

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

MUSCOWPETUNG SAULTEAUX NATION

SPECIFIC CLAIMS TRIBUNAL		
F	TRIBUNAL DES REVENDEICATIONS	D
I	PARTICULIERES	E
L	August 14, 2024	P
E	Katherine Richard	O
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Ottawa, ON		1

Claimant

v

HIS MAJESTY THE KING IN THE RIGHT OF CANADA

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

Respondent

DECLARATION OF CLAIM

Pursuant to Rule 41 of the

Specific Claims Tribunal Rules of Practice and Procedure

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*.

August 14, 2024

Date

Katherine Richard

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
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I. Claimant (R. 41(a))

1. The Claimant, Muscowpetung Saulteaux Nation, (hereinafter also referred to as the “Claimant” or “First Nation” or “Band” depending on the context) is a First Nation within the meaning of subsection 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 1-5 (the “*Indian Act*”), as amended, and within the meaning of Treaty No. 4 (“Treaty 4”). The First Nation is located in southern Saskatchewan.

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

2. 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

...

three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim.

3. The First Nation submitted a claim respecting various alleged breaches by the Respondent relating to its mismanagement of the First Nation’s trust accounts, which are comprised of the capital account (the “Capital Account”) and the interest/revenue account (the “Revenue Account”) to the Minister of Indian Affairs and Northern Development (the “Minister”), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC” or the “Department”), in the spring of 2021 (the “Mismanagement Claim”).
4. The Mismanagement Claim was filed with the Specific Claims Branch (the “SCB”) on April 13, 2021. On February 22, 2024, the First Nation wrote the SCB outlining its request for the negotiated resolution of the Mismanagement Claim. The First Nation never received any response to this request.

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

5. The Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (R. 41(d))

6. The following are the grounds for the Mismanagement Claim, as provided for in section 14 of the *Specific Claims Tribunal Act*:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

- (a) a failure to fulfil a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

- (b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation pertaining to Indians or lands reserved for Indians-of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada; and
- (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))

Indian Act Legislation Respecting Expenditures from Band Trust Fund Accounts

7. The Respondent's management of the First Nation's Band Trust Fund Accounts was governed by provisions in the 1886, 1895, 1906, 1927, 1951, and 1970 versions of the *Indian Act*.
8. Section 70 of the *Indian Act*, 1886, c 43 set out the general scheme governing the management of Band trust funds and how the Department was to direct the expenditures of Indian moneys:

70. The Governor in Council may, subject to the provisions of this Act, direct how, and in what manner, and by whom, the moneys arising from sales of Indian lands, and from the property held or to be held in trust for the Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians, (with the exception of such sum, not exceeding ten per cent of the proceeds of any lands, timber, or property, as is agreed at the time of the surrender to be paid to the members of the band interested therein,) shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given; and may provide for the general management of such moneys, and direct what percentage or proportion thereof shall be set apart, from time to time, to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Act, and for the construction or repair of roads passing through such reserves or lands, and by way of contribution to schools attended by such Indians.

9. Section 70 was amended in 1895 to authorize expenditures related to bridges, ditches, watercourses and the construction of school buildings under the same terms. A further amendment in 1898 added surveys and compensation to Indians for improvements or any interest they have in lands taken from them to the list of permitted expenditures in section 70.
10. The *Indian Act*, 1906, RSC 1906, c 81 was in place until 1926. Sections 89 and 90 expanded upon the level of detail provided in section 70 of the *Indian Act*, 1886, but are otherwise similar in their effect:

89. With the exception of such sums not exceeding fifty per centum of the proceeds of any land, and not exceeding ten per centum of the proceeds of any timber or other property, as is agreed at the time of the surrender to be paid to the members of the band interested therein, the Governor in Council may, subject to the provisions of this Part, direct how and in what manner, and by whom, the proceeds arising from the disposal of Indian lands, or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other sources for the benefit

of the Indians, shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given.

2. The Governor in Council may provide for the general management of such moneys and direct what percentage or proportion thereof shall be set apart, from time to time to cover the cost of and incidental to the management of reserves, lands, property and moneys under the provisions of this Part, and may authorize and direct the expenditure of such money 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 of school buildings, and charitable institutions, and by way of contribution to schools attended by such Indians.

90. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle for the band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed properly represent capital.

11. Section 90 was amended in 1924 to allow for expenditures from Capital for implements or machinery for the band and loans to band members under certain conditions, with Governor-in-Council approval and band consent.
12. The 1927 *Indian Act*, RSC 1927, c 98 carried over the permitted list of expenditures of a Band's Capital funds from previous versions of the *Act* and added section 92: "where the capital standing to the credit of a band does not exceed the sum of two thousand dollars, the Governor- in-council may direct and authorize the expenditure of such capital for any purpose which may be deemed for the general welfare of the band." Section 95(d) of the 1927 *Act* also gave the Superintendent General the power to use band funds to pay for the relief of sick, disabled, aged or destitute Indians where these individuals are not provided for by the band. A 1936 amendment to section 93 allowed the Governor-in-Council with the consent of the band to direct the expenditure of capital moneys "in the possessory rights of a member of the band in respect of any particular parcel of land on the reserve."
13. The 1951 *Indian Act*, SC 1951, c 29, distinguished between "capital" and "revenue" funds for the first time. Section 61 clarified that band funds may only be used for "the benefit of the Indians or band for whose use and benefit in common the moneys are received or held and subject to this Act and to the terms of any treaty surrender" and "the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band." Section 62 classified money derived from the sale of surrendered lands or capital assets as "capital money" and all other Indian money that was not "capital money" to be "revenue money".
14. Section 64 of the 1951 *Indian Act* provided that with consent of the band council, and Minister authorization, capital funds could be expended as follows:
 - i. to make a per capita distribution to band members of an amount not exceeding fifty percent of the capital funds derived from the sale of surrendered land;

- ii. to construct and maintain roads, bridges, ditches, watercourses on reserves or surrendered lands;
 - iii. to construct and maintain outer boundary fences on reserves;
 - iv. to purchase land for the use of the band as a reserve or as an addition to a reserve;
 - v. to purchase for the band the interest of a member in lands on a reserve;
 - vi. to purchase livestock, farm implements, farm equipment or machinery;
 - vii. to construct or maintain permanent improvements in connection with a reserve or works that in the Minister opinion will be of permanent value to the band or will constitute a capital investment;
 - viii. to loan funds to band members to promote the welfare of the band with restrictions on the size of the loans relative to the property owned by the borrower;
 - ix. to meet the expenses necessarily incident to the management of reserve or surrendered lands and any band property;
 - x. for any purpose that in the Minister's opinion is for the benefit of the band.
15. The effect of section 64 was that a band's capital funds could only be expended for the purpose of benefitting the band as a whole and not just its individual members. Section 65 permitted the Minister to use capital funds to compensate an individual for land taken from him for band purposes and for expenses related to the suppression of grass or forest fires or to protect Indian property in case of an emergency.
16. The *Act* permitted revenue moneys funds to be used for the following purposes, with both band council consent and Minister authorization:
- i. to assist sick, disabled, aged or destitute Indians;
 - ii. to provide for the burial of deceased indigent band members;
 - iii. to provide for the payment of contributions under the *Unemployment Insurance Act* on behalf of employed persons paid in respect of their employment from the band's funds.
17. Band consent was not required for the following expenditures of revenue funds, but Governor in Council authorization was required:
- i. for the destruction of weeds, prevention of the spread of insects, pests, diseases which could destroy or injure the vegetation on an Indian reserve;
 - ii. to prevent and control the spread of diseases on a reserve;
 - iii. to provide for the inspection of premises on a reserve and their destruction, alteration or renovation;
 - iv. to prevent overcrowding of premises used as dwellings;
 - v. to provide for sanitary conditions in private premises and public places on reserves; and
 - vi. for the construction and maintenance of boundary fences.

18. The 1970 *Indian Act*, RSC 1970, c 98, added a further expenditure to the list of expenditures that could be made with band consent and Minister approval from capital funds: paragraph 64(j) provided for expenditures “to construct houses for members of the band, to make loans to members of the band for building purposes with or without security and to provide for the guarantee of loans made to the members of the band for building purposes.” Section 66(1) of the 1970 *Act* also added a power to spend revenue moneys “for any purpose that in [the Minister’s] opinion will promote the general progress and welfare of the band or any member of the band.” This power required both band council consent and Minister authorization. However, band council consent was no longer required for expenditures of revenue funds to assist sick, disabled, aged or destitute band members, to provide for the burial of indigent band members or to make *Unemployment Insurance Act* contributions for employees paid of out band funds. A newly added section 67 allowed the Minister to recover from band funds money expended by “Her Majesty for the purpose of raising or collecting Indian moneys.”

Indian Reserve #80

19. The First Nation adhered to Treaty 4 on September 8, 1875. Pursuant to the terms of Treaty 4, treaty reserves were set aside for the use and benefit of the First Nation. Indian Reserve (“IR”) #80 was surveyed and set aside for the use and benefit of the Muscowpetung Band.
20. In January of 1909, the Band allegedly agreed to surrender 17,600 acres from the southern boundary of Indian Reserve #80.
21. The Surrender Document specified that the land was to be sold with an immediate distribution of \$10,000 at the time of the surrender, with another \$10,000 to be distributed a year later. The conditions of the surrender document read as follows:

...AND upon the further condition that all moneys received from the sale thereof, shall after deducting the usual proportion for expenses of management, and the payments hereinafter provided for, be placed to our credit and interest thereon paid to us, in the usual way, or expended as hereinafter provided.

...

This Surrender is hereby granted on condition that the land be sold at not less than Eight dollars per acre, and that there be paid to the Indians ***Ten thousand dollars at the time of surrender and ten thousand dollars one year therefrom; the interest on the balance of the purchase price placed to the credit of the Band to be paid annually, on the understanding that a certain portion thereof may be expended yearly for our benefit: what interest is not spent during the year is to be paid to us.***

...

Owners of improved land to be compensated therefore at the rate of five dollars per acre on estimated acres, payment to be made at time of taking surrender, and balance, if any, paid after surveyor determines actual areas. Improved land, means that which has been plowed in within the last two years.

...

Indian children between the age of 12 and 18 years to have their shares funded after the first payment, which is to be made to parents for all children. The land to be sold by public auction, in quarter section lots.

[Emphasis added.]

22. A public auction was held on October 27, 1909, at Balgonie, Saskatchewan and all of the surrendered land, with the exception of 352 acres of land, was sold. The aggregate sum realized was \$152,318.30 (the “Net Sale Proceeds”), with an average price of \$9.32 per acre.
23. One of the conditions of the surrender was that owners of improved land would be compensated at \$5.00 per acre. When J.K. McLean, Dominion Land Surveyor, valued the parcels of land, most of the quarter section lots were marked with a check mark under the “improvements” column, suggesting that some level of cultivation had taken part on those parcels of land. However, it appears that “Echewas” was the only Band member whose land was assessed as having improvements and he received \$9.20 in payment for his “ploughed field.”
24. Moneys received from the 1909 sales were deposited and expended from the Capital and Revenue Accounts.
25. As of 1910, the Muscowpetung Band had still not received the second payment of \$10,000 stipulated by the terms of the surrender. The Department of Indian Affairs decided that the second payment would be postponed until the spring of 1911 as it was thought the money could be used for work in the spring.
26. On May 20, 1911, Chief Muscowpetung complained to the Indian Department about the payments from Inspector Graham. Chief Muscowpetung described how the Band only received \$25.00 per head when they were expecting \$120.00 per head.
27. Throughout 1915, the Band continued to repeatedly express its dissatisfaction that the payments from the surrender of the “bench” portion of the reserve were not being properly paid and that the Band severely needed the funds.
28. The remaining approximately 352 acres of IR 80 which were surrendered but not sold in 1909 were not placed on the market for sale prior to 1916. It is the Claimant’s belief that the remaining approximately 352 acres were sold by individual inquiry and arrangements, with the credit of the sales being deposited to the Band’s Capital Account.

Indian Reserve #80A

29. The Last Mountain Reserve No. 80A (“**IR 80A**”) was set aside for the use and benefit of the Muscowpetung Band, as well as 7 other First Nations in the Qu’Appelle Valley. In 1918, 1,408 acres of IR 80A were unlawfully surrendered.

30. The legality of the surrender of 1,408 acres of IR 80A is the subject of a separate and distinct Specific Claim. However, the surrender of IR 80A is relevant to the instant Claim, as the First Nation's share of land payments from the sale of IR 80A were ultimately deposited in the Muscowpetung Interest Account. Between December 1928 and December 1940, approximately \$4,891 was deposited to the Muscowpetung Interest Account from the Long Lake (Last Mountain Lake) IR 80A Acct. #178.

Indian Reserve #80B

31. The haylands reserve was set aside and confirmed as Indian Reserve 80B ("**IR 80B**") in May 1889. Annual Reports indicate that hay was cut from IR 80B under the supervision of the Indian Agency. Moneys received from these sales were deposited and expended from the Capital and Revenue Accounts.

Indian Land Management Fund (ILMF)

32. An implied condition of surrenders of reserve lands until 1912 was that 10% of the revenue from land sales would be charged and invested to the credit of the Indian Land Management Fund ("ILMF").

33. ILMF was intended to be an administrative surcharge whose purpose was to finance future expenses related to the management and control of lands and other property held by the Crown in trust for Indians. Once funds were deposited into the ILMF, monies would be invested in Provincial debentures at a fixed rate of 6%. The rationale behind the ILMF, according to the Department of Indian Affairs, was that the funds were necessary to pay for expenses related to administering land sales and auctions.

34. From 1910-1912, the following amounts were deducted from the Muscowpetung Trust Fund Account for the ILMF:

Year	Management Fund Money Deducted
1910	-\$ 1,522.27
1911	-\$ 859.77
1912	-\$ 441.19

35. ILMF was in fact used for agency salaries and expenses, and other mis-expenditures.

36. The Department borrowed against the ILMF to fund advances to be distributed to Bands during surrender meetings. In 1906, the Superintendent General of Indian Affairs, Frank Oliver, proposed that surrenders be obtained from the Muscowpetung and Pasqua Bands and that money be borrowed from the ILMF to provide cash distribution advances at the time of the surrenders. An Order in Council approved Oliver's proposition of the advance of a cash distribution from the ILMF at the time of a surrender of a portion of the Muscowpetung Reserve.

37. By 1912 the ILMF fund deemed “unworkable” and the practice of collecting a 10% ILMF on land and timber sales was discontinued. As of April 1, 1912, no more land sale percentages were deducted for payment into the ILMF, and the money paid in by the prairie Bands was to be returned to their respective accounts. All ILMF deductions were returned to the Band in 1914.

Expenditures from Muscowpetung’s Capital and Revenue Accounts

38. The Department of Indian Affairs held a Capital Account and an Interest or Revenue Account for the First Nation. The Capital Account was intended to hold capital funds, which would produce interest, and which had restricted uses tied directly to capital investment. Land and timber sales proceeds were deposited into the Capital Account. Rates of interest earned on the Capital Account were adjusted periodically by Order in Council and were deposited into the Interest (Revenue) Accounts. Land sale deposits accounted for the vast majority of the funds credited to the Capital Account. The remaining credits to the Capital Account included gravel, oil and farming revenues, transfer shares, and interest payments.
39. The Muscowpetung Capital Account was opened in 1909, with the first ledger showing an opening balance, dated March 31, 1910, of \$4,700.46 with \$15,221.93 being deposited into the account because of land sales that year.
40. Proceeds from the 1909 surrender sale were deposited into Account #214. In the fiscal years from 1909-10 to 1940-41, approximately \$143,000 was deposited to the Capital Account for land sales. As noted above, between December 1928 and December 1940, the First Nation received approximately \$4,891 as its share of land sales from the IR 80A Surrender.
41. The Capital Account balance grew slowly. From 1927-28 onward, a balance of just over \$100,000 was maintained in the account.
42. The Muscowpetung Interest Account depended mainly on the deposit of annual interest earned on the fund balances and the periodic deposits of the interest portion of land sale payments. The Interest Account also typically received revenue earned from leases, fines, casual timber sales, etc. The interest portion of land sale payments was usually deposited to the Interest Account.
43. A review of Muscowpetung Band ledger transactions during the years 1899 to 1984 (the “**Review Period**”) show ledger entries from the First Nation’s Trust Funds totalling approximately \$981,999 in historical dollars in improper transactions. These improper transactions during the Review Period were due to the Crown’s failure to comply with the *Indian Act* and were in breach of its fiduciary duty and treaty obligations.
44. Over the Review Period, there were instances of misadministered transactions during 73 of the 86 relevant fiscal years.

45. Misadministered transactions from the Capital Account in the Review Period total \$180,843 encompass expenditures in the following categories: personal goods and services, livestock, machinery and implements, improvement and maintenance of land, capital projects, building materials, net seed and feed refunds, wages and salaries, and other transactions with no apparent validation or explanation.
46. Misadministered transactions from the Revenue Account in the Review Period total \$801,156 encompass expenditures in the following categories: personal goods and services, improvements to roads, bridges and ditches, livestock, machinery and implements, improvements and/or maintenance of land, capital projects, building materials, seed and feed, agricultural supplies and services; funeral expenses (prior to 1951), payments to the government, wages and salaries, and other transactions with no apparent validation or explanation.

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

47. At the broadest level, the Crown owed an *ad hoc* fiduciary duty to the Band. By undertaking to control all of the Band's moneys in the capital and revenue accounts (via the exercise of the Crown's executive function in passing various iterations of the *Indian Act*, which gives exclusive control to the federal Crown in managing the Band's financial affairs), the Crown undertook to take act in the best interests of the beneficiary Band. By virtue of the *Indian Act*, the Band was vulnerable to the Crown's control. Finally, the financial interests of the Band were adversely affected by the Crown's exercise of discretion and control over the Band's moneys. The Crown breached its *ad hoc* fiduciary duties to the Band.
48. The vulnerability between the Respondent and the Claimant does not result from an inequality of bargaining power, but stems from the structure and nature of the fiduciary relationship. The inability of Muscowpetung Band to prevent the injurious exercise of discretion by the Crown flowed from the structure and nature of the fiduciary relationship between Muscowpetung Band and the Crown. There can be no doubt that the Crown's unilateral authority to make expenditures of the First Nation's trust funds (which were primarily derived from the unlawful surrender and sale of the First Nation's lands), impacted the legal and practical interests of the Band. Pursuant to the *Indian Act*, the Band was obliged to cede its legal interest in proceeds from the sale or lease of Indian lands and other valuables, and the Crown undertook to protect its interests, giving rise to a reasonable expectation on the part of the Indians the Crown would act in a fiduciary capacity. The consequence of the legislative scheme and the relationship between the First Nation and the Crown placed the First Nation in a particularly vulnerable position, wherein they had to rely on the Crown to exercise good faith, loyalty, and care in managing the First Nation's moneys.
49. In addition to the *ad hoc* fiduciary duties the Respondent owed to the Claimant, the Crown also owes the Band duties as a Trustee, in the private-law sense. The Respondent is the Trustee responsible for the management and administration of trust funds held for the First

Nation. The provisions of the various *Indian Acts* governed the expenditure of Indian moneys deposited to a band's Capital and Revenue Accounts that were to be maintained by the Respondent for the First Nation. These provisions addressed what items the Indian moneys deposited to these accounts could be expended on what authority or approval. In managing Indian moneys on behalf of the Muscowpetung Band, the Crown forsook all other financial interests in the favour of the Band in relation to the Band's moneys; there was no balancing of competing interest in managing the Band's affairs as a reasonable, and prudent man would.

50. Despite the Respondent's fiduciary, statutory, and trust obligations pursuant to the various iterations of *Indian Act*, as a matter of practice, the Respondent improperly expended funds from the Capital Account and the Revenue Account.
51. Finally, the IR 80 Surrender Document created four obligations upon the Crown: (1) to pay \$10,000 to the Band at the time of surrender; (2) to pay \$10,000 to the Band one year after the surrender; (3) to deposit the balance of the purchase price in the Capital Account; (4) to pay the Band the annually accruing interest earned on the capital earned from the land sales, on the understanding that some of the annual interest could be spent on the Band's needs, with the balance to be paid to the Band in cash.
52. Although the validity of the IR 80 Surrender is the subject of a separate specific claim, it is worth noting that the terms of the surrender were unilaterally created by the Crown to induce the Band to surrender its lands. Further, the terms of the IR 80 Surrender were contrary to the interests of the Band, and fail to meet the standard of what a prudent fiduciary would do in managing his own affairs.
53. The IR 80 Surrender Document created four obligations upon the Crown: (1) to pay \$10,000 to the Band at the time of surrender; (2) to pay \$10,000 to the Band one year after the surrender; (3) to deposit the balance of the purchase price in the Capital Account; (4) to pay the Band the annually accruing interest earned on the capital earned from the land sales, on the understanding that some of the annual interest could be spent on the Band's needs, with the balance to be paid to the Band in cash.
54. By availing itself of the profits of the unlawful surrender and sale of IR 80 to finance the Band during the entire Review Period, and (1) to pay \$10,000 to the Band at the time of surrender; (2) to pay \$10,000 to the Band one year after the surrender, the Crown not only failed in its duty to prudently manage the affairs of the Band, but was also unjustly enriched.
55. By inducing the Band to surrender 17,600 acres in 1909 based on an unfulfilled commitment to transfer \$20,000 to the Band almost immediately, followed by annual payments of accrued interest on earned capital, and Crown benefited by the using the Band's own money to finance expenditures that were properly the responsibility of the Crown. This can only be described as an enrichment on the Crown's behalf and a corresponding deprivation on the Respondent's behalf. Most importantly, there is no

juristic reason for the enrichment; there is no justification in any iteration of the *Indian Act* to permit expenditures that were not compliant with the Crown's statutory or fiduciary obligations.

56. Even if the Surrender Documents contemplated a substantial distribution of \$20,000 to the Band, this was not in keeping with the Crown's more fundamental fiduciary duty to manage the Band's money's as a prudent fiduciary would in managing his own affairs. The Crown was not empowered by the Surrender Documents to contract out of its fiduciary obligations, and the Crown had a duty to protect any income earned from the sale of reserve lands.
57. The Crown is deemed to be aware of its own legislation, and had actual knowledge of its obligations under the statutory scheme. Nonetheless, the Respondent permitted the expenditure of \$180,843 from the Capital Account, and \$801,156 from the Revenue Account over the Review Period, despite many of these transactions not having the requisite authorization in the form of an Order in Council or Band Council Resolution.
58. The details of the deposits to and the expenditures from the First Nation's Capital and Revenue Accounts have been provided to the Respondent in the First Nation's Specific Claim Submission and Supporting documents and will be detailed for the Tribunal in the hearing of this matter and when the Respondent is called to account for the same.

Breach of Duties as Fiduciary to the Claimant

59. Finally, at all times, the Crown owed an *ad hoc* fiduciary duty to the Band. By undertaking to control all of the Band's moneys in the capital and revenue accounts via statutory authority, the Crown undertook to take act in the best interests of the beneficiary Band; the Band was vulnerable to the Crown's control; and the financial interests of the Band were adversely affected by the Crown's exercise of discretion and control over the bands moneys.
60. The Respondent breached its statutory obligations to the First Nation by failing to administer the Capital and Revenue Accounts in accordance with legislation in force from time to time throughout the Review Period. Some of the invalid transactions required proper authorization in the form of an Order in Council and there is no record of one being obtained. Some of the invalid transactions required band consent and there is no record of a Band Council Resolution authorizing the transaction.
61. The Crown did not act in accordance with the duties of good faith, loyalty, and care. In fact, the Crown's expenditures from the Muscowpetung Trust Funds clearly demonstrate a pattern of self-interested conduct and conduct benefiting third parties rather than the best interests of the Band. The Crown capriciously exploited its discretion over the control and management of the Muscowpetung Trust Funds by using the funds to fulfill its treaty obligations (to which the First Nation was already entitled), fulfill its policy objectives, and for other purposes, none of which benefitted the Muscowpetung Band, all of which fell

outside of the permissible scope of the *Indian Act*, and represented a marked departure from the terms of the Surrender Document.

VII. Relief Sought

62. In light of the foregoing, the First Nation seeks the following relief:

- a) A finding that the Crown was unjustly enriched by its mismanagement and mis-expenditure of the First Nation's trust accounts;
- b) A finding that the Crown is a constructive trustee;
- c) A finding that the Respondent breached its fiduciary and trust obligations to the Claimant;
- d) Damages for the loss of moneys wrongfully expended from the First Nation's trust accounts;
- e) Damages for the loss of interest that should have been earned on moneys that were wrongfully expended, with compound interest from the date of the breach to the present;
- f) Costs of this proceeding, and in the Specific Claims Process, on a solicitor-client basis; and
- g) Such other damages or compensation as this Honourable Tribunal deems just.

Dated this 14th day of August 2024 at the City of Calgary in the Province of Alberta.



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