 16, 2009, the Minister provided the First Nations with a letter indicating that for the purposes of the *SCTA*, the date of the decision to negotiate the claim was deemed to be October 16, 2008.

## **III. Canada's position regarding validity of the claim**

12. Canada admits that the claim is valid under s. 14(1)(c) of the *SCTA*, as Canada breached its fiduciary duty to the First Nations when Indian Agent Hardinge, appointed by Canada, mismanaged band moneys between 1920 and 1923. Canada admits that it further breached its fiduciary duty to the First Nations in the manner it addressed the Indian Agent's mismanagement.

13. On the current documentary record, Canada is unable to take a position on whether legal obligations under the *Indian Act* were breached under s. 14(1)(b) of the *SCTA*, as pled in paragraph 14 of the Declaration of Claim.
14. Sections 14(1)(a) and (f) of the *SCTA*, as pled in paragraph 14 of the Declaration of Claim, are inapplicable to the claim. Section 14(1)(a) applies to Crown obligations to provide land or other assets and s. 14(1)(f) applies to reserve lands.

#### **IV. Canada's position regarding the basis for the Tribunal to award compensation**

15. For proven losses arising from its breaches of fiduciary duties, Canada says paragraph 20(1)(c) of the *SCTA* provides the basis for the Tribunal to award compensation. Canada says in this claim, the principles of equitable compensation apply.

#### **V. Canada's position regarding the allegations of fact**

16. The material facts related to this claim are not in dispute. Where specific allegations of fact from the Declaration of Claim are not wholly admitted in the Response, it is generally based on a characterization of the facts alleged, or an incomplete documentary record, not on a denial of the core facts. Canada proposes that the parties develop an agreed statement of facts early in the process, for which additional historical research will be required.
17. In response to the allegations of fact in the Declaration of Claim generally, the terms "fraud", "diversion" and "stolen" are used throughout to describe the actions of Indian Agent Hardinge. On the current documentary record, Canada does not know if his actions constituted fraud, diversion or theft.

***Statutory scheme regarding managing band moneys (Indian Act, 1906)***

18. In response to paragraphs 15 through 21 of the Declaration of Claim, Canada says that it was required to deposit and manage First Nations' moneys in accordance with the *Indian Act*.
19. In response to paragraph 22 of the Declaration of Claim, Canada is unable to confirm at this time that instructions issued to Indian agents in 1913 explained that ss. 89 and 90 controlled the management of capital accounts and that an Order in Council was required for all expenditures.

***Agency administration generally***

20. In response to paragraph 23 of the Declaration of Claim, Canada agrees that Indian agents (agents) were charged with a number of reserves and bands in particular agencies organized by the Department of Indian Affairs (Department), and had the responsibilities and powers set out in the *Indian Act*.
21. In response to paragraph 24 of the Declaration of Claim, Canada agrees agencies would typically employ clerks to assist the agents, especially with transactional bookkeeping.
22. In response to paragraph 25 of the Declaration of Claim, Canada agrees that inspectors were charged with travelling to agencies to audit the books and to report on the administration of the agencies.
23. In response to paragraph 26 of the Declaration of Claim, Canada agrees that an Indian commissioner oversaw all the agencies and inspectorates.

***Background / summary***

24. In response to paragraph 27 of the Declaration of Claim, Canada agrees that in April, 1923, Inspector Christianson determined that Agent Hardinge failed to follow proper accounting procedures for the Touchwood Agency's books. Agent Hardinge was reprimanded by Indian Commissioner Graham.
25. In response to paragraph 28 of the Declaration of Claim, Canada agrees that in September, 1923, Inspector Christianson reviewed the Touchwood Agency books and discovered that Agent Hardinge had mismanaged the First Nations' accounts and lied about debts that he had incurred on behalf of the First Nations. As a result, Agent Hardinge was discharged from his job.
26. In response to paragraph 29 of the Declaration of Claim, Canada agrees that Agent Hardinge repeatedly incorrectly transferred moneys intended for the First Nations, or their individual members, to pay accounts to make the books balance.
27. In response to paragraph 30 of the Declaration of Claim, Canada agrees that approximately eighteen months into Agent Hardinge's tenure, band debt had increased from about \$15,000 to about \$43,000. Canada agrees that by March 1, 1923, about \$43,000 of debt was retired by loans from the First Nations' trust fund accounts. Canada says that while most of the loans were to be repaid by the individual First Nation members over five years, the Fishing Lake loan to itself did not provide those terms.
28. In response to paragraph 31 of the Declaration of Claim, Canada agrees that the total debt accumulated by Agent Hardinge on behalf of the First Nations by 1923 was about \$60,000. Canada says that in December, 1924, the Department used advances from the First Nations' trust fund accounts to repay \$23,126.15 to merchants, representing the portion of the debt for which Agent Hardinge had signed orders. Canada agrees that the Department left individual members to repay the outstanding debts from their funds.

29. In response to the remainder of paragraph 31 of the Declaration of Claim, Canada agrees that the Department did not use any of its own funds to replace the moneys that Agent Hardinge had incorrectly transferred from the Touchwood Agency's accounts.
30. In response to paragraph 32 of the Declaration of Claim, Canada agrees that the First Nations have suffered financial losses arising from the mismanagement of the Touchwood Agency through the period Agent Hardinge was charged with its affairs. Canada says expert accounting evidence is required to determine the extent of those losses.

### ***The Order System***

31. In response to paragraph 33 of the Declaration of Claim, Canada agrees that s. 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.
32. In response to paragraph 34 of the Declaration of Claim, Canada agrees that the Order System lacked controls and played a significant role in the accumulation of debt at the Touchwood Agency. However, Canada disagrees that there were very few controls regulating the Touchwood Agency's spending generally. Canada says that the *Indian Act* and *Regulations*, as well as various Departmental policies, governed spending.
33. In response to the remainder of paragraph 34 of the Declaration of Claim, Canada disagrees that, under the Order System, Agent Hardinge had full authority to order the goods and supplies he determined were necessary and to charge it to whatever account or ledger sheet he determined to be most appropriate. Canada says that Agent Hardinge's authority was subject to his following good accounting practices. Agent Hardinge was dismissed for failing to do so.

34. In response to paragraph 35 of the Declaration of Claim, Canada agrees that the Department was aware of problems associated with the Order System. However, Canada is unaware that there was a fundamental disconnect between the internal rules of the Department and the practice of its Indian agents. Nevertheless, Canada agrees that Agent Hardinge did not follow the rules of the Department in administering the Touchwood Agency from 1920 to 1923.
35. In response to the remainder of paragraph 35 of the Declaration of Claim, Canada agrees that the Department had recognized issues with the Order System as early as February, 1893 and that the Order System could lead to collusion between agents and merchants.
36. In response to paragraph 36 of the Declaration of Claim, Canada agrees that Commissioner Graham acknowledged the potential for problems with the Order System in a letter dated July 12, 1915.
37. In response to paragraph 37 of the Declaration of Claim, Canada agrees that Commissioner Graham initially recommended cutting back the use of the Order System and proposed its use should be “tightened”. On October 7, 1921, the Department requested all order books be returned to Ottawa and agents stop using the forms.
38. In response to the remainder of paragraph 37, Canada does not know how long the Department continued to use the Order System generally, but agrees that Agent Hardinge continued to use the Order System in the Touchwood Agency until September, 1923.

***Debts of the Touchwood Agency***

39. In response to paragraph 38 of the Declaration of claim, Canada agrees J.B. Hardinge was hired on June 6, 1920 to act as Indian agent of the Touchwood Agency, and this arrangement was formalized on December 14, 1922.
40. In response to the remainder of paragraph 38 of the Declaration of claim, Canada agrees that during his tenure, Agent Hardinge mismanaged the Touchwood Agency and, in

contravention of Departmental directives, created a substantial debt with local merchants for items purchased for the First Nations through the use of the Order System.

*Agent Hardinge requests loans*

41. In response to paragraph 39 of the Declaration of Claim, Canada agrees that in February, 1922, Agent Hardinge asked Commissioner Graham for an advancement of about \$38,000 from the Touchwood Agency band trust accounts to retire about ~~\$37,0641.41~~ \$37,061.40 of debt that the Touchwood Agency band members owed to merchants. Agent Hardinge represented to the Department that he was only responsible for incurring \$6,685.50 of the debt on behalf of the First Nations.
42. In response to paragraph 40 of the Declaration of Claim, Canada agrees that Agent Hardinge claimed that the figures he reported to the Department included only those purchases which agents had the authority to make.
43. In response to the remainder of paragraph 40 of the Declaration of Claim, Canada is unable to confirm at this time that on March 17, 1922, Secretary Scott recommended to the Superintendent General for Indian Affairs, Charles Stewart, that the Touchwood Agency's debts be paid off using Agent Hardinge's figures.
44. In response to paragraph 41 of the Declaration of Claim, Canada is unable to confirm at this time that Secretary Scott requested each debt to be acknowledged by each First Nation member, each account to be certified by an agent, and each member to sign an agreement to repay his advance from the sales of grain or produce. However, Canada says in about 1923, ledgers were prepared indicating that individual First Nation members had agreed to repay \$30,381.92 of debt to merchants accrued via the Order System. The same ledgers showed agreements were not made for \$12,452.27 of debt.
45. In response to the remainder of paragraph 41 of the Declaration of Claim, Canada agrees that the Department viewed the debts as belonging to individual First Nation members, and that the loans from the trust accounts were to those individuals to pay their debts.

46. In response to paragraph 42 of the Declaration of Claim, Canada agrees that:
- a. ~~Kawacatoose First Nation obtained a \$13,601.45 loan from their capital account, as sanctioned by an Order in Council dated May 9, 1922. Individual Kawacatoose members were to repay the loan in five years, with interest at five percent.~~
  - b. Fishing Lake First Nation obtained a \$2,835.29 loan from their interest account.
  - c. The Day Star, Muskowekwan and George Gordon First Nations had insufficient funds in their trust accounts to pay their debts. Consequently, they were loaned \$20,624.65 from the Fishing Lake interest account. The loan was to be repaid by the borrowing First Nations' members at six percent interest within five years. The Department agreed to assume this loan if it remained unpaid after five years.
47. In response to paragraph 43 of the Declaration of Claim, Canada agrees that on May 3, 1922, a Band Council Resolution signed by Chief Sabotawasis of the Fishing Lake First Nation authorized removal of \$20,624.65 from the Fishing Lake interest account.
48. In response to paragraph 44 of the Declaration of Claim, Canada agrees that in the fall of 1922, the Department forwarded cheques to Agent Hardinge to be distributed to the indebted merchants.
49. In response to paragraph 45 of the Declaration of Claim, Canada agrees that on March 1, 1923, another Band Council Resolution was signed by Chief Sabotawasis of the Fishing Lake First Nation, to loan an additional \$5,000 from the Fishing Lake interest account to the Muskowekwan and George Gordon First Nations. As with the previous loan, this loan was to be repaid by the borrowing First Nations' members within five years with a six percent interest rate.

*The Department discovers mismanagement*

50. In response to paragraph 46 of the Declaration of Claim, Canada agrees that in September, 1923, the Department sent Inspector Christianson to make a general inspection of the Touchwood Agency. The Department reported that Inspector Christianson found about \$30,000 of unrecorded debt. This meant that the previous year, when Agent Hardinge told the Department auditor and Inspector Christianson that there was no unreported debt, there was in fact about \$25,000 of unrecorded debt.
51. In response to paragraph 47 of the Declaration of Claim, Canada agrees that on October 4, 1923, Agent Hardinge tendered his resignation. Canada says that the Department rejected his resignation at that time. After further investigation, the Department dismissed Agent Hardinge on December 1, 1923.
52. In response to paragraph 48 of the Declaration of Claim, Canada agrees that the Department determined that Inspector Christianson should conduct a thorough review of the Touchwood Agency's accounts.
53. In response to paragraph 49 of the Declaration of Claim, Canada agrees that Inspector Christianson found unrecorded accounts with merchants in various towns, as far as a hundred miles away. Agent Hardinge failed to report the debts, and even denied their existence until Inspector Christianson brought him face to face with the indebted merchants.
54. In response to paragraph 50 of the Declaration of Claim, Canada agrees that Inspector Christianson stated that Agent Hardinge created "the most terrible mix-up that could be imagined". Inspector Christianson discovered that in order to balance the books, Agent Hardinge repeatedly incorrectly transferred funds intended for the Touchwood Agency First Nations or their individual members.

55. In response to paragraph 51 of the Declaration of Claim, Canada agrees that Inspector Christianson determined that Agent Hardinge engaged in the following wrongful conduct during his tenure with the Touchwood Agency:
- a. Hardinge interfered with the ledgers to make the numbers match.
  - b. 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.
  - c. 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. During Agent Hardinge's regime, \$13,576.37 passed through this account.
  - d. Hardinge mismanaged the loan account by transferring in money from the Touchwood Agency band members, regardless of whether they benefited from the loans.
  - e. Hardinge substantially increased the indebtedness of the Touchwood Agency through purchasing goods and services from local merchants on credit.
  - f. Hardinge accumulated a debt of \$59,959.93, on behalf of the bands. The Department only acknowledged \$31,155.51 in debt, as it refused to recognize claims that were not supported by written documentation executed by Agent Hardinge.
  - g. 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.
  - h. Hardinge traded in equipment for inferior new equipment at a greater cost.

- i. Hardinge took part in transactions where the Touchwood Agency bands paid for work that was never completed or was charged at inflated prices.
  
56. In response to the remainder of paragraph 51 of the Declaration of Claim:
  - a. Canada does not know if Agent Hardinge tampered with the capital and revenue accounts.
  
  - b. Canada says the statement that it was “questionable” that Agent Hardinge was using his own money is opinion.
  
  - c. Canada does not know if Agent Hardinge caused \$6,000 in loss by trading in equipment.
  
57. In response to paragraph 52 of the Declaration of Claim, Canada agrees that merchants understood signed orders by Agent Hardinge to be a form of credit or a guarantee by Canada. The Department took the view that it operated as a conduit for the transactions and was not responsible for payments of the debts.
  
58. In response to paragraph 53 of the Declaration of Claim, Canada agrees that the Department put the onus of the debt on the Touchwood Agency bands and their members. However, Canada says the Department paid about \$28,673.64 of its own money towards the debts, when it repaid to the Fishing Lake First Nation, the amount of the Day Star, Muskowekwan and George Gordon First Nations’ guaranteed loans. The Department did not compensate band members for any of the money Agent Hardinge had incorrectly transferred.
  
59. In response to paragraph 54 of the Declaration of Claim, Canada is unable to confirm at this time that on December 3, 1923, Inspector Christianson advised the Department that he had identified approximately \$77,000 in debt incurred at the Touchwood Agency over and above the amounts paid through loans from band trust accounts.

60. In response to paragraph 55 of the Declaration of Claim, Canada agrees that on January 8, 1924, the Department hired Biggs, a chartered accountant, to conduct a review of the Touchwood Agency.
61. In response to paragraph 56 of the Declaration of Claim, Canada agrees that in February, 1924, the Department briefed Minister Charles Steward on the debts of the Touchwood Agency. Based on information provided by Inspector Christianson and Biggs, the Department reported \$52,621.98 in outstanding debts incurred by Agent Hardinge in contravention of orders and without authority. The Department also reported that there appeared to be a direct defalcation by Agent Hardinge of \$7,337.
62. In response to paragraph 57 of the Declaration of Claim, Canada agrees that on June 6, 1924, Biggs submitted his report, which outlined the deficiencies in the various accounts at the Touchwood Agency as a result of Agent Hardinge. Biggs found that the total amount of the Touchwood Agency debts was \$55,907 and that Agent Hardinge withheld \$2,335 in income that should have been credited to individual members.
63. In response to paragraph 58 of the Declaration of Claim, Canada agrees that in October, 1924, Band Council Resolutions were signed permitting the following advances from the bands' accounts:
  - a. \$1,637 from the capital account of the Day Star First Nation.
  - b. ~~\$9,000 from the capital account of the Kawacatoose First Nation.~~
  - c. \$3,489 from the capital account of the Muskowekwan First Nation.
  - d. \$9,000 from the capital account of the Fishing Lake First Nation.
64. In response to paragraph 59 of the Declaration of Claim, Canada agrees that on December 1, 1924, an Order in Council was obtained for the purpose of liquidating the debt of the individual band members which resulted from the orders of Agent Hardinge.

65. In response to paragraph 60 of the Declaration of Claim, Canada agrees that in January, 1925, the Department forwarded a letter to Commissioner Graham enclosing cheques totaling \$23,126.15, which represented the advances authorized by Band Council Resolutions. Inspector Christianson distributed the cheques to the merchants.
66. In response to paragraph 61 of the Declaration of Claim, Canada agrees that 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 it would only accept orders that had been authorized by an agent.
67. In response to paragraph 62 of the Declaration of Claim, Canada agrees that on April 17, 1925, Inspector Graham sent a letter to the Department denying the claim of several merchants, saying that they had to borrow money from the bands to pay *bona fide* indebtedness, and “many of them contributed money to pay accounts for which they were not responsible”.
68. In response to paragraph 63 of the Declaration of Claim, Canada agrees that the Department informed a politician who was lobbying for payment on behalf of a local merchant that Touchwood Agency band members did not have the funds to pay the debt as they had little revenue.
69. In response to paragraphs 64 and 65 of the Declaration of Claim, Canada awaits the results of further accounting to determine any losses to the First Nations. Canada reserves its position in regard to the Kroll Lindquist Avey Report, which was prepared in the course of settlement negotiations preceding the filing of this Declaration of Claim.
70. In response to paragraph 66 of the Declaration of Claim, Canada agrees that forensic / investigative expert accounting is required to determine the complete loss suffered by the First Nations. Canada wants to work cooperatively with the First Nations to acquire this evidence.

## VI. Canada's statement of facts

71. Agent Hardinge acted as Indian agent for the Touchwood Agency from June 6, 1920 to fall, 1923.

### *Agent Hardinge requests loans*

72. In spring of 1922, the Department agreed to Agent Hardinge's request to receive loans from the bands' trust fund accounts to cover individual band members' debts to merchants. Agent Hardinge falsely claimed that the majority of the debt had been incurred under the previous agent.

73. In total, about \$42,745 in individual band member debt was discharged from loans from band trust fund accounts, from May 3, 1922 to March, 1923:

- a. ~~The Kawacatoose First Nation members' debts were paid off via a loan of about \$13,601.45 from the band's capital account, repayable in five years by individual band 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.~~
- b. The Fishing Lake First Nation members' debts were paid off via an advance of about \$2,835.29 from their interest account.
- c. As the Day Star, Muskowekwan and George Gordon First Nations had insufficient funds, the band members' debts were paid off via a loan of about \$20,624.65 from the Fishing Lake interest account. The Department agreed to assume this loan if it was not paid within five years, with six percent interest. This loan was authorized by a Band Council Resolution dated May 3, 1922.

- d. In March, 1923, the Muskowekwan and George Gordon First Nation members' debts were paid via a further loan of about \$5,000 from the Fishing Lake First Nation's interest account. The Department agreed to assume this loan if it was not repaid within five years, with six percent interest. This loan was authorized by a Band Council Resolution dated March 1, 1923.
74. In about 1923, ledgers were prepared indicating that individual band members had agreed to repay \$30,381.92 of debt to merchants accrued via the Order System. However, the same ledgers showed agreements were not made for \$12,452.27 of debt.

***The Department discovers mismanagement***

75. In April, 1923, the Department discovered that Agent Hardinge was not recording transactions in accordance with Department regulations. He was reprimanded by Commissioner Graham.
76. 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 debts. Agent Hardinge lied to Inspector Christianson throughout the investigation. As a result, the Department fired Agent Hardinge on December 1, 1923.
77. 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.
78. In January, 1924, the Department hired a chartered accountant, Biggs, to provide a professional review of the Touchwood Agency books.

79. Biggs completed his report in June, 1924. He found that Agent Hardinge had breached procedures by:
- a. Incorrectly transferred interest payments and farming revenue intended for bands and band members, in order to make the books balance, in the amount of \$2,335.
  - b. Allowing \$55,907 of Touchwood Agency indebtedness to merchants to accrue through the Order System.
  - c. Traded in equipment for inferior new equipment at a greater cost and paid for work that was incomplete.

***The Department's actions post-report***

80. In January, 1925, the Department used band trust funds to pay individual band members' merchant debt, where there were written orders or signed notes from Agent Hardinge, in the amount of \$23,126.15:
- a. ~~Kawacatoose: \$9,000.00~~
  - b. Fishing Lake: \$9,000.00
  - c. Day Star: \$1,637.15
  - d. Muskowekwan: \$3,489.00
81. These advances were authorized by Band Council Resolutions in October, 1924 and an Order in Council dated December 1, 1924.
82. The Department did not address the remaining merchant debt identified by Biggs, for which there were verbal orders from Agent Hardinge, written orders from the farming instructor, or no orders.
83. In the spring of 1925, merchants continued to try to collect upon this debt.

***Status of the loans***

84. By July 7, 1929, the Department had used approximately \$28,673.64 of its own funds to pay back the guaranteed loans Fishing Lake First Nation made to the Day Star, Muskowekwan and George Gordon First Nations on May 3, 1922 and March 1, 1923. The Department believed it had fully discharged this debt with interest.
85. ~~Based on the current documentary record, it appears that Kawacatoose First Nation's 1922 loan of \$13,601.45 to individual band members was not repaid.~~
86. The remaining advances did not provide for terms of repayment and do not appear to have been repaid either, based on the record as currently available.

**VII. Relief**

87. Canada seeks the following relief:
- a. A consent order of validity, once the accounting evidence has been received.
  - b. If applicable, a deduction under s. 20(3) of the *SCTA* for any partial compensation already provided to the First Nations.
  - c. Dismissal of the declaratory relief sought by the First Nations at paragraph 76 of the Declaration of Claim.
  - d. Such further relief as this Honourable Tribunal deems just.

**VIII. Communication (R. 42(g))**

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Dated: January 27, 2020

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**AMENDED: March 17, 2022**

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