

SPECIFIC CLAIMS TRIBUNAL	
F I L E D	TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES May 02, 2025 Mark Chamoun
Ottawa, ON	1

SCT File No.: SCT -5002-25

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

MISTAWASIS NĒHIYAWAK

Claimant

v.

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

Respondent

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

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act*, SC 2008, c 22, and the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.

Date: May 2, 2025

Registry Officer: Mark Chamoun

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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I. Claimant (Subrule 41(a) of the Rules)

1. The Claimant, Mistawasis Nêhiyawak, confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*. The Claimant is located in the Province of Saskatchewan.

II. Conditions Precedent (Subrule 41(c) of the Rules)

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have 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

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;

...

3. This claim relates to the unlawful introduction and implementation by the Crown of the Certificate of Possession system on the Mistawasis Indian Reserve No. 103 to individual members of Mistawasis Nêhiyawak under s. 20 of the 1951 *Indian Act* and Canada's failure to ensure that the First Nation was properly compensated for the resulting loss of reserve lands held communally by the First Nation.

4. The Claimant filed its claim with the Minister for processing under the Specific Claims Policy, which claim was received by the Minister on January 11, 2021.

5. In a letter dated June 17, 2024, the Claimant was advised by the Respondent that it was the decision of the Minister not to accept the claim for negotiation.

III. Claim Limit (Paragraph 20(1)(b) of the Act)

6. For the purposes of this claim, the Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (Subsection 14(1) of the Act)

7. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

- (a) a failure to fulfill 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;
- (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.
- (d) an illegal lease or disposition by the Crown of reserve lands; and
- (e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

V. Allegations of Fact (Subrule 41(e) of the Rules)

Creation of Mistawasis Reserve under Treaty No. 6

8. Chief Mistawasis, Chief of Mistawasis Nêhiyawak at the time, formerly known as the Mistawasis Band, signed Treaty No. 6 in August 1876. Among the provisions of Treaty No. 6 was a provision that First Nations were entitled to farming lands for reserves on a communal or collective basis, set aside for their exclusive use and benefit, in the amount of one square mile (640 acres) for each family of five, or in that same proportion for families larger and smaller. Accordingly, Treaty No. 6 gives rise to a treaty right to lands for its signatory First Nations. Pursuant to Treaty No. 6, in 1889, Indian Reserve No. 103 was set aside for the communal and collective use and benefit of Mistawasis Nêhiyawak (“Mistawasis Reserve”).

9. The land set aside at that time was comprised of approximately 48,280 acres. Approximately 18,155 acres was lost through wrongful surrenders in 1911, 1917, and 1919, leaving Mistawasis Nêhiyawak with approximately 30,125 acres of reserve land.

10. Under the terms of Treaty No. 6, the Crown reserved the right to sell or otherwise dispose of any reserve land or interest therein with the consent of the First Nation and in the best interest of the First Nation.

Lead up to the Introduction and Implementation of Certificates of Possession

11. Beginning in 1876, the *Indian Act* included a provision for a location ticket system whereby reserve land could be surveyed into individual lots and assigned to individual band members. The 1927 *Indian Act* furthered the individual possession of reserve land by implementing a certificate of occupancy system whereby an individual could be allotted an area of reserve land up to 160 acres. No location tickets or certificates of occupancy were issued on the Mistawasis Reserve under either of these earlier *Acts*.

12. In 1942, in response to the influx of veterans returning to Canada following the Second World War, Canada passed the *Veterans' Land Act* (VLA). The VLA established grants for veterans to assist with the purchase and improvement of farm land. The purpose of the grants was to assist veterans toward the full ownership of rural farm land and working equipment whereby the Crown would bear part of the cost of the property and cost of equipment for cultivating the land. It was considered to be in the public interest to aid veterans in becoming owners of farm homes. The program was such that a veteran could receive assistance to purchase land, and then with proof of purchase, apply for additional grants to improve the land. Without evidence of title to land, a veteran would not be eligible to receive a grant under the VLA.

13. In 1945, the *Act to amend the Veterans' Land Act, 1942* delegated the administration of grants available to First Nation veterans to the Department of Indian Affairs. Section 35A of the amending legislation also permitted First Nation veterans to be established on reserve land as well as other lands. Previously, this had not been possible because the reserve land could not be used as security. The Director of Indian Affairs Branch clarified that Indian Agents needed to ensure that a First Nation veteran had proper title to the reserve land on which he was being established in the form of either an application for a location ticket or with a Band Council Resolution (BCR) confirming that the veteran was the recognized owner of the right to occupy a specified piece of reserve land. A member was not recognized as owner of any piece of land on a reserve unless he had been allocated it by the band. A circular issued in early 1946 notified staff that the VLA had

been amended to permit the purchase of land on reserve. The manual issued to Indian agents following the 1945 changes included that the VLA was devised to assist veterans by planned land settlement and, specific to First Nation veterans, to settle them on reserve land, therefore ownership of land was necessary.

14. At that time, Mistawasis Nêhiyawak was operating under band custom in passing BCRs regarding the temporary allocation of land to individual members, as opposed to passing BCRs under any provision of the *Indian Act*.

15. In the lead up to the 1951 amendments to the *Indian Act*, Special Joint Committee hearings were held between various First Nations and Crown representatives. During the hearings, First Nation Chiefs expressed concerns over the alienation of reserve lands through allotment to veterans and advocated for the discontinuance of expropriation of reserve lands and affirmation that the First Nations are the sole owners of the communally held reserve land, as per the treaty. In response to these concerns, Crown representatives assured the First Nations that veteran members were not given title to the land and that the idea that any lands allocated to veterans would cease to belong to reserves was incorrect.

Introduction and Implementation of Certificates of Possession by the Crown

16. In 1951, the *Indian Act* underwent significant amendments, including the replacement of the former location ticket system with the Certificate of Possession system. The section dealing with settlement of veterans or soldiers was removed.

17. Under s. 20 of the amended 1951 *Indian Act*, a newly created Certificate of Possession in effect transferred all of the First Nation's legal interests in the reserve land to a First Nation member in perpetuity. It gave a certificate holding member a variety of exclusive interests in the reserve land, in perpetuity, including the right to occupy the location, build a home, extract resources, divide the land amongst their children, transfer the land to another member of the First Nation, and to lease the land. This legal effect of the issuance of Certificates of Possession was either not known by Canada at the time, or not conveyed to Mistawasis Nêhiyawak, or both. In any event, there is no evidence that the legal effects of the issuance of a Certificate of Possession was ever conveyed to Mistawasis Nêhiyawak until many years later in the 1970's. The authority to issue a Certificate of Possession was held by the Minister, not the First Nation.

18. Shortly after the 1951 *Indian Act* amendments were passed, the Mistawasis Band Council requested the issuance of allotments of land to various First Nation members. No mention of the *Indian Act* was made in the BCR and the requests referred to ‘tickets of possession’ or ‘tickets of occupation’. There is no evidence to indicate or suggest that any discussion took place between Indian Agents and the First Nation with respect to the long-term legal implications of the individual land allotments. Nor is there any indication in the evidence that the First Nation was changing from its earlier system of customary allotment of land by BCR to that of implementing the *Indian Act*. Further, having not specified the form of allotment in the BCR, either the Superintendent or Headquarters unilaterally made a decision to issue a Certificate of Possession or a Certificate of Occupation.

19. In June 1952, the Mistawasis Band Council again requested allotments of reserve land to individuals and used the wording ‘Certificates of Occupation’. Although the language in the BCR had changed, Indian Affairs set the regulations for the meetings and Superintendents were expected to actively guide Band councils in the wording of the BCRs. Between September 9 and 16, 1952, the Indian Affairs Branch issued 32 Certificates of Possession, not Certificates of Occupation as requested by the Band Council. These Certificates of Possession included the words “Under Section 20, THE INDIAN ACT”.

20. In 1955 and 1956, Mistawasis Nêhiyawak passed various BCRs requesting that individuals be recognized as being in ‘lawful possession’ of the allocated parcels of reserve land. Despite none of the BCRs specifying that the reserve land was to be allotted in accordance with the *Indian Act* as Certificates of Possession, additional Certificates of Possession were issued by Indian Affairs.

21. By the end of 1955, 78 of the 204 quarters sections of the Mistawasis Reserve had been allotted to individual members by way of Certificates of Possession, issued by the Crown. This amount represents approximately 38 percent of the reserve land. Notably, 25 percent of the total reserve consisted of land not suitable for cultivation.

22. There is no evidence in the historical record to indicate that any discussion whatsoever took place between the Band Council and the Superintendent, or any other official of Indian Affairs for that matter, with respect to the long-term legal effects of issuing reserve land allotments under

the provisions of the *Indian Act*, or the legal implications to the reserve land of the issuance of the different types of certificates.

23. In 1955, an Indian Affairs circular explained that incorrect or inadequate understanding of section 20 of the *Indian Act* by Band Councils resulted in BCRs that worked so as to convey lawful possession, which of course provided exclusive possession in perpetuity, in cases where it was clear that the Band Council intended to issue conditional occupancy only. Furthermore, this explanation was removed from the final version. Apparently, Canada was not concerned whether First Nations were clear in their understanding of how best to function to achieve their desired goal of conditional or temporary possession of reserve land, while Canada implemented its Certificate of Possession system.

24. By 1962, Band Council requests for Certificates of Possession were re-written to exclude reference to Certificates of Possession and were directed to refer to ‘allotment only’. In some instances, Crown entries appear on BCRs stating that the individuals had originally been approved for Certificates of Possession in 1952 and 1955. This suggests that Indian Affairs maintained the power to determine the type of land allotment issued. Even during the mid-1960’s the Department of Indian Affairs continued to have the final say in the form of allotment of reserve land that was issued to First Nation members.

25. As a result of the Certificates of Possession issued, a significant portion of reserve land was and remains alienated from Mistawasis Nêhiyawak. Mistawasis Nêhiyawak has forever lost the use and benefit of approximately 78 quarter sections and fractional quarter sections of Mistawasis Reserve land due to the Crown issuance of Certificates of Possession. The long-term effects and legal implications of allotting land by way of Certificates of Possession to individual First Nation members was of no use or benefit to Mistawasis Nêhiyawak.

VI. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligations

The Nature and Effect of the Issuance of a Certificate of Possession

26. It is clear from a number of different historical indicators and caselaw cited that it was and has been the intention that First Nation reserve land was and is to be held communally - the

members of a First Nation as a whole were and are to benefit from Indian reserve lands, rather than to satisfy the interests of any individual First Nation member. The reserve land is for the use and benefit of the First Nation as a whole, not individual First Nation members.

27. Nevertheless, Canada's policy of promoting the individual ownership of First Nation land began many years ago and it existed for many years. Canada was aware of the danger of the concentration of reserve land in the hands of a few First Nation members, but promoted and implemented the Certificate of Possession anyway.

28. A Certificate of Possession grants all of the incidents of legal ownership of land to a First Nation member, except actual legal title. Accordingly, a First Nation member who is issued a Certificate of Possession has all of the rights in the allocated land, similar to that of a fee simple owner.

29. The interest transferred to the recipient by a Certificate of Possession is transferred on a permanent basis. It is, in fact, issued in perpetuity, and may be passed down through an estate. The effect of the issuance of a Certificate of Possession is to alienate the Indian reserve land, the duration of which is permanent and is likely to be in perpetuity, in the absolute discretion of the First Nation member who was issued the Certificate of Possession by the Crown. The *Indian Act* provides significant benefits and protections for the Certificate of Possession holder, on a permanent basis, with virtually no recourse for the First Nation to reacquire its reserve land.

30. The legal effects of the issuance of a Certificate of Possession are:

- (a) a Certificate of Possession vests in an individual member all the incidents of ownership in the allotted part with the exception of legal title to the land itself, which remains with the Crown;
- (b) the incidents of ownership in land no longer reside with the First Nation as a whole. Once a Certificate of Possession is issued incidents of ownership reside with an individual First Nation member;
- (c) the First Nation itself, being the collective of First Nation members, no longer "owns" the land;

- (d) a First Nation member who is issued a Certificate of Possession has all of the rights in the allocated land, similar to that of a fee simple allocation;
- (e) a Certificate of Possession is permanent and irrevocable;
- (f) the legal interest of the First Nation has disappeared, or at least been suspended;
- (g) the “suspension” of the interest of the First Nation is permanent, in the absolute discretion of the First Nation member issued the Certificate of Possession by the Crown; and
- (h) a Certificate of Possession is very close in effect, for all practical purposes, to a fee simple certificate of title.

31. A Certificate of Possession is irrevocable. The legal interest of the First Nation has disappeared, or at least been suspended.

32. There is a substantial benefit to a Certificate of Possession holder, and a *concomitant and equivalent loss* to Mistawasis Nêhiyawak. The Certificate of Possession holder:

- (a) gets the use and benefit of the lands, in fee simple equivalency, in perpetuity if he or she so desires;
- (b) pays nothing for the purchase of the land;
- (c) pays no rental to Mistawasis;
- (d) reaps all of the profits from the land;
- (e) pays no share of those profits whatsoever to Mistawasis Nêhiyawak;
- (f) can do no work, lease the land to a non-First Nation farmer on a crop share or cash basis, keep the full amount of the rental crop or monies, and pay nothing to Mistawasis Nêhiyawak;
- (g) accumulates the improvements at the expense of the use and benefit of Mistawasis reserve land; and

(h) has the use and benefit of the land for free.

33. The First Nation gets no economic benefit from its own land held under a Certificate of Possession, on a permanent basis. Obviously, Certificates of Possession are for the benefit of the individual First Nation member, and not for the benefit of the First Nation as a whole. The issuance of Certificates of Possession was not for the use or benefit of Mistawasis Nêhiyawak.

34. The Minister had options available other than to allot permanent Certificates of Possession to First Nation members, thus alienating the reserve land from the First Nation as a whole in perpetuity. The Minister did not need to issue Certificates of Possession in the first place. Other less permanent options were available. Instead of issuing Certificates of Possession, the Crown should have allowed the First Nation to temporarily allot or lease its land to First Nation farmers who wished to farm it at fair market value, or for free if the Council so chose to encourage farming by First Nation members.

35. However, the Crown had other self-serving considerations in mind with respect to the Certificate of Possession System, which had their roots in decades of government policy. The Crown, through its policies regarding First Nation land and subsequent *Indian Act* legislation, had other self-serving reasons for encouraging First Nations to take up farming and allot lands to individual First Nation members. The Crown was acting in what it saw as its own best interests – the goal of assimilation. The Certificate of Possession System was in the best interests of the policies of the Crown. That was the primary consideration.

36. It was the Crown, not Mistawasis Nêhiyawak, that benefited from the introduction and implementation of the Certificate of Possession System on the Mistawasis Nêhiyawak reserve.

37. The above illustrates what was and continues to be the nature and effects of the issuance of Certificates of Possession by the Crown on Mistawasis Nêhiyawak reserve lands. The Certificate of Possession System, by its very nature and effect, *was not* in the best interests of Mistawasis Nêhiyawak as a whole.

Breach of Treaty No. 6

38. By the terms of Treaty No. 6, the Crown had a legal obligation to provide land to Mistawasis Nêhiyawak, in an amount set out in the Treaty. *Some* of that obligation was fulfilled

by the setting aside of Indian Reserve No. 103 for Mistawasis Nêhiyawak. By introducing and implementing the Certificate of Possession System and issuing Certificates of Possession, which in effect transferred possession from the First Nation to individual First Nation members in perpetuity, the Crown alienated land from the quantum of reserve lands available for the use and benefit of Mistawasis Nêhiyawak as a whole, and its First Nation members, as provided for on a communal and collective basis in Treaty No. 6. The Crown was obliged to set aside 640 acres per family of five, or in that proportion for larger or smaller families. What it “gave” to the First Nation with one hand in fulfillment of its obligation under Treaty No. 6, it “took away” with the other hand pursuant to s. 20 of the *Indian Act* and the Certificate of Possession System.

39. In this way the Crown reneged on its treaty obligation to maintain a full complement of reserve land for the use and benefit of the First Nation as a whole. Accordingly, the Crown failed to satisfy and maintain its legal obligation with respect to the amount of land prescribed for Mistawasis Nêhiyawak under Treaty No. 6. The reserve land of Mistawasis Nêhiyawak, which was intended for the use and benefit of the First Nation as a whole pursuant to its treaty right to land, did not remain for the use and benefit of the First Nation as a whole because of the issuance of Certificates of Possession by the Crown on Mistawasis Nêhiyawak. Rather it was diminished in its use and benefit to the First Nation. As a result, there was a breach of Treaty No. 6 in this regard.

40. As well, the terms of Treaty No. 6, which included the right to have reserve land “or any interest” in reserve land, once created, “sold or otherwise disposed of” from the use and benefit of a First Nation only with the consent of the members of that First Nation, were not complied with by the Crown when introducing and implementing the Certificate of Possession System on Mistawasis Nêhiyawak in 1951 and thereafter. As a result, there was a breach of Treaty No. 6 in this regard as well.

41. Accordingly, there were two breaches of Treaty No. 6 by the issuance of Certificates of Possession on Mistawasis Nêhiyawak reserve lands.

42. The Claimant therefore claims that under the terms of Treaty No. 6, the Respondent owed the Claimant a treaty obligation to set aside and maintain a full quantum of land for the communal use and benefit of Mistawasis Nêhiyawak and to not dispose of the land or any interest therein without the consent of the First Nation. The Claimant claims that by the introduction and

implementation of the Certificate of Possession system by the Respondent, the Respondent failed to fulfill its legal obligation to set aside and maintain a full quantum of land for Mistawasis Nêhiyawak. Furthermore, the Respondent failed to comply with the *Indian Act* and Treaty No. 6 in *not* obtaining the consent of the Mistawasis Nêhiyawak membership prior to alienation of the reserve land. The Claimant claims that the Crown breached and failed to fulfil its Treaty obligation to set aside and maintain a full and complete quantum of land for Mistawasis Nêhiyawak pursuant to its treaty land obligations under Treaty No. 6.

Breach of Fiduciary Duty

43. The evidence establishes that there was a fiduciary duty owed by the Crown to Mistawasis Nêhiyawak in relation to the introduction and implementation of the Certificate of Possession System on their reserve lands.

44. The nature or content of the fiduciary duty owed by the Crown when a First Nation's quasi-proprietary interest in its reserve land is in issue includes:

- (a) the Crown is obliged to preserve and protect a First Nation's legal interest in the reserve allocated to it;
- (b) "the duty is one of utmost loyalty to the beneficiary";
- (c) "it is to secure the paramountcy of one side's interests The beneficiary's interests are to be protected. This is achieved through a regime designed to secure loyal service of those interests";
- (d) "compelling a fiduciary to put the best interests of the beneficiary before their own is thus essential to the relationship"; and
- (e) "the Crown does not have a general fiduciary duty to protect and preserve the Indian lands from destruction, . . . , but rather will have a fiduciary duty to protect and preserve the Indian Band's legal, quasi-property interest from invasion or destruction by third parties or the Crown itself".

45. This is the nature of the fiduciary duty owed by the Crown to Mistawasis Nêhiyawak in this case.

46. The rule of “general inalienability” at common law and in the *Indian Act* is intended to “prevent the erosion of the native land base”. However, the land base of Mistawasis Nêhiyawak *was eroded significantly* by the introduction and implementation of the Certificate of Possession System. The Crown breached its fiduciary duty to Mistawasis Nêhiyawak in that it did not “prevent the erosion of the native land base” of Mistawasis Nêhiyawak when it introduced and implemented the Certificate of Possession System on Mistawasis Nêhiyawak’s reserve. In fact, the Crown took active steps to erode the First Nation land base from the use and benefit of Mistawasis Nêhiyawak as a whole. As a result, the Crown breached its fiduciary duty to Mistawasis Nêhiyawak in this regard.

47. When the Crown alienated interests in Mistawasis Nêhiyawak land through the introduction and implementation of the Certificate of Possession System, there was an obligation on the Crown to “*impair minimally Indian interests in reserve land*”, that is, to take or alienate as minimal an interest as possible. The Crown did not need to completely alienate Mistawasis Nêhiyawak reserve lands by issuing Certificates of Possession to individual First Nation members in perpetuity. The Crown did not *have to* issue Certificates of Possession simply because they were available pursuant to legislation. The Crown breached its fiduciary duty to Mistawasis Nêhiyawak by failing to ensure that the First Nation’s rights in its reserve lands were impaired as little as possible when it approved and issued Certificates of Possession to individual First Nation members.

48. The Crown issued Certificates of Possession to members of Mistawasis Nêhiyawak, which “gave up”, and thus adversely affected, the legal cognizable Indian interest of Mistawasis Nêhiyawak in its reserve lands by permanently “giving it” to First Nation members. The Crown failed to “protect and preserve” the legal cognizable Indian interests of Mistawasis Nêhiyawak in its reserve lands, from invasion or destruction by the Crown itself. As a result, the Crown breached its fiduciary duty to Mistawasis Nêhiyawak in this regard.

49. Addressing the nature or content of the actions of the Crown when it was administering and managing Mistawasis Nêhiyawak’s quasi-proprietary interest in its reserve land:

- (a) the Crown did not preserve and protect Mistawasis Nêhiyawak’s legal interest in the reserve allocated to it;
- (b) the Crown did not act in “utmost loyalty” to Mistawasis Nêhiyawak;
- (c) the Crown did not “secure the paramountcy of” Mistawasis Nêhiyawak’s interests. Mistawasis Nêhiyawak’s interests were not protected;
- (d) the Crown did not “put the best interests of the beneficiary (Mistawasis Nêhiyawak) before their own”, as “is ... essential to the relationship”; and
- (e) the Crown did not “protect and preserve the Indian Band’s legal, quasi-property interest from invasion or destruction by ... the Crown itself”.

50. Furthermore, as set out in caselaw, the Crown is also in breach of its fiduciary duty by reason of its breaches of Treaty No. 6.

51. The Crown breached its fiduciary duty to Mistawasis Nêhiyawak in the above regards.

Informed Consent

52. One of the requirements for compliance with a fiduciary obligation by the Crown is that of full disclosure to the First Nation when its consent is required. A First Nation cannot provide its informed consent to a legal consequence if the First Nation does not first have full disclosure appropriate to the subject matter.

53. The connection between a fiduciary duty and the issue of full disclosure leads logically to the issue of whether or not Mistawasis Nêhiyawak provided its informed consent to the issuance of Certificates of Possession on Mistawasis Nêhiyawak lands. In this case the subject matter that should have been disclosed to the First Nation was that a Certificate of Possession was “permanent” and likely “in perpetuity”.

54. There was an obligation on the Crown to disclose to Mistawasis Nêhiyawak that the “legal interest” granted under a Certificate of Possession is or may be tantamount to a grant of a permanent interest in the land, and thus a permanent alienation of the land, albeit it to a member of the First Nation.

55. The Crown breached its fiduciary duty to the First Nation by not conveying a critical aspect of the Certificate of Possession itself to the First Nation. Such a lack of knowledge of the permanence of a Certificate of Possession would vitiate any consent given by the Band Council to the allotment of land for the purposes of the issuance of a Certificate of Possession under s. 20(1) of *Indian Act*.

56. The onus here is upon the Crown to establish that Mistawasis Nêhiyawak was in possession of all the relevant information with respect to the legal nature and effect of Certificates of Possession before the Crown issued them to First Nation members.

57. The historical record clearly indicates that there was a complete lack of information provided to Mistawasis Nêhiyawak by the Crown, accurate or otherwise, as to the actual nature and legal effect of the issuance of a Certificate of Possession in the time leading up to the issuance of Certificates of Possession pursuant to s. 20 of the *Indian Act*.

58. There is no evidence that the Crown discussed the issue of the legal nature, effects or consequences of the introduction and implementation of the Certificate of Possession System on Mistawasis Nêhiyawak's reserve, and of the issuance of Certificates of Possession on Mistawasis Nêhiyawak's reserve, with the Chief, Council or individual members of the First Nation whatsoever.

59. As well, the lack of independent legal advice indicates that Mistawasis Nêhiyawak could not have provided its *informed consent* to the issuance of Certificates of Possession on Mistawasis Nêhiyawak reserve land.

60. It can only be concluded that Mistawasis Nêhiyawak never did provide its informed consent to "the terms under which [the Crown] held the property as fiduciary" nor to the introduction and implementation of the Certificate of Possession System on Mistawasis Nêhiyawak reserve lands, nor to the issuance of permanent Certificates of Possession on Mistawasis Nêhiyawak lands.

61. There is no intention whatsoever, clear, plain or otherwise, in any of the written record, and particularly the BCRs and Certificates of Possession themselves, that the Band Councils of the day, before or at the time of the introduction and implementation of the Certificate of

Possession System, intended to make allotments of land pursuant to s. 20 (1)(a) of the *Indian Act*, such that the First Nation's interests could or would be affected by a permanent allotment of First Nation land, perhaps in perpetuity, to an individual First Nation member.

62. The lack of informed consent prevents the Crown from relying on the BCRs as directions and justifications for their actions, or protection from their actions and inactions in introducing and implementing the Certificate of Possession System on Mistawasis Nêhiyawak reserve lands.

63. As a result of this lack of information, neither the Band Council nor Mistawasis Nêhiyawak itself were able to provide their informed consent to the permanent alienation of portions of Mistawasis Nêhiyawak reserve lands by way of allotments under s. 20 (1) of the *Indian Act*.

64. For the reasons provided above, the Crown owed a fiduciary duty to Mistawasis Nêhiyawak in relation to its introduction and implementation of the Certificate of Possession System on Mistawasis Nêhiyawak reserve lands.

VII. Relief Sought

65. In light of the foregoing, Mistawasis Nêhiyawak seeks the following relief, including compensation from Canada, as follows:

- (a) compensation for Canada's breach of the terms of Treaty No. 6, breach of the provisions of s. 18 of the various *Indian Acts* in place from time to time, and breach of its fiduciary obligations;
- (b) compensation for Canada's breach of the terms of Treaty No. 6 in that the actions of the Crown in relation to introducing and implementing the Certificate of Possession System on Mistawasis Nêhiyawak had the effect of reducing the quantum of reserve land in the possession of and available to Mistawasis Nêhiyawak, which was owed to them pursuant to Treaty No. 6;
- (c) compensation for Canada's breach of the terms of Treaty No. 6 in that Certificates of Possession were issued by Canada without compliance with Treaty No. 6 which required the consent of the "Indians entitled thereto" before reserve lands could be "sold, leased or otherwise disposed of";


- (d) compensation for Canada's breach of its fiduciary obligations to Mistawasis Nêhiyawak by transferring a greater interest in land than necessary from Mistawasis Nêhiyawak to individual First Nation members pursuant to the Certificate of Possession System;
- (e) compensation for the unlawful alienation of Mistawasis Nêhiyawak reserve lands by Canada by the issuance of Certificates of Possession;
- (f) compensation arising from Canada's failure to adequately administer and ensure that the administration of Mistawasis Nêhiyawak reserve lands was in the best interests of Mistawasis Nêhiyawak as a whole;
- (g) compensation for Canada's failure to provide Mistawasis Nêhiyawak members with legal or technical advice or to conduct a vote or referendum of the Mistawasis Nêhiyawak membership in accordance with s. 18 of the *Indian Act* and Treaty No. 6 so that members of the First Nation would be afforded an opportunity to provide a free, full and informed consent to the issuance of Certificates of Possession on Mistawasis Nêhiyawak reserve lands;
- (h) compensation for Canada's failure to withhold its consent to a transaction that was clearly foolish, improvident and exploitative;
- (i) compensation for the value of the loss of reserve lands comprising approximately 11,840 acres that was transferred by Canada to individual First Nation members pursuant to the Certificate of Possession System;
- (j) compensation for the current, unimproved market value of the Certificate of Possession Lands;
- (k) compensation in an amount sufficient to allow Mistawasis Nêhiyawak to purchase land to replace the lands lost by the wrongful issuance of Certificates of Possession by Canada;
- (l) compensation for the net loss of use of the Certificate of Possession Lands, brought forward to the current value of the loss, that was transferred by Canada to individual

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First Nations members pursuant to the Certificate of Possession System during the period from 1950 to the date of settlement;

- (m) compensation for the value of foregone lease income and income equivalents from leases of Mistawasis Nêhiyawak Certificate of Possession Lands;
- (n) compensation for the value of gravel, rock, timber and other resources taken from Mistawasis Nêhiyawak Certificate of Possession Lands;
- (o) compensation for Canada’s failure to obtain adequate, appropriate or timely compensation for land taken and damages suffered;
- (p) compensation for Canada’s failure to pay adequate or any compensation to Mistawasis Nêhiyawak as a whole for Mistawasis Nêhiyawak reserve lands taken and transferred by Canada to individual First Nation members pursuant to the Certificate of Possession System;
- (q) equitable interest;
- (r) costs; and
- (s) such other compensation or costs as may be appropriate.

Dated this 2nd day of ~~April~~ ^{May}, 2025.



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