

SPECIFIC CLAIMS TRIBUNAL		
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	Katherine Richard	E
Ottawa, ON		4

Tribunal File No. SCT-5003-25

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

FISHING LAKE FIRST NATION

Claimant

and

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

Respondent

RESPONSE
Pursuant to Rule 42 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Response is filed under the provisions of the *Specific Claims Tribunal Act*, SC 2008, c 22, and the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-19.

TO: Fishing Lake First Nation
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I. 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 endeavors to embody these principles as it assists the Tribunal in its task of adjudicating matters brought before it.
2. The claim relates to whether Canada mismanaged moneys in Fishing Lake First Nation's capital and revenue accounts beginning in 1906, including managing proceeds of a surrender for sale of portions of Indian Reserve No. 89 (IR 89). Canada admits it has statutory and fiduciary duties to properly manage the funds in Fishing Lake First Nation's capital and revenue accounts in accordance with the *Indian Act*, RSC 1985, c I-5 (*Indian Act*).
3. 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.
4. 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.

II. Status of Claim

5. Canada agrees that Fishing Lake 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 (the Claim).
6. In response to paragraphs 2 and 3 of the Claim, Canada admits the Claim meets the condition precedent as set out in paragraph 16(1)(a) of the *SCTA*.
7. Canada acknowledges that for the purposes of the Claim, Fishing Lake First Nation is not seeking compensation in excess of \$150 million, as pled in paragraph 5 of the Claim.

8. Canada acknowledges Fishing Lake First Nation has brought the Claim pursuant to paragraphs 14(1)(a), (b), and (c) of the *SCTA*, as pled in paragraph 6 of the Claim.

III. Canada's Position with Respect to Validity of the Claim

9. In response to the Claim as a whole, Canada did not mismanage Fishing Lake First Nation's capital and revenue accounts. Canada did not mismanage proceeds received from the 1907 surrender or other sources. The facts do not establish a valid claim under the *SCTA*.
10. Furthermore, some of the financial mismanagement alleged by Fishing Lake First Nation in this proceeding has been settled between Canada and Fishing Lake First Nation or adjudicated by the Tribunal:
 - a. In 2025, Canada and Fishing Lake First Nation reached an agricultural benefits settlement, which precludes claims for all matters related to agricultural benefits, including the mismanagement of funds in the First Nation's capital and revenue accounts relating to agricultural benefits; and
 - b. The Tribunal's decision in *Day Star First Nation et al v. His Majesty the King in Right of Canada*, 2025 SCTC 5 awarded Fishing Lake First Nation compensation for the mismanagement of trust monies between 1920 and the "mid 1930's".
11. In response to paragraphs 54, 66, and 78 of the Claim, Canada states Fishing Lake First Nation and Canada reached a settlement agreement in 2001 respecting the 1907 surrender of 13,190 acres of IR89, which precludes the filing of any claim seeking compensation for the 1907 surrender.
12. In response to paragraphs 59, 65, 75, 76, 81 and 84 of the Claim, Canada states the expenditures of sale proceeds complied with the 1907 surrender document, the *Indian Act* and Canada's policies. The evidence does not support an

outstanding lawful obligation to Fishing Lake First Nation for alleged breach of treaty, breach of statutory duty, breach of trust, or breach of fiduciary duty.

13. In response to paragraph 75 of the Claim, Canada did not direct expenditures from Fishing Lake First Nation's capital and revenue accounts contrary to the *Indian Act* in the relevant timeframe. At all material times, Canada fulfilled its statutory obligations in managing Fishing Lake First Nation's capital and revenue accounts.
14. In response to paragraphs 68 and 83 of the Claim, at all relevant times, Canada acted in the best interest of Fishing Lake First Nation in managing its capital and revenue accounts. Canada does not admit it had a self-interest that conflicted and prevailed over its obligations to Fishing Lake First Nation, nor did it place the interests of third parties over those of Fishing Lake First Nation.
15. In response to paragraph 85 of the Claim, Canada does not admit:
 - a. It was unjustly enriched to the detriment of Fishing Lake First Nation;
 - b. It breached obligations as a trustee, if any exist;
 - c. It breached statutory, fiduciary or other obligations owing to Fishing Lake First Nation;
 - d. Fishing Lake First Nation is entitled to equitable compensation for the loss of trust property, breach of treaty, breach of surrender obligations, breach of trust obligations or any other breach as specified in the Claim; or
 - e. Fishing Lake First Nation is entitled to costs on a solicitor and client basis or otherwise.

IV. Canada's Position with Respect to Allegations of Fact

16. In response to paragraph 7 of the Claim, Canada admits Fishing Lake First Nation has an historical connection with the Saulteaux Nation who migrated west to participate in the fur trade.
17. In response to paragraph 8 of the Claim, Canada admits Treaty 4 negotiations began in 1874 in Fort-Qu'Appelle and that Commissioner Alexander Morris, Minister of Interior David Laird, William J. Christie, Loud Voice as spokesman for the Cree, and Gabriel Cote as spokesman for the Saulteaux, participated in the negotiations.
18. In response to paragraph 9 of the Claim, Canada admits it purchased Rupert's Land for £300,000 and that Chief Pasqua requested the £300,000 paid to the Hudson's Bay Company be paid to the First Nations. Canada further admits that Alexander Morris stated it was not the Crown's role to get involved with debt payments.
19. In response to paragraph 10 of the Claim, Canada does not admit any statements made were intended to be, or are, oral terms of Treaty 4 regarding the role of the government in the personal financial affairs of First Nations.
20. In response to paragraph 11 of the Claim, Canada admits Chief Yellow Quill signed an adhesion to Treaty 4 on August 24, 1876, and by 1885 annuities were paid to the Yellow Quill Band at Nut Lake and Fishing Lake.
21. In response to paragraphs 12 and 13 of the Claim, Canada admits Dominion Land Surveyor John Nelson surveyed IR 89 in 1881. IR89, consisting of 34.5 square miles (approximately 22,080 acres) was confirmed for the historical Yellow Quill Band by Order-in-Council PC 1151 dated May 17, 1889.
22. In response to paragraph 14 of the Claim, Canada admits an amount was transferred into Fishing Lake Capital Account No. 271 from the "Yellowquill Band" on October 31, 1906, and that an amount was transferred to Fishing Lake

Interest Account No. 271 (also known as the Fishing Lake Revenue Account) from the Yellowquill Band in 1907. Canada does not currently have information to admit the remainder of the paragraph.

23. In response to paragraph 15 of the Claim, Canada admits in July and August of 1907, Inspector of Indian Agencies W.M. Graham (Inspector Graham) secured a separation agreement for the Yellow Quill Band, which was split into three separate First Nations: the Kinistino Band, the Fishing Lake Band, and the Nut Lake Band.
24. In response to paragraph 16 of the Claim, Canada admits Inspector Graham secured the surrender of 13,170 acres of IR 89 on August 9, 1907. Canada admits the terms of the surrender were as stated in paragraph 16 except that the one-time payment was \$100.00 per head.
25. In response to paragraph 17 of the Claim, Canada admits the surrender terms provided the surrender proceeds were to be added to Fishing Lake First Nation's "credit" after making payments and deducting a proportion for expenses.
26. In response to paragraph 18 of the Claim, Canada admits Fishing Lake First Nation surrendered additional reserve lands in 1915.
27. In response to paragraph 19 of the Claim, Canada admits a portion of the land sales revenue from the 1907 surrender was to be withheld for the purposes of the Indian Land Management Fund (ILMF).
28. In response to paragraph 20 of the Claim, Canada admits only that until 1912, 10% of First Nations' land and timber sales were charged and invested to the credit of the ILMF.
29. Canada acknowledges that the ILMF was not completely self-supporting and was eventually discontinued. Canada does not agree with the assertion in paragraph 21 of the Claim that the West was required to subsidize Ontario and Quebec as part of the ILMF program. Canada does not have knowledge of the

other asserted facts in paragraphs 21, 22 and 23 of the Claim and requires further historical research to confirm these asserted facts.

30. In response to paragraph 24 of the Claim, Canada admits \$1,562.60 was refunded to the Fishing Lake Capital Account in the 1913-1914 fiscal year as reimbursement for funds taken for the ILMF.
31. In response to paragraph 25 of the Claim, Canada acknowledges it implemented policies with respect to on-reserve finances and farming but does not admit these policies were premised on a destructive attitude or intended to save Canada money.
32. In response to paragraphs 26-29 of the Claim, Canada admits only that it created the Permit System, which regulated sales of agricultural goods by First Nation members. Canada does not admit the remainder of paragraphs 26-29.
33. In response to paragraphs 30-40 and 51 of the Claim, Canada states the Order System initially involved the use of standard order forms to allow an individual member of a First Nation to purchase goods from a merchant. A policy existed to prevent the use of band funds to pay debts incurred under the system. Canada does not have information at this time to confirm whether Fishing Lake First Nation capital funds were used to pay individual members' debts in the relevant timeframe, contrary to the *Indian Act*, or any other obligation Canada may have. Canada does not agree with the characterization of the intent of the Order System in these paragraphs.
34. In further response to paragraphs 32-34 of the Claim, Canada admits the Order System was overseen by Indian Agents and had the effect of limiting the availability of credit to First Nation farmers. Canada does not admit the Order System resulted in significant loss of trust funds either from capital expenditures or otherwise in the relevant timeframe of the Claim.

35. In response to paragraph 36 of the Claim, Canada admits there was a suggestion to prohibit Indian Agents from becoming party to orders or promissory notes without the consent of the Department of Indian Affairs. Canada requires further information to confirm the date and author of the memorandum.
36. In further response to paragraph 36 of the Claim, Canada admits Frank Pedley, Superintendent General of Indian Affairs, advised Indian Commissioner David Laird in April 1907 that the Order System had been abused. Pedley did not specify how the Order System was abused.
37. In response to paragraph 37 of the Claim, Canada admits a delegation of Treaty 4 First Nations met with Frank Pedley and Frank Oliver in Ottawa in 1911 and that the meeting minutes includes the quote in this paragraph.
38. In response to paragraph 38 of the Claim, Canada admits J.D. McLean, Assistant Deputy of the Department of Indian Affairs, issued a circular in January 1912 which stated no money should be paid to merchants or persons who were “not Indians”, pursuant to clause five of the “Memorandum of Guidance”, except by permission of the Department.
39. In response to paragraph 39 of the Claim, Canada admits Inspector Graham stated he disapproved of giving order forms to Indian Agents on July 12, 1915, citing the danger of the Order System being abused.
40. In response to paragraph 41 of the Claim, Canada admits Assistant Commissioner of Indian Affairs Hayter Reed (Commissioner Reed) wrote to Indian Commissioner Edgar Dewdney in August 1885. Reed advised he would be adopting a system of keeping First Nations on reserve except with passes.
41. In response to paragraphs 41 and 42 of the Claim, Canada states only that the Pass System required individual members of First Nations to obtain passes to leave their reserve. Canada does not admit any of the remainder of the paragraphs.

42. In response to paragraph 43 of the Claim, Canada admits only that the Birtle System was for loaning cattle. Canada does not admit the remainder of the paragraph.
43. In response to paragraphs 44 and 45 of the Claim, Canada states the Peasant Farming Policy was initiated in 1888 under Commissioner Reed. Under the policy, Canada did not provide money for modern (at the time) machinery and equipment. Canada does not admit the remainder of paragraphs 44 and 45.
44. In response to paragraphs 46-50 of the Claim, Canada admits the Greater Production Scheme was established in 1918. In 1918, subsection 90(3) was added to the *Indian Act*, which permitted the Superintendent General of Indian Affairs to lease uncultivated reserve lands without a surrender. Canada admits that the Greater Production Scheme was phased out by 1922. Canada does not admit the remainder of paragraphs 46-50.
45. In response to paragraph 52 of the Claim, Canada agrees Fishing Lake First Nation was part of the historical Touchwood Hills Indian Agency along with several other First Nations. These First Nations filed a specific claim with Specific Claims Branch in 1993, which was later filed with the Tribunal in November 2019. In that claim, Canada admitted a breach of fiduciary duty for the mismanagement of band moneys between 1920 and 1923 and for “the manner it addressed the Agent’s mismanagement”. The Tribunal released its Reasons for Decision on compensation on July 25, 2025 (*Day Star First Nation et al v. His Majesty the King in Right of Canada*, 2025 SCTC 5 (*Day Star*)). The Tribunal awarded compensation to Fishing Lake First Nation for financial mismanagement between 1920 and the “mid 1930’s”.
46. In response to paragraph 53 of the Claim, Canada states the Tribunal’s decision in *Day Star* precludes compensation in this Claim for any losses due to financial mismanagement between 1920 and the mid-1930s.

47. In response to paragraph 55 of the Claim, Canada states J.D. McLean wrote to Inspector Graham on September 10, 1925, and stated he was aware of cases where the Department of Indian Affairs had expended capital funds to pay individual debts. Canada does not have information at this time to confirm whether Fishing Lake First Nation capital funds were used to pay individual members' debts in the relevant timeframe.
48. In response to paragraphs 56-58 of the Claim, Canada admits it is responsible for the management and administration of Fishing Lake First Nation's capital and revenue accounts and that the provisions of the *Indian Act* and related regulations and policies provided how Canada was to maintain and expend moneys in the capital and revenue accounts. Canada further admits the *Indian Act* addressed the various approvals required prior to Canada making particular expenditures.
49. In response to paragraphs 59 and 60 of the Claim, Canada does not admit it improperly expended funds from Fishing Lake First Nation's capital and revenue accounts in the relevant timeframe of the Claim such that Fishing Lake First Nation is entitled to compensation, based on the current evidentiary record. Any instances where Canada improperly expended funds from Fishing Lake First Nation's capital and revenue accounts have been settled or adjudicated by the Tribunal in *Day Star*.
50. In further response to paragraph 56 and in response to paragraphs 61-65 of the Claim, Canada states Treaty 4 is silent on the management of proceeds from surrendered land sales, and the 1907 surrender document contains no reference to Treaty 4.
51. In further response to paragraph 65 and in response to paragraph 66 of the Claim, Canada does not admit that Treaty 4 promises proceeds from the sale of reserve land would be kept safe and increase over time, nor that Treaty 4 obligates Canada to protect First Nations' capital and revenue monies or to ensure they accrue interest.

52. In response to paragraphs 67 and 68 of the Claim, Canada admits it owes a statutory duty to Fishing Lake First Nation to administer the funds in Fishing Lake First Nation's capital and revenue accounts in accordance with the *Indian Act*. Canada does not admit it breached this duty in the relevant timeframe of the Claim.
53. In response to paragraph 69 of the Claim, Canada admits Fishing Lake First Nation had a capital and revenue account during the Claim period. Canada further admits the capital account typically contains sale proceeds of reserve lands and other specific assets, while the revenue account typically contains interest earned on capital and revenue money.
54. Canada agrees that the 1886, 1906, and 1927 versions of the *Indian Act* contain provisions that govern the management of Indian moneys as set out in paragraphs 70-74 of the Claim. However, Canada does not admit the relevant provisions of the *Indian Act* have been correctly stated in these paragraphs.
55. In further response to paragraph 72 of the Claim, Canada states section 166 of the *Indian Act*, RSC 1906, c 81 provided that band consent could also be obtained by way of a membership vote.
56. In response to paragraphs 76-85 of the Claim, Canada acknowledges interactions with an Indigenous group may give rise to a fiduciary duty in some circumstances but states it has no fiduciary duty to invest Fishing Lake 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, was to be placed to the credit of Fishing Lake First Nation with interest paid annually or semi-annually, according to the surrender terms. Canada complied with the *Indian Act* in managing Fishing Lake First Nation's capital and revenue accounts in the relevant timeframe of the Claim.

57. In further response to paragraphs 76-85 of the Claim, Canada states its management of sale proceeds complied with the 1907 surrender document, the *Indian Act*, and Canada's policies in the relevant timeframe. Canada states the evidence does not support an outstanding lawful obligation to Fishing Lake First Nation for alleged breach of treaty, breach of statutory duty, breach of trust, or breach of fiduciary duty.
58. In response to paragraph 82 of the Claim, Canada acknowledges Fishing Lake First Nation has supplied some details of the capital and revenue deposits and expenditures used to support its specific claim submission. To properly evaluate the Claim, further details and evidentiary support will be required. Canada will work cooperatively with Fishing Lake First Nation to obtain a more detailed and complete record.

V. Canada's Statement of Facts

59. Canada relies upon the facts set out in section IV, above.
60. The historical Yellow Quill Band, comprising Fishing Lake First Nation, Kinistino First Nation, and Nut Lake First Nation signed an adhesion to Treaty 4 on August 24, 1876.
61. Order-in-Council PC 1151, dated May 17, 1889, confirmed two reserves for the Yellow Quill Band: IR 89 and IR No. 90. IR 89 consisted of 34.5 square miles (approximately 22,080 acres) of land located at Fishing Lake. IR No. 90 consisted of 16.2 square miles (approximately 10,358 acres) of land located at Nut Lake.
62. On August 7, 1907, the Yellow Quill Band completed a formal separation into three separate and distinct First Nations, each with their own separate reserve: Fishing Lake First Nation, Kinistino First Nation, and Nut Lake First Nation.

63. On August 9, 1907, Fishing Lake First Nation agreed to surrender 13,170 acres of IR 89. The terms of the surrender set out what payments and deductions were to be made, as well as how the proceeds were to be distributed.
64. The ILMF, opened in 1857, contained 10% of First Nations' land and timber sales. These funds were used to defray First Nations' management expenses. However, the fund was not successful, and no further collections were taken after April 1, 1912. Order-in-Council PC 12/2901 dated November 21, 1913, stated First Nations' contributions to the ILMF would be repaid in full.
65. Canada deducted funds from Fishing Lake First Nation's capital account for the purposes of the ILMF between 1910 and 1912 totalling \$1,561.46, and from their revenue account in 1909 totalling \$1.14. The ILMF deductions from Fishing Lake First Nation's capital and revenue accounts totalled \$1,562.60.
66. On January 31, 1914, Canada credited \$1,562.60 to Fishing Lake First Nation's capital account and \$46.88 to their revenue account as reimbursement for the ILMF deductions.
67. On August 14, 1915, Fishing Lake First Nation surrendered an additional 12 acres of IR 89. The terms of the 1915 surrender provided that all monies were to be placed to Fishing Lake First Nation's credit and interest paid to them in the "usual way", and that the surrendered land was not to be sold for less than \$60 per acre. Order-in-Council PC 2080 confirmed the surrender.
68. Fishing Lake First Nation executed many band council resolutions approving expenditures from trust funds throughout the Claim period. Expenditures were made for many purposes, including but not limited to the purchase of seed, equipment repair, an engine-based threshing machine in 1935, seed drills and binders in 1936, and fencing in 1950.

69. Canada made all distributions from Fishing Lake 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, or equitable obligation to Fishing Lake First Nation relating to management of the capital and revenue accounts in the relevant timeframe of the Claim.
70. In the alternative, if any breach of the *Indian Act* is found in connection with Canada's management of Fishing Lake First Nation's capital and revenue accounts, any financial benefit to Fishing Lake First Nation associated with related expenditures should be set off against compensation awarded by the Tribunal.

VI. Canada's Statement of Relief

71. 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 subsection 20(3) of the *SCTA* and seeks to set off the value of the benefit received by Fishing Lake First Nation from any compensation deemed owing;
 - c. Canada may decide not to seek costs upon the final determination of the Claim; however, it reserves the right to seek such costs; and
 - d. Such further relief as counsel may request and this Honourable Tribunal deem just.

Communication (R. 42(g))

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

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Dated this 27th day of October, 2025.



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