

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
December 13, 2022	D E P O S É
Dragisa Adzic	
Ottawa, ON	1

SCT File No.: SCT- 6004-22

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**PAUL FIRST NATION**

Claimant

v

**HIS MAJESTY THE KING IN THE RIGHT OF CANADA**  
as represented by the Minister of Crown-Indigenous Relations

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*.

December 13, 2022

\_\_\_\_\_  
Date

Dragisa Adzic

\_\_\_\_\_  
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 Claimant, Paul First Nation, is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, SC 2008 c. 22 (the “*Specific Claims Tribunal Act*”) by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c. I-5, as amended, and within the meaning of Treaty 6. PFN is located west of Edmonton, in the Province of Alberta.
2. The Paul First Nation is the successor in interest to the Ironhead and Sharphead Indian Bands, which were amalgamated in or around 1895 and thereafter generally referred to as the Paul Band (referred to hereinafter as the “First Nation” or “Paul Band” depending on the historical context).

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

3. The following condition precedent as set out in subsection 16(1)(b) of the *Specific Claims Tribunal Act* has 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;
    - (a) The Minister has notified the First Nation in writing of his or her decision not to negotiate the claim; in whole or in part.
    - (b) 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.
4. On June 5, 1996, the First Nation submitted a claim alleging various breaches by the Crown relating to its mismanagement of the Paul Band’s Capital Account to the Minister of Aboriginal Affairs and Northern Development (the “Minister”), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC”), (the “Mismanagement Claim”). The Claim was subsequently deemed filed pursuant to the transitional rules of the *Specific Claims Tribunal Act*, on October 16, 2011.
5. On May 11, 2011, Canada informed the First Nation that it accepted the claim in part and made an offer to settle on December 12, 2011.
6. The First Nation did not accept the settlement proposal.

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

The First Nation does not seek compensation in excess of \$150 million for the Mismanagement Claim.

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

7. The following are the grounds for the Mismanagement 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;

...

- (c) a breach of a legal obligation arising from the Crown's provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation.

**V. Allegations of Fact (R. 41(e))**

**Background**

8. The Paul Band adhered to Treaty 6 at Edmonton on August 21, 1877.
9. In 1891, 32.75 square miles was surveyed on the eastern shore of White Whale (Wabamun) Lake later comprising the Wabamun Reserves Nos. 133A and 133B. The Paul Band is the successor in interest to Sharphead Band, which received annuities under its own band list starting in 1878. Indian Reserve 141, comprising of 27,136 acres, was surveyed in 1885 and set aside for Sharphead Band.
10. The Crown amalgamated the Sharphead Band with the Paul Band in or around 1895. The entirety of IR 141 comprising 27,136 acres was unlawfully surrendered in 1897 and subsequently sold to third parties. The allegations relating to the amalgamation and illegal surrender of IR 141 are set out in a separate Specific Claim and do not form the basis of the within Claim.
11. The Paul Band was not designated its own Capital and Revenue Trust accounts by the Crown. Following the surrender of IR 141, Canada deposited proceeds from the sale of the IR 141 lands to the Sharphead Capital and Revenue ("Account No. 202"). Funds from Account 202 were spent on the amalgamated Sharphead and Paul Band beginning in 1901. From 1907 on, the ledger records continue to identify Account No. 202 as the Wabamun or Wabanum Lake account with co-mingling of Indian Moneys for both bands.

**Promises of the Crown under Treaty 6**

12. In 1876, the Crown entered into Treaty 6 with the Plains and Wood Cree Indians and other tribes in what is now the central regions of Alberta and Saskatchewan. Among other things, the treaty provided for the purported surrender of aboriginal title to roughly 121,000 square miles of land in the fertile agricultural belt in exchange for various promises and treaty benefits to be provided by the Crown.
13. The written terms of Treaty 6 contain explicit promises and benefits to be provided by the Crown including, *inter alia*, the following:

... And further, Her Majesty agrees *to maintain schools for instruction in such reserves* hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.

It is further agreed between Her Majesty and the said Indians, *that the sum of \$1,500.00 per annum shall be yearly and every year expended by Her Majesty in the purchase of ammunition, and twine for nets*, for the use of the said Indians, in manner following, that is to say: In the reasonable discretion, as regards the distribution thereof among the Indians inhabiting the several reserves, or otherwise, included herein, of Her Majesty's Indian Agent having the supervision of this treaty.

It is further agreed between Her Majesty and the said Indians, *that the following articles shall be supplied to any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land*, that is to say: Four hoes for every family actually cultivating; also, two spades per family as aforesaid: one plough for every three families, as aforesaid; one harrow for every three families, as aforesaid; two scythes and one whetstone, and two hay forks and two reaping hooks, for every family as aforesaid, and also two axes; and also one cross-cut saw, one hand-saw, one pit-saw, the necessary files, one grindstone and one auger for each Band; and also for each Chief for the use of his Band, one chest of ordinary carpenter's tools; also, for each Band, enough of wheat, barley, potatoes and oats to plant the land actually broken up for cultivation by such Band; also for each Band four oxen, one bull and six cows; also, one boar and two sows, and one hand-mill when any Band shall raise sufficient grain therefor. All the aforesaid articles to be given once and for all for the encouragement of the practice of agriculture among the Indians.

It is further agreed between Her Majesty and the said Indians, that each Chief, duly recognized as such, shall receive an annual salary of twenty-five dollars per annum; and each subordinate officer, not exceeding four for each Band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer, as aforesaid, *shall also receive once every three years, a suitable suit of clothing, and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal, and also as soon as convenient, one horse, harness and waggon.*

*That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof*

*by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.*

...

*That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.*

14. Treaty negotiations took place at Fort Carlton between August 15<sup>th</sup> and 23<sup>rd</sup>, 1876 and the resulting Treaty placed binding obligations on both the Chiefs and the Crown. The Crown sought access to the vast tract of land in Treaty 6 and peace with the Indians to facilitate the settlement of the West. The signatory Chiefs sought a secure agricultural livelihood in the face of the extinction of the bison.
15. The solemnity of Treaty 6 derives from this mutual respect and mutual intention to create a binding relationship. As Treaty Commissioner Alexander Morris reported, the Indians understood that Treaty 6 was to “last as long as the sun shines and the river runs.”
16. Although a draft of Treaty 6 had been prepared and provided to the Commissioners prior to the treaty negotiations, the insistence of the Cree Chiefs that the Crown provide assistance in the event of starvation or a general famine and addition of the “medicine chest” clause to the written treaty. The Chiefs expressly requested medicines “free of cost” or a “free supply of medicines.” In addition to medical help, the Chiefs also requested aid in case of “troubles seen and unseen,” or “when we can’t help ourselves in case of trouble,” or “in case of extremity,” or “general famine”.
17. The health care clauses are unique to Treaty 6 and were an integral part of the negotiations. They were adopted in direct response to clear concerns and requests voiced by the Chiefs during the 1876 treaty negotiations. In 1870, an epidemic raged throughout many of the signatories’ territories, including Paul Band’s, followed by widespread starvation and disease resulting from the rapid disappearance of the buffalo.
18. Treaty Commissioner Alexander Morris specifically addressed the assembled Chiefs regarding the health care clauses, promising that the Queen would come to their aid in times of “national calamity” or “unforeseen circumstances,” and cited several examples where the Crown had assisted other Indians. Morris told them to trust in the Queen’s generosity:

... if any great sickness or general famine overtook you, that on the Queen being informed of it by her Indian agent, she in her goodness would give such help as she thought the Indians needed.

...

A medicine chest will be kept at the house of each Indian agent, in case of sickness amongst you.

### **Statutory Framework Governing the Management of Indian Moneys**

19. The scheme within the *Indian Act*, as amended, 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.
20. The *Indian Act* of 1876 consolidated earlier legislation affecting Indians and lands reserved for Indians. Sections 58 to 60 dealt with the collection, management, and investment of Indian funds, all at the discretion of the Governor in Council. Section 58 stated that money was to be dealt with as under previous legislation. Section 59 placed the general authority to invest and manage the proceeds of land sales in the hands of the Governor General in Council.
21. Legislative amendments from 1894 onward refers to capital funds as distinct from Indian moneys generally. Typically, the Department created both a capital account and an interest or revenue account for each Indian band.
22. Under the scheme of the *Indian Act* between 1876 and 1951, 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 s. 26 of the FAA, the Crown could not pay moneys out of the Consolidated Revenue Fund without the 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.
23. Pursuant to s. 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.
24. Section 89 of the *Indian Act*, 1906 gave the Governor in Council broad powers to invest and manage Indian moneys.
25. Pursuant to s. 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.

26. Section 90(1) authorized the Governor in Council, provided they had the consent of the band, 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, s. 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.
27. Pursuant to s. 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).
28. Instructions issued 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.
29. In 1951, amendments to the *Indian Act* “simplified and broadened” the legislation governing Indian Moneys and new sections were intended to give Indian Band Councils “greater scope” concerning the use of Band funds. The *Indian Act* of 1952 explicitly defined “capital and “revenue”:

All Indian moneys derived from the sale of surrendered lands or the sale of capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be deemed to be revenue moneys of the band.

30. The authority to manage Indian moneys that had previously rested with the Governor General in Council was divided between the Minister in charge of Indian Affairs and the Band Council. Section 65 of the *Indian Act* of 1951 limited the expenditure of Band funds without Band consent to a very limited set of conditions:
  - (a) compensation to an Indian in an amount that is determined in accordance with this Act to be payable to him in respect of land compulsorily taken from him for band purposes, and
  - (b) expenses incurred to prevent or suppress grass or forest fires or to protect the property of Indians in cases of emergency.

31. Section 64 listed the authorized uses of capital with the consent of the Band and approval of the Minister:
- (a) to distribute per capita to the members of the band an amount not exceeding fifty percent of the capital moneys of the band derived from the sale of surrendered lands;
  - (b) to construct and maintain roads, bridges, ditches and water courses on the reserve or on surrendered lands;
  - (c) to construct and maintain outer boundary fences on reserves;
  - (d) to purchase land for use by the band as a reserve or an addition to the reserve;
  - (e) to purchase for the band the interest of a member of the band in lands on a reserve;
  - (f) to purchase livestock and farm implements, farm equipment, or machinery for the band;
  - (g) to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment;
  - (h) to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of
    - (i) the chattels owned by the borrower; and
    - (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession;
  - (i) to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property;
  - (j) for any other purpose that in the opinion of the Minister is for the benefit of the band.
32. Section 64(j) allowed for the use of capital funds for purposes beyond those that would “properly represent capital,” as in the previous *Acts*.
33. Section 66 listed three separate processes for authorizing the use of interest moneys. First, under s. 66(1), interest moneys could be used for any purpose that would “promote the general progress and welfare of the band or any member of the band” with the consent of the Band and approval of the Minister. Second, s. 66(2) authorized the Minister to use interest moneys to pay for the costs of relief and pay for burials of indigent Band members. As in previous *Acts*, Band consent was not required for these expenditures.
34. Third, the Governor in Council could authorize certain additional uses of interest moneys without Band consent:

- (a) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;
- (b) to prevent, mitigate and control the spread of diseases on reserves, whether infectious or communicable;
- (c) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;
- (d) to prevent overcrowding of premises on reserves used as dwellings;
- (e) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves; and
- (f) for the construction and maintenance of boundary fences.

35. The 1951 *Indian Act* also introduced the possibility of allowing bands to manage their own interest moneys, with the approval of the Governor in Council.

**Federal Policies Promoting Reserve Land Surrenders and Use of Capital for Band Expenses**

36. During the period between 1896 and 1911, several surrenders of reserve land were procured from Indian bands on the prairies at the instigation of the Department of Indian Affairs and the Laurier government. During this period, the Crown introduced a number of policies and legislative amendments to the *Indian Act* that were designed to encourage and induce Indian Bands on the prairies to surrender some or all of their reserve lands for sale to non-Indian settlers.

To encourage First Nations to surrender their lands, the 1906 *Indian Act* changed the proportion of land sales proceeds that could be distributed, increasing the amount allowed for distribution from 10% to 50% of the land sales proceeds. Frank Oliver, Minister of the Interior and Superintendent General of Indian Affairs, explained that this was considered necessary as an inducement to surrender reserve lands: This we find, in practice, is very little inducement to them to deal for their lands and we find that there is a very considerable difficulty in securing their assent to any surrender. Some weeks ago, when the House was considering the estimates of the Indian Department, it was brought to the attention of the House by several members, especially from the Northwest, that there was a great and pressing need of effort being made to secure the utilization of the large areas of land held by Indians in their reserves without these reserves being of any value to the Indians and being a detriment to the settlers and to the prosperity and progress of the surrounding country.

37. The Ferguson Commission of Inquiry in 1915 exposed evidence of widespread graft, corruption, and speculation in the surrender and sale of Indian reserve lands by key government officials, including the Deputy Minister of the Interior James Smart, the

Deputy Superintendent General of Indian Affairs Frank Pedley, and the Minister of Interior and Superintendent General of Indian Affairs Frank Oliver.

38. Not only did the surrender and sale of reserve lands help some politicians and officials to profit from speculation in Indian lands, but it was also used by Indian Affairs to justify the use of band funds to pay for various expenses, including agricultural implements, medical services, and other forms of assistance that the Crown was obligated to provide at its expense under Treaty 6. In his annual report for 1908, Deputy Superintendent General Frank Pedley explained:

... it is now recognized that where Indians are holding tracts of farming or timber lands beyond their possible requirements and by so doing seriously impeding the growth of settlement, and there is such demand as to ensure profitable sale, the product of which can be invested for the benefit of the Indians and relieve *pro tanto* the country of the burden of their maintenance, it is in the best interests of all concerned to encourage such sales.

39. Despite the restrictions on expenditures of Indian moneys under the *Indian Act*, the Minister of the Interior and Superintendent General of Indian Affairs, Frank Oliver, reasoned that:

It would seem that the advancement of the Indians in the newer provinces would be promoted by allowing all the interest accruing on Indian funds to be treated as interest and to become available for general expenditure.

...

Moreover, there exists the necessity for funds for immediate expenditure for farming operations on Indian Reserves in Saskatchewan and Alberta and by utilizing available Indian funds Parliamentary appropriations will be reasonably curtailed.

40. In 1913, Deputy Superintendent General of Indian Affairs D. C. Scott issued “General Instructions” to all Indian Agents in Canada. Scott identified the core principle of the Department with respect to Indian Moneys, including, *inter alia*:

- it was the policy of the Department to promote self-support among the Indians and not to provide gratuitous assistance to those Indians who can provide for themselves;
- no expenditures were to be made without the authority of the Department;
- the needs of bands should be paid for from Band funds;
- Indian Agents were prohibited from intervening to collect debts due by Indians, and were not on any account to accept orders on money due to Indians. Agents were to inform merchants and others who would be likely to have any transaction with Indians

that the Department would not recognize such orders and will not be responsible for their payment;

- Indians should pay for their own medical costs whenever possible.

41. Deputy Superintendent General Harold McGill updated the general instructions to Indian Agents in 1933. The instructions pertaining to expenditures were very similar to those issued in 1913.

### **Unauthorized Expenditures from the Paul Band's Capital and Revenue Accounts**

42. Between 1897 and 1911, the Paul Band's reserve lands were reduced to only a fraction of their original size, and capital amounts resulting from the surrender and sale of reserve lands were deposited to trust. The specific allegations related to the aforesaid surrenders are set out in separate Specific Claims and do not form part of the within Claim, however, they provide important context on the source of the funds deposited to trust for the Paul Band.

43. Surrenders took place in 1897 (Sharphead IR 141), 1906 (the Marl Surrender in June 1906 and IR 133B Surrender in September 1906), and in 1911 (the Farmlands Surrender in May 1911, and Duffield Townsite Surrender in August 1911). Lands were also expropriated for railway purposes in 1908. The majority of the monies held in Paul Band's Capital Account were derived from the sale of its surrendered or expropriated reserve lands. Interest from the Capital Account Funds was deposited to the Revenue Account. Both accounts were administered by the Department of Indian Affairs and were subject to the provisions of the *Indian Act*.

44. From the early 1900s to on or about 1940, the Paul Band's members experienced illness, famine, and pestilence on reserve, including epidemics of influenza, tuberculosis, measles, smallpox.

45. In 1901, the Department started to use funds from Account No. 202 to pay for costs associated with relief, housing, farm implements, and seed. \$187.30 was spent on farming implements in 1901.

46. Between April 1901 and March 1911, \$10,775.11 was used from the No. 202 Interest Account. Some of these expenditures were for food and may have been authorized under the *Indian Act* provision allowing for Band funds to be used to pay relief costs notwithstanding the promise in Treaty 6 to provide relief and assistance. These total \$1,684.80. No evidence of authorization has been found for the remaining \$9,070.31.

47. In 1907-08 the first significant expenditures from the Capital Account were made. Prior to this date the only debits from capital had been Indian Land Management Fund deductions

and refunds or corrections to land sales credit. \$2,723.14 was spent on fencing materials and three mowers and three rakes. The expenditures for fencing materials were authorized by Order in Council, but installed at the request of “the public,” as conveyed through the provincial Department of Public Works and the Indian Agent had recommended that the Province should pay for them. The purchase of mowers and rakes was approved by the Department with the proviso that “the cost of the same to be made a charge against Band funds” and there is no evidence that the Band was aware of the expenditure of the Band funds for this purpose.

48. In May 1908, Indian Commissioner David Laird instructed the local Indian Agent that the Department had decided that in future the Paul Band was to pay for all its own costs. Only items that were “furnished under Treaty” should be bought with government funds:

The Department has concluded that Bands having money at their credit sufficient to supply their needs should not be provided out of the public revenue with anything beyond the supplies called for by Treaty stipulations.

Therefore in the case of the Indians of the Enoch’s, Paul’s and Michel’s Bands, all supplies beyond those furnished under Treaty are to be paid for out of the Bands’ funds...

49. In 1911, two surrenders took place. The May 1911 surrender passed on the following conditions:

- The lands to be sold shall be \$45,000.00;
- that \$20,000.00 of the proceeds shall be expended as follows:
  - Fence material and labour thereon, \$4000.00;
  - work horses and farming implements for working members of our band and ponies for the aged and widow members of our band, \$6000.00;
  - separator and engine to operate same, \$4500.00;
  - grass and other seeds, \$500.00;
  - buildings for storage of seed grain, storage of implements and for issuing of beef, \$4000.00; and
  - for the repairing of roads, building bridges, etc., \$1000.00.

50. The May 1911 Surrender further stated that the Band’s interest money was to be used for rations, except for the annual purchase of \$150.00 worth of blankets and clothing. There is no evidence that the Paul Band had been previously informed of the Department’s policy

that their capital and interest money was to be used to pay for all expenditures not related to treaty benefits.

51. The second surrender passed in August 1911, on condition of an immediate cash payment. The Department agreed that the Band would receive \$3.50 per head immediately and another \$1.50 per head when the land was sold. According to the surrender document, this was to amount to a distribution of \$570, with the remainder of the sales money to be added to the money from the surrender of May 13, "and expended as provided in said surrender."
52. The terms of the 1911 Surrenders were fulfilled over ten years. From 1911-12 to the end of the 1921-22 year, \$0 was spent from the Capital account to fulfil the terms of the surrender related to fence materials and labour; grass and seed; and buildings for the storage of grain, implements, and beef. \$6,560.50 was spent on work horses and farming implements (\$560.50 more than contemplated in the surrender). In 1918, the Agent asked if the threshing equipment required (separator and engine) could be purchased. \$1,369 was spent on the threshing equipment. \$491.75 was spent on road repairs, building bridges, etc. In 1911-1913, \$4,553.45 was expended from the Interest Account 202 for rations, clothing and blankets, and "other items". These expenditures left the Interest Account with a negative balance of \$780 at the end of 1913.
53. Between 1921 and 1926, there were no debits from the Capital Account. Between 1926 and 1940, \$35,174.75 was expended from the Capital Account 202. In 1926-27, over \$15,000 was debited to transfer the shares of members in the Ermineskin and Samson Bands.
54. Between 1911 and 1940, \$36,901.69 was expended from the Interest Account 202 for Agricultural Expenditures.
55. Between 1909 and 1940, \$9,661.75 was expended on medical supplies and support from the 202 trust accounts. After 1940, the trust accounts continue to show periodic expenditures for certain kinds of medical expenses.
56. In 1963, the Council asked to use capital funds to make a per capita distribution of \$25 to each member of the Paul Band, noting on the BCR that the distribution was intended to assist members in purchasing clothing, garden seed, and farming assistance, and that this would be deducted from any relief issued that month. They also requested \$10,000 from capital for wells and housing on the same BCR. The total expenditure of \$21,125 was approved by the Department.
57. Further expenditures were made from both the Capital and Revenue Accounts between 1940 and 1984.

58. The expenditures made by the Crown, which were not authorized by the Paul Band, have resulted in the loss of investment returns, use and other benefits of the funds wrongfully spent.
59. The full extent of the unauthorized expenditures and the Respondent's breach of trust will be proven at or before a Hearing in this Claim.

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

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

60. The Claimant submits that the Crown expended Indian moneys deposited in the Paul Band's capital and revenue accounts without the necessary authority or approvals of Governor in Council or the Superintendent General of Indian Affairs as the case required contrary to the provisions of the *Indian Act*, therefore breached the statutory scheme governing the management of Indian Moneys.
61. 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.

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

62. The Respondent's fiduciary obligations crystallized when the Crown assumed discretionary control over the Claimant's Capital and Revenue Accounts. The Crown had a fiduciary duty to act in the best interests of the Claimant, place the interests of the Claimant 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.
63. At all material times, the Crown held and exercised discretionary control over the Paul Band's Capital and Revenue Accounts, pursuant to the *Indian Act*. The Paul Band was in a position of complete vulnerability to the Crown and to the unilateral exercise of its powers.
64. The Claimant submits that the Crown breached their fiduciary duties and trust obligations to the Claimant. The Claimant submits that the Crown did not act in accordance with its duty to act in the best interest of the Claimant with respect to the Indian moneys deposited in the Capital and Revenue Accounts. Crown expenditures from the Claimant's trust

accounts demonstrate self-interested conduct and conduct which benefited third parties rather than the Claimant. The Crown exploited their discretionary control and management of the Claimant trust funds by utilizing the funds for other purposes which did not benefit the Paul Band.

65. Furthermore, the Crown had a duty to manage the Paul Band's Capital and Revenue Accounts in the best interests of the Paul Band and to act as a prudent and competent fiduciary. Therefore, using trust funds for agricultural implements, medical expenditures, and to support the band in times of pestilence or famine that were the responsibility of another party – the Crown itself – constituted an unjust enrichment to the Crown and a breach of its fiduciary duties to the Paul Band.
66. The First Nation claims that the current value of the funds improperly expended from the Capital and Revenue Accounts must be returned to the First Nation, with compound interest or a rate of return commensurate with returns earned by the Canada Pension Plan or other major endowments or pensions.

## VII. RELIEF SOUGHT

67. In light of the foregoing, the First Nation seeks the following relief:
  - a. A determination that the Respondent owes the First Nation outstanding lawful obligations pursuant to the mismanagement of its Capital and Revenue Accounts in its capacity as trustee or fiduciary.
  - b. Equitable compensation for the following breaches of the Respondent's statutory, trust, fiduciary, and other legal duties, specifically:
    - i. the Respondent's breach of the statutory scheme contemplated in the *Indian Act*, in effect from time to time, regarding the governance and management of Indian trust moneys when authorizing and directing the expenditures from the Capital and Revenue Accounts; and
    - ii. the Respondent's breach of its fiduciary and trust like duties regarding the mismanagement of the Capital and Revenue Accounts contrary to the provisions of the *Indian Act*, as amended;
  - c. Damages and equitable compensation based on the current value of the mismanaged funds from the Capital and Revenue Accounts plus compound interest or a rate of return commensurate with returns earned by the Canada Pension Plan or other major endowments or pensions to the date of judgment; and
  - d. Such other damages or compensation as this Honourable Tribunal deems just.

Dated this 13<sup>th</sup> day of December, 2022, at the City of Calgary in the Province of Alberta.



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