

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	D E P O S E
	September 9, 2024	
	Katherine Richard	
Ottawa, ON	1	

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

MOSQUITO GRIZZLY BEAR’S HEAD LEAN MAN FIRST NATION

Claimant

v.

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

Respondent

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**DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
*Specific Claims Tribunal Rules of Practice and Procedure*

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

September 9, 2024

Date

Katherine Richard

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
Bank of Canada Building, 234 Wellington Street East Tower  
Ottawa, Ontario K1A 0H8  
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**I. Claimant (R. 41(a))**

1. The Claimant, Mosquito Grizzly Bear's Head Lean Man First Nation, (hereinafter also referred to as the "Claimant" or "First Nation" or "Band" depending on the context) confirms that it 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") and *Treaty No. 6* ("Treaty 6"). The First Nation is located in western 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...

- (b) 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 Band Trust Fund 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 First Nation filed the Mismanagement Claim with the Specific Claims Branch (the "SCB") on or about May 4, 2021. On or about April 4, 2024, the First Nation wrote the SCB outlining its request for a 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))**

***(a) Survey of IR 109 at Eagle Hills***

- 7. Chief Mosquito adhered to Treaty 6 at Battleford on August 29, 1878. The first Treaty payroll for the Mosquito Band lists 208 members.
- 8. George Simpson, Dominion Land Surveyor, surveyed Indian Reserve No. 109 (the “Mosquito Reserve”) at Eagle Hills in the summer of 1878. Confirmed by Order in Council P.C. 1151/1889 on May 17, 1889, IR 109 consisted of 23,040 acres and was described as follows:

The south-western part of this reserve is an open rolling prairie interspersed with swamps and ponds containing soil of a sandy nature. The north-easterly part is a broken country with stretches of land well adapted for cultivation. The soil here is a black sandy loam bearing a luxuriant vegetation. The timber consists of poplar and balm of Gilead some of which is of large size and good quality. This and the adjoining reserves have suffered to a great extent from the ravages of fire. Ponds and hay marshes abounding in wild-fowl are numerous.

- 9. According to T.P. Wadsworth, Inspector of Indian Agencies, the Mosquito Band settled on IR 109 in 1880 and by 1882 had “already made considerable advancement in building houses and farming.” The 1881 Annual Report records that the Mosquito Band had the following acres under crop: 10 acres with 175 bushels potatoes, 4 acres with 8 bushels barley, 12 acres in turnips and 5 acres in gardens.

***(b) Survey of IRs 110 and 111 at Eagle Hills***

- 10. Chief Lean Man (or “Poor Man”) and Little Chief were two Assiniboine leaders with close kinship ties whose bands traditionally resided and hunted in the Cypress Hills area near (what is now known as) the southern Alberta-Saskatchewan border. Chief Lean Man adhered to Treaty 4 at Fort Walsh on September 25, 1877. According to the Treaty paylists for 1877, the Lean Man Band consisted of 173 members at the time of their adhesion.
- 11. The Crown started paying Treaty 4 annuities to Little Chief’s band at Fort Walsh in 1879. A year later, Little Chief resigned his leadership position in favour of his son, and the Band was thereafter known as the “Grizzly Bear’s Head Band”.

12. By 1879, the Indians living near Cypress Hills were starving and relied on government rations stored at Fort Walsh to survive. In 1880, A.W. Ponton, Dominion Land Surveyor, established a large reserve for the Assiniboine Indians at the Head of the Mountain.
13. In the summer of 1882, the Department forced the Lean Man and Grizzly Bear's Head Bands to abandon their reserve at Cypress Hills and travel guarded by the North West Mounted Police to Eagle Hills. Upon their arrival, the two bands moved onto, or near, the present-day Mosquito Reserve.
14. J.C. Nelson, Dominion Land Surveyor, surveyed Indian Reserves No. 110 and 111 for the Grizzly Bear's Head and Lean Man Bands in the summer of 1884. IRs 110 & 111 contained 36.2 square miles and were located beside the Mosquito Reserve. Nelson described them as follows:

The eastern part of these reserves is high rolling country, partially wooded with poplar and balm of Gilead. There are stretches of open prairie containing rich black soil well adapted for cultivation. In the western portion the surface is undulating, and in the hollows and flats around the larger lakes there are excellent hay grounds. A greater part, however, is only fitted for grazing and stock raising.

***(c) 1905 Surrender of 14,400 acres from IRs 110/111***

15. To aid the bands in settling on their reserves, Treaties 4 & 6 contained terms promising the provision of agricultural implements, livestock, and seed grain to facilitate the bands' transition to a sustainable agricultural economy. However, subsequent events outside the bands' control prompted a shift in federal agricultural policies which slowed the bands' agricultural process to a near halt.
16. By the 1890s, the Department controlled all elements of life on-reserve, including the bands' access to food, tools, and other necessary resources. Permits from Indian Agents were required to sell almost anything. The Department limited the prices at which grains or other products could be sold by Indians to prevent competition with non-Indigenous farmers. Passes from the Indian Agent were required to the reserve. The *Indian Act* did not permit Chief and Council to enter into any agreement dealing with their own moneys unless authorized and approved in writing by the Superintendent General of Indian Affairs. Throughout this period, the Department did not allow the Band to have a Chief and Council nor did it recognize any right to self-representation.
17. The Mosquito, Lean Man, and Grizzly Bear's Head bands all suffered from privation and starvation in the late 1870s and early 1880s. By the turn of the century, they remained in a somewhat weakened state, with a low birth rate and high death rates for young children. They tried establishing a mixed economy and enjoyed some success in raising livestock and root crops for food, and selling hay, wood, and other resources for cash. The non-Indigenous people of the region were afraid of them and retained a distance that included an aversion to agricultural competition.

18. The Grand Trunk Pacific Railway incorporated in 1903. A feeder line route to Battleford that would cross the Mosquito and Grizzly Bear's Head / Lean Man reserves was announced that same year. The advent of the railway eliminated their labour in freighting as a source of revenue for the Mosquito, Grizzly Bear's Head, and Lean Man bands.
19. On February 6, 1905, Indian Agent J.P.G. Day wrote to the Indian Commissioner, David Laird claiming that the "Indians of the three Stony Bands" had requested a surrender of 22.50 sections of land. Agent Day supported the surrender and may have initiated the same. His report stating that the three Bands had decided that they were for "all intents and purposes, one Band", led to the Department treating the Mosquito band as if they had an interest in the surrendered lands.
20. Approximately two weeks later, the Assistant Indian Commissioner forwarded Day's request to the Secretary of the Department of Indian Affairs recommending the surrender and stating that a good price would be realized at the auction sale. By February 22, 1905, J.K. Mclean, Assistant Surveyor forwarded a plan of the subdivision marking the proposed surrender of approximately the western two-thirds of IRs 110/111.
21. Subsequently, on March 23, 1905, Frank Pedley, Deputy Superintendent General of Indian Affairs wrote a memorandum to Sir Wilfrid Laurier regarding the proposed surrender of 22.5 sections from IRs 110/111. Pedley recommended that "authority be given for taking a surrender" noting that "the land is lying idle and there are a large number of old people who require assistance." No mention is made of the terms of the surrender, other than the need for the general benefit of old people.
22. On May 19, 1905, a meeting was held on the Mosquito Reserve to consider a proposal to surrender 22.5 sections of land from IRs 110/111. A surrender document was subsequently signed by "The Stony Band of Indians." Very little information exists as to what transpired at this meeting, what notice was given for the meeting, or how many Band members attended. According to Indian Agent Day, the surrender document was signed by ten members of the three Bands who approved the surrender of 22.5 square miles of IRs 110/111 with the funds to be placed at the credit of the "Stony Band." The conditions of the surrender included the following

TO HAVE AND TO HOLD the same unto His said Majesty The King, his Heirs and Successors forever, in trust to sell.... the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people.

AND upon the further condition that all moneys received from the sale.... thereof, shall, after deducting the usual proportion for expenses of management, be placed to our credit and the interest thereon, paid to us and our descendants annually or semi-annually as to the Department of Indian Affairs may deem best in our interests.

AND WE, the said Principal men of the said Stony Band of Indians....do on behalf of our people and for ourselves hereby ratify and confirm, and promise to ratify and confirm, whatever the said

Government may do, or cause to be lawfully done, in connection with the sale of the said portion of land and disposition of moneys arising therefrom.

23. The surrender affidavit was sworn by J.P.G. Day and Stenchiaco, #80 Grizzly Bear's Head Band, before L.P.O. Noel, a Justice of the Peace for the North-West Territories and read as follows:

AND the said J.P.G. Day for himself saith: -

That the annexed Release or surrender was assented to by a majority of the male members of the said Band of Indians of the Stony Bands Nos. 109, 110, 111 of the full age of twenty- one years then present.

That such assent was given at a meeting or council of the said Band summoned for that purpose and according to its Rules.

That he was present at such meeting or council and heard such assent given.

That he was duly authorized to attend such council or meeting by the Superintendent General of Indian Affairs.

That no Indian was present or voted at said council or meeting who was not a member of the Band or interested in the land mentioned in the said Release or Surrender.

That the said Stenchiaces says: That the annexed Release or Surrender was assented to by him and a majority of the male members of the said Band of Indians of the full age of twenty-one years then present.

That such assent was given at a meeting or council of the said Band of Indians summoned for that purpose, according to its Rules, and held in the presence of the said J.P.G. Day.

That no Indian was present or voted at such council or meeting who was not a habitual resident on the Reserve of the said Band of Indians or interested in the land mentioned in the said Release or Surrender.

24. On November 3, 1905, Order in Council P.C. #1920/1905 was passed confirming the surrender.

25. On December 21, 2017, the Crown admitted that it breached its fiduciary obligation to the Claimant and that said breach rendered the 1905 surrender of lands from Indian Reserves 110/111 invalid.

***(d) Valuation and Sale of Surrendered Lands***

26. On August 4, 1905, J.D. McLean, Secretary of the Department of Indian Affairs requested Dominion Land Surveyor J.K. McLean to subdivide the surrendered lands "in order that the lands may be put in the market as soon as possible." McLean completed the subdivision in early October and submitted a description and valuation of the surrendered lands to the Deputy

Superintendent General of Indian Affairs valuing the land at between \$2.50 and \$5.00 per acre. McLean additionally recommended that the surrendered lands be sold by tender. McLean described the land as “poor...a great part being hilly and the whole is very stony.”

27. Despite recommendations that the surrendered lands be sold by tender, Pedley directed that the sale be done by public auction at Battleford. The lands were to be offered for sale with one-fifth down, and the balance remaining in four equal annual instalments.
28. On April 19, 1906, M.J. Kane of Kane Land Co. wrote to Agent Day offering \$7.00 per acre for all the lands surrendered from IRs 110/111, and the request was forwarded to Department headquarters in Ottawa on April 21, 1906. In Day’s opinion, the price offered by Kane Land Co. was “more than it will bring, if it is broken up into small lots, and sold by public auction. However, the Department ignored the offer and chose to move forward with selling the lands by way of public auction.
29. The first auction took place on June 13, 1906, but due to limited advertisement and notice of the auction, attendance was limited, and few parcels were sold. At a second auction, held on the following day, 59 of the 90 quarter sections available were sold to 15 purchasers at an average sale price of \$4.01 per acre – slightly above the \$3.83 per acre upset price, for a total of \$38,240.42.
30. Following the auction, the firm of Champagne, Speers & Simpson offered to purchase the remaining unsold land for \$2.00/acre. In addition, E.H. White wrote to Frank Pedley submitting an offer to purchase the unsold land at the rate of \$3.10/acre. For reasons not disclosed in the archival file, the Department of Indian Affairs did not accept the offers, even though much of the land remained unsold.
31. Over two years later, a third auction took place on November 4, 1908, but Agent Day adjourned the sale due to inadequate attendance. Only twelve quarter sections were sold for a total of \$7,552.97. On November 20, 1908, Day reopened the sale, but reported that no bidders were present.
32. In April of 1909, the Kane Land Company once again offered to purchase the remaining unsold land for \$4.00/acre. However, the Department of Indian Affairs only replied with two notices of an auction sale to be held in June of that year. An additional auction took place on June 16, 1909. Only three or four people attended the sale and no quarter sections were sold.
33. A final auction took place on June 1, 1910. While little information remains on the record regarding this sale, virtually all the parcels were sold for an average of \$3.87 per acre for a total of \$11,656.75.

*(e) Creation of the First Nation’s Trust Accounts*

34. Canada opened the Mosquito Capital Account #332 in 1906. The first ledger shows an opening balance of \$6,883.28, with \$7,648.08 deposited into the account from land sales from the 1905 Surrender. Collections regarding the surrendered land from IRs 110/111 continued for many

years. The Departmental records illustrate that many of the sales were often in default, although few of the sales were actually cancelled.

***(f) Distribution of Interest Payments to the Bands***

35. On November 18, 1909, J.P.G. Day, Indian Agent, wrote to J.D. McLean, Secretary of the Department of Indian Affairs informing him that the Stoney Band had asked that interest from the sale of their land be distributed amongst them:

I have the honour to say that all the Stonies have petitioned me to ask you to let them have the amount of Interest, at present standing to their credit from sale of surrendered Reserve Lands: they wish to have the Cash so that it may be distributed among them pro rata to the number contained in each family. As these Indians are good workers, and not much of a burden on the Storehouse; I would respectfully advocate that their Petition be granted, so that they might be enabled to purchase supplies for their Winter use.

36. On November 29, 1909, McLean approved the distribution of \$180.00 and the Department issued the first cash distribution to all three Bands, including the Mosquito Band. Day reported that when the Bands met to receive their interest payments, they requested Day to “ask the Department for a Statement of their Land sold, and the expenditure thereon, up to date: also at what stated times they might expect to receive future payments on account of Interest.”
37. In the following spring, the Bands again asked that their interest money be distributed “for the purpose of purchasing Seed Grain, and as an aid to more extensive farming.” Day added that “[t]hey also request that the balance of their unsold lands be disposed of at as early a date as possible, as they claim that they are losing the interest on this unsold portion.” The Bands’ request prompted a second distribution in April of that year, which was followed by a larger interest distribution payment on December 29, 1910, of \$516 dollars, or \$6.10 per person from Trust Account 332.
38. Beginning in the 1930s, the Department started using interest payments to service agency debts, meaning that the direct payments to band members were increasingly reduced. By 1931, there were 127 people in the Mosquito/Grizzly Bear’s Head/Lean Man Bands receiving \$10 per person, but this dropped to \$5.00 per person in 1933.

***(g) The 1949 Amalgamation***

39. On June 29, 1949, D.J. Allan, the Superintendent of Reserve and Trusts wrote a memorandum to legal advisor W.W. Cory regarding the situation on IR 109. Allan described the surrender of 1905, which had been based on Agent Day’s advice that the three bands were essentially one band. Allan provided the opinion that it would be difficult to retroactively divide the assets, since the band had been paid as one for so many years. Allan added that \$9872.89 remained in their revenue (interest) account:

By Order in Council P.C. 1151 dated May 17<sup>th</sup>, 1889, Reserves Nos. 110 and 111 (undivided) in accordance with descriptions and plan compiled by John C. Nelson were confirmed as belonging

to “Grizzly Bear’s Head” and “Lean Man’s” Bands. By the same Order in Council, Reserve No. 110 [sic] adjoining was confirmed as belonging to the Mosquito Band of Indians...In a letter dated February 6<sup>th</sup>, 1905, Indian Agent Day stated that the Indians of the three Stony Bands...had requested that a portion of their reserve be disposed of by the Government. Further along in the letter it is intimated that the Indians had agreed that if their request for the disposal of such lands was granted they would all live together on the Mosquito Indian Reserve...He again reported that these three Bands have grown to be regarded as one Band...

Branch records indicate that since the date of the taking of this Surrender monies received from the sale of the surrendered lands were deposited in an account known as the Stony (Mosquito) Trust Account No. 332 and that expenditures for all the usual purposes were made for the benefit of members of all three of the Bands without any attempt to differentiate between the groups. The present balances to the credit of the Account are:- Capital \$42,879.37, and Revenue \$9,872.89. The time required for an investigation as to the monies which have passed through the account in the intervening forty-four years would be very considerable, but we may safely assume that the greater portion of it was derived from the sale of the lands.

40. Allan continued by asking whether “the verbal agreement implied in the correspondence proceeding the date of the Surrender together with the Surrender...and the Order in Council...may be considered as entitling the Mosquito Band of Indians to share in the proceeds of the land sold on the Grizzly Bear’s Head and Lean Man’s Reserves.”
41. Cory replied on July 5, 1949, noting that the above-mentioned documents did not constitute an amalgamation and that the bands “should have been formally amalgamated into one band.” Cory suggested that the following alternatives be considered:
  1. The Grizzly Bear’s Head and Lean Man’s Bands be amalgamated, and a trust fund set up for this new band and a new trust fund set up for the Mosquito Band, or,
  2. Amalgamate the three Bands, viz., Grizzly Bear’s Head, Lean Man’s and Mosquito Bands with the three reserves established as one reserve and set apart for the benefit of this new band.
42. A July 22, 1949, letter to C.S. Bell suggests that the Department did not take the advice of Cory stating that “[i]t is felt that for all practical purposes since 1889 the three groups of Stonys have not only considered themselves one Band and conducted themselves as such but they have been departmentally recognized as only one Band since the date of the general surrender in 1905.” As such, the letter noted that “[w]e do not suggest that any new arrangement should be made by the Indians among themselves but rather that the arrangement honoured by forty years’ observance be confirmed.”
43. Bell’s next correspondence tells us that he did in fact hold a band meeting on September 7, 1949, to discuss the status of the three bands. A second meeting with the Mosquito and Grizzly Bear’s Head and Lean Man Band was held on September 21, 1949. Bell reported the vote that was taken “on the question as to whether they wished to be one Band:”

Of the Mosquito Band there were fourteen members present of a voting strength of sixteen, Of the Grizzly Bear's Head Band there were thirteen members present of a voting strength of fifteen.

Mosquito Band voted as follows:

Twelve for amalgamating as one Band and two against. Grizzly Bear's Head Band voted as follows:

Twelve for amalgamating as one Band and one against.

Mr. Harvey Bell, Lawyer, North Battleford was at the meeting, being retained by the Grizzly Bears Head Band. Mr. F.R. Conroy, Lawyer, North Battleford, was also present at the meeting, being retained by the Mosquito Band.

...

I would suggest that the Annuity Paysheets be changed to have the two Bands paid as one Band. As there are no survivors of the Lean Man Band, I would also suggest that the name Lean Man be dropped and the land included in the area designated as the Mosquito-Grizzly Bears Head Reserve.

44. Bell subsequently instructed an unspecified individual within the Department of Mines and Resources to have band council resolutions signed not only by chief and council, but by the male voters, and Bell forwarded these on October 22, 1949, with a voters list. The band council resolutions do not speak of an amalgamation but of the coordination of resources and monies as one community.

***(h) Unauthorized Expenditures from Band's Trust Funds***

45. At all material times relevant to the Mismanagement Claim, the Respondent was responsible for the proper management and expenditure of capital and revenue moneys held in trust for the benefit of the First Nation. At all times, the Respondent's management of the Claimant's trust moneys was governed by:
  - (a) Treaties 4 & 6;
  - (b) The 1905 Surrender Document;
  - (c) The *Indian Act*; and
  - (d) The Respondent's fiduciary and other lawful obligations to the First Nation resulting from the Respondent's unilateral undertaking to manage the First Nation's trust funds for the benefit of the First Nation.

46. The legal instruments and principles described above address what purposes the Claimant's trust moneys can be expended on and whose authority or approval (i.e., Governor in Council, Band Council, Superintendent General of Indian Affairs or Minister of Indian Affairs) is required before trust moneys can be expended.
47. At all material times, a significant power and informational imbalance existed between the Respondent and the Claimant. The Respondent had complete power and control over the Claimant's trust moneys and controlled all information regarding the same.
48. Between 1906 and 1984, the Respondent improperly expended funds from the First Nation's Capital Account and Revenue Account in breach of the Respondent's fiduciary and other lawful obligations owed to the First Nation. Specifically, a number of expenditures recorded in the band ledgers over those years are contrary to the legislation (in force at the time) governing the management and expenditure of trust fund accounts.
49. Revenue Account expenditures totalling \$318,289 are comprised of invalid transactions in the following areas or categories of spending:
  - (a) \$3,773 on personal goods and services;
  - (b) \$38 on education related expenditures;
  - (c) \$8,439 on livestock, machinery, and implements;
  - (d) \$1,016 on improvements and/or maintenance of land;
  - (e) \$9,789 on capital projects;
  - (f) \$18,533 on building materials;
  - (g) \$3,609 on seed and feed;
  - (h) \$5,824 on agricultural supplies and services;
  - (i) \$5,636 on medical and medical related expenditures;
  - (j) \$30,860 on famine and pestilence related expenditures;
  - (k) \$671 on funeral expenses;
  - (l) \$4,224 on wages and salaries;
  - (m) Negative \$98 on costs of management; and
  - (n) A total of \$225,978 on transactions for which there were no apparent validation

and/or explanations

50. Capital Account expenditures of \$82,222 are comprised of invalid transaction in the following areas or categories of spending:

- (a) \$2,643 on personal goods and services;
- (b) \$5,882 on livestock, machinery, and implements;
- (c) 6,262 on capital projects;
- (d) \$32,553 on building materials;
- (e) \$5,744 on agricultural supplies and services;
- (f) \$3,315 on wages and salaries; and
- (g) \$25,823 on transactions for which there were no apparent validation and or explanations.

51. The unlawful expenditure of moneys held in the First Nation's Revenue Account and Capital Account totals at least \$400,511.

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

***(a) Breach of Treaty Promise to Protect and Increase Trust Moneys***

52. The Claimant is descended from and the successor in interest to three Treaty bands: the Mosquito Band, Grizzly Bear's Head Band, and Lean Man Band. The Mosquito Band is a signatory to Treaty 6, while the Lean Man Band and Grizzly Bear's Head Bands are adherents to Treaty 4.

53. The reserve lands clause of Treaty 4 states the following:

And Her Majesty the Queen hereby agrees, through the said Commissioners, to assign reserves for said Indians, such reserves to be selected by officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families; provided, however, that it be understood that, if at the time of the selection of any reserves, as aforesaid, there are any settlers within the bounds of the lands reserved for any band, Her Majesty retains the right to deal with such settlers as She shall deem just, so as not to diminish the extent of land allotted to the Indians; and provided, further, that **the aforesaid reserves of land, or any part thereof, or any interest or right therein, or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians**, with the consent of the Indians entitled thereto first had and obtained, but in no wise shall

the said Indians, or any of them, be entitled to sell or otherwise alienate any of the lands allotted to them as reserves.

54. Meanwhile, the reserve lands clause of Treaty 6 states:

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any Band as She shall deem fit, and also that **the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto**, with their consent first had and obtained;

55. The oral terms of Treaty 6 include a promise by Alexander Morris, Lieutenant-Governor of Manitoba and the North-West Territories, that if any part of the First Nation's reserves were sold, the proceeds of sale would be "put away to increase".

56. The terms of Treaties 4 & 6, including the oral promise of Lieutenant-Governor Morris, contain a sacred promise that the proceeds of any sale of the First Nation's reserve lands would be kept safe and would increase over time. This promise obligates the Crown to protect the First Nation's trust moneys and pay a rate of interest ensuring that the Claimant's trust moneys do indeed increase. The improper expenditures from the Claimant's trust accounts breached the Crown's sacred Treaty promise to the First Nation.

***(b) Breach of the Terms of the 1905 Surrender Document***

57. Under the terms of the Surrender Document, the Respondent undertook to manage the Net Sale Proceeds in accordance with the best interest of the First Nation and pay interest on the same. The Net Sales Proceeds should have and should still be invested for the benefit of the First Nation with compound interest paid to the First Nation annually. The Respondent breached its lawful obligation to invest the Net Sales Proceeds and earn a market rate of investment return on the same.

***(c) Breach of Federal Legislation and Policy Concerning Band Trust Fund Accounts***

58. The Respondent owes statutory duties to the First Nation to properly manage and protect the funds held in the Capital Account and Revenue Account administered by the Respondent for the First Nation's benefit. The statutory duties arise from the provisions of the *Indian Act*, as amended.

59. Since before Confederation, the Indian Department has held and controlled moneys that are considered property of Indian bands, rather than individual members. Typically, the Department creates and manages both a Capital Account and a Revenue Account for each First Nation. The Capital Account is for moneys gained through the sale of land, timber, or other assets owned by the First Nation, while the Revenue Account is for moneys earned from other sources, including the accrual of interest on the First Nation's trust accounts.

60. Since 1876, the various iterations of the *Indian Act* have governed the management of band trust moneys, including placing limits on the same. Section 70 of the *Indian Act*, RSC 1886, c 43, originally sets 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.

61. Sections 89 & 90 of the *Indian Act*, RSC 1906, c 81, set out a scheme very similar to the one described above:

**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 it 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.

62. Section 167 of the 1906 *Indian Act* sets out how consent of the band can be obtained:

**167.** If any band has a council of chief or councillors, any ordinary consent required of the band may be granted by a vote of a majority of such chiefs or councillors, at a council summoned according to its rules, and held in the presence of the Superintendent General or his agent.

63. In 1924, Canada amended section 90 to authorize expenditures for implements or machinery for the band and loans to individual band members under certain conditions. Such expenditures required approval of the Governor-in-Council and band consent.

64. The *Indian Act*, RSC 1927, c 98, carries over the permitted list of expenditures from previous versions of the *Act* and empowers the Superintendent General to expend band funds for the relief of sick, disabled, aged or destitute Indians, where these individuals are not otherwise provided for by the band.

65. The *Indian Act*, SC 1951, c 29, introduces a number of changes to the statutory scheme governing the management and expenditure of band funds, the following of which are of significance to the Mismanagement Claim:

- a. Section 61 clarifies 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”.
- b. Section 62 of the 1951 *Indian Act* formally distinguishes between “capital” and “revenue” funds for the first time, classifying money derived from the sale of surrendered lands or capital assets as “capital money” and all other Indian money as “revenue money”.
- c. Until the 1951 *Indian Act*, expenditures of band funds were *only* allowed with the express authority the Governor-in-Council, which was generally provided by way of Order-in-Council. The 1951 *Indian Act* was the first iteration to grant the Minister of Indian Affairs to authorize some expenditures.

66. The 1970 *Indian Act*, RSC 1970, c 98, adds a further expenditure to the list of expenditures that can be made with band consent and Minister approval and removes the requirement of band consent from some of the permitted expenditures.

67. Despite the Respondent’s knowledge of its duties and obligations relating to the expenditure of trust funds held on behalf of First Nations, it directed expenditures from the Claimant’s Capital Account and Revenue Account on items not authorized or permitted by the *Indian Act* and did not obtain the necessary authority or approvals to make expenditures, contrary to the provisions of the *Indian Act*.

**(d) Breach of the Respondent's Fiduciary and Trust-like Obligations to the Claimant**

68. At all material times, the Respondent owed an *ad hoc* fiduciary duty to the Claimant respecting the trust moneys held by the Respondent for the benefit of the Claimant. The Crown breached its *ad hoc* fiduciary duties to the Band.
69. Specifically, by enacting various iterations of the *Indian Act* to assume exclusive control over the First Nation's financial affairs, including the First Nation's Capital Account and Revenue Account, the Crown undertook to act in the best interests of the beneficiary First Nation, who, by virtue of the *Indian Act* legislation, was completely vulnerable to the Crown's control. The financial interests of the First Nation were adversely affected by the Crown's exercise of discretionary control over the First Nation's trust moneys.
70. 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 the Band to prevent the injurious exercise of discretion by the Crown flowed from the structure and nature of the fiduciary relationship between the Claimant 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 Claimant. 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 to the Crown, who 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.
71. 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 Claimant, 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 person would.
72. Despite the Respondent's fiduciary 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.
73. 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.

74. The Respondent did not discharge its fiduciary duty to act in the best interest of the First Nation with respect to expenditures from the Capital Account and the Revenue Account by allowing its self-interest to conflict with and prevail over its obligations to the First Nation. At all times the Respondent placed its own interests and the interests of third parties over those of the First Nation.

## VII. RELIEF SOUGHT

75. 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 trustee;
- c) A finding that the Crown breached its Treaty, statutory, fiduciary, trust, and other lawful obligations to the Claimant regarding the trust funds held in the First Nation's Capital and Revenue Accounts;
- d) Equitable compensation for the loss of trust property resulting from the unauthorized or otherwise illegal reductions to the same, including compensation for the lost opportunity to invest and earn a compounded rate of return on the First Nation's trust moneys;
- e) Equitable compensation for the Respondent's breaches of Treaty, breach of the Surrender Document, breach of its trust obligations, breach of its fiduciary or trust-like obligations, and breach of the terms of the various *Indian Acts* and policies in place from time to time;
- 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 6<sup>th</sup> day of September 2024 at the City of Saskatoon in the Province of Saskatchewan.

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