

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES		
F I L E D	April 12, 2023	D E P O S E
Susie Thorsley		
Ottawa, ON	5	

SCT File No.: SCT-6004-22

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

PAUL FIRST NATION

Claimant

v.

HIS MAJESTY THE KING IN THE RIGHT OF CANADA

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

Respondent

RESPONSE

**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*.

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I. Overview

1. The Respondent, His Majesty the King in right of Canada (“Canada”), is committed to reconciliation and a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, cooperation, and partnership. Canada endeavors to embody these principles as it assists the Specific Claims Tribunal (“Tribunal”) in its task of adjudicating matters brought before it.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.
3. The Declaration of Claim (“Claim”) relates to whether Canada breached its statutory, trust, fiduciary, or other legal duties when authorizing and directing certain expenditures from the Paul First Nation’s capital and revenue accounts (“Capital and Revenue Accounts”).
4. Canada acknowledges that it has a statutory duty pursuant to the *Indian Act* and a fiduciary duty to properly administer and authorize expenditures from the Capital and Revenue Accounts.
5. Canada admits that it breached its fiduciary duty when it made the deductions of \$298.35 for mowers and rakes and \$478.00 for 13 sets of harnesses in 1908, \$31.50 for Indian Agent Urbain Verreau in 1911 and \$21.50 for stoves and pipes in 1912 from the Capital and Revenue Accounts. Canada further states that the deductions in 1908 and 1912 are not compensable losses as the deductions were for purchases for Paul First Nation and the members of Paul First Nation received full benefit of the use of those purchases.
6. For all other expenditures, Canada acted properly in administering the funds from the Capital and Revenue Accounts resulting in no statutory breach of the *Indian Act*, nor any breach of fiduciary duty for authorizing the expenditures from the Capital and Revenue Accounts. In addition, the May and August 1911 Surrenders (as described below) authorized the expenditure of moneys from the Capital and Revenue Accounts.

II. Status of Claim (R. 42(a))

7. Canada admits, in response to paragraph 3 of the Claim, that this Claim meets the condition precedent in sub-section 16(1)(b) of the *SCTA*.
8. Canada admits the facts set out in the following paragraphs of the Claim:
 - a. on June 5, 1996, that Paul First Nation filed a specific claim asserting capital account mismanagement with the Minister of Aboriginal Affairs and Northern Development (the “Minister”), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC”); (Paragraph 4)
 - b. on May 11, 2011, that Canada informed Paul First Nation that its specific claim was accepted, in part; (Paragraph 5) and
 - c. that Paul First Nation has not settled any portion of the specific claim with Canada. (Paragraph 6)

III. Validity of Claim (R. 42(b) and (c))

9. Canada admits that it has expended moneys from the Capital and Revenue Accounts. However the *Indian Act* permitted such expenditures, with the exception of:
 - a. \$298.35 for mowers and rakes and \$478.00 for 13 sets of harnesses on November 27, 1908;
 - b. \$31.50 for Indian Agent Urbain Verreau in on November 27, 1911;
 - c. \$23.90 for stoves and pipes on February 13, 1912.
10. For those four deductions, Canada admits that it breached its fiduciary duty to Paul First Nation. However the deductions of \$298.35, \$478.00 and \$23.90 were not compensable losses as the deductions were for purchases for Paul First Nation and the members of Paul First Nation received full benefit of the use of those purchases.

11. For all other expenditures, Canada denies that it breached its statutory or fiduciary duties by expending moneys from the Capital and Revenue Accounts. Canada further states that the May 1911 and August 1911 Surrenders (as described below) authorized the expenditure of moneys from the Capital and Revenue Accounts.
12. Accordingly, if the Tribunal finds Paul First Nation's claim to be valid, then Canada states that:
 - a. sub-section 20(1) of the *SCTA* may provide a basis for the Tribunal to award compensation; and
 - b. this would be subject to any applicable deduction for set-off from such compensation calculated in accordance with sub-section 20(3) of the *SCTA*.

IV. Allegations of Fact (R. 41(e)); Acceptance, denial or no knowledge (R. 42(d))

Pleading of Evidence

13. In response to the whole of the Claim, and to paragraphs 8 – 66 in particular, Canada states that the Paul First Nation has pleaded evidence contrary to Rule 39 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Despite this, Canada has attempted to respond to the Declaration of Claim in a substantive manner.

Paul First Nation and its Adherence to Treaty No. 6

14. In response to paragraph 1 of the Claim, Canada acknowledges that Paul First Nation is a “band” within the meaning of section 2(1) of the *Indian Act*, and is a “First Nation” within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“*SCTA*”). Canada further acknowledges that Paul First Nation is located west of Edmonton, in the Province of Alberta.
15. In response to paragraphs 8 and 12 of the Claim, Canada acknowledges that:

- a. In 1876, it entered into Treaty No. 6 (“Treaty 6”) with certain Plain and Wood Cree and other Tribes in what is now central Saskatchewan and Alberta;
 - b. Approximately one year later, in or about August 21, 1877, Chief Alexis of the Alexis First Nation signed an adhesion to Treaty 6;
 - c. When Chief Alexis adhered to Treaty 6, the ancestors of Paul First Nation were viewed as members of Alexis First Nation; and
 - d. Consequently, Canada admits that Paul First Nation has adhered to Treaty 6.
16. In response to paragraphs 9 to 11 of the Claim, Canada states:
- a. At or around the time of the adhesion to Treaty 6, Ironhead was a Headman of the Alexis First Nation;
 - b. By 1880, Headman Ironhead and his followers resided at, or near, White Whale Lake (now known as Wabamun Lake). By contrast, Chief Alexis and his followers resided at, or near, Lac St. Anne;
 - c. After Headman Ironhead passed away in or about 1886 or 1887, his followers became followers of Paul Firebag, who was a Headman under Chief Alexis. At some point this group became known as “Paul’s Band” (now Paul First Nation);
 - d. In November and December 1891, John C. Nelson, a Dominion Land Surveyor, surveyed a reserve and a fishing station at, or near, White Whale Lake for the members of Chief Alexis’s First Nation to whom a reserve had not yet been allotted. By this point, the members were followers of Paul Firebag;
 - e. By Order in Council P.C. No. 1633 dated June 16, 1892, these lands, which amounted to 32.7 square miles (or 20,928 acres), more or less, were withdrawn from the operation of *The Dominion Lands Act*, RSC 1886, 49 Victoria, c 54;
 - f. At that time, these lands became known as Indian Reserve No. 133A, consisting of 20,293 acres), more or less, and Indian Reserve No. 133B, consisting of 635 acres, more or less;
 - g. Over the next years, Paul First Nation grew as members of the Sharphead First Nation joined Paul First Nation either by marriage or a request to transfer;

- h. By 1895, the members of the Sharphead First Nation had dispersed and the Department of Indian Affairs considered the Sharphead Reserve to be abandoned. A majority of the members of the Sharphead First Nation were resident at White Whale Lake;
- i. In 1895, the Department of Indian Affairs considered the Sharphead First Nation dissolved and transferred those members residing at White Whale Lake to Paul First Nation;
- j. On September 11, 1897, the former members of the Sharphead First Nation surrendered the whole of Indian Reserve No. 141, consisting of 27,136 acres, more or less; and
- k. The moneys flowing from the sale of the surrendered lands were distributed to the capital accounts of those bands to which the former members of Sharphead First Nation now belonged.

Treaty 6

- 17. In further response to paragraph 12 of the Claim, Canada admits by the terms of Treaty 6, the Indigenous signatories exchanged Aboriginal title to approximately 121,000 square miles of land for certain promises and benefits.
- 18. In response to paragraph 13 of the Claim, Canada admits that Treaty 6 includes the clauses as quoted therein without the emphasis added.
- 19. In response to paragraph 14 of the Claim, Canada admits that Treaty 6 was signed on August 23, 1876 at Fort Carlton and on September 9, 1876 at Fort Pitt. The Cree Chiefs sought a treaty, at least in part, to transition to an agricultural way of life. Canada's purposes for entering Treaty 6 are set out in the text of the treaty itself, and included opening up land for settlement, ensuring peace, and exchanging land for various promises and benefits, including entitlement to reserve lands.
- 20. In response to paragraph 15 of the Claim, Canada acknowledges that Treaty 6 contemplates a solemn exchange of promises made by Canada and the various First Nation signatories and

adherents to it, including, Paul First Nation. Canada also admits that the Honourable Alexander Morris, Lieutenant-Governor of the Province of Manitoba and the North-West Territories, was one of the Treaty Commissioners of Treaty 6 (“Commissioner Morris”). During the negotiations of the terms of Treaty 6, Commissioner Morris stated: “What I trust and hope we will do is not for to-day or tomorrow only; what I will promise, and what I believe and hope you will take, is to last as long as that sun shines and yonder river flows.”

21. In response to paragraphs 16, 17 and 18 of the Claim, Canada states that during Treaty 6 negotiations:
 - a. The representatives of the First Nations in attendance requested changes, in writing, to the initial offer made by the Treaty Commissioners. In part, the representatives of the First Nations sought some provision for the poor, unfortunate, blind and lame, and for a free supply of medicines or medicines free of cost.
 - b. “The Badger” is noted as requesting aid “when we cannot help ourselves and in case of troubles seen and unseen”; and Mis-tah-wah-sis (also known as Mistawasis or Chief Big Child) indicated that they were not requesting food for every day, but “in case of famine or calamity”;
 - c. Commissioner Morris noted that:
 - i. he could not undertake the responsibility of promising provision for the poor, blind and lame;
 - ii. there are people in unfortunate circumstances in all parts of the Crown’s dominions;
 - iii. “[T]hey must be left to the charity and kind hearts of the people. If you are prosperous yourselves, you can help you unfortunate brothers”;
 - iv. “some great sickness or famine stands as a special case”;
 - v. it was only in the case of a national famine or pestilence that the Crown would intervene;
 - vi. in “unforeseen circumstances” or “extraordinary circumstances”, they should trust in the generosity of the Queen; and

- vii. “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”.
- d. In response to the request for a free supply of medicines, Commissioner Morris noted that, “[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 Monies

- 22. In response to paragraph 19 of the Claim, Canada acknowledges that one of the aspects of the *Indian Act* is to define how Canada administers and manages “Indian moneys”. This includes setting out how the expenditures of “Indian moneys” are to be authorized and directed.
- 23. In response to paragraph 20 of the Claim, Canada admits that the *1876 Indian Act* consolidated earlier legislation affecting “Indian peoples and lands reserved for Indian peoples”. The purpose and function of sections 58, 59, and 60 of the *1876 Indian Act* are:
 - a. Section 58 sets out that “all moneys or securities of any kind applicable to the support or benefit of Indians, or any band of Indians, and all moneys accrued or hereafter to accrue from the sale of any Indian lands or of any timber on any reserves or Indian lands” are to be “dealt with in the same manner as they have been applied to or dealt with before” under previous legislation;
 - b. Section 59 granted the Governor in Council authority (subject to the *Act*) to direct investments of Indian moneys “arising from the sale of Indians land”, including (but not limited to) “property held or to be held in trust for Indians”, as well as management of how expenses are payable; and
 - c. Section 60 outlined that any “proceeds arising from the sale or lease of any Indian lands, or from the timber, hay, stone, minerals, or other valuables thereon, or on a reserve, shall be paid to the Receiver General to the credit of the Indian Fund.”

24. In response to paragraph 21 of the Claim, Canada states that it generally maintains one capital and one revenue account per band.
25. In response to paragraph 22 of the Claim, Canada agrees that “Indian moneys” collected or received by Canada are deposited in the Consolidated Revenue Fund. However, within the Consolidated Revenue Fund, specific accounts have been set aside for bands, including the Paul First Nation.
26. In response to paragraph 23 of the Claim, Canada acknowledges that section 38 of the *1906 Indian Act* authorized the Governor in Council to make regulations “prohibiting or regulating the sale, barter, exchange or gift ... by any Indian or any band ... in the province of Manitoba, Saskatchewan or Alberta, or the Territories, of any grain or root crops, or other produce grown upon any reserve”.
27. In further response to paragraph 23 of the Claim, sub-section 87(2) of the *1906 Indian Act* required contracts or agreements binding or purporting to bind “Indian moneys” or securities to be approved in writing by the Superintendent General.
28. In response to paragraphs 24 and 25 of the Claim, Canada states that sub-section 89(1) of the *1906 Indian Act* provided the Governor in Council the ability to invest and manage “Indian moneys”.
29. In further response to paragraph 25, Canada states that sub-section 89(2) of the *1906 Indian Act* provided the Governor in Council the ability:
 - a. to direct what percentage or proportion shall be set apart to cover the cost of and incidental to the management of reserves, lands, property and moneys; and
 - b. to authorize and direct the expenditure of such moneys for surveys, for compensation to Indians for improvements or any interest they had in lands taken from them, for the construction or repair of roads, bridges, ditches and watercourses on such reserves or lands, for the construction

and repair of school buildings and charitable institutions and by way of contribution to schools attended by such Indians.

30. In response to paragraphs 26 of the Claim, Canada acknowledges that:
- a. Sub-section 90(1) of the *1906 Indian Act* provided that the Governor in Council could authorize and direct the expenditure of capital moneys with the consent of a band and for what types of expenditures;
 - b. Sub-section 90(2) provided that the Governor in Council could authorize and direct the expenditure of capital moneys in the event of a band refusing to consent; and
 - c. Sub-section 90(3) provided that the Superintendent General could authorize and direct the expenditure of the capital funds of a band if land in a reserve whether held in common or by an individual Indian is uncultivated and the band or individual is unable or neglects to cultivate.
31. In response to paragraph 27 of the Claim, Canada agrees with the Claim's general characterization of section 91 of the *1906 Indian Act*. However, an "Indian fund" is found within the Consolidated Revenue Fund.
32. In response to paragraph 28 of the Claim, Canada acknowledges that on October 25, 1913, then Deputy Superintendent General of Indian Affairs, Duncan Campbell Scott ("Scott"), issued "General Instructions" to Indian Agents in Canada. Paragraph 65 of the "General Instructions" provided for the expenditures of band capital as follows:

Agents whose bands have capital funds at their credit in the hands of the Department are referred to section 89 and 90 of the Indian Act. Any proposed expenditures must be referred to the Department, in order that it may be submitted to the Governor in Council for consideration. The Agent's own recommendation for or against the expenditures should always be forwarded to the Department, and the amount should be definitely stated. While under subsection 2 of section 89, the consent of the band in council or of the council of the band (See sections 166 and 167 of the Indian Act) is not actually necessary as regards an expenditure for any of the purposes referred to in that sub-section, nevertheless it is advisable to obtain the Indians' consent where

possible. For an expenditure under section 90, the consent of the Indians is always necessary, the consent being given in the form of a resolution.

33. In response to paragraph 29 of the Claim, Canada acknowledges that on June 20, 1951, the Senate and House of Commons assented to amendments to the *Indian Act*. Canada states that section 62 of the *1952 Indian Act* sets out how “Indian moneys” (as defined by sub-section 2(h) of the *1952 Indian Act*) can be distinguished as either “capital moneys” or “revenue moneys” of a band.
34. In response to paragraph 30 of the Claim, Canada admits that the legislative authority and requirements regarding the management of Indian moneys has changed over time as a result of amendments made to the *Indian Act*. Canada also acknowledges that sub-sections 65(a) and (b) of the *1951 Indian Act* states that the Minister may pay from capital moneys:
 - (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.
35. In response to paragraph 31 of the Claim, Canada agrees that section 64 of the *1951 Indian Act*, listed, where consent of the council of a band is given, how “the Minister may authorize and direct the expenditures of capital moneys of the band”. Canada also admits that sub-sections 64(a) to (j) of the *1951 Indian Act* are accurately cited in paragraph 31 of the Claim.
36. In response to paragraph 32 of the Claim, Canada does not agree with the Claim’s interpretation of sub-section 64(j) of the *1951 Indian Act*. Canada states that pursuant to sub-section 64(j), the Minister may authorize and direct the expenditure of capital moneys of the band with its consent for any other purpose that in the opinion of the Minister is for the benefit of the band.

37. In response to paragraphs 33 and 34 of the Claim, Canada agrees that section 66 of the *1951 Indian Act* listed three separate processes for authorizing and directing the expenditures of “revenue moneys”. Sub-section 66(1) authorized the Minister to direct expenditures, with the consent of the council of the band of “revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band or any member of the band.” Sub-section 66(2) states that the “Minister may make expenditures out of the revenue moneys of the band to assist sick, disabled, aged or destitute Indians of the band and to provide for the burial of deceased indigent members of the band.” Additionally, sub-section 66(3) lists additional expenditures of revenue moneys that could be authorized by the Governor in Council. Sub-sections 66(3)(a) to (f) are accurately cited in paragraph 34 of the Claim.
38. In response to paragraph 35 of the Claim, Canada states that sub-section 68(1) of the *1951 Indian Act* sets out that “the Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke any such order.”

Federal Policies Regarding Reserve Land Surrenders, Use of Capital, and Band Expenses

39. In response to paragraphs 36, Canada acknowledges that in 1906, Parliament amended the *Indian Act*. Section 89 included the provision, as amended, increasing the allowable upfront cash distribution to be paid to the members of a band from the proceeds from land sales from 10% to 50%.
40. In response to paragraphs 36 and 37 of the Claim, Canada states that:
- a. During the years 1896 to 1911, the Department of Indian Affairs was the responsibility of the Minister of the Interior who also held the position of Superintendent General of Indian Affairs;
 - b. In 1913, the Conservative Government under Sir Robert Borden commissioned a Winnipeg lawyer, Mr. Thomas Roberts Ferguson (“Ferguson”), to inquire into the administration of the public domain since the beginning of Laurier’s Liberal Government in 1896 (“Ferguson Inquiry”). The scope of the Ferguson Inquiry

required Ferguson to report on all matters connected with the disposition of Dominion Lands; timber, mineral and water lands and rights; and “Indian lands and Indian reserves”;

- c. The Ferguson Inquiry conducted investigations during a two-year period from 1913 to 1914;
 - d. The reports from the Ferguson Inquiry (“Ferguson Reports”) were considered by the House of Commons on April 14, 1915;
 - e. Unfortunately, the Ferguson Reports were destroyed by fire in 1916; and
 - f. The Ferguson Inquiry did not investigate any of the Paul First Nation’s surrenders and sales of those surrendered lands.
41. In response to paragraphs 38 to 41 of the Claim, Canada only acknowledges that the Department of Indian Affairs issued general instructions to Indian Agents from time to time. In addition, as a general matter, the Department of Indian Affairs sought to promote self-support among Indigenous persons.

Expenditures from Paul First Nation’s Capital and Revenue Accounts

42. In response to paragraphs 42 to 57 of the Claim, Canada states that Paul First Nation is pleading evidence relevant to two other separate claims currently before the Tribunal. SCT File No. 6001-16 concerns a surrender and subsequent sale of land and SCT File No. 6004-19 concerns the disposition of lands for railway purposes. However, despite this, because the Claim pleads that such evidence provides “important context” as per paragraph 42 of the Claim, Canada has attempted in the paragraphs that follow to respond to this evidence in a substantive manner. Additionally, Canada reserves its right to amend this Response pending the progress and outcomes of these other two separate matters.
43. Moreover, Canada submits that the Tribunal cannot make any findings of fact or liability with respect to those portions of SCT File No. 6001-16 and SCT File No. 6004-19 that are duplicative with this Claim.
44. In response to paragraph 43 of the Claim, Canada agrees the following surrenders took place:

- (1) September 11, 1897, the former members of the Sharthead First Nation, surrendered 27,136 acres of Indian Reserve No. 141;
- (2) June 20, 1906, Paul First Nation surrendered the mines, deposits, beds, veins and seams of marl and sand lying under and on the surface of Paul First Nation reserve which lay on the eastern shore of White Whale Lake, in trust to Canada;
- (3) September 11, 1906, Paul First Nation surrendered 635 acres of Indian Reserve No. 133B;
- (4) May 13, 1911, Paul First Nation surrendered 4,500 acres of Indian Reserve No. 133A; and
- (5) August 5, 1911, Paul First Nation surrendered 100 acres, called the Duffield Townplot, on the Indian Reserve No. 133A.

45. In further response to paragraph 43 of the Claim, Canada acknowledges that on January 8, 1908, the Governor General in Council issued Order in Council P.C. No. 36 authorizing the disposition of lands to the Grand Trunk Railway Company for the right-of-way on Indian Reserve No. 133A and Indian Reserve No. 133B, and for station grounds on Indian Reserve No. 133 A, under section 46 of the *1906 Indian Act*, upon such terms as may be agreed to. Canada also acknowledges that the Capital and Revenue Accounts were administered by the Department of Indian Affairs, and were subject to the *Indian Act*.
46. In response to paragraph 44 of the Claim, Canada acknowledges that various incidents of illness occurred over the period in question.
47. In response to paragraphs 45 to 47, and 53 to 57 of the Claim, Canada acknowledges that it authorized certain expenditures from the Capital and Revenue Accounts. Canada states that it satisfied its statutory or fiduciary obligations as they relate to the expenditures made over the period in question except for the deduction from the Capital Account for the mowers and rakes listed in paragraph 47 of the Claim for the amount of \$298.35.
48. In further response to paragraph 47 of the Claim, Canada states that on May 23, 1907, Paul First Nation consented to the expenditure of \$2000.00 for fencing from the Capital Account.

This consent was signed by Chief David Bird, and three other members. The expenditure was then authorized by Order in Council P. C. 1379 dated June 15, 1907. In total \$1,946.79 was expended for fencing materials. Canada further states that the purchase of the mowers and rakes was made for the Paul First Nation and they received the full benefit of their use.

49. In response to paragraph 48 of the Claim, Canada acknowledges the quote from the letter, dated May 6, 1908 from Indian Commissioner David Laird to Indian Agent U. Verreau.

50. In response to paragraphs 49 to 51 of the Claim, Canada states the following:

- a. In 1911 two surrenders occurred;
- b. The first surrender occurred on May 13, 1911. Paul First Nation surrendered 4,500 acres in Indian Reserve No. 133A, that being sections 13, 14, 23, 24, 25, 26, 35 and 36 in Township 52, Range 3 (May 1911 Surrender); and
- c. The terms of the May 1911 Surrender were that the lands would not be sold for a sum aggregating less than \$45,000.00 and that the \$20,000.00 of the proceeds be expended on the following:

...fence material and cost of erecting fences, \$4000.00, work horses and farming implements for the use of the working members of our band and for ponies for the use of 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 the storage of implements, seed grain and for the issuing of food, \$4000.00; and for the repairing of roads, building bridges, etc., within our reserve \$1000.00.

The residue to be funded and the interest thereon, together with the interest on deferred land payments and the interest on all other funded moneys to be yearly expended as follows: - \$150.00 for blankets and clothing for the aged and infirm members of our band and the residue to be expended to provide food to be equally distributed at regular intervals to such members of our band who present themselves at the food distributing building on the days set for this purpose...

- d. The second surrender occurred on August 5, 1911. Additional lands of 100 acres, called the Duffield Townplot, on Paul First Nation's Reserve No. 133A were

surrendered for sale ("August 1911 Surrender"). The terms of the surrender were the following:

AND upon the further condition that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management, be expended as follows; five hundred and seventy dollars to be paid us in cash within surrender, two hundred and eighteen, to be paid us in cash within one month of the sale of said land, the balance to be added to the moneys realized from the sale of the eight sections surrendered on the thirteenth of May 1911 and expended as provided in said surrender.

- e. For the August 1911 Surrender, band members were paid individually in two payments, first for \$3.50 and then \$1.50. Moneys from the August 1911 Surrender land sales were to be added to the proceeds of the May 1911 Surrender and spent on the items identified in the May 1911 Surrender.
51. In response to paragraph 52 of the Claim, Canada states that it fulfilled the terms of both the May 1911 Surrender and the August 1911 Surrender.
 52. In response to paragraphs 58 to 66 of the Claim, Canada acknowledges that it authorized certain expenditures from the Capital and Revenue Accounts. However, the *Indian Act* provided the Superintendent General of Indian Affairs with the authority to access the Capital and Revenue Accounts, with the exception of the purchase of the mowers and rakes for \$298.35 and 13 sets of harnesses for \$478.00 in 1908, the payment of \$31.50 to Indian Agent Urbain Verreau in 1911 and the purchase of stoves and pipes for \$23.90 in 1912. For all other expenditures, Canada acted properly in accessing the funds from the Capital and Revenue Accounts.
 53. In further response to paragraphs 58 to 66, Canada does admit that it breached its fiduciary duty for the purchase of the mowers and rakes for \$298.35 and 13 sets of harnesses for \$478.00 in 1908, the payment of \$31.50 to Indian Agent Urbain Verreau in 1911 and the purchase of stoves and pipes for \$23.90 in 1912. Canada further states that the deductions of \$298.35, \$478.00 and \$23.90 were not compensable losses as these items were purchased for the Paul First Nation and they received full benefit of their use.

54. Aside from the deductions of \$298.35, \$478.00, \$31.50, and \$23.90, Canada, in authorizing certain expenditures from the Capital and Revenue Accounts, did not breach the *Indian Act*, nor did Canada breach any other fiduciary duty owed to Paul First Nation
55. Additionally, Canada states that the May and August 1911 Surrenders authorized the expenditure of certain moneys from the Capital and Revenue Accounts.

V. Statements of Fact (R. 42(e))

54. Canada relies upon the facts set out under heading “IV. Allegations of Fact (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))”.
55. Treaty 6 was signed on August 23, 1876 at Fort Carlton and on September 9, 1876 at Fort Pitt, with certain Plain and Wood Cree and other Tribes in what is now central Saskatchewan and Alberta.
56. By the terms of Treaty 6, the Indigenous signatories exchanged Aboriginal title to approximately 121,000 square miles of land for certain promises and benefits. Canada’s purposes for entering Treaty 6 are set out in the text of the treaty itself, and included opening up land for settlement, ensuring peace, and exchanging land for various promises and benefits, including entitlement to reserve lands.
57. In or about August 21, 1877 Chief Alexis of the Alexis First Nation signed an adhesion to Treaty 6.
58. When Chief Alexis adhered to Treaty 6, the ancestors of Paul First Nation were viewed as members of Alexis First Nation.
59. At or around the adhesion to Treaty 6, Ironhead was a Headman of the Alexis First Nation.
60. By 1880, Headman Ironhead and his followers resided at, or near, White Whale Lake (now known as Wabamun Lake).

61. After Headman Ironhead passed away in or about 1886 or 1887, his followers became followers of Paul Firebag, who was a Headman after Chief Alexis. At some point this group became known as “Paul’s Band” (now Paul First Nation).
62. In November and December 1891, John C. Nelson, a Dominion Land Surveyor, surveyed a reserve and a fishing station, at or near, White Whale Lake, which amounted to 32.7 square miles or 20, 928 acres, more or less.
63. On June 16, 1892, Indian Reserves No. 133A and 133B were confirmed by Order in Council P.C. No. 1663.
64. On May 13, 1911, Paul First Nation surrendered approximately 4,500 acres of Reserve 133A. That being sections 13, 14, 23, 24, 25, 26, 35 and 36 in Township 52, Range 3.
65. On August 5, 1911, Paul First Nation surrendered 100 acres, called the Duffield Townplot, on the Wabamun Reserve No. 133A.
66. The Paul First Nation is located west of Edmonton, in the Province of Alberta.
67. One of the features of the *Indian Act* is to establish the scheme for how Canada administers and manages “Indian moneys”. This includes setting out how the expenditures of “Indian moneys” are to be authorized and directed.

VI. Relief sought by Canada (R.42(f))

68. Canada seeks the following relief:
 - a. A determination of the amount for which Canada is liable for the admitted breach of its fiduciary duties to the Paul First Nation;
 - b. Dismissal of the remainder of the Claim;
 - c. In the alternative, if the Tribunal finds that Canada mismanaged certain moneys in the Capital or Revenue Accounts, a calculation of compensation that takes into

account any compensation and benefits received by Paul First Nation resulting from deductions or expenditures made from the Capital and Revenue Accounts as required by sub-section 20(3) of the *SCTA*;

- d. Canada may decide not to seek costs upon the final determination of the proceedings, however it reserves the right to seek such costs; and
- e. Such further relief as counsel may request and this Honourable Tribunal deems just.

VII. Communication (R. 42(g))

69. Canada's address for the service of documents is:

Department of Justice Canada
Prairie Regional Office (Edmonton)
300 EPCOR Tower, 10423 – 101 Street
Edmonton, Alberta T5H 0E7
Attention: Tanya Knobloch / Jacob Marchel

70. Canada's facsimile number for the service of documents is (780) 495-2964.

71. Canada's email addresses for the service of documents are:

tanya.knobloch@justice.gc.ca
jacob.marchel@justice.ca

Dated this 12th day of April, 2023.



ATTORNEY GENERAL OF CANADA

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