

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	December 9, 2024	D E P O S É
Alexandre Bois		
Ottawa, ON	5	

BETWEEN:

MOSQUITO GRIZZLY BEAR'S HEAD LEAN MAN FIRST NATION

Claimant

v.

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: Mosquito Grizzly Bear's Head Lean Man First Nation
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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. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this claim proceeds through the Tribunal process.
3. In this Response, Canada periodically uses terminology now recognized as antiquated. Canada does so only when required for legal accuracy or when referring to or quoting from historical sources.
4. This claim relates to whether Canada mismanaged moneys in the Mosquito Grizzly Bear's Head Lean Man First Nation's trust accounts, including land sale proceeds following the surrender of approximately 14,400 acres of land from Indian Reserves ("IR") Nos. 110 and 111 in 1905.
5. Canada admits it has a statutory duty to properly administer the funds in the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts in accordance with the *Indian Act*. The current evidentiary record does not support a conclusion that Canada breached any treaty, fiduciary or statutory duties in its administration of the sale proceeds or any other funds in the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts.
6. At all times, Canada conducted itself in accordance with the honour of the Crown. In the spirit of reconciliation, Canada will cooperate with the Mosquito Grizzly Bear's Head Lean Man First Nation to obtain more detailed expert and documentary evidence to inform discussions between the parties regarding Canada's management of the capital and revenue accounts. Should new information come to light, Canada will amend this response accordingly.

Status of Claim

7. Canada admits that Mosquito Grizzly Bear's Head Lean Man First Nation is a First Nation within the meaning of section 2 of the *Specific Claims Tribunal Act*, SC 2008, c 22 ("*SCTA*"), as pled in paragraph 1 of the Declaration of Claim.
8. Canada admits, in response to paragraphs 2 and 6 of the Declaration of Claim, that this claim meets the condition precedent as set out in paragraph 16(1)(b) of the *SCTA*. Canada acknowledges that the Mosquito Grizzly Bear's Head Lean Man First Nation has brought their claim pursuant to sections 14(1)(a), (b), and (c) of the *SCTA*.
9. As pled in paragraphs 3 and 4 of the Declaration of Claim, Canada admits:
 - a. the Mosquito Grizzly Bear's Head Lean Man First Nation submitted the specific claim to the Specific Claims Branch. Canada does not admit that the claim was submitted in the spring of 2021. Canada states that the claim was submitted in November 2020;
 - b. the claim alleged mismanagement of Mosquito Grizzly Bear's Head Lean Man First Nation's trust accounts;
 - c. the Mosquito Grizzly Bear's Head Lean Man First Nation's claim was deemed filed with the Minister on May 4, 2021; and
 - d. Pursuant to section 16(1)(b) of the *SCTA*, more than three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified Mosquito Grizzly Bear's Head Lean Man First Nation in writing of their decision on whether to negotiate the claim.
10. Canada acknowledges that for the purposes of this claim, the Mosquito Grizzly Bear's Head Lean Man First Nation is not seeking compensation in excess of \$150 million, as pled in paragraph 5 of the Declaration of Claim.

Canada's Position with Respect to Validity of the Claim

11. Canada does not admit that the facts establish a valid claim under the *SCTA* based on the current evidentiary record.
12. Canada does not admit allegations of mismanagement of funds connected to proceeds received from the 1905 surrender and other sources and continues to research this aspect of the claim.
13. In response to paragraph 67 of the Declaration of Claim, Canada does not agree that it directed expenditures from the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts in a way that was contrary to the *Indian Act*. Canada does not admit that it breached its statutory obligations in relation to managing Mosquito Grizzly Bear's Head Lean Man First Nation's trust accounts.
14. In response to paragraphs 48, 56, 67, 68 and 72 of the Declaration of Claim, Canada states that the management of expenditures of sale proceeds complied with the surrender document, the *Indian Act* and Canada's policies. Canada says that the evidence does not support an outstanding lawful obligation to the Mosquito Grizzly Bear's Head Lean Man First Nation for alleged breach of treaty, breach of statutory duty, breach of trust or breach of fiduciary duty.
15. In response to paragraph 74 of the Declaration of Claim, at all times, Canada acted in the best interest of the Mosquito Grizzly Bear's Head Lean Man First Nation in managing its trust accounts. Canada does not admit the allegation that Canada allowed its self-interest to conflict with and prevail over Canada's obligations to the Mosquito Grizzly Bear's Head Lean Man First Nation, nor did it place the interests of third parties over those of the Mosquito Grizzly Bear's Head Lean Man First Nation.
16. The facts do not support a claim of solicitor-client costs as requested in paragraph 75(f) of the Declaration of Claim.

Canada's Position with Respect to Allegations of Fact

17. In response to paragraph 25 of the Declaration of Claim, Canada states that on December 21, 2017, Canada admitted it breached its pre-surrender fiduciary obligation to the Mosquito Grizzly Bear's Head Lean Man First Nation rendering the surrender of lands from IRs 110 and 111 invalid. On January 18, 2021, the Tribunal, in a decision cited as 2021 SCTC 1, awarded substantial compensation to the Mosquito Grizzly Bear's Head Lean Man First Nation for the surrender of lands from IRs 110 and 111 in 1905.
18. In response to paragraphs 1, 8, and 14 of the Declaration of Claim, Canada admits that IR 109 was established on May 17, 1889, with an area of 23,040 acres. IRs 110 and 111 were surveyed in the summer of 1884, with an area of 36.2 square miles, and also established on May 17, 1889.
19. In response to paragraphs 10 and 11 of the Declaration of Claim, Canada admits that Chief Lean Man adhered to Treaty 4 on September 25, 1877. Canada states that the Lean Man Band consisted of 174 members at the time of adhesion. Canada admits that it started to pay Treaty 4 annuities at Fort Walsh in 1879 and that Little Chief resigned in 1880. Canada does not admit the other facts asserted in this paragraph and requires further historical research to confirm.
20. In response to paragraph 52 of the Declaration of Claim, Canada states that Mosquito Grizzly Bear's Head Lean Man First Nation is an adherent to Treaty 6. Canada does not admit that Grizzly Bear's Head Band signed a formal adhesion to Treaty 4.
21. Canada admits the statements of fact in paragraphs 7, 9, 20-24, 29-32, 35-37, and 39-44 of the Declaration of Claim in their entirety. Canada admits the first sentence of paragraph 15 of the Declaration of Claim. Canada admits paragraph 19 of the Declaration of Claim, except the assertions contained in the second sentence.
22. In response to paragraph 12 of the Declaration of Claim, Canada admits only that the First Nations living near Cypress Hills requested rations. Canada does not admit that

a reserve was established for the “Assiniboine Indians at the Head of the Mountain” in 1880.

23. In response to paragraph 13 of the Declaration of Claim, Canada does not agree that the Lean Man First Nation and the Grizzly Bear’s Head First Nation were “forced” to move to the Eagle Hills area.
24. Canada has no knowledge of the assertions set out in paragraph 18 of the Declaration of Claim and will work cooperatively with the Mosquito Grizzly Bear’s Head Lean Man First Nation to obtain a more detailed and complete record.
25. In response to paragraph 19 of the Declaration of Claim, Canada states that it has no knowledge of whether Agent Day “may have initiated” the surrender.
26. Canada admits paragraph 26 of the Declaration of Claim with the exception of the first sentence. Canada states that the first sentence of paragraph 26 does not refer to the lands surrendered from IRs 110 and 111.
27. In response to paragraph 27 of the Declaration of Claim Canada states that it has no knowledge of whether Deputy Superintendent General Pedley directed the sale of the land by public auction.
28. In response to paragraph 28 of the Declaration of Claim, Canada does not admit that it ignored the offer of the Kane Land Co. but admits that it proceeded with selling the lands by public auction.
29. Canada has no knowledge of the assertions set out in paragraph 33 of the Declaration of Claim and will work cooperatively with the Mosquito Grizzly Bear’s Head Lean Man First Nation to obtain a more detailed and complete record.
30. In response to the second sentence of paragraph 15 of the Declaration of Claim and the entirety of paragraphs 16, 17, 47, 56, 69, 70, and 71 of the Declaration of Claim, Canada states that these constitute argument, opinion and/or statements of legal conclusion and thus contain no discernible facts to admit or deny. To the extent that any of these paragraphs do contain facts, Canada does not admit these facts.

31. In response to paragraph 34 of the Declaration of Claim, Canada admits receipt and deposit of the sale proceeds into the Mosquito Grizzly Bear's Head Lean Man First Nation's capital account. Canada states that there was an initial deposit of \$7,648.08, followed by a debit of \$764.80 for a closing balance of \$6,883.28 for the fiscal year 1906. At all times, Canada retained the balance of sale proceeds in the capital account in the amount dictated by the surrender document.
32. Canada does not admit the assertions contained in paragraph 38 of the Declaration of Claim.
33. In response to paragraphs 45 and 46 of the Declaration of Claim, Canada admits it is responsible for the management and administration of the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts, and that the provisions of the *Indian Act* and related regulations and policies legislated how Canada was to maintain and expend moneys in the capital and revenue accounts. Canada further admits that the *Indian Act* addressed the various approvals required prior to Canada making particular expenditures.
34. In response to paragraphs 48-51 of the Declaration of Claim, Canada states the current evidentiary record lacks sufficient detail to conclude that Canada improperly expended any funds from the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts.
35. Canada states that it is unclear how the Mosquito Grizzly Bear's Head Lean Man First Nation calculated the figures in paragraphs 49 and 50 of the Declaration of Claim. Canada will work cooperatively with the Mosquito Grizzly Bear's Head Lean Man First Nation to obtain more detailed documentary and expert evidence in order to determine any areas of agreement regarding the expenditures from the capital and revenue accounts. As a result, Canada is not in a position to admit or deny those statements.
36. Canada states that some Orders in Council and supporting documents authorizing certain expenditures appear to be missing from the evidentiary record, and Canada will work cooperatively with the Mosquito Grizzly Bear's Head Lean Man First

Nation to obtain a more detailed and complete record. This will allow for a more complete analysis of whether the expenditures listed in paragraphs 49 and 50 of the Declaration of Claim were contrary to the *Indian Act* or Canada's policies.

37. In further response to paragraphs 48 and 51 of the Declaration of Claim, Canada does not admit that it improperly expended funds from the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts in breach of its fiduciary and other lawful obligations. Nor does Canada admit that expenditures recorded in the band ledgers were contrary to the legislation in force at the time.
38. In response to paragraphs 53 and 54 of the Declaration of Claim, Canada states that Treaties 4 and 6 are silent on the management of proceeds from surrendered land sales. The surrender document contains no reference to Treaties 4 and 6. Canada states that it complied with the surrender document in expending the sale proceeds.
39. In response to paragraphs 55 and 56 of the Declaration of Claim, Canada does not admit that Treaty 6 contained an "oral term" that sale proceeds of reserve land would be "put away to increase" or any oral terms whatsoever. Canada does not admit that Treaties 4 and 6 promise that proceeds from the sale of reserve land would be kept safe and increase over time, nor that Treaties 4 and 6 obligate Canada to protect First Nations' trust monies or to ensure that they accrue interest so as to ensure that the trust monies increase.
40. In response to paragraph 57 of the Declaration of Claim, Canada states that it fulfilled the surrender terms and discharged its post-surrender fiduciary obligations set out in the land surrender document by selling the land, making the appropriate deductions for management expenses and authorized distributions, and depositing the sale proceeds into the Mosquito Grizzly Bear's Head Lean Man First Nation's capital account, where interest was accumulated and subsequently transferred into their revenue account.
41. In further response to paragraph 57 of the Declaration of Claim, Canada states it has no fiduciary duty to invest the Mosquito Grizzly Bear's Head Lean Man First

Nation's money or sale proceeds in a particular manner. Canada admits that the balance of the sale proceeds, after all distributions were paid, were to be placed to the credit of the Mosquito Grizzly Bear's Head Lean Man First Nation with interest paid annually or semi annually, according to the surrender terms. Canada fulfilled its statutory duties by complying with the *Indian Act* in managing the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts.

42. In response to paragraph 58 of the Declaration of Claim, Canada admits that it owes a statutory duty to the Mosquito Grizzly Bear's Head Lean Man First Nation to administer the funds in the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts in accordance with the *Indian Act*.
43. In response to paragraph 59 of the Declaration of Claim, Canada states that Mosquito Grizzly Bear's Head Lean Man First Nation had a capital and revenue account during the relevant claim period. Canada states that proceeds from the sale of surrendered reserve lands were deposited into Mosquito Grizzly Bear's Head Lean Man First Nation's capital account, while interest earned on surrender monies and sale proceeds were deposited into Mosquito Grizzly Bear's Head Lean Man First Nation's revenue account.
44. Canada agrees that the 1886, 1906, 1927, 1951, and 1970 versions of the *Indian Act* contain provisions that govern the management of Indian moneys as set out in paragraphs 60-66 of the Declaration of Claim.
45. Canada admits the balance of the sections of the historic versions of the *Indian Act* quoted in paragraphs 60-62 of the Declaration of Claim. With respect to paragraph 62, Canada states that section 166 of the *Indian Act, 1906* (RSC 1906, c 81) provided that band consent could also be obtained by way of a membership vote.
46. With respect to the characterizations of the historic versions of the *Indian Act* stated in paragraphs 63 to 66 of the Declaration of Claim, Canada states as follows:
 - i. With respect to paragraph 63, Canada agrees with the characterization of the 1924 amendment to section 90 of the *Indian Act* but states that,

beginning with the *Indian Act*, SC 1918 c 26, the Governor in Council had the ability under section 90(2) of the *Indian Act* to spend monies for the purposes listed in section 90(1) without band consent.

- ii. With respect to paragraph 64, Canada states that the provision empowering the Superintendent General to expend band funds for the relief of “sick, disabled, aged, or destitute Indians” originated in 1869, in the *Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, SC 1869, c 6 (32-33 Vict.).
- iii. With respect to paragraph 65(a), Canada states that the portion of section 61 of the *Indian Act*, SC 1951, c 29 is misquoted and should read “...for the benefit of the Indians or bands 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 or surrender, 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.”
- iv. With respect to paragraph 65(b), 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 a provision distinguishing “capital moneys” was added to the *Indian Act* in 1894 (SC 1894, c. 32, s. 11).
- v. Canada does not admit paragraph 65(c), and states that the Superintendent General of Indian Affairs had the authority to make expenditures of band funds in some circumstances.
- vi. With respect to paragraph 66, Canada states that the further expenditure referred to is 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...” This amendment was introduced in 1956 (SC 1956, c 40, s. 15), not 1970, as stated in the Declaration of Claim. Canada does not admit that the *Indian Act*, 1970 was the first version of the *Indian Act* to not require band consent.

47. In response to paragraphs 68 and 72 of the Declaration of Claim, Canada states that the management of expenditures of sale proceeds complied with the surrender document, the *Indian Act* and Canada’s policies. Canada says that the evidence does not support an outstanding lawful obligation to the Mosquito Grizzly Bear’s Head Lean Man First Nation for alleged breach of treaty, breach of statutory duty, breach of trust or breach of fiduciary duty.
48. In response to paragraph 73 of the Declaration of Claim, Canada acknowledges that the Mosquito Grizzly Bear’s Head Lean Man First Nation has supplied some details of the capital and revenue deposits and expenditures used to support its specific claim submission.

Canada’s Statement of Facts

49. The Mosquito Grizzly Bear’s Head Lean Man First Nation was formed by the amalgamation of three predecessor First Nations: the Mosquito First Nation, the Lean Man First Nation, and the Grizzly Bear’s Head First Nation.
50. The Lean Man First Nation adhered to Treaty 4 at Fort Walsh in 1877 and was paid annuities beginning that year.
51. The Grizzly Bear’s Head First Nation was paid Treaty 4 annuities beginning in 1879 at Fort Walsh.
52. The Mosquito First Nation adhered to Treaty 6 on August 29, 1878, at Battleford and was paid annuities under Treaty 6 beginning that year. IR 109 was surveyed for the Mosquito First Nation in August 1878 in the Eagle Hills area just south of Battleford. It was confirmed as a reserve on May 17, 1889, by Order in Council P.C. 1151.

53. In 1882, following the closure of Fort Walsh, the Lean Man First Nation and the Grizzly Bear's Head First Nation moved to the Eagle Hills area. Beginning that year, both First Nations began receiving Treaty 6 annuities.
54. In 1933, the Grizzly Bear's Head and Lean Man First Nations amalgamated, with Grizzly Bear's Head being the successor First Nation.
55. In 1949, the Grizzly Bear's Head and Mosquito First Nations amalgamated, becoming the Mosquito Grizzly Bear's Head Lean Man First Nation.
56. From 1933 to 1948, the Grizzly Bear's Head and Mosquito First Nations received benefits under the terms of Treaty 6 as separate First Nations. Since the amalgamation in 1949, the Mosquito Grizzly Bear's Head Lean Man First Nation has continued to receive benefits under Treaty 6. The Mosquito Grizzly Bear's Head Lean Man First Nation's Reserves are within the boundaries of Treaty 6. The Mosquito Grizzly Bear's Head Lean Man First Nation is not entitled to receive benefits under the terms of Treaty 4.
57. Canada surveyed IRs 110 and 111 in the summer of 1884. Order in Council P.C. 1151 confirmed IRs 110 and 111 on May 17, 1889. IRs 110 and 111 were contiguous to IR 109.
58. On February 6, 1905, Agent Day wrote to David Laird, Indian Commissioner, claiming that the "Indians of the three Stony Bands" [a name frequently used for the three First Nations collectively] had requested a surrender of 22.50 sections of land from IRs 110 and 111. Agent Day supported the surrender, stating that the three Bands were "to all intents and purposes, one Band, as they have for a number of years lived together in the same village."
59. On May 19, 1905, a meeting was held to consider the proposal to surrender 14,400 acres of land from the reserves. A surrender document was subsequently signed by "The Stony Band of Indians". There is no voting list but there is an affidavit from the Indian Agent attesting that the surrender was taken at a meeting of male Band members of the full age of twenty-one or over.

60. The First Nation agreed to an interest distribution in the surrender:

And upon the further condition that all moneys received from the Sales..... 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 semiannually 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 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.

61. On November 3, 1905, Order in Council P.C. 1920 approved the surrender of a portion of land from IRs 110 and 111 and gave authority “for the disposition of the land in such manner as the Superintendent General may deem best in the interests of the Indians, notwithstanding the Land Regulations established by Order in Council of 15th September 1888.”
62. Following the surrender, one capital account and one revenue account (then called an interest account) were managed for the three bands and eventually for the amalgamated band.
63. Canada sold the subject lands at public auctions on June 13 and 14, 1906, November 4, 1908, and June 1, 1910, for a total of approximately \$54,426, all of which was placed in the Mosquito Grizzly Bear’s Head Lean Man First Nation’s capital account.
64. Canada fully discharged the surrender terms, depositing the sale proceeds into the Mosquito Grizzly Bear’s Head Lean Man First Nation’s capital account. Interest on the land sales was credited to the Mosquito Grizzly Bear’s Head Lean Man First Nation’s interest account. All funds deposited into the Mosquito Grizzly Bear’s Head Lean Man First Nation’s accounts were managed by Canada in accordance with the *Indian Act* and related regulations and policies.

65. Canada states that it made all distributions from the Mosquito Grizzly Bear's Head Lean Man First Nation's capital and revenue accounts in compliance with the surrender terms and the *Indian Act*. Canada did not breach any legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to the Mosquito Grizzly Bear's Head Lean Man First Nation relating to management of the capital and revenue accounts at any time.
66. In the alternative, Canada states that if a breach of the *Indian Act* in connection with expenditures is found, any benefit of the expenditures to the Mosquito Grizzly Bear's Head Lean Man First Nation should be set off against any losses found to have occurred. Compensation should only be awarded in respect of expenditures for which the Mosquito Grizzly Bear's Head Lean Man First Nation did not receive a benefit or received an inadequate benefit.

Canada's Statement of Relief

67. Canada seeks the following relief:
- a. Dismissal of the claim;
 - b. In the alternative, should any expenditure be found to lack proper authorization or be otherwise inappropriate, Canada relies upon s. 20(3) of the *SCTA* and seeks to set off the value of the benefit received by the Mosquito Grizzly Bear's Head Lean Man First Nation from any compensation deemed owing;
 - c. Canada may decide not to seek costs upon the final determination of the proceedings; however, it reserves the right to seek such costs; and
 - d. Such further relief as counsel may request and this Honourable Tribunal deems just.

Communication (R. 42(g))

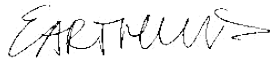
The Respondent's address for the service of documents is:

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Dated this 9th day of December 2024.



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