

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D E P O S É
March 24, 2023	
Susie Thorsley	
Ottawa, ON	5

SCT File No.: SCT-3001-22

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SAGAMOK ANISHNAWBEK FIRST NATION

Claimant

-and-

HIS MAJESTY THE KING IN RIGHT OF CANADA

As represented by the Minister of Crown-Indigenous Relations

Respondent

RESPONSE
OF HIS MAJESTY THE KING IN RIGHT OF CANADA
Pursuant to Rule 42 of the Specific Claims Tribunal Rules of Practice and Procedure

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

TO: Sagamok Anishnawbek First Nation
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PART I – OVERVIEW

1. The Sagamok Anishnawbek First Nation (“Sagamok”) is the successor to the Spanish River bands that signed the Robinson-Huron Treaty on September 9, 1850 (the “Treaty”). Under the terms of the Treaty, Sagamok agreed to surrender its traditional territory to the Crown with the exception of a specific reservation of land, which it selected, and which was excluded from the surrender (the “Reservation”). In this claim, Sagamok asserts that a certain tract of land, referred to as the La Cloche Tract, should have been included in the Reservation.

2. The Treaty includes a Schedule of Reservations that identifies the reservations of land for each signatory First Nation. For Sagamok, the Schedule of Reservations identifies a specific tract of land that clearly does not include the La Cloche Tract. In particular, the Reservation’s boundaries are defined in clear and unambiguous terms by reference to natural water boundaries and a previously surveyed line. Accordingly, there was no uncertainty as to the location of the Reservation or about the exclusion of the La Cloche Tract.

3. Canada states that the common intention of the parties was for the La Cloche Tract to be surrendered to the Crown under the Treaty. Accordingly, Canada’s position is that the Crown did not breach a fiduciary duty by excluding those lands from the Reservation

4. Before the Treaty was concluded, the Crown did not owe an obligation, fiduciary or otherwise, to exclude any particular tract of land from the scope of the contemplated surrender. Rather, in negotiating the Treaty, the Crown’s obligation was to act honourably.

5. Canada states that the Crown did conduct itself in an honourable manner when it asked Sagamok to select the lands it sought as a reservation, and which were to be excluded from the

surrender. The reason the La Cloche Tract is not part of the Reservation is because Sagamok selected different lands instead, and did not include the La Cloche Tract as part of the lands that were excluded from the surrender.

6. After the Treaty was concluded, the Crown's obligation was to take the steps necessary to implement the common intentions of the parties. In other words, when the Crown surveyed the Reservation in 1852, it was obliged to survey the tract of land selected by Sagamok and identified in the Schedule of Reservations. Moreover, the Crown consulted with Sagamok in completing that survey, and Sagamok confirmed that the La Cloche Tract should be excluded from the Reservation.

7. In excluding the La Cloche Tract from the 1852 survey, the Crown was implementing the Treaty in accordance with the common intentions of the parties. The Crown did not breach a fiduciary duty in doing so.

PART II – STATUS OF CLAIM

8. The Claim was submitted to Canada by Sagamok in accordance with the Federal Specific Claims Policy on or about July 19, 2002. Canada did not accept the claim and advised Sagamok by way of a letter dated July 28, 2010.

PART III – CANADA'S POSITION ON THE VALIDITY OF THE CLAIM

9. Canada's position is that the Declaration of Claim does not assert a valid claim and Sagamok is therefore not entitled to the relief sought.

10. In particular, the Crown did not owe a treaty or fiduciary obligation to include the La Cloche Tract within the Reservation. Consequently, the Crown did not breach or fail to fulfill any legal obligation capable of giving rise to a claim under s. 14 of the *Specific Claims Tribunal Act*.

11. Additionally, Sagamok at paragraph 141(a) of the Declaration of Claim seeks an order from the Tribunal declaring that its claim to the La Cloche Tract is valid. The Tribunal cannot grant such relief as its jurisdiction is clearly limited by s. 15(4)(b) to claims for monetary compensation.

PART IV – CANADA’S POSITION REGARDING ALLEGATIONS OF FACT

12. Subject to the clarifications outlined below, Canada admits the allegations of fact contained in paragraphs 15-124:

(a) Canada admits that Sagamok is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008 c 22, as well as an “Aboriginal people” within the meaning of section 35 of the *Constitution Act, 1982*, and is a party to the Treaty. Canada also admits that Sagamok is a successor to the Spanish River bands that signed the Treaty and that the Sagamok people are Anishinaabe or Ojibway. However, Canada has no knowledge as to the exact nature or history of the political relationships that existed within or among the Spanish River bands.

(b) With respect to paragraphs 15 and 16, Canada admits that First Nations peoples, including the Anishnaabe, were present in North America when Europeans first arrived, and that they were organized in societies with their own legal orders, laws, customs, practices, and traditions. Canada also admits that the Chiefs and Principal Men participated in treaty

negotiations with the authority to refuse or accept the terms of the treaty on behalf of their respective bands.

- (c) Canada admits that the La Cloche Tract, or Claim Area, is within Sagamok's traditional territory; however, Canada has no knowledge as to the exact scope or extent of Sagamok's traditional territory. Pleading specifically in response to paragraphs 33, 34, and 44, Canada has no knowledge of the nature or extent of Sagamok's use of the La Cloche Tract. Canada further states that any interest Sagamok may have had in those lands prior to 1850 was surrendered to the Crown under the Treaty.
- (d) With respect to paragraphs 18-24 and 35-39, Canada states that the *Royal Proclamation, 1763*, was a prerogative instrument of the Crown, an expression of Crown policy, and was primarily directed to Crown servants and non-Indigenous individuals. While the provisions of the *Royal Proclamation* were revoked by the *Quebec Act, 1774*, that revocation did not alter the Crown's policy with respect to the alienation of lands by Indigenous groups to no one other than the Crown through a surrender.
- (e) Pleading further with respect to paragraphs 18-24 and 35-39, the *Royal Proclamation* did not create reserve-type interests in lands as that term is used and understood today, and which refers to specific tracts of land set aside for the exclusive use of specific bands, and over which the Crown has administration and control. Nor did the *Royal Proclamation* represent an undertaking capable of giving rise to a fiduciary duty. Canada also states that in negotiating the Treaty with Sagamok, the Crown acted honourably and in a manner that respected the policy articulated in the *Royal Proclamation*.

- (f) With respect to paragraph 40, Canada has no knowledge as to the documents reviewed by Alexander Vidal in preparing the Vidal-Anderson Report with Indian Superintendent Thomas G. Anderson.
- (g) With respect to paragraphs 25-27, Canada admits only that a large number of Indigenous communities were represented at meetings in Niagara in the summer of 1764. During those meetings the Crown made no promises concerning the *Royal Proclamation, 1763*, or about continuing presents. The *Royal Proclamation* was an expression of Crown policy and not a treaty.
- (h) With respect to paragraphs 28 and 29, Canada states that the presents were intended to ensure that Indigenous groups would support the Crown in future wars. Canada further states that these allegations are irrelevant to the current proceeding as they have no bearing on the La Cloche Tract or the decision of Sagamok to surrender those lands under the Treaty.
- (i) Canada admits paragraphs 30-32, except insofar as the exchange of the Casual and Territorial Revenues of the Crown for a Civil List was not complete until 1847.
- (j) With respect to paragraph 43, Canada has no knowledge of any agreements, oral or otherwise, between Sagamok and the HBC or its predecessor with respect to the La Cloche Tract. Canada also denies that the presence of fur traders and of a trading post violated the *Royal Proclamation, 1763*.
- (k) With respect to paragraphs 45-49, Canada admits only that the Province of Canada began to issue licenses to explore for minerals in 1845 and that this led to protests by the

Indigenous peoples who occupied the lands along the northern shores of Lakes Huron and Superior. Canada further states that the allegations in these paragraphs are irrelevant to the current proceeding as they have no bearing on the La Cloche Tract or the decision of Sagamok to surrender those lands under the Treaty.

(l) With respect to paragraphs 53 and 54, Canada states that the 1848 survey by Vidal did not grant the HBC any rights in La Cloche Tract. Moreover, the survey did not, in any way, compromise or adversely impact Sagamok or Sagamok's interest in those lands. Sagamok did not express any concern or objection to the survey. Canada denies the allegation that Vidal was supportive of HBC's interest and gave no regard to Sagamok's interest. Rather, it appears that Vidal was unaware of Sagamok's interest in the lands.

(m) With respect to paragraphs 58-62, Canada admits that Vidal and Anderson confirmed that the claims of the First Nations in the region were as credible as the claims of First Nations to the south. However, that observation was not a recognition of Aboriginal title as that term is understood under s. 35 of the *Constitution Act, 1982*. Moreover, any rights or interests that were held by the First Nations in question were surrendered to the Crown in 1850 under the Robinson-Huron and Robinson-Superior Treaties.

(n) Pleading further to paragraphs 58-62, Canada denies that Vidal and Anderson's consultations were inadequate or deficient. Vidal and Anderson were there to investigate, not to negotiate a treaty. There were further consultations between Sagamok and other Crown representatives before the Treaty was concluded.

(o) With respect to paragraph 63, Canada has no knowledge as to the precise location of Sagamok's "designation or locality" when Vidal and Anderson visited in 1849, and the

documentary evidence in that regard is unclear. Certainly, the reference to Sagamok's residence being "about the La Cloche River" does not mean it was in the La Cloche Tract. Moreover, the suggestion that Sagamok would not have wanted to move from the La Cloche Tract, or to surrender those lands, is inconsistent with the terms of Treaty.

- (p) With respect to paragraph 65, Canada admits that the Vidal-Anderson Report states that Sagamok had indicated it wished to have a reservation "on the banks of the Spanish River, locality not determined upon." Canada denies all other allegations in this paragraph. In particular, the allegation that Sagamok likely would have asked for the La Cloche Tract to form part of the Reservation is speculation and is inconsistent with the terms of the Treaty.
- (q) With respect to paragraph 66, Canada admits only the first sentence and denies the remaining allegations, which are speculation.
- (r) With respect to paragraphs 70-71 and 107, Canada has no knowledge of the interests of the HBC or whether Governor Simpson was able to advance those interests through the treaty process. Canada denies that he exercised any influence over the demarcation of Sagamok's Reservation. Canada also denies the suggestion that Treaty Commissioner William Benjamin Robinson had any conflicts of interest or used his position to advance the interests of the HBC. Canada further states that these allegations are irrelevant to the current proceeding as they have no bearing on the La Cloche Tract or the decision of Sagamok to surrender those lands under the Treaty.
- (s) With respect to paragraph 74, Canada denies that the Crown owed an obligation, under the Dorchester Regulations or otherwise, to provide each signatory First Nation with a copy of the Treaty. Moreover, Canada further states that these allegations are irrelevant to the

current proceeding as they have no bearing on the La Cloche Tract or the decision of Sagamok to surrender those lands under the Treaty. Sagamok knew at the time of Treaty and afterwards what lands were surrendered under the Treaty and what lands were excluded from the surrender.

- (t) With respect to paragraph 75, Canada has no knowledge of what records J.W. Keating may have prepared or that may have been lost. With respect to the allegation that there is no record of the discussions between Robinson and Sagamok regarding the Reservation, Canada states that the lands selected by Sagamok are identified and described in the Schedule of Reservations that forms part of the Treaty.
- (u) With respect to paragraph 80, Canada admits only the first sentence and denies the remaining allegations. In particular, because Sagamok had not selected the La Cloche Tract as part of the Reservation, and also because those lands had not been sold or promised for sale to the HBC, there was no reason for the Crown to advise of the HBC's interest in acquiring those lands (assuming Sagamok was not already aware).
- (v) With respect to paragraph 81, Canada states that the lands forming part of the reservations were those lands that were selected by the First Nations and agreed upon by the Crown. The selection of reservations was not governed by any overarching principles or criteria – it was simply based on agreement between the Crown and First Nation signatories.
- (w) With respect to paragraphs 82-83, Canada denies that the description of the Reservation was vague. In fact, the description was clear in that it did not include the La Cloche Tract. Canada has no knowledge of how the La Cloche Tract was used by Sagamok at the time

of the Treaty, and denies the suggestion that Sagamok would not have surrendered the La Cloche Tract as it is speculation and inconsistent with the terms of the Treaty.

(x) With respect to paragraph 84, Canada admits only that the First Nation signatories insisted on surveys being completed of the reservations they had selected. Canada denies that the descriptions in the Schedule of Reservations were preliminary. Canada also denies that a survey was required to establish the Reservation. Moreover, and in any event, the boundaries of the Reservation were confirmed by way of consultations that occurred during the survey in 1852.

(y) With respect to paragraph 85 and 97, Canada admits that in some cases the descriptions of the reservations were amended subsequent to surveys. That was not the case with respect to the Reservation because the description in the Schedule of Reservations was clear and accurate. Accordingly, there were no misunderstandings or uncertainties to resolve between the parties, and Sagamok made no request to adjust the boundaries of the Reservation. Canada denies that Sagamok was not consulted and did not make its views known during the survey of its Reservation. In fact, Sagamok confirmed the description of the Reservation contained in the Schedule of Reservations.

(z) With respect to paragraph 90, Canada denies that any confusion as to whether the reservations should be measured in miles or leagues affected the survey of the Reservation. Because the boundaries of the Reservation were identified by reference to natural features, those natural features took precedence over any measurement of distance.

(aa) With respect to paragraphs 94-96, Canada denies that the Commissioner of Crown Lands expressed concern about the plan to split up the survey team. When he asked if the

plan “would interfere with the examination of the Reserves,” he was speaking of the plan to engage an additional surveyor to perform the work. Canada also states that there is no indication one way or the other of whether J.W. Keating or J.S. Dennis did or did not consult with the Anishinaabe with respect to the proposal to split the survey team.

(bb) With respect to paragraphs 99, 100 and 108-111, Canada denies that the approach taken by Dennis and Keating to the surveys impacted, in any way, the accuracy of those surveys. Canada also denies that consultations with the First Nations in respect of those surveys was inadequate, violated Crown policy or fell below the standard of care expected of a fiduciary. Canada further states that the survey of the Reservation was carried out with reasonable care and diligence, and denies that any errors were made or that the survey was given a “short shrift.” Additionally, the statements pleaded at paragraphs 109 and 110 constitute improper opinion evidence and argument, and are not proper pleadings.

(cc) With respect to paragraph 101, Canada denies that Surveyor Bristow’s lack of experience or familiarity with the Anishnaabe people in any way affected his surveying work. In particular, Bristow’s work was relatively straightforward given that the Reservation was defined by reference to natural features and the previously surveyed western limit of the HBC’s trading post at La Cloche.

(dd) With respect to paragraph 103-106, Canada states that it is unclear how long Dennis and Keating spent at La Cloche. However, their task was relatively straightforward and did not require a great deal of time. All they needed to accomplish was to confirm with Sagamok that the eastern boundary of the Reservation corresponded to the western limit of the lands surveyed by Vidal in 1848. This boundary was confirmed by Sagamok.

Moreover, and contrary to the allegation of the Claimant, Dennis's report does not suggest there was a lack of engagement or room for meaningful consultation. Rather, what it suggests is that there was no dispute or disagreement about the location of the eastern boundary of the Reservation.

(ee) With respect to paragraphs 115-117, and in response to the claim generally, Canada denies that the La Cloche Tract was improperly excluded or excluded in error. Those lands were excluded from the Reservation because that was the common intention of the parties to the Treaty. The exclusion of those lands was neither a breach of fiduciary duty, nor was it inconsistent with the honour of the Crown.

(ff) With respect to paragraph 121, Canada denies that Sagamok had or made a counter claim to the La Cloche Tract.

13. Canada denies the allegations and legal claims advanced in paragraphs 125-140. In particular, the La Cloche Tract was not excluded from the Reservation in error. It was excluded because it was the common intention of the parties for those lands to be surrendered to the Crown under the Treaty.

14. Moreover, the Crown did not breach a fiduciary duty by not reserving the La Cloche Tract or by excluding the La Cloche Tract from the 1852 survey of the Reservation. Nor did the Crown breach any other duty arising from the honour of the Crown, the *Royal Proclamation, 1763*, or any other source.

15. The Crown also did not breach a fiduciary duty or a Treaty obligation when it granted the La Cloche Tract to the HBC in 1854.

PART V – CANADA’S STATEMENT OF FACTS

16. Canada states that the common intention of the parties to the Treaty was for the La Cloche Tract to be surrendered to the Crown and excluded from the Reservation. Consequently, the Crown was under no obligation to include the La Cloche Tract within the Reservation.

(a) The HBC’s La Cloche Trading Post

17. In 1847, the Crown Lands Department instructed Vidal to survey several tracts of land in the Lake Huron and Lake Superior regions that had been requested by the HBC, including lands at La Cloche where the HBC operated a trading post. These surveys were conducted at the expense of the HBC. The Commissioner of Crown Lands advised that the lands in question had not been surrendered and he recommended that Vidal should investigate any Indigenous settlements in the area.

18. Vidal surveyed the lands at La Cloche in 1848. The western boundary of those lands was on the west side of the discharge of the La Cloche River, and the eastern boundary was about one mile east of the mouth of the river. The tract surveyed by Vidal was two miles wide, centred on the HBC post, and five miles deep. At the request of the HBC agent, Vidal planted wooden posts to mark the front lines of the tract. Vidal reported that there were no rival claims with respect to the La Cloche lands. Vidal’s plan of the tract was submitted to the Crown Lands Department in March 1849.

19. While the HBC had operated a trading post at La Cloche since approximately 1821, it did not acquire a legal interest in those lands until 1854, after the Treaty was concluded and the lands had been surrendered to the Crown.

20. Moreover, at no time did the Spanish River bands ever express any concerns to the Crown with respect to the HBC's La Cloche trading post.

(a) Background to the Treaty

21. In 1849, because of events following the discovery of minerals in the area north of Lakes Huron and Superior, the Governor in Council commissioned Vidal and Anderson to explore the north shore to determine whether the Indigenous peoples in the area would be willing to surrender their lands, and if so, on what terms. Vidal and Anderson were authorized to assure the First Nations with whom they consulted that the Government wishes to "... secure to them permanently such reservations of land in the vicinity of their present settlements as they desire to retain..."

22. In their report, Vidal and Anderson state that they held a meeting on October 24, 1849, with Chief Penaiseseh, who was one of three Chiefs representing the Indigenous groups in the La Cloche/Spanish River area. Their report also states that Chief Penaiseseh represented a band of about 250 people "about La Cloche River", which claimed the land "from Nid D'aigle [west of the Spanish River] to La Cloche River back to the inland band."

23. In December of 1849, Vidal and Anderson submitted a list of the reservations of land requested by the bands they had met with. For the Spanish River band, the Commissioners listed "a reserve on the banks of the Spanish River – locality to be determined upon."

24. Vidal and Anderson also advised of three cases where bands had purported to grant land to third parties, including the HBC. In two of these cases, the reservations that the bands requested overlapped in some way with these purported grants. Anderson and Vidal did not mention any purported grant or agreement with respect to the HBC post at La Cloche.

25. The Crown Lands Department prepared a map based on the report of Anderson and Vidal. This map showed the traditional territory of the “Spanish River and La Cloche Band” between Nid D’Aigle (west of the Spanish River) and the La Cloche River. The map also shows the HBC post as situated just west of the mouth of the La Cloche River, within the area marked as being the traditional territory of the Spanish River and La Cloche band. The map shows a line drawn from the HBC post to the Spanish River, in the same place where the eastern boundary of the Reservation would eventually be surveyed.

(b) The Robinson Treaties

26. In 1850, Robinson was appointed Treaty Commissioner in order to enter a treaty with the First Nations of Lakes Huron and Superior.

27. Robinson ultimately concluded two identical treaties, one with the First Nations of Lake Superior and the other with the First Nations of Lake Huron. The Robinson-Huron Treaty, which was concluded with the First Nations of Lake Huron, was signed on September 9, 1850, at Sault Ste. Marie.

28. In exchange for a one-time payment and a perpetual annuity, the seventeen Lake Huron Chiefs and bands agreed to cede their lands, except the reservations set out in a schedule that formed part of the Treaty.

29. After the Treaty was signed, J.W. Keating, the Secretary to the Treaty Commission, spoke with each of the chiefs and compiled a Schedule of Reservations that was appended to, and that forms part of, the Treaty.

30. The Schedule of Reservations lists two chiefs as representing the Spanish River band (Namassin and Naoqugabo). A third signatory, “Penaissy”, is likely the same person as Chief Penaiseseh as reported by Vidal and Anderson in 1849.

31. The Reservation selected by the Spanish River bands is described in the Schedule of Reservations as follows:

FIFTH – Namassin and Naoquagabo and their Bands, a tract of land commencing near Lacloche, at the Hudson Bay Company’s boundary; thence westerly to the mouth of the Spanish River’ then four miles up the south bank of said river, and across to the place of beginning.

32. The Schedule of Reservations clearly identifies the eastern boundary of the Reservation as being the western limit of the HBC trading post that Vidal had surveyed in 1848. Accordingly, the La Cloche Tract lies outside, and to the east, of the Reservation as described in the Treaty.

33. The Treaty, including the Schedule of Reservations, was ratified by way of an Order in Council dated November 12, 1850.

(c) Surveying the Reservations

34. In 1851, J.S. Dennis was appointed to survey the reservations identified by the Treaty. He was to be accompanied by Superintendent George Ironside. Surveyor Dennis and Superintendent Ironside began their work in the fall of 1851, but Dennis was only able to survey three of the reservations that year.

35. The surveying work continued in 1852, and this time Dennis was accompanied by Keating, who had been responsible for preparing the Schedule of Reservations at the time of the Treaty.

Keating was selected to join Dennis because of his knowledge of the First Nations involved, their language, and the location of the reservations they had selected in 1850.

36. Dennis began the survey of the Reservation in 1852. His report indicates that in carrying out the survey, he was accompanied by “the Chief interested.” Together they “visited, marked, and confirmed” the post placed by Vidal in 1848 as the south-west corner of the HBC trading post, and the south-east corner of the Reservation. In accordance with the description in the Schedule of Reservations, this marked the western boundary of the La Cloche Tract as the eastern limit of the Reservation, thereby excluding the La Cloche Tract.

37. After confirming that the southeastern corner of the Reservation corresponded with the southwestern limit of the HBC trading post, Dennis then left instructions for Surveyor Arthur Bristow to carry out the balance of the survey.

38. Bristow used the post planted by Vidal in 1848 as his starting point. He then planted a new post on the south bank of the Spanish River to mark the northeast corner of the Reservation, marking it with the initials “IR” (Indian Reservation) on the west side and “CL” (Crown Lands) on the north and east sides.

39. After surveying the eastern boundary of the Reservation, Bristow left for French River. The other boundaries were defined by reference to natural features, in that the Reservation followed the south shore of the Spanish River west to the shore of Lake Huron. Accordingly, it was unnecessary for Bristow to survey those boundaries.

40. The Superintendent General of Indian Affairs forwarded the descriptions of the reservations to the Commissioner of Crown lands, who made additions and corrections to some of the descriptions. The description of the Reservation is as follows:

5th Chiefs Namassing & Nokwgabo & their Bands. A tract commencing at a post planted by P.L.S. A. Vidal in the year 1848 on the North Shore of Lake Huron about 100 chains westerly of the mouth of the La Cloche River and running due North 350 chains to Spanish River. Thence following said River westerly to Lake Huron and thence following said Lake shore south Easterly to the place of beginning. Containing about 28,000 acres by a rough estimate.

41. By Proclamation dated February 1, 1854, the provisions of sections 13 and 14 of the *Act for the Protection of the Indians of Upper Canada* were extended to the reservations on Lakes Huron, Superior, Nipissing, and Nipigon. The description of the Reservation in the Proclamation was virtually identical to the description that had been prepared by the Superintendent General of Indian Affairs and the Commissioner of Crown Lands, as set out above.

(d) The Crown was under no obligation to include the La Cloche Tract in the Reservation

42. Canada states that the La Cloche Tract was not included in the Reservation because it was the parties' common intention for those lands to be surrendered to the Crown.

43. Prior to Treaty, the Crown did not owe Sagamok a fiduciary duty to exclude any particular tract of land from the scope of the contemplated surrender. In particular, Sagamok's interest in the La Cloche Tract was not the type of interest capable of giving rise to a fiduciary obligation.

44. In negotiating the Treaty, the Crown's obligation was to act in an honourable manner, not as a fiduciary. Throughout the Treaty negotiations, the Crown did conduct itself in an honourable

manner. The Crown's conduct in negotiating and concluding the Treaty was also consistent with the policy articulated in the *Royal Proclamation, 1763*.

45. In particular, the Crown invited Sagamok to select the reservation it wished to be excluded from the surrender. The only reason the La Cloche Tract is not included within the Reservation is because Sagamok chose different lands. It was not excluded from the Reservation because of any misconduct by the Crown.

46. Additionally, Canada states that the Crown properly consulted with Sagamok in the period leading up to the Treaty, during the Treaty negotiations, and while implementing the Treaty. Sagamok's decisions regarding the selection of its Reservation, and its agreement to surrender the La Cloche Tract, were free, informed and voluntary. The Crown acted honourably throughout this process and at no time did the Crown breach a fiduciary duty.

47. Moreover, the Treaty was not, in any way, an exploitative bargain. In particular, and contrary to the allegations in the Claim, the Crown did not prefer the interests of the HBC over the interests of Sagamok, nor did the Crown allow the HBC to exploit Sagamok.

48. After the Treaty was concluded, the Crown's obligation was to ensure that the lands selected by Sagamok and identified in the Schedule of Reservations were in fact set aside and reserved. In other words, the Crown's obligation was to implement the Treaty in accordance with the common intentions of the parties.

49. With respect to the 1852 survey of the Reservation, Canada states that the survey in question was carried out with appropriate diligence and accurately demarcated the boundaries of

the lands that were identified and selected by Sagamok in 1850. Accordingly, the Crown did not breach a fiduciary duty in the process of surveying the Reservation.

50. While discussions between Sagamok and Crown representatives during the survey may not have been extensive or time-consuming, that is only because there were no uncertainties, ambiguities or disputes as to the boundaries of the lands that were to be surveyed. In particular, apart from its eastern boundary, the boundaries of the Reservation were defined by reference to natural features, and therefore did not require a survey.

51. Moreover, because the La Cloche Tract was properly excluded from the Reservation, and was surrendered to the Crown under the Treaty, the Crown did not owe or breach a fiduciary duty when it issued a patent to the HBC with respect to the lands in question.

PART VI - RELIEF

52. Canada seeks the following relief:

- (a) Dismissal of this claim on the basis that the Crown did not owe or breach the legal obligations alleged in the Declaration of Claim; and,
- (b) Canada may decide not to seek costs upon the final determination of the action but reserves the right to do so.

PART VII - COMMUNICATION

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

Department of Justice Canada, Ontario Regional Office, 120 Adelaide Street West, Suite 400, Toronto, Ontario, M5H 1T1

54. The Respondent's facsimile number for service is: (416) 973-2319.

55. The Respondent's email address for service is: dan.luxat@justice.gc.ca.

Dated this 24th day of March, 2023.



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