SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

FISHING LAKE FIRST NATION

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* and the *Specific Claims Tribunal Rules of Practice and Procedure.*

_____
Date

Katherine Richard
_____
Registry Officer

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

1. The Claimant, Fishing Lake First Nation, (hereinafter referred to as the "Claimant", "First Nation" or "Band", depending on the context) confirms that it is a First Nation within the meaning of section 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 ("*Specific Claims Tribunal Act*") by virtue of being a "band" within the meaning of the *Indian Act*, RSC 1985, c I-5 ("*Indian Act*"), and within the meaning of *Treaty No. 4* ("Treaty 4").

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

3. On January 19, 2022, the Claim submitted the Mismanagement Claim to the Minister of Crown-Indigenous Relations ("CIRNAC" or the "Department") alleging various breaches in relation to the Respondent's mismanagement of the Claimant's band trust fund accounts (the "Mismanagement Claim"), which are comprised of the capital account (the "Capital Account") and the interest/revenue account (the "Revenue Account"). The Mismanagement Claim met the Minimum Standard for a claim and was filed with the Minister on July 19, 2022.

4. On July 10, 2025, Canada made a qualified offer to negotiate just part of the Claimant's which is wholly unacceptable to the Claimant.

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) *The Negotiation and Signing of Treaty 4*

7. The ancestors of the present day Fishing Lake First Nation are members of the Saulteaux Nation who migrated west from the Great Lakes region to Manitoba and Saskatchewan in the late 18th century to follow the fur trade.

8. Treaty 4 negotiations began in the fall of 1874 at Fort-Qu'Appelle. Negotiating on behalf of Canada were Commissioners Lieutenant-Governor Alexander Morris, Minister of the Interior David Laird, and W.J. Christie, retired chief factor of the Hudson's Bay Company. Loud Voice was the main Cree spokesman, and Cote was considered the main leader of the Saulteaux.

9. One concern of the Cree and Saulteaux at the Treaty 4 negotiations was the fact that the Crown had paid the Hudson's Bay Company £300,000 for Rupert's Land, which the Indians insisted should have instead been paid to them. During the negotiations, Chief Pasqua pointed to Mr. McDonald of the Hudson's Bay Company and stated: "You told me you had sold your land for so much money, £300,000. We want that money". When the gathered Chiefs asked Morris to have the Indians' debts to the Hudson's Bay Company "wiped out", Morris protested that he

could not do this and that it was not the government's role to get involved in debt payments:

> I would be very glad if we had it in our power to wipe out your debts, but it is not in our power. All we can do is to put money in your hands and promise to put money in the hands of those who are away, and give you money every year afterwards, and help you make a living when the food is scarce.

10. The above promise, alongside others made by Morris during the negotiation and signing of Treaty 4, emphasized the limited role that government would play in the personal financial affairs of the Indian people.

11. Chief Yellow Quill signed an adhesion to Treaty 4 on August 24, 1876. At that time, there were different factions of the Yellow Quill Band, living in three separate groups at Egg Lake, Quill Lake, and also had houses at Fishing Lake. By 1885, the Yellow Quill Band was being paid annuities at both Nut Lake and Fishing Lake.

(b) Survey of IR 89

12. Fishing Lake Indian Reserve Number 89 ("IR 89") was surveyed in 1881 by Dominion Land Surveyor Nelson for the members of the Yellow Quill Band residing at Fishing Lake. The IR 89 was 13,170 acres in size and was located near Wadena and Kylemore, Saskatchewan.

13. IR 89 was confirmed by Order-in-Council PC 1151/1889 on May 17, 1889.

(c) ***Creation of the Fishing Lake Account No. 271***

14. Fishing Lake Capital Account No. 271 was established on October 31, 1906 when $895.23 was transferred from the Yellowquill Band's Account. Fishing Lake Interest Account No. 271 was opened on March 31, 1907 when $20.10 was deposited from Yellowquill's Band Account No. 288. Shortly after, proceeds from the 1907 surrender of Fishing Lake reserve lands were deposited to the Fishing Lake Capital Account. The first withdrawal of Fishing Lake Band funds took place in 1910, when $10,600 was withdrawn to reimburse the Consolidated Revenue Fund for the initial cash distribution of $10,000 paid out at the surrender.

(d) ***1907 Separation Agreement and Surrender***

15. During July and August 1907, Indian Inspector Graham secured separation agreements from 20 member of the Nut Lake Band, 11 members of the Kinistino Band and 11 members of the Fishing Lake Band. The agreement stated as follows:

> And WHEREAS it is considered desirable that any doubt as to the separate existence of the above Bands and of ownership of their reserves should be set at rest.
> WITNESSETH that we, the Chiefs and Principal men of the said Bands of Indians, on behalf of our respective Bands, hereby express our entire satisfaction with the Reserves as above described, so set apart under Treaty No. 4, and hereby agree to accept same in full of land grant under said Treaty, on the distinct understanding that our Bands are to be considered separate and distinct from each other, and that each Band is to have exclusive right as to its own Reserve.

16. Shortly thereafter, on August 9, 1907, Indian Agent Graham sought and obtained a surrender of a portion of the Fishing Lake Surrender. The terms of the surrender were as follows:

> That there shall be an annual distribution of the interest, at three percent, on the money arising from the sale of this land.
> That payment shall be made at the time of this surrender of $10.00 per head.
> Owners of improved land to be compensated thereof at the rate of ($5.00) Five Dollars per acre on estimated areas, payment to be made within four months from date.
> Owners of buildings to be compensated therefor within four months from date, at values to be fixed by an officer of the Department, provided that any Indian may, if he sees fit, remove his buildings.
> That the land shall be properly advertised and sold in due time by public auction in parcels of one quarter section or under.

17. The surrender also provided that the sales money from the surrender would be placed in a trust account "after deducting the usual proportion for expense of management."

18. In 1915, the Fishing Lake Band surrendered additional lands from its reserve.

(e) ***Indian Land Management Fund***

19. One of the conditions of the 1906 Surrender was that 10% of the land sales revenue would be

charged and invested to the credit of the Indian Land Management Fund ("ILMF").

20. Established with the purpose of paying for departmental administrative costs, the ILMF was to be maintained by taking 10% from the collection of land and timber sales across the country. Once deposited into the ILMF, the moneys would be invested in Provincial debentures at 6%. During the land surrender period on the prairies, the Department stated that the ILMF was necessary to pay the expenses of administering land sales, including land auctions, but actually used the ILMF for agency salaries and expenses.

21. Debts and controversies surrounded the ILMF for many years as people gradually became aware that despite most of the collections being made in the West, the bulk of the funds were going towards salaries and expenses claimed by agents in Ontario and Quebec. From the period of 1911-1912, over $35,000 was spent in Ontario and Quebec, and $28,000 was collected from the three prairie provinces and the Northwest Territories.

22. By 1913, the Department uncovered that the ILMF was "not completely self-supporting". On February 14, 1913, Frank Pedley, the Deputy Superintendent General of Indian Affairs, wrote to the Deputy Minister of Justice regarding the Department's intention to close the ILMF and distribute the funds at present to the trust accounts of the bands who had contributed thereto.

23. As of April 1, 1912, no more land sales percentages were deducted for payment into the ILMF; and no more departmental expenditures were charged to the fund. According to the Order-in-Council which ordered the closing of the account, the money paid in by the prairie bands was supposed to be returned to their respective accounts.

24. In the 1913-1914 fiscal year, $1,562.60 was refunded to the Fishing Lake Capital Account from the Indian Land Management Fund.

(f) ***The Crown's Restrictive Agricultural Policies***

25. Starting with the Home Farm Program in 1878, Canada developed and implemented a number of ill-fated policies that had a profoundly negative effect on the Claimant's ability to transition to an agricultural economy. These policies emphasized the destructive attitude of the Department of Indian Affairs towards the Claimant and were ultimately designed to benefit settlers and save the Respondent money. The implementation of the Crown's draconian

policies had disastrous effects on the Claimant by restricting the movement, livelihood, and culture of band members, and causing famine and death predicated on racist constructions of social hierarchy.

The Permit System

26. Through the *Indian Act*, the Crown imposed a number of paternalistic and onerous restrictions on Indians that prevented them from fully integrating into the agricultural economic growth of the prairies. The Permit System was designed to control Indian debt and credit, stipulating that transactions between a merchant or buyer and an Indian had to be authorized by a department agent. Through this system, the Claimant's ability to sell their products and purchase goods was strictly monitored.

27. In 1893, the Muscowpetung and Pasqua bands from Treaty 4 submitted a petition to the Department outlining concerns regarding the Permit System, one of which was the restriction placed on them when selling their goods to outsiders. This petition marked the beginning of a lengthy tradition of western Indian protest against the permit system. The consistent point of protest was that the Permit System precluded the Claimant from commercial farming, as they could not buy, sell or transact business within the wider Euro-settler economy.

28. In addition, a series of amendments to the *Indian Act* prevented the Indians from selling agricultural products off-reserve. The 1906 *Indian Act* prohibited band members from dealing directly with merchants, with section 38 empowering the Governor in Council to prohibit or regulate the sale, barter, exchange, or gift by a band of Indians of any agricultural product grown on-reserve. Further, section 87(2) of the 1906 *Indian Act* prohibited merchants from entering into binding agreement with bands without written approval from the Superintendent General of Indian Affairs.

29. Control of Indian transactions through the Permit System placed restraints unlike anything experienced by other farmers in the West. These restrictions had an enormous impact on the agricultural activity of the Claimant.

The Order System

30. In addition to the Permit System, the Department interposed itself between Indians and

merchants by creating and providing "order forms" to agencies to regulate the purchase of necessities by band members on credit. Under what was known as the "Order System," the Indian Agent would issue order forms to merchants in exchange for goods and services provided to Indians. At times, the debt statements produced by the Indian Agent for the Qu'Appelle Agency showed amounts owing to outside merchants for items such as horses, building material and agricultural implements. Before a merchant was allowed to trade on a reserve, he was obliged to submit a list of goods, and was forbidden to sell what were regarded as trinkets or useless articles.

31. Individual band members across the North West did not have access to the necessary farm equipment that was vital in assisting their transition to an agrarian way of life. As a result, they often sought to purchase these items through credit. The Department continuously advocated against the purchase of machinery through credit, arguing that the agent would be "burdened with collecting debts." The Department's position that key farming machinery should not be purchased on credit was at odds with the Department's reluctance to replace, repair or lend threshing machinery to reserve farmers. Equipment on Indian reserves, such as threshing machines, became increasingly out of date and were rarely repaired or replaced.

32. As a result, Indians across the prairies resorted to purchasing these vital machines on credit, as authorized by the Indian Agent through the Order System. The result of the Order System was that Indians became indebted to local merchants for "vital items." The Indian Agents oversaw and kept account of these transactions, and bank loans, available to all settlers who had proof of title, were not open to Indian farmers, as they could not put up their property against a loan. This resulted in the Order System being primarily responsible for the accumulation of debts incurred by Indian Agencies on behalf of individual Indians in the prairie Treaty areas.

33. Merchants viewed the order forms that were signed by an Indian Agent as a form of credit for Indian purchases, and such orders were taken as a guarantee by the Government of Canada. The Department's position was that the orders were the responsibility of individual band members, and that the debts were to be paid when the band member received funds from farming, interest, or other income. The system worked as long as future income covered the debts incurred. If a bad crop year or other difficulties occurred, the system failed, and debts would continue to accumulate.

34. There was a fundamental disconnect between the internal rules of the Department governing the management of Indian moneys and the actual practices of Indian Agents, largely due to ongoing pressure from merchants, which resulted in significant losses of trust funds of many prairie bands, including the Fishing Lake Band. In practice, the Indian Agents liberally issued orders for band members to pay for not only capital expenditures or other necessities for farm work, but also food and luxury items from merchants on credit.

35. In addition, the Indian Agent's role and the use of the Order System became misconstrued. While the use of the Order System for "useless articles" was expressly prohibited, Indian Agents began to issue orders for luxury personal items. The Department was aware of the problems that arose in the operation of the Order System from at least 1893. In addition to internal correspondence and Department circulars to Indian Agents, constructive notice was issued to financial institutions, merchants and other concerned parties.

36. In January 1898, D. C. Scott, Accountant, suggested implementing a new process that would prohibit Indian Agents from becoming a party to orders or promissory notes without prior express consent of the Department. The Department's continued use of the Order System in spite of existing problems was reiterated in correspondence between the new Deputy Superintendent General Frank Pedley and Indian Commissioner David Laird in April 1907.

37. In 1911, a delegation representing Treaty 4 Bands travelled to Ottawa and met with the Superintendent General of Indian Affairs to discuss various concerns regarding land surrenders and the implementation of Treaty. Among other things, the delegates discussed recent land surrenders and the management of their money and financial transactions. One delegate argued that the Indian Agent should not be involved in debt collection on behalf of merchants:

> We think the Agent has no right to collect the debts that Indians owe to white people unless they give him an order. I was told by the Indians to take home a written agreement that the Agent will not do such a thing any more.

38. In January 1912, the Department sent out another Circular to all agents in the Prairie Provinces, Ontario and Quebec reiterating the rules of the Order System. Specifically, agents were prohibited from assisting in the collection of merchant debts incurred by Indians and were referred to a clause in the Memorandum of Guidance in their pay-list books that clearly stated,

"No money should be paid to merchants or other persons who are not Indians, except by special permission of the Department."

39. William Graham also recognized the damaging effect of the Order System in a July 12, 1915 letter:

> Personally I disapprove of giving Agents these forms, as there is a great deal of danger of the order system being abused. Many Agents would look upon them as authority from the Department to give Orders, and when this would result in hopeless debt, they would defend themselves by saying they could make good if given time to do so

40. While the Department repeatedly conveyed it was not responsible for debts accumulated to merchants, it continued to use the Order System even though it was aware Indian Agents used it in an imprudent and dishonest manner and that merchants were providing credit on the assumption it was a form of guarantee from the Department.

The Pass System

41. After the events of the North-West Rebellion, the Department sought ways in which to restrict Indians on their reserves. By August of 1885, Hayter Reed announced that he had implemented the Pass System:

> I am adopting the system of keeping the Indians on their respective Reserves and not allowing any leave them without passes - I know this is hardly supportable by any legal enactment but we must do many things which can only be supported by common sense and by what may be for the general good. I get the Police to send out daily and send any Indians without passes back to their Reserves – but unless one is at their heels Police duties here are done in a halfhearted manner.

42. The Pass System could be used to force Indians to remain on their reserves during critical times in the crop year. The Pass System also restricted Indians from communicating with each other as well as with the Métis and undesirable portions of the larger society. The implementation of the Pass System only served to bolster the government's national policy of colonizing the west.

The Birtle System

43. After 1886, the Birtle System, a departmental cattle loan system, was implemented. Through the system, a "trustworthy" individual "was loaned a cow and was to raise a heifer, either of which had to be returned to the agent. The animal the Indian kept became his property, although the agent's permission was required to sell or transfer ownership. The agent was then to lend the returned animal to another Indian of the band who had no cattle. Under the Birtle system, the Indian Agent was able to maintain tight control over the Indians' cattle; Indians would not be allowed to slaughter or sell animals that were theoretically theirs without the consent of the Agent. The Birtle System was yet another method of barring the Claimant from participating in the commercial economy of the northwest.

Peasant Farming Policy

44. The Peasant Farming Policy was implemented in response to the concerns of non-Indigenous farmers and designed to remove First Nation agriculture from the emergent competitive market of large-scale mechanized operations. Instead, Indigenous farmers were expected to have an acre of wheat, an acre of roots and vegetables, and the product of a cow or two, so as to achieve "a frugal economic self-sufficiency in the manner of traditional European peasants".

45. The rationale for the peasant farming policy was the late nineteenth century belief in social evolution, or the idea that "man developed progressively through prescribed stages from savagery through barbarism to civilization. These stages could not be skipped, nor could a race or culture be expected to progress at an accelerated rate." Rather than embrace commercial agriculture, Indians were expected to become merely self-sufficient. The emphasis on pre-modern implements and also on paternalistic control were two vital components of the peasant farming system. Reed felt discouraging the use of mechanized tools would have the effect of Indians "keep[ing] cows for household purposes rather than rais[ing] large herds"; this was a positive development in Reed's view, as he believed that in terms of evolution, Indians were "not yet prepared for an 'unnatural' leap to large herds".

Greater Production Scheme

46. The governmental policy known as the "Greater Production Scheme" was established in 1918 to increase agricultural output on "idle" Indian lands to assist in the war effort. The scheme put great pressure on Indian agents to increase the acreage farmed by Indians. Without any

program funding, agents were pressured by senior officials to raid Indian trust funds to implement Departmental policies.

47. A 1918 amendment to the *Indian Act* allowed the Superintendent General to lease uncultivated reserve lands without a surrender or the consent of the band for whom the lands had been set aside for. When asked about the new scheme and the proposed amendments to the *Indian Act*, and how the Indians would fare if "some of their best lands were taken under the scheme," Arthur Meighen, Minister of the Interior, responded by stating "I do not think we need waste any time in sympathy for the Indian, for I am pretty sure his interests will be looked after by the Commissioner."

48. W. M. Graham, Indian Commissioner, received extensive authority over the Greater Production Scheme and was empowered to formulate a policy for each reserve to "direct the implementation of such policies; to lease Indian lands; to market grain and livestock, to engage or dismiss employees as he saw fit; and to make recommendations to the superintendent general with regard to the 'greater efficiency' of the Indian service in the west".

49. The rationale for the Greater Production Scheme was that the Indians were perceived as being reluctant or unwilling to productively make use of their land. The "surplus lands" argument was used as justification for the surrender of thousands of acres that took place under the former government from 1896 to 1911. Arthur Meighen, the Superintendent General of Indian Affairs from 1917 to 1920, was now using the "surplus lands" argument as a justification to permit non-Indians to farm reserve lands without the consent of the Indians.

50. Greater Production Farms were managed by departmental agents and functioned through the use of Indian labour and Indian farm machinery which "had been virtually commandeered by the agent at great inconvenience". The Greater Production Scheme was plagued by problems of mismanagement and the financial returns were not impressive. Within a few years it was clear that the Greater Production Scheme would not produce its desired effects. The Greater Production Scheme was phased out by 1922.

(g) ***Debts to Band Funds and the Order System in the Qu'Appelle Agency***

51. The Order System was functioning in the Touchwood Agency after the 1907 surrender, often resulting in significant debts accrued by individual band members to local merchants. In many

cases, merchants who had sold agricultural equipment to Indians approached the Department of Indian Affairs seeking payment of outstanding balances on accounts. It was the merchants' position that the purchases were authorized or guaranteed by the Indian Agent.

52. The Fishing Lake First Nation is part of the Touchwood Hills Agency which filed a specific claim in 1993 on behalf of the First Nations within that Agency, which includes the Fishing Lake First Nation. That claim was filed with the Specific Claims Tribunal ("SCT") on November 6, 2019. In its Response before the SCT, Canada admitted a breach of the Crown's fiduciary duty to the Touchwood Agency First Nations for the mismanagement of band moneys between 1920 and 1925, and in particular, the mismanagement of debt and loans. As part of that process before the Tribunal, the parties are obtaining accounting evidence to determine the losses from this breach from 1920 to 1925.

53. This Misadministration Claim by the Fishing Lake First Nation will therefore not directly address mismanagement of Fishing Lake Band Trust Funds during those years. In the event that a settlement is not reached for the specific claim by the Touchwood Agency at the Tribunal, any losses of the Fishing Lake First Nation from 1920 to 1925 will be included as part of this claim.

54. Although the Fishing Lake Band surrendered a significant part of its reserve and was to receive income from the sale of the surrendered lands, band members received very little money from the Department of Indian Affairs and faced difficulties in obtaining the items they needed to succeed in agriculture.

55. While the Department absolved itself of responsibility for disobedient Indian Agents, the historical record is clear that it later capitulated to pressure from merchants and sanctioned the expenditure of moneys held in trust for the benefit of the bands, including Fishing Lake, to clear the debts of individual members contrary to the *Indian Act* and the Respondent's other lawful and equitable duties owed in relation to the Fishing Lake Capital and Interest Accounts. To the extent that Fishing Lake band members owed money to merchant, these were illegal, and any debt write-off s or payment of debts from Fishing Lake Band funds were illegal and improper use of Band monies.

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

56. 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) Treaty 4;
    (b) The 1907 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.

57. 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.

58. 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.

59. Between 1906 and 1975, 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, expenditures were 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.

60. The unlawful expenditure of moneys held in the Fishing Lake First Nation's Capital Account total at least $21,968.78. The unlawful expenditure of moneys held in the First Nation's Revenue Account total at least $115,099.85. Added together, the total unlawful expenditure of moneys held in the First Nation's trust accounts is at least $137,068.63.

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

61. The Claimant is a signatory to Treaty 4. The reserve lands clause of Treaty 4 states:

> 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.

62. When the Claimant signed Treaty 4, the Crown interpreted the Treaty as the Claimant ceding rights in their traditional lands in exchange for a one-time payment to band members and the promise of future payments, livestock, and agricultural supplies. In addition, Treaty 4 provides for a reserve to be surveyed and set aside for the Claimant, upon which the Claimant expected to settle and pursue agriculture as a means of livelihood unmolested from undue interference by the Respondent.

63. Once the Treaty was signed, the Claimant had selected their reserve, the Respondent surveyed the reserve, and the Claimant started to use the reserve, the Claimant was limited to that location upon which to build an agriculture-based economy, subject to the Respondent's timely fulfillment of its Treaty promises; however, it was not long before the Respondent turned its attention to the Claimant's reserve lands and initiated a concentrated effort to seek surrenders of the same for the benefit of politicians and land speculators.

64. The irreplaceable *sui generis* reserve interest held by the Claimant in their reserve land was exchanged for the sale proceeds of those lands. Pursuant to the reserve lands clause of Treaty 4, such sales proceeds must be used for the use and benefit of the Claimant as contemplated by

the parties at the time of Treaty; ie., to provide an enduring benefit for **all** members of the First Nation, including future generations.

65. Accordingly, a necessary and implied term of Treaty 4 is the Respondent's sacred promise that the proceeds of any sale of the Claimant's reserve lands would be kept safe and would increase over time. This promise obligates the Crown to protect the Claimant's trust moneys and pay a rate of interest ensuring that the Claimant's trust moneys do indeed increase. The Crown breached its Treaty promise to the Claimant by failing to protect the Claimant's trust moneys, and by failing to ensure that they increased over time.

(b) Breach of the Terms of the 1906 Surrender Document

66. The 1907 Surrender met the legal requirements for the creation of an express trust: certainty of intention, certainty of subject-matter (trust property), and certainty of object (beneficiary). The statutory framework of the *Indian Act* reinforces the intention to create a trust relationship. The Capital and Revenue moneys of the Fishing Lake Band held in the Consolidated Revenue Fund constitute the trust property, and the beneficiary is the Fishing Lake Band. In such circumstances, the Respondent is subject to a well-defined set of obligations for the administration of the trust property, including the terms of the 1906 Surrender Document.

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

67. The Respondent breached its statutory obligations relating to the First Nation's Capital and Revenue Accounts between 1906 and at least 1975 by:

    a. Mismanaging the Claimant's Capital and Revenue Accounts (the "Trust Funds") when it expended moneys without valid authorization by the Governor in Council, the Minister, and the Band or Band Council, as required by the *Indian Act* at the relevant times; and

    b. Improperly spending the Claimant's trust funds for purposes not authorized by the *Indian Act*.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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

76. 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 Claimant.

77. Specifically, by enacting various iterations of the *Indian Act* to assume exclusive control over the Claimant's financial affairs, including the Fishing Lake Capital Account and Revenue Account, the Crown undertook to act in the best interests of the Claimant, 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.

78. The vulnerability between the Respondent and the Claimant, and in particular, the Claimant's inability to prevent the injurious exercise of discretion by the Crown, flows from the structure and nature of the fiduciary relationship. There can be no doubt that the Crown's unilateral authority to make expenditures of the Claimant's trust moneys (which were primarily derived from the unlawful surrender and sale of the Claimant's Treaty reserve lands), impacted the legal and practical interests of the Claimant.

79. Pursuant to the *Indian Act,* the Claimant was obliged to cede its legal interest in proceeds from the sale or lease of Indian lands and other valuables to the Respondent, who undertook to protect its interests, giving rise to a reasonable expectation that the Respondent would act in a fiduciary capacity. The consequence of the legislative scheme and the relationship between the Claimant and the Respondent placed the Claimant in a particularly vulnerable position, wherein they had to rely on the Crown to exercise good faith, loyalty, and care in managing the Claimant's moneys. The Respondent understood and undertook to act in a fiduciary capacity towards the Claimant. As stated by Arthur Meighen, Minister of the Interior: "I do

not think we need waste any time in sympathy for the Indian, for I am pretty sure his interests will be looked after by the Commissioner".

80. In addition to the *ad hoc* fiduciary duties the Respondent owed to the Claimant, the Respondent also owes the Claimant 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 Claimant. 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 Claimant. These provisions addressed what items the Indian moneys deposited to these accounts could be expended on, and what authority or approval was required for such expenditures. In managing Indian moneys on behalf of the Claimant, the Respondent forsook all other financial interests in the favour of the Claimant in relation to the Claimant's trust moneys; there was no balancing of competing interest in managing the Claimant's trust accounts as a reasonable and prudent person would.

81. Despite the Respondent's fiduciary and trust obligations pursuant to the various iterations of the *Indian Act*, as a matter of practice, the Respondent improperly expended funds from the Capital Account and the Revenue Account.

82. 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.

83. The Respondent did not discharge its fiduciary duty to act in the best interest of the Claimant 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 Claimant. At all times, the Respondent placed its own interests and the interests of third parties over those of the Claimant.

84. The Claimant submits that the Respondent owed, and subsequently breached, the fiduciary obligations of loyalty, good faith, and full disclosure to the Claimant in relation to the Respondent's management of the Claimant's trust moneys. The Respondent also owed fiduciary obligations to keep the Claimant's trust moneys safe, and to ensure that they increased. Further, the Respondent owes a fiduciary obligation to account for the trust property,

and failing which, to make up the difference. In fulfilling these obligations, the Respondent must satisfy the standard of care of a person of ordinary prudence managing their own affairs. The Respondent failed to do so.

VII. RELIEF SOUGHT

85. In light of the foregoing, the Claimant 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 with respect to the trust moneys held in the Capital Account, Revenue Account, and any other trust accounts managed by the Crown for the use and benefit of the Claimant;

c) A finding that the Crown breached its Treaty, statutory, fiduciary, trust, and other lawful and equitable 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 surrender documents, 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 22nd day of July, 2025 at the City of Saskatoon in the Province of Saskatchewan.

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