

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

COTE FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations and Northern Affairs

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

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building, 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

I. Claimant (R. 41(a))

1. The Claimant, Cote First Nation, (hereinafter also referred to as the “Claimant” or “First Nation” or “Band” depending on the context) confirms that it is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c 22 (the “*Specific Claims Tribunal Act*”) by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c I-5 (the “*Indian Act*”), as amended, and within the meaning of *Treaty No. 4* (“Treaty 4”). The First Nation is located north of Kamsack, Saskatchewan.

II. Conditions Precedent (R. 41(c))

2. The following condition precedent as set out in subsection 16(1)(a) 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 notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part;
3. The First Nation submitted a claim (the “Mismanagement Claim”) respecting various alleged breaches by the Respondent relating to its mismanagement of the First Nation’s trust accounts (“Trust Funds”), which are comprised of the Capital Account and Revenue Account.
 4. The Mismanagement Claim was deemed filed with the Minister of Indian Affairs and Northern Development (the “Minister”), now referred to as Crown-Indigenous Relations and Northern Affairs Canada (“CIRNAC” or the “Department”), on May 30, 2018.
 5. The Department notified the First Nation in writing on February 12, 2021 that the Minister declined to negotiate a settlement of the Claim on the basis that the 2012 Settlement Agreement released Canada from liability for mismanagement of its Trust Funds.

III. Claim Limit (Act, s.20(1)(b))

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

IV. Grounds (R. 41(d))

7. 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) Expropriation and Surrenders:

8. The First Nation adhered to Treaty 4 on September 15, 1874. Pursuant to the terms of Treaty 4, Indian Reserve No. 64 (“IR 64”) was established on May 17, 1889 for the use and benefit of the First Nation, with an area of 36,160 acres lying to the east of the Assiniboine River in what is now southeastern Saskatchewan.
9. Between 1904 and 1914, IR 64 was reduced in size from 36,160 acres to 2,501 acres through illegal land surrenders and expropriation. A small portion of the surrendered lands was later returned to reserve status, but most of the lands were sold. All four of the surrenders obtained by the Crown in 1905, 1907, 1913, and 1914 were accepted for negotiation under Canada’s Specific Claims Policy and were settled in 2012.
10. In addition to these surrenders, in 1903 the Canadian National Railway expropriated a railway right-of-way from IR 64. In 1904, IR 64 lands were surrendered for a townsite and railway station grounds. The First Nation submitted specific claims relating to the 1903 expropriation and the 1904 surrender, both of which have been filed with the Specific Claims Tribunal (SCT-5003-14 and SCT-5004-14 respectively).
11. The majority of the monies held in the Cote Band’s Capital Account was derived from the sale of its surrendered reserve lands. Interest from the Capital Account Funds was deposited to the Revenue Account. Both accounts were administered by the Department of Indian Affairs and were subject to the provisions of the *Indian Act*.

b) Mismanagement of Capital and Revenue Funds:

12. The Crown is responsible for the management and administration of monies held for First Nations.
13. The Crown unilaterally assumed this responsibility for itself through the provisions of the *Indian Act* in force from 1886 to the present. These provisions provided for the management and expenditure of Indian monies deposited to a band’s Capital and Revenue Accounts, which are maintained on behalf of a band by the Crown. The provisions specified *what* Indian moneys could be expended upon, *which* account those expenditures could be made from, and *who*—Governor in Council, Band, Band Council, Minister of Indian Affairs—could authorize spending of monies from a band’s Capital Account and Revenue Account.

14. Despite the obligations and duties set out in the *Indian Act* in force at the relevant times from 1903 onward, and the policies in place during these times, the Crown improperly expended funds from the Cote First Nation's Capital Account and Revenue Account. These monies were spent either for purposes unauthorized by the *Indian Act*, or without proper authority or approval, or in furtherance of government policies that were not in the best interests of the First Nation.
15. In instances where expenditures were made for items authorized under the *Indian Act*, Governor in Council consent was not always obtained. In instances where there was no Order in Council authorizing an expenditure, the depletion of the First Nation's Capital Account was void *ab initio*.
16. Following the 1903 expropriation, and when the Cote First Nation's lands were sold after the 1904, 1905, 1907, 1913, and 1914 surrenders, monies were received from the land sales and deposited to the First Nation's Trust Fund accounts.
17. The details of the deposits to and expenditures from the First Nation's Capital and Revenue Accounts are provided in the Mismanagement Claim and supporting documents. These will be detailed and quantified for the Tribunal in the hearing of this matter and when the Crown is obligated to account for its management and administration of the First Nation's Trust Funds.
18. In addition to the unlawful expenditures, other breaches occurred in the context of the misadministration of moneys held in trust for bands by the Crown, due to policies and directives at the time. Policies such as the Peasant Farming System, the Order System, and the Greater Production Scheme resulted in undue influence exerted over individual Indians and encouraged the misappropriation of Band funds by Crown agents.
19. The most significant unlawful expenditures from the Cote Band's Capital Account were for payments of member debts, accounting transfers, agricultural implements, and horses in the amount of approximately \$16,856.00.
20. The most significant unlawful expenditures from the Cote Band's Revenue Account were for accounting adjustments, relief, interest distributions to members, farming, medical costs, and loans to members in the amount of approximately \$158,372.65.

VI. The Basis in Law on which the Respondent is said to have Failed to Meet or Otherwise Breached a Lawful Obligation

35. The First Nation claims the Crown breached the provision of the various *Indian Acts* in place from time to time, by virtue of illegal and unauthorized expenditures from the First Nation's Capital and Revenue Accounts.
36. The Respondent owes statutory and fiduciary duties to the First Nation to properly administer the funds held in the Capital Account and Revenue Account held by the Respondent for the

First Nation's benefit. The statutory duties arise from the provisions of the *Indian Act*, as in force at the relevant times.

37. The First Nation submits that by failing to comply with the provisions of the *Indian Act* regarding the management and administration of its Trust Funds, the Respondent breached its legal, trust, statutory, treaty, fiduciary, and/or equitable obligations to the First Nation from 1903 to present.
38. Despite the Respondent's knowledge of its duties and obligations relating to expenditures of funds held on behalf of the First Nation, it directed expenditures from the Band's Capital Account and Revenue Account on items not authorized or permitted by the *Indian Act*, and/or did not obtain the necessary authority or approvals to make expenditures, contrary to the provisions of the *Indian Act* force from 1903 to present.
39. Therefore, the First Nation claims that the Respondent breached the statutory provisions of the *Indian Act* when authorizing and directing the expenditure of Indian moneys from the Capital Account and the Revenue Account from 1903 to present.
40. The First Nation claims that the Respondent did not discharge its fiduciary duty to act in the best interest of the First Nation 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 First Nation. This conduct that ultimately benefited the Respondent and third parties rather than the First Nation.
41. The First Nation claims the value of the funds improperly expended from the Capital Account and the Revenue Account be returned to the First Nation, with compound interest from the date of the breach to the present.

VII. RELIEF SOUGHT

42. In light of the foregoing, the First Nation seeks the following relief:
 - a) Damages for the loss of Trust Funds wrongfully expended, including interest that should have been earned thereon;
 - b) Damages for the Respondent's breach of the terms of Treaty 4, breach of its trust obligations, breach of its fiduciary or trust-like obligations of the terms of the various *Indian Acts* and policies in place from time to time;
 - c) Equitable interest calculated from the date of the breach(es) to the date of the judgment of award;
 - d) Costs of this proceeding, and in the Specific Claims Process, on a solicitor-client basis; and
 - e) Such other damages or compensation as this Honourable Tribunal deems just.

Dated this 23 day of April 2021 at the City of Calgary in the Province of Alberta.



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