

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

**KAHKEWISTAHAW FIRST NATION**

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
F I L E D	D É P O S É
June 5, 2017	
Stephanie Duffy	
Ottawa, ON	14

**Claimant**

v.

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the Minister of Indian Affairs and Northern Development

**Respondent**

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**RESPONSE TO CLAIMANT'S APPLICATION TO HAVE DOCUMENTS  
ADMITTED INTO EVIDNCE**

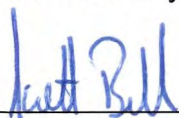
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The Respondent provides the following Response to the Application of Kahkewistahaw First Nation dated May 4, 2017 to have certain documents admitted by the Tribunal:

1. The two affidavits the Applicant seeks to admit, one sworn and one unsworn, contain testimony of deceased persons, are offered to prove the truth of their contents and as such are hearsay.
2. The Respondent respectfully submits the Tribunal should decline to exercise its expanded discretion to admit evidence under s. 13(1)(b) of the *Specific Claims Tribunal Act* because:
  - a. The sworn affidavit of Joseph Arthur Crowe is not relevant to an issue before the Tribunal; and

- b. The unsworn affidavit of Lawrence Kay does not meet the reliability requirement of the “principled approach” for admission of hearsay statements.
3. The Respondent relies on the following materials and evidence:
    - a. The pleadings and proceedings taken herein;
    - b. The Written Submissions on Behalf of Respondent, dated June 5, 2017;
    - c. Three historical documents labelled and described as:
      - Document No. 48, “Complete List of Voters”, dated July 4<sup>th</sup>, 1944;
      - Document No. 49, purporting to be a Surrender, dated July 4, 1944; and
      - Document No. 50, being a deposition, sworn July 4<sup>th</sup>, 1944.
  4. The Respondent respectfully requests the following relief:
    - a. Dismissal of the within Application in its entirety; and,
    - b. Costs of the within application.

Dated this 5th day of June, 2017.



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**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Prairie Region – Saskatoon Office  
123 – 2<sup>nd</sup> Avenue South, 10<sup>th</sup> Floor  
Saskatoon, SK S7K 7E6  
Fax: (306) 975-5013

**Per: Scott T. Bell**  
Tel: (306) 975-6844  
E-mail: [scott.bell@justice.gc.ca](mailto:scott.bell@justice.gc.ca)  
[saskSCT-5002-16-kahk@justice.gc.ca](mailto:saskSCT-5002-16-kahk@justice.gc.ca)

Solicitor for the Respondent.

COMPLETE LIST OF VOTERS

Kahkewistahaw

Band, Province of Saskatchewan

Register submitted July 4th

1944

File No. 23108-3

NAME	PRESENT	ABSENT	PRO	AGAINST	
Harry Favel	X		X		
Jacob Wasacase	X		X		
Robert McKay	X		X		
Angus Alexson, Jr.	X		X		
George Alexson	X		X		
Robert Smoker	X		X		
Jack Bob	X		X		
Sidney Isaac	X		X		
Angus Alexson, Sr.	X		X		
John Crowe	X		X		
Willie Smoker	X		X		
Sam Tapotat	X		X		
Arthur Wasacase	X		X		
Stanley McKay	X		X		
Hector Wasacase	X		X		
Fred McKay	X		X		
Alex Wasacase	X		X		
Lawrence Kay	X		X		
Albert Wasacase	X		X		
Jimmy Kay, Jr.	X		X		
Robert Bob	X		X		
Jimmy Kay, Sr.	X		X		
Andrew Alexson		X			
Robert Francis		X			
Wilfred Isaac		X			
Unaffiliated (check when necessary)	Summary	22	3	22	0

Certified Correct *H. J. Kenley* Indian Agent

July 4th 1944

IMPORTANT NOTICE

This form must be carefully filled in and certified by Agent and attached to appropriate documents. Failure to do so will render inaccurate roll and roll. Procedures to be followed in taking corrections is explained fully in circular of instructions attached. These instructions MUST be strictly followed.

DEPARTMENT OF MINES AND RESOURCES  
INDIAN AFFAIRS BRANCH

HAROLD W. MCILL  
Director of Indian

Ottawa, 19

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Form No. I.A. 114  
R. 1017

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**COMPLETE LIST OF VOTERS**

**Kahkewistahaw Band, Province of Saskatchewan**

Roll submitted **July 4th 1944** File No. **23108-3**

NAME	PRESENT	ABSENT	FOR	AGAINST	
Brought Forward	22	5	22	0	
Alfred Tapatat	X			X	
Louis Crowe		X			
Alfred Gopher		X			
Archie Mequahquay		X			
Herbert Sparvier		X			
Joe Francis		X			
Dan Wasacase		X			
Allan Tapatat	X			X	
Paul Louison		X			
Alfred Francis		X			
Herbert Alexson		X			
Horace Tapatat	X		X		
Isidore Smoker		X			
Allan McKay		X			
Alfred Louison		X			
John Francis		X			
William Wasacase		X			
William G. Francis		X			
<i>(The additional data when necessary)</i>	Summary	25	18	23	2

Certified Correct *(Signature)* Indian Agent  
July 4th 1944

**IMPORTANT NOTICE**

This form must be carefully filled in and certified by Agent and attached to respective documents. Failure to do so will render records null and void. Pleasantry to be followed in taking names where is explained fully in structure of instructions attached. These instructions MUST be every detail be followed carefully.

DEPARTMENT OF MINES AND RESOURCES  
INDIAN AFFAIRS BRANCH

HAROLD W. McGILL,  
Director of Indian Affairs

Ottawa, ..... 19.....

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ORIGINAL



File No. 23108-3.....

DEPARTMENT OF MINES & RESOURCES  
INDIAN AFFAIRS BRANCH

*P.C. 6171  
Aug 7<sup>th</sup> 1944*

KNOW ALL MEN BY THESE PRESENTS

THAT WE, the undersigned Chief and Principal men of  
Kahkewistahaw Indian Band  
resident on our Reserve Kahkewistahaw No. 72.

in the Province of  
Saskatchewan and Dominion of Canada, for  
and acting on behalf of the whole people of our said Band in  
Council assembled, Do hereby release, remise, surrender, quit  
claim and yield up unto our Sovereign Lord the King, his Heirs  
and Successors forever, ALL AND SINGULAR, that certain parcel  
or tract of land and premises, situate, lying and being ~~in the~~  
the whole of Kahkewistahaw Indian Reserve No. 72A  
in the County of ----- and Province of  
Saskatchewan containing by admeasurement 68.16 acres

be the same more or less ~~and being composed of~~

604-769

INAC Indian Lands Registry Instrument No. 16722

1944/07/04

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

AND upon the further condition that all moneys received from the ----- sale ----- thereof, shall be credited to Band funds.

AND WE, the said Chief and Principal men of the said Kahkewistahaw Indian Band do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the sale of the said land.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals this fourth day of July in the year of our Lord one thousand nine hundred and forty-four.

SIGNED, SEALED AND DELIVERED,  
In the presence of

..... *W. D. Kerley* .....

..... *H. Gavel* .....  
 ..... *Joseph Wasan* .....  
 ..... *Robert McLean* .....  
 ..... *Geo. Crow* .....  
 ..... *Stanley Meekes* .....  
 ..... *Sidney Isaac* .....

604-770.

1470

KAHKEWISTAHAW  
INDIAN BAND

-to-

THE KING

SURRENDER

-of-

Kahkewistahaw Indian Reserve  
No. 72, in the Province of  
Saskatchewan.

Dated July 4, 1944.

Department Of Indian Affairs & Northern Development

ASSIGNMENTS AND OTHER ENDORSEMENTS

INSTRUMENT NO. 16722

Surrender & Order in Council

CERTIFY THAT THE WITHIN INSTRUMENT  
IS DULY ENTERED AND REGISTERED IN THE  
LAND REGISTRY, INDIAN AFFAIRS BRANCH,  
DEPARTMENT OF INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT, AT OTTAWA.

AT 1100 O'CLOCK A M OF THE

10 DAY OF February

AD ID 70 NUMBER 16722

FOR Kahkuiatatalem I.R. NO. 72A

IN THE PROVINCE OF Sask

[Signature]  
AUTHORIZED OFFICER

Land Registry



Dominion of Canada

PERSONALLY APPEARED BEFORE ME

Province of Saskatchewan  
County of Broadview  
To Wit:

Walter J. D. Kerley  
(Name of Agent)  
of the Crooked Lake Agency  
Broadview,  
in the Province of Saskatchewan

and Harry Favel, Chief, Jacob Wasacase, H.M., Robert McKay, H.M.  
(Names of Indians)  
Chiefs of the Kahkewistahaw Band of Indians No. 72

And the said Walter J. D. Kerley  
(Name of Agent)  
for himself saith:—

That the annexed release or surrender was assented to by a majority of the male members of the said band of Indians of the full age of twenty-one years entitled to vote, all of whom were present at the meeting or council.

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

That the terms of the said surrender were interpreted to the Indians by an interpreter qualified to interpret from the English language to the language of the Indians.

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

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

That no Indian was present or voted at said council or meeting who was not a member of the band or interested in the land mentioned in the said release or surrender.

And the said Harry Favel, Jacob Wasacase, and Robert McKay  
(Names of Indians)

say:—  
That the annexed release or surrender was assented to by them and a majority of the male members of the said band of Indians of the full age of twenty-one years.

That such assent was given at a meeting or council of the said band of Indians summoned for that purpose as hereinbefore stated, and held in the presence of the said

Walter J. D. Kerley  
(Name of Agent)

That no Indian was present or voted at such council or meeting who was not a habitual resident on the reserve of the said band of Indians and interested in the land mentioned in the said release or surrender.

That the terms of the said surrender were interpreted to the Indians by an interpreter qualified to interpret from the English language to the language of the Indians.

That they are Harry Favel, Chief, Jacob Wasacase, H.M., Robert McKay,  
(Chiefs or Principal Men)  
H.M. of the said band of Indians and entitled to vote, at the said meeting or council.

Sworn before me by the deponents  
at the town of Broadview  
in the Province of Saskatchewan  
this 8th day of July  
A.D. 1944

W. J. D. Kerley  
Harry Favel  
Jacob Wasacase  
Robert McKay

Form No. 314

A. L. Brown  
A. J. P. in r for Sask.

1944/07/08