

| | |
|---|------------------|
| SPECIFIC CLAIMS TRIBUNAL | |
| TRIBUNAL DES REVENDICATIONS PARTICULIÈRES | |
| F I L E D | December 4, 2024 |
| Dragisa Adzic | |
| Ottawa, ON | 6 |

SCT File No. SCT-5004-24

SPECIFIC CLAIMS TRIBUNAL

BETWEEN

MUSCOWPETUNG SAULTEAUX NATION

Claimant

-and-

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

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*.

TO: Muscowpetung Sauleaux Nation
As represented by Ron Maurice, Ryan Lake, and Melanie Webber
Maurice Law Barristers & Solicitors
#100, 602-12th Avenue SW
Calgary AB, T2R 1M7
Phone: (403) 266-1201
Fax: (403) 266-2701
Email: rmaurice@mauricelaw.com
rlake@mauricelaw.com
mwebber@mauricelaw.com

Overview

1. 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 endeavours to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. The claim relates to whether Canada mismanaged moneys in Muscowpetung Saulteaux Nation's capital and revenue accounts, including land surrender sale proceeds following the surrender of portions of Indian Reserve ("IR") No. 80 in the early twentieth century. Canada admits it has statutory and fiduciary duties to properly manage the funds in Muscowpetung Saulteaux Nation's capital and revenue accounts in accordance with the *Indian Act*.
3. As set out below, Canada admits that the claim is valid on the basis that certain specified expenditures from Muscowpetung Saulteaux Nation's revenue account were made in breach of Canada's fiduciary duty between 1909 and 1941. These actions may have caused loss to Muscowpetung Saulteaux Nation.
4. Canada requires further historical research and expert historical and accounting evidence to determine whether there were other breaches of its statutory and fiduciary duties in addition to the specific revenue account expenditures Canada admits were made in breach of its obligations.
5. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement and will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process. Canada hopes that the parties can work together to gather the required research and expert evidence in an efficient and cooperative manner. Canada will re-assess its position and, if appropriate, will amend this Response as new documentary and expert evidence is received.

6. This Response periodically uses terminology now recognized as antiquated. This is only when required for legal accuracy or when referring to or quoting from historical sources.

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

7. Canada admits that Muscowpetung Saulteaux Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 (“*SCTA*”), as pleaded in paragraph 1 of the Amended Declaration of Claim. Canada further admits that Muscowpetung Saulteaux Nation is located in southern Saskatchewan.
8. Canada admits, in response to paragraphs 2 to 4 of the Amended Declaration of Claim (“Declaration of Claim”), that this Claim meets the condition precedent as set out in paragraph 16(1)(b) of the *SCTA*.
9. In response to paragraph 3, Canada states that a claim by Muscowpetung Saulteaux Nation regarding asserted misadministration of capital and revenue accounts between 1909 and 1941, dated October 20, 2022, was received by Crown Indigenous and Northern Affairs Canada, Specific Claims Branch, on October 22, 2020 (the “Claim”).
10. In response to paragraph 4 of the Declaration of Claim, Canada admits that the Claim was filed with the Minister of Crown-Indigenous Relations (the “Minister”) on April 13, 2021. In further response to paragraph 4, Canada states that Muscowpetung Saulteaux Nation provided Canada two without prejudice settlement offers dated February 21, 2023, and September 14, 2023. Canada acknowledged receipt of the September 14, 2023, settlement offer and commented on various aspects of the Claim and the settlement offer on October 4, 2023. Canada does not admit the other assertions in paragraph 4.

11. Canada acknowledges Muscowpetung Saulteaux Nation is not seeking compensation in excess of \$150 million for the purposes of this claim, as outlined in paragraph 5 of the Declaration of Claim.

II. Canada's position with respect to Validity of the Claim (R.42(b) and (c))

12. In response to paragraph 6 of the Declaration of Claim, Canada admits there is a valid claim for mismanagement of capital and revenue accounts from 1909 to 1941. Canada does not admit that the claims relating to dates outside of 1909 to 1941 are relevant, as they were not included in the Claim filed with the Minister as required by s.16(1) of the *SCTA*.

13. In response to paragraph 6 of the Declaration of Claim, Canada acknowledges that Muscowpetung Saulteaux Nation has brought their claim pursuant to sections 14(1)(a), (b), and (c) of the *SCTA*.

14. In response to paragraphs 47, 48, 57, 59 and 60 of the Declaration of Claim, Canada admits it owes statutory and fiduciary duties in relation to the management of Muscowpetung Saulteaux Nation's capital and revenue accounts. Canada admits that certain expenditures from Muscowpetung Saulteaux Nation's revenue account, as identified below, were made in breach of Canada's fiduciary duty between 1909 and 1941. Canada requires further historical research and expert historical and accounting evidence to determine whether there were other breaches of its statutory and fiduciary duties regarding the administration and expenditure of funds from Muscowpetung Saulteaux Nation's revenue and capital accounts. Pending receipt of additional research and expert evidence, Canada does not admit it breached any other duties or obligations regarding the administration and expenditure of funds from Muscowpetung Saulteaux Nation's capital account or revenue accounts.

15. In response to paragraphs 51 and 53, Canada admits that the 1909 IR 80 Surrender contained the following provisions: (1) to pay ten thousand dollars at

the time of surrender to Muscowpetung Saulteaux Nation; (2) to pay ten thousand dollars one year therefrom to Muscowpetung Saulteaux Nation, (3) that the interest on the balance of the purchase price be placed to the credit of Muscowpetung Saulteaux Nation annually, on the understanding that a certain portion thereof may be expended yearly for their benefit, (4) the moneys received from the sale, after deductions for expense management, be placed to Muscowpetung Saulteaux Nation's credit, with interest thereon paid to Muscowpetung Saulteaux Nation or expended as otherwise specified in the Surrender document.

16. In response to paragraphs 49, 54, 55, and 56 of the Declaration of Claim, Canada does not admit that it acted in the capacity of a trustee or as a constructive trustee in relation to Muscowpetung Saulteaux Nation's capital and revenue accounts.
17. In response to paragraphs 54 and 55 of the Declaration of Claim, Canada does not admit that the Crown was unjustly enriched.
18. In response to paragraphs 43 and 61 of the Declaration of Claim, Canada states that Muscowpetung Saulteaux Nation has not pled any material facts to establish a breach of treaty obligations by Canada. Canada does not admit any breaches of treaty obligations in relation to this claim.

III. Canada's position with respect to Assertions of Fact

Indian Act Legislation

19. Canada agrees that the 1886, 1895, 1906, 1927, 1951, and 1970 versions of the *Indian Act* contain provisions that govern the management of Indian moneys as set out in paragraph 7 of the Declaration of Claim. Canada notes that the Claim filed with the Minister only asserted misadministration of capital and revenue accounts between 1909 and 1941. Therefore, Canada does not admit the relevancy of versions of the *Indian Act* prior to the *Indian Act*, RSC 1906, c 81

and after the amendments to the *Indian Act* made in *An Act to amend the Indian Act*, SC 1940-41, c 19 except as an aid to interpreting the provisions in force between 1909 and 1941.

20. Canada agrees that section 70 of the *Indian Act*, RSC 1886, c 43 is as stated at paragraph 8 of the Declaration of Claim. Canada does not admit to the characterization of section 70 as a general scheme.
21. In response to paragraph 9 of the Declaration of Claim, Canada agrees that section 70 of the *Indian Act*, 1886, was amended by SC 1895 c 35 s 2. Canada agrees that the amendment allowed the Governor in Council to authorize and direct expenditures of relevant moneys for the construction or repair of roads, bridges, ditches, watercourses, and school buildings on reserve or other lands referred to in the section. Canada agrees that section 70 was further amended by SC 1898, c 34, s 6 and that this amendment allowed the Governor in Council to direct the expenditure of relevant moneys for surveys and for compensation to Indians for improvement or any interest they have in lands taken from them.
22. In response to paragraph 10 of the Declaration of Claim, Canada agrees that the *Indian Act*, 1906 was in place until it was repealed and replaced by the *Indian Act*, 1927, RSC 1927, c 98. Canada states that wording contained in sections 89 and 90 of the *Indian Act*, 1906 provides for the expenditure of capital moneys and that section 89(2) included the wording “and repair” between the words “construction of” and “school buildings.”
23. In response to paragraph 11 of the Declaration of Claim, Canada agrees that section 90(1) of the *Indian Act*, 1906 was amended by the *Indian Act*, SC, 1924, c 47, s 5. Canada agrees the amendment allowed the Governor in Council to, with the consent of a band, authorize and direct the expenditure of capital money in the purchase of implements or machinery for the band and provide loans to band members on certain conditions. Canada states that as a result of amendments to section 90 by SC 1918, c 26, s 4, the Governor in Council also had the authority

under section 90(2) to authorize and direct the expenditure of capital moneys without band consent for any of the purposes set out in section 90(1), provided certain conditions were met.

24. In response to paragraph 12 of the Declaration of Claim, Canada agrees that section 92 of the *Indian Act*, 1927 included the stated wording, which had been added to section 89 of the *Indian Act*, 1906 by SC 1927, c 32, s 1. Canada agrees that section 95(d) of the *Indian Act*, 1927, like section 92(d) of the *Indian Act*, 1906, allowed the Superintendent General to furnish sufficient aid from the funds of the band for relief of sick or disabled, or aged or destitute Indians when the band of which they are members does not provide such relief. Canada agrees that section 93(1) of the *Indian Act* was amended by SC 1936, c 20, s 3 to allow the Governor in Council, with the consent of the band, to authorize and direct the expenditure of any capital moneys in the purchase of possessory rights of a member of the band in respect of any particular parcel of land on the reserve. Canada states that the Governor in Council also had the authority under section 93(2) to authorize and direct the expenditure of capital moneys without band consent for any of the purposes set out in section 90(1), provided certain conditions were met.
25. In response to paragraph 13 of the Declaration of Claim, Canada does not admit that the *Indian Act*, SC 1951, c 29 was the first iteration of the *Indian Act* that distinguished “capital” and “revenue” funds. Canada states that section 9 of the *Indian Act*, SC 1894, c 32, s11 referred to “capital moneys”. Canada agrees that section 61(1) and section 62 of the *Indian Act*, SC 1951, c 29 contain the wording quoted in paragraph 13 of the Declaration of Claim.
26. In response to paragraph 14, Canada states that section 64 of the *Indian Act*, SC 1951, c 29 says that the Minister “may authorize and direct expenditure of capital moneys of the band” with the consent of band council for the expenditure categories listed in sub-sections (a) through (j.) Canada states that sub-sections

(a) through (j) generally correspond with subparagraphs i. through x. of the Declaration of Claim. However, Canada states that sub-paragraphs 14 vi, vii and viii of the Declaration of Claim do not accurately set out corresponding sub-sections 64 (f), (g) and (h) of the *Indian Act*, SC 1951, c 29. Canada states that sub-sections 64(f), (g) and (h) read as follows:

- (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,and may charge interest and take security therefor.

Canada admits the balance of the subsections of section 64 are correctly cited.

27. In response to paragraph 15 of the Declaration of Claim, Canada does not admit that the effect of section 64 of *Indian Act*, SC 1951, c 29 was that the band's capital funds could only be expended for the purpose of benefitting the band as a whole and not just its individual members. Canada agrees with how paragraph 15 describes the effect of section 65 of the *Indian Act*, SC 1951, c 29.

28. In response to paragraph 16, Canada states that an amendment to subsection 66(2) made by SC 1956, c 40, s 16 provided 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, to provide for the burial of deceased indigent members of the band and to provide for the payment of contributions under the *Unemployment Insurance Act* on behalf of employed persons who are paid in respect of their employment out of moneys of the band. Canada does not admit that the Minister required the consent of the band in order to make expenditures out of revenue moneys pursuant to amended subsection 66(2).
29. In response to paragraph 17 of the Declaration of Claim, Canada states that subsection 66(3) of the *Indian Act*, SC 1951, c 29 lists types of expenditures the Governor in Council could authorize without the consent of the council of the Band. Canada states that the enumerated list of expenditures provided at paragraph 17 of the Declaration of Claim accurately summarizes subsection 66(3).
30. In response to paragraph 18 of the Declaration of Claim, Canada states that an amendment to section 64 made by SC 1956, c 40, s 15 added the power of the Minister, with the consent of the council of a band, to authorize and direct the expenditure of capital funds “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 members of the band for building purposes” and agrees that this wording was also contained in the *Indian Act*, RSC 1970, c 98.
31. In further response to paragraph 18, Canada does not admit that section 66(1) of the *Indian Act*, 1970 added a power to spend revenue moneys. Canada states that the wording of section 66(1) had remained the same since the *Indian Act*, SC 1951, c 29. Also, Canada does not admit that the *Indian Act*, 1970 was the first version of the *Indian Act* to not require band consent for expenditures listed in

section 66(2). Canada states that no versions of the *Indian Act* since 1951 required band consent to make expenditures pursuant to section 66(2). Canada states that section 67 of the *Indian Act*, 1970, replaced section 66A, which had been added by SC 1956, c 40, s 17. Canada agrees that section 67 of the *Indian Act*, 1970, provided the Minister with the powers described in paragraph 18 of the Declaration of Claim.

Indian Reserve 80

32. As set out in paragraph 19 of the Declaration of Claim, Canada admits that Muscowpetung Saulteaux Nation adhered to Treaty 4 on September 8, 1875, and that IR 80 was surveyed and set aside for the use and benefit of Muscowpetung Saulteaux Nation.
33. As stated in paragraph 20 of the Declaration of Claim, Canada admits that in 1909, Muscowpetung Saulteaux Nation agreed to surrender 17,600 acres from IR 80.
34. Canada agrees that the surrender document reads as stated in paragraph 21 of the Declaration of Claim with the exception of the words in the second quoted paragraph, “that the land be sold at not less than Eight dollars per acre, and”, were crossed out in the original document.
35. In response to paragraph 22 of the Declaration of Claim, Canada agrees that a public auction was held on October 27, 1909, and that all of the surrendered land, with the exception of 352 acres, was sold. Canada agrees that the land was sold for \$152,318.30.
36. In reply to paragraph 23, Canada agrees that a member of Muscowpetung Saulteaux Nation named Echewas was paid for improvements to the land in the amount of \$9.20 from the capital account. Canada agrees that one of the conditions of the surrender was that owners of improved land would be

compensated at the rate of \$5 per acre. Canada does not admit the other facts asserted in this paragraph, which Canada requires further historical research to confirm.

37. In response to paragraph 24, Canada states that the money received from the 1909 sales of surrendered reserve lands were deposited into and expended from the capital account. Canada does not admit that the moneys received from the 1909 sales of surrendered reserve lands were deposited into and expended from the revenue account.
38. In reply to paragraph 25, Canada does not admit that Muscowpetung Saulteaux Nation had not received the second payment of \$10,000 in 1910. Canada states that on May 18, 1910, Muscowpetung Saulteaux Nation members were paid \$120.00 each for the second payment.
39. In reply to paragraph 26 of the Declaration of Claim, Canada agrees that Chief Muscowpetung wrote to the Indian Department on May 20, 1911, regarding payment to members of Muscowpetung Saulteaux Nation by Inspector Graham of only \$25.00 per head when Muscowpetung Saulteaux Nation was expecting \$120.00 per head.
40. In response to paragraph 27 of the Declaration of Claim, Canada says that in a letter dated May 17, 1915, Muscowpetung Saulteaux Nation member Eaches, on behalf of Muscowpetung Saulteaux Nation, stated that Muscowpetung Saulteaux Nation was not receiving their payments from the land surrender. Canada does not admit that there were multiple expressions of dissatisfaction throughout 1915.
41. In response to paragraph 28 of the Declaration of Claim, Canada does not admit the facts asserted in this paragraph at this time and will require further research to verify the asserted facts.

Indian Reserve 80A

42. In response to paragraph 29 of the Declaration of Claim, Canada states that in 1884, Fishing Station IR 80A, also known as Last Mountain Lake Reserve or Long Lake Reserve, consisting of 1,408 acres was surveyed for multiple First Nations, including Muscowpetung Saulteaux Nation. In 1918 IR 80A was surrendered by multiple First Nation to Canada to sell. Canada does not admit that the surrender of IR 80A was unlawful.
43. In reply to paragraph 30 of the Declaration of Claim, Canada agrees that there is an ongoing separate Specific Claim concerning the 1918 surrender of 1408 acres from IR 80A. Canada states that seven payments were made to Muscowpetung Saulteaux Nation's interest account between 1928 and 1941 pertaining to the leasing of IR 80A and totalling \$4,895.25.

Indian Reserve 80B

44. In response to paragraph 31 of the Declaration of Claim, Canada states that hay lands were surveyed in 1881 and confirmed as Hay Reserve IR 80B in 1889. These lands were later added to Muscowpetung Saulteaux Nation's reserve. Canada does not admit the facts asserted in this paragraph at this time and will require further research to verify the asserted facts.

Indian Land Management Fund (ILMF)

45. In response to paragraph 32 of the Declaration of Claim, Canada agrees that until 1912, 10% of revenue from First Nations' land sales were charged and invested to the credit of the Indian Land Management Fund ("ILMF"). Canada states this was its policy until 1912; however, Canada does not admit that this creates an implied condition on all surrenders.
46. In response to paragraph 33 of the Declaration of Claim, Canada does not admit that funds deposited into the ILMF were invested only in Provincial debentures

at a fixed rate of 6%. While the funds were invested in Provincial debentures at a fixed rate of 6%, they were also invested in Provincial debentures at a fixed rate of 3%. Canada admits the other facts asserted in this paragraph.

47. Canada agrees that the amounts stated in paragraph 34 of the Declaration of Claim were deducted from Muscowpetung Saulteaux Nation's capital account for the ILMF.
48. Regarding paragraph 35 of the Declaration of Claim, Canada states that the ILMF was used to defray expenses in the management of lands. Canada does not admit there were mis-expenditures from the ILMF.
49. In reply to paragraph 36 of the Declaration of Claim, Canada states that the Superintendent General of Indian Affairs, Frank Oliver, wrote a memorandum in 1906, recommending that the Privy Council authorize a surrender of lands on the Muscowpetung and Pasqua Reserves. In this recommendation, Frank Oliver notes that a 10% distribution to members would likely be required and that the advance could come from the ILMF and be repaid once the land is sold.
50. Canada admits paragraph 37 of the Declaration of Claim and further states that Muscowpetung Saulteaux Nation received a reimbursement of \$84.80 deposited to the revenue account and \$2,826.51 deposited to the capital account on January 1, 1914.

Expenditures From Muscowpetung Saulteaux Nation's Capital and Revenue Accounts

51. In response to paragraph 38 of the Declaration of Claim, Canada agrees that the Department of Indian Affairs administered a capital account and a revenue account for Muscowpetung Saulteaux Nation in accordance with the *Indian Act* and related regulations and policies. Canada states that proceeds from the sale of surrendered reserve lands were deposited into Muscowpetung Saulteaux Nation's capital account, while interest earned on surrender monies and sale

proceeds was deposited into Muscowpetung Saulteaux Nation's revenue account. Canada does not admit any other facts asserted in this paragraph and will need to conduct further research to confirm the remaining assertions.

52. In response to paragraph 39 of the Declaration of Claim, Canada states that there was a closing balance in Muscowpetung Saulteaux Nation's capital account of \$4,700.46 as of March 31, 1910. In further response to paragraph 39, Canada states that \$15,231.93, representing proceeds of sales of surrendered reserve lands, was deposited into the account in 1909. Canada does not admit the remaining assertions in this paragraph.
53. In response to paragraph 40 of the Declaration of Claim, Canada agrees that proceeds from the 1909 surrender sale were deposited into the capital account. Canada states that between fiscal years 1909-10 to 1940-41 approximately \$143,000.00 was deposited to the capital account from land sales. Canada does not admit the remaining asserted facts in this paragraph.
54. In response to paragraph 41 of the Declaration of Claim, Canada agrees that the balance of the capital account from the end of fiscal year 1927-28 until at least the end of fiscal year 1940-41 was over \$100,000.00. Canada does not admit the other assertions in this paragraph and states that the Capital account grew over time.
55. In response to paragraph 42 of the Declaration of Claim, Canada states that interest earned on funds in Muscowpetung Saulteaux Nation's capital account was deposited annually into the revenue account and that balances in the capital account were primarily made up of proceeds from the sale of reserve lands. In further response to paragraph 42, Canada states that revenue from fines and leases was also deposited into the revenue account. Canada states that interest on land sales was sometimes credited to the revenue account.

56. In response to paragraph 52 of the Declaration of Claim, Canada admits that the validity of the IR 80 Surrender is subject to a separate specific claim. Canada does not admit that the surrender terms were unilaterally created by Canada to induce Muscowpetung Saulteaux Nation to surrender its land. Canada does not admit the terms of the IR 80 Surrender were contrary to the interests of Muscowpetung Saulteaux Nation.
57. In response to paragraph 43, 44, 45,46, 50 and 58 of the Declaration of Claim, Canada states that the Claim filed with the Minister was from 1909 to 1941 and does not admit to asserted invalid expenditures from the capital account or the revenue account outside this time period.
58. In further response to paragraphs 43, 44, 45, 46, 50 and 58, Canada admits that certain expenditures from Muscowpetung Saulteaux First Nation's revenue account, as identified below, were made in breach of Canada's fiduciary duties between 1909-1941. Canada requires further historical research and expert historical and accounting evidence to determine whether there were other breaches of its statutory and fiduciary duties regarding the expenditure of funds from Muscowpetung Saulteaux Nation's capital and revenue accounts. Should such information come to light, Canada will amend this response accordingly.
59. Expert accounting evidence will also be required to determine the extent of losses arising from any breaches of Canada's statutory or fiduciary duties. Canada does not admit to the asserted categories of invalid expenditures or other asserted breaches of duties and obligation in paragraphs 43, 44, 45,46, 50 and 58.

IV. Canada's Statements of Fact

IR 80, IR 80A & IR 80B

60. On September 8, 1875, Chief Cheecuck adhered to Treaty 4. Canada surveyed IR 80 in 1881 and Order-in-Council P.C. 1151 confirmed IR 80 on May 17, 1889.

IR 80 was situated on the Qu'Appelle River in Saskatchewan and had an area of 38,080 acres.

61. IR 80B, referred to as "Hay Grounds" was also surveyed in 1881 and confirmed by Order-in-Council P.C. 1151 in 1889. The lands were later added to Muscowpetung Saulteaux Nation's reserve.
62. IR 80A, referred to as "Fishing Station" and later known as Last Mountain Lake or Long Lake Reserve, consisted of 1,408 acres and was set aside for multiple First Nations. IR 80A was surrendered and leased. IR 80A is the subject of an ongoing Specific Claim, SCT-5001-13.

Conditions of the 1909 Surrender of IR 80 Lands

63. In 1909, Muscowpetung Saulteaux Nation surrendered approximately 17,600 acres from IR 80. The surrender was confirmed by Order-in-Council P.C. 157 on February 8, 1909. The terms of the surrender provided that the money received would be placed in a capital account and annual interest payments would be made to members of Muscowpetung Saulteaux Nation or expended for their benefit. The terms also provided that:
 - (a) Muscowpetung Saulteaux Nation would receive \$10,000.00 at the time of surrender;
 - (b) Muscowpetung Saulteaux Nation would receive \$10,000.00 one year after the surrender; and
 - (c) Owners of improved land would be compensated at a rate of \$5 per acre.
64. Between fiscal years 1909-10 to 1940-41, approximately \$143,000 in proceeds from the 1909 land sales was deposited into Muscowpetung Saulteaux Nation's capital account.

Adherence to the Conditions of the Surrender of IR 80

65. The surrendered land went to auction on October 27, 1909, and all the surrendered land, except 352 acres, was sold. Two distributions of proceeds from the sale of surrendered lands were made to members of Muscowpetung Saulteaux Nation in 1909 and 1910 in accordance with the terms of the 1909 surrender.

Interest on Land Sales from the 1909 Surrender

66. From 1911 to 1941, interest distributions to Muscowpetung Saulteaux Nation's members totalled \$108,000.23. During this period, the total amount of interest earned from land sales was \$72,251.11.

1909 Surrender Settlement

67. A settlement agreement for the 1909 IR 80 Surrender Claim (the "1909 Claim") was signed by the Minister of Crown-Indigenous Relations on August 9, 2023. The terms of the settlement included a release from any aspect of the 1909 Claim. Canada states that this release does not prevent Muscowpetung Saulteaux Nation from bringing the current claim in relation to mismanagement of Muscowpetung Saulteaux First Nation's capital and revenue moneys.

The 1918 Surrender of IR 80 Lands

68. In 1918 Muscowpetung Saulteaux Nation executed a surrender deed for a portion of land on IR 80 for lease with a term of 5 years for the sum of \$500.00 annually. The total revenue credited to Muscowpetung Saulteaux Nation's Revenue Account from land leases was \$6,584.35.

Indian Land Management Fund (ILMF)

69. The ILMF, opened in 1857, was based on taking 10% of First Nations' land and timber sales to defray the expenses of management. However, the fund was not successful, and no further collections were taken after April 1, 1912. Order in Council 12/2901 dated November 21, 1913, stated that First Nations would be repaid their contributions in full.
70. Deductions from Muscowpetung Saulteaux Nation's capital account were made in 1910, 1911, and 1912 for the purposes of the ILMF, totalling \$2,823.23. On January 1, 1914, reimbursements were made to both the revenue and capital accounts, totalling \$2,911.31.

Expenditures from the Capital Account

71. Canada does not admit to any breaches of statutory or fiduciary duties regarding expenditures from Muscowpetung Saulteaux Nation's capital account. With the benefit of further documentary and expert historical and accounting evidence, breaches of statutory or fiduciary duties relating to capital account expenditures may be identified. Should such information come to light, Canada will amend this response accordingly.

Expenditures from the Revenue Account

72. Canada states that between 1909 and 1941 expenditures totalling \$111.40 were made from the revenue account to pay debts incurred by individual members of Muscowpetung Saulteaux Nation that were in breach of Canada's fiduciary duty.
73. Canada states that between 1909 and 1941 six expenditures totalling \$3,726.85 were made from the revenue account in relation to a government program to increase food production on idle reserve land (Greater Production Scheme) that were in breach of Canada's fiduciary duty.

Quantification of losses arising from any identified breaches of statutory or fiduciary duties

74. With the benefit of further historical research and expert historical and accounting evidence, it should be possible to determine the amount of loss arising from any breaches of statutory or fiduciary duties. Canada states that the compensation for unlawful expenditures should be calculated as the value that Muscowpetung Saulteaux Nation would have received had the unlawful expenditure not occurred, brought forward to the present-day. In accordance with section 20(3) of the *SCTA*, Canada states that any value received by Muscowpetung Saulteaux Nation from the expenditures should be brought forward to a present-day value and deducted from the amount of compensation.

V. Relief

75. Canada seeks the following relief:

- a. A consent order of validity, once the necessary documentary research and expert historical and accounting evidence has been received;
- b. A deduction under s. 20(3) of the *SCTA* of the value of any benefit received by Muscowpetung Saulteaux Nation in relation to the subject matter of this claim brought forward to its current value from the amount of compensation owed to Muscowpetung Saulteaux Nation;
- c. Dismissal of the claims that the Canada failed to comply with its Treaty obligations and is a constructive trustee;
- d. Such further relief as this Honorable Tribunal deems just.

VI. Communication

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

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: William Kuchapski and Emily Arthur

Facsimile number for service is (306) 975-4030

Email address for service is:
sct_team_muscowpetung_saulteaux_nation@justice.gc.ca

Dated this 4th day of December, 2024.



ATTORNEY GENERAL OF CANADA

Department of Justice
Prairie Region (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Fax: (306) 975-4030

Per: William Kuchapski, Scott Bell, and Emily Arthur

Tel: (306) 518-0738 and (306) 518-0741

E-mail address: sct_team_muscowpetung_saulteaux_nation@justice.gc.ca

William.Kuchapski@justice.gc.ca

Emily.Arthur@justice.gc.ca

Counsel for the Respondent