

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
June 16, 2021	D E P O S E
Dragisa Adzic	
Ottawa, ON	1

SCT File No.: SCT - 5002 - 21

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

COTE FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN 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*.

June 16, 2021

Date

Dragisa Adzic

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

1. The Claimant, the Cote First Nation (the “First Nation” or “Cote” or “the Band”, depending on the context) is a First Nation within the meaning of subsection 2(a) of the *Specific Claims Tribunal Act*, SC 2008, c. 22, by virtue of being a “band” within the meaning of the *Indian Act*, RSC 1985, c. I-5 and within the meaning of Treaty No. 4 (“Treaty 4”). The First Nation’s reserve is located in southeastern Saskatchewan.

II. Conditions Precedent

2. The following condition precedent 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

...

(b) three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;

3. The First Nation submitted a claim alleging the Crown breached its statutory, fiduciary, and honourable obligations by illegally alienating parcels of the Cote Band’s reserve land for road purposes (“the Claim”). Between 1906 and 1976, there were at least eight unlawful takings of reserve lands for roads, as well as three unlawful takings of undeveloped road allowances on the reserve.
4. The Claim was deemed filed with the Minister on September 6, 2017. Three years have elapsed since the date when the Claim was filed with the Minister, and the First Nation has not been notified of a decision on whether to negotiate the Claim.

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

5. For purposes of this Claim, the First Nation does not seek compensation in excess of \$150 million.

IV. Grounds of the Specific Claim (Act, s. 14(1))

6. The First Nation submits that the Claim falls within the parameters of section 14(1) of the *Specific Claims Tribunal Act* which states:

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:

(b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;

(c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;

(d) an illegal lease or disposition by the Crown of reserve lands; ...

V. Statement of Facts

Dominion Land Survey System

7. The Dominion Land Survey system was introduced in the 1872 *Dominion Lands Act*. This system surveyed and subdivided lands in western Canada based on a grid system with meridians running north to south, and ranges running west to east. Lands were surveyed in numbered townships each containing 36 sections of one square mile (640 acres) each, and sections were divided into quarter sections of 160 acres each. Road allowances ran north-south and east-west between sections in each township and between townships. The acreage of a road allowance did not reduce the size of sections or townships, but instead added acreage to the township.
8. Most road allowances in Saskatchewan are 66 feet wide, but there are exceptions in southeastern Saskatchewan where the road allowances are 99 feet wide. Most of the road allowances on the Cote Reserve are 99 feet wide. Lands in southeastern Saskatchewan, including where the Cote Reserve is located, were surveyed between 1871 and 1880.
9. All acreages specified in this Declaration of Claim are approximate and subject to further clarification.

Creation of IR 64 in 1874

10. In 1874, Chief Gabriel Cote, also known as Mee-may, signed Treaty No. 4 at Qu’Appelle on behalf of the Cote Indian Band.
11. Under the terms of Treaty 4, Her Majesty undertook, *inter alia*, to set aside a reserve for the use and benefit of each band adhering to Treaty 4.
12. Cote Indian Reserve Number 64 (“the Cote Reserve” or “IR 64”) was surveyed by Dominion Land Surveyor in January 1877 for the use and benefit of the Cote Band. The reserve was shown as 36,160 acres (56.5 square miles) and was confirmed by Order in Council P.C. 1151 on May 17, 1889. Due to land surrenders and takings

between 1903 and 1917, IR 64 was reduced to about 7,562 acres (about 21% of its original size) by 1917. Some unsold surrendered lands were subsequently reconstituted as reserve lands, and IR 64 today is approximately 19,977.85 acres (31.2 square miles) in size.

Land Takings from IR 64 between 1904 and 1914

13. On July 14, 1903, Order in Council P.C. 1173 approved the sale of 44.56 acres to the Canadian Northern Railway (“CNR”) for a railway right of way across IR 64. CNR subsequently wanted additional reserve lands for a townsite and railway station grounds. On June 21, 1904, the Cote Band surrendered 272 acres for the Kamsack townsite and station grounds. The surrender was accepted by Order in Council P.C. 1841 on September 28, 1904.
14. On December 14, 1905, approximately 18,044 acres of IR 64 was surrendered. Of this acreage, 12,000 acres were surrendered for sale and 6,000 acres were in exchange for haylands located elsewhere. Order in Council P.C. 3 on January 12, 1906, approved this surrender. The surrendered lands were described as a block of land rather than according to township and section numbers. Thus, any road allowances subsequently surveyed were included in the surrender.
15. In 1906, Dominion Land Surveyor Reid surveyed IR 64 into townships and sections. This allowed the road allowances within the lands surrendered in 1905 to be aligned with the townships and road allowances outside the reserve.
16. On June 20, 1907, the Cote Band surrendered 10,683 acres from the southern half of IR 64. The surrender was accepted by Order in Council P.C. 1886 on August 21, 1907.
17. On November 20, 1913, the Cote Band surrendered an additional 10,422 acres of the southern portion of IR 64, some of which overlapped with lands surrendered in 1905. The surrendered lands included the road allowances. The surrender was accepted by Order in Council P.C. 3066 on December 8, 1913.
18. In 1914, another 164 acres was surrendered which the Department of Indian Affairs (“DIA”) determined was inadvertently omitted from the 1913 surrender. This surrender was approved by Order in Council P.C. 1321 on May 18, 1914.
19. In August 1915, Inspector of Indian Agencies Graham wrote to Secretary of Indian Affairs McLean, stating that the Cote Reserve was now too small for the Band’s agricultural needs. Graham recommended that unsold surrendered lands be restored to reserve status.
20. By Order in Council P.C. 2162 dated September 17, 1915, the Crown transferred some of the undeveloped road allowances within the surrendered portions of IR

64 to the Province of Saskatchewan. These included the road allowances that were surrendered in 1913 and 1914.

Undeveloped Road Allowances Not Returned to IR 64 in 1916/1917 and 1963 Nor Included in 1909 Exchange Lands

21. On May 11, 1916, Order in Council P.C. 1106 returned 5,383 acres of previously surrendered lands to the Cote Reserve. On February 28, 1917, Order in Council P.C. 5666 returned 4,875 acres to IR 64, which were some of the lands surrendered in 1913. However, approximately 270 acres of undeveloped road allowances within the reconstituted reserve land were not returned to IR 64 since they had been transferred to the Province of Saskatchewan.
22. On June 27, 1963, Order in Council P.C. 963 reconstituted the unsold surrendered lands from 1905 to IR 64. Most of the road allowances were included in the reconstituted lands since they had not been transferred to Saskatchewan in 1915. However, the road allowances along the northern limit of Section 19, Township 30, Range 31, W1M and the northern limit of Section 24, Township 30, Range 32, W1M were not reconstituted to reserve since they were transferred to the Province in 1915. This acreage to be determined.
23. On September 25, 1909, Order in Council P.C. 2004 added land back to IR 64 which were part of the exchange lands from the 1905 surrender. These lands were described by townships and sections, and therefore did not include the intervening road allowances. The total acreage of the road allowances within the portion of land added to the reserve is approximately 160 acres.

Developed Road Allowances

24. There were three road allowances with roads built on them within the boundaries of IR 64.

December 15, 1906 Surrender of 20 Acres – Plan 1038

25. On March 1, 1905, John Stocks from the Government of the Northwest Territories, wrote to the DIA enclosing Plan 1046 of a road that passed through IR 64, and requested that the land be reserved for a road. This plan was renamed Plan 1038. The area of the roadway is located along the north-east limit of the Canadian Northern Railway entering the Town of Kamsack from the south-east.
26. On December 15, 1906, the Cote Band surrendered 20 acres of IR 64 for road purposes. The surrender was accepted by Order in Council P.C. 57 on January 14, 1907.

27. By Order in Council P.C. 634 on March 26, 1919, approximately 1.5 acres of the surrendered land was annulled as it was not required for road purposes but was never reconstituted as part of the reserve.
28. The Cote Band surrendered approximately 20 acres of reserve land for road purposes and received no compensation.

May 31, 1922 Taking of 1.58 Acres – Plan 1837

29. In May 1922, a proposed road on IR 64 to provide access between two road allowances was surveyed. One road allowance was within the land surrendered for exchange in 1905, and the other was a road allowance surveyed on IR 64 by Dominion Land Surveyor Reid in 1906. The proposed road was shown on Plan 1837 and was 1.58 acres in size.
30. On May 31, 1922, the provincial Department of Highways applied for a transfer of this road allowance, which was not included with the September 19, 1915, Order in Council transferring road allowances to the Province of Saskatchewan.
31. On June 29, 1922, Order in Council P.C. 1324 transferred this road allowance to the Province of Saskatchewan without a surrender or an expropriation and without compensation to the Cote Band.

Highway 8 Development

32. Highway 8 was constructed in two distinct stages. Section One was surveyed in 1908 and the reserve lands for this section were surrendered in 1911. Section Two was surveyed in 1924 with road improvements and modifications in 1933, 1936 and 1943 on IR 64. In 1962, these two sections of the road were rebuilt into the modern-day Highway 8.

June 12, 1911 Surrender of 72.49 Acres - Plan 1061

33. Section One of the road that would eventually become known as Highway 8 on the Cote Reserve was surveyed in 1908 and titled “New Road Plan CLSR Rd. 1061”.
34. On April 5, 1911, the Province of Saskatchewan wrote to the DIA Secretary showing the survey of this road through the Cote reserve and requested these lands for road purposes. The lands were entirely within IR 64.
35. On June 12, 1911, the Cote Band surrendered 72.49 acres of a 99-foot-wide road allowance on IR 64, as described on Plan 1061. No compensation was paid to the Cote Band.

36. The surrender was confirmed by Order in Council P.C. 1649 on July 22, 1911. The recommendation to the Governor in Council to accept the surrender stated that the road would be of use for the public and the Band.

March 4, 1933 Taking of 35.64 Acres - Plan 2539

37. The 1908 survey shows that Highway 8 veered west, crossed the Assiniboine River, then proceeded northward on IR 64. Another survey in 1924 straightened Highway 8 and extended straight in a north/south line. This was Section Two of Highway 8.
38. On July 19, 1924, the provincial Deputy Minister of Highways requested that the Land Patent Branch inform whether patents were issued for northeast section 27 and northeast half section 34, within Township 30, Range. 32. N.O. Cote, Controller responded on July 30, 1924, that these lands were within the Cote Reserve, and the request was being forwarded to the DIA.
39. The lands on the 1924 survey were outside the existing road allowances on IR 64. In January 1926 a new survey, Plan 2539 for Section Two of Highway 8, was sent to DIA.
40. On March 4, 1933, Order-in-Council P.C. 342 approved the transfer to the Province of Saskatchewan of the lands shown on Plan 2539, pursuant to the terms of section 48 of the 1927 *Indian Act*. No compensation was paid to the Cote Band.

January 11, 1936 Taking of .028 acres – Plan 2652

41. Improvements constituting three small curves were made to Section Two of the highway from Kamsack towards Pelly, which required small parcels of land to be taken from IR 64 by the Province of Saskatchewan.
42. The first curve required 0.028 acres of Cote Reserve land at the southwest quarter of fractional section 14, Township 31, Range 32, and was surveyed in 1933 on Plan 2652. Order-in-Council P.C. 56, dated January 11, 1936, states, “that additional right of way is required to provide a curve at the South West corner Section 14 and it is considered that this construction will be of sufficient benefit to the reserve lands to justify its transfer without compensation.”

May 4, 1943 Taking of .82 and .81 Acres - Plan 2539A

43. Two curves located at intersections at the northeast corner of Section 34, Township 30, Range 32, and the southwest quarter of fractional Section 14, Township 31, Range 32, totaling 0.82 acres and 0.81 acres, respectively, were surveyed in 1937 on Plan 2539A.

44. On May 4, 1943, Order-in-Council P.C. 3659 authorized these takings of Cote Reserve land under Section 48 of the 1927 *Indian Act*. Compensation of \$57.05 was paid for these two parcels of reserve land.

November 16, 1972 Taking of 74.29 Acres – Plan 53922

45. In May and June 1962, a new road, shown on CLSR Plan 53922, was surveyed by Saskatchewan Land Surveyor Zeldenrust. This survey widened part of Highway 8 and created a new road right-of-way.
46. On November 16, 1972, by Order in Council P.C. 1972-2633, three parcels of land were added back to IR 64, containing 37.298 acres in total. This same Order in Council authorized the taking under section 35 of the 1970 *Indian Act* of a right of way for public road purposes, as shown on Plan 53922. Compensation in the amount of \$3,706.50 was paid to the Cote Band.
47. Part of the lands on Plan 53922 were within Section One of Highway 8, which were reserve lands surrendered in 1911. The remaining 38 acres were within Section Two of Highway 8.

1976 Road Widening – Plan 62877

48. Survey Plan 62877 in 1976 shows that Highway 8 was widened at some point. This Plan shows the width of the right of way is 190.290 feet, whereas the width of the right of way shown the 1972 Plan 53922 as 150 feet, a difference of 40 feet.
49. There is no evidence of any lawful authority for the widening of Highway 8 through IR 64.

VI. The Basis in Law in which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

Issue 1: Breach of the Crown's Statutory Obligations

50. The Crown failed to comply with the applicable statutory provisions when Cote Reserve lands were taken for road purposes at various times between 1906 and 1976.
51. There were eight takings of Cote Reserve lands for road purposes during this time frame: the 1906 taking (Plan 1038), the 1922 taking (Plan 1837), and six takings related to Highway 8 through IR 64. In each instance, the road takings did not comply with the relevant surrender or expropriation provisions of the *Indian Act*, or the reserve lands were taken without any legal authority.

December 15, 1906 Surrender of 20 Acres – Plan 1038

52. This surrender did not comply with the statutory requirements for a valid surrender, as set out in section 49 of the 1906 *Indian Act*. Canada has an obligation to demonstrate that the statutory requirements for a valid surrender were met, and it failed to do so.
53. Even if a surrender was appropriate in these circumstances, which is denied, Canada failed to ensure that the procedural safeguards for a surrender were met. A surrender meeting, in accordance with the rules of the Band, was not called for the purpose of considering a surrender. There is no evidence of notice of a meeting being properly called to expressly consider a surrender of 20 acres of IR 64 for a road. There are no minutes of such a meeting, and no list of voters. There is no record of the vote, such as whether a quorum of eligible voters was present and how many voted for, against, or abstained.

May 31, 1922 Road Taking of 1.58 Acres – Plan 1837

54. This transfer of the road allowance on IR 64 was without lawful authority. Canada made no attempt to comply with the statutory requirements for a valid expropriation set out in the 1906 *Indian Act*. There was no payment of compensation and no indication that the Band was even aware of the taking of its reserve lands.
55. The provincial *Highways Act*, RSS 1920, c. 21, is the enabling statutory authority for the expropriation of road allowances. That Act set out stringent requirements for the taking of lands required for a road allowance. Strict compliance with these statutory requirements was necessary for a valid taking, which was not done. The taking was without legal authority and was void *ab initio*.

Highway 8 Development***June 12, 1911 Surrender of 72.49 Acres - Plan 1061***

56. Canada chose to engage the surrender process under the *Indian Act* when it determined that 72.49 acres of Cote Reserve land was required for road purposes. The 1911 surrender did not comply with the statutory requirements for a valid surrender under the 1906 *Indian Act*. There is no evidence that a proper meeting in accordance with the rules of the Band was held, or that a quorum of eligible voters was present, or that the requisite majority were in favour of this surrender.
57. Even if a surrender was appropriate in these circumstances, which is denied, Canada failed to adhere to the requirements for a valid surrender under the 1906 *Indian Act*.

March 4, 1933 Taking of 35.64 Acres - Plan 2539

58. Order in Council P.C. 342 approved the transfer of 35.64 acres of IR 64 land to the Province of Saskatchewan.
59. There was no lawful authority for this transfer. There was no attempt to comply with the provisions for a valid expropriation of reserve land as set out in section 48 of the 1927 *Indian Act*. No compensation was paid to the First Nation, as was required by section 48. Further, the 1930 provincial *Highways Act*, RSS 1930, c. 26, which was the enabling statutory authority for the province to expropriate land for road allowances, was not followed. These lands were taken without legal authority and the taking is void.

January 11, 1936 Taking of .028 acres - Plan 2652

60. Improvements to Highway 8 required the taking of an additional .028 acres of IR 64. Order in Council P.C. 56 authorized the taking of Cote Reserve land without compensation, on the basis that the construction would be of benefit to the Band. The road allowances in this portion of Cote Reserve had not been transferred to the Province of Saskatchewan.
61. The Crown did not comply with the proper expropriation process set out in section 48 of the 1927 *Indian Act* by accepting this taking of IR 64 lands without compensation. The Crown did not comply with the requirements of the 1927 *Indian Act* and the *Department of Highways and Transportation Act*, RSS 1934-35 c. 8 when it unilaterally decided there would be no compensation and notice of the taking was not provided to the Cote Band. Cote Reserve land was taken without legal authority and the taking is rendered void.

May 4, 1943 Taking of .82 Acres and .81 Acres - Plan 2539A

62. Order in Council P.C. 3659 dated May 4, 1943, authorized the taking of two parcels described on Plan 2539A, .82 acres and .81 acres, pursuant to the expropriation provisions set out in section 48 of the 1927 *Indian Act*. Compensation of \$57.05 was paid by the Province of Saskatchewan for the two parcels of land.
63. The Crown failed to comply with the statutory requirements of the 1927 *Indian Act* and *The Highways and Transportation Act*, RSS 1940, c. 22. The Crown did not consult or notify the Cote Band regarding this expropriation, did not inform the Band of the compensation offered, or the Band's right to claim for higher compensation amount. There is no indication of the adequacy of the compensation. This taking was not done in accordance with the statutory requirements and was void *ab initio*.

November 16, 1972 Taking of 74.29 Acres – Plan 53922

64. Order in Council P.C. 1972-2633 dated November 16, 1972, authorized the taking of 74.29 acres described on Plan 53922, pursuant to the expropriation provisions set out in section 35 of the 1970 *Indian Act*. The 1970 *Indian Act* and *The Highways Act*, RSS 1965 c. 27, in conjunction with *The Expropriation Procedure Act*, SS 1968 c. 21, had stringent requirements for expropriation, none of which were complied with. The Crown did not ensure the Cote Band received the proper notice requirements nor did it advise them of the option of a compensation review. The taking of Cote Reserve land is therefore void.

1976 Road Widening - Plan 62877

65. There was no lawful authority for the widening of Highway 8 through IR 64. The Crown did not comply with the 1970 *Indian Act*, nor the provincial *Expropriation Procedure Act*, SS 1968, c. 21, or *Highways Act*, RSS 1965, c. 27. Cote Reserve land was taken without legal authority and the taking is void.

Issue 2: Breach of the Crown's Fiduciary Obligations

66. A general fiduciary duty exists between the Crown and the Cote Band. Within this context, there are specific fiduciary obligations which arise with respect to reserve lands.
67. In the case of a surrender, the Crown has pre-surrender duties to prevent an exploitative bargain and not engage in tainted dealings. Subsequent to a surrender, the Crown has a duty to fulfil the terms of the surrender and to act in the best interests of the Band. In the case of an expropriation, the Crown has a duty to minimally impair the Band's interest in its reserve lands and an obligation to inform and advise the Band regarding the transaction and withhold its consent to a improvident or exploitative bargain. More generally, the Crown has fiduciary obligations to comply with its own legislation and to protect the Band's reserve lands from unlawful takings.
68. The Crown's breached its pre-surrender and post-surrender fiduciary obligations when reserve lands were taken for road purposes. The surrender bargains were exploitative, especially when the lands were taken without compensation. With respect to the undeveloped road allowances to IR 64 after the surrender, Canada breached its fiduciary obligation to follow through and fulfil its obligation to act in the best interests of the Band.
69. The Crown also breached its fiduciary obligation when reserve lands were expropriated without the payment of compensation, or when inadequate compensation was paid. Takings without any legal authority whatsoever were breaches of the Crown's obligation to respect and honour the Band's *sui generis* interest in its reserve lands.

***Undeveloped Road Allowances Not Returned to IR 64 in 1916/1917 and 1963
Nor Included in 1909 Exchange Lands***

70. By Order in Council P.C. 1106 dated May 11, 1916, 5,383 acres of previously surrendered lands were returned to the Cote Reserve. In addition, on February 28, 1917, Order in Council P.C. 5666 returned another 4,875 acres to the Cote Reserve, which were also part of previously surrendered land. The undeveloped road allowances previously surrendered in 1913 and 1914 were not reconstituted as part of IR 64 in 1916 and 1917, since they were transferred to the Province of Saskatchewan in 1915.
71. The Crown expressly acknowledged that it had taken too much of the Band's reserve and the Band needed more lands. However, when previously surrendered lands were reconstituted to IR 64 in 1916/1917, Canada breached its fiduciary duty by failing to ensure that all the lands the Cote Band was entitled to were returned to the reserve. By failing to restore comparable acreage to reserve status, Canada breached its fiduciary duties owed to the Cote Band.
72. In a similar situation, the Cote Band surrendered 18,044 acres of IR 64, on December 14, 1905, and was accepted by Order in Council P.C. 3 on January 12, 1906. The surrendered lands were described as a single block of land, thereby including all the road allowances.
73. By Order in Council P.C. 2004 dated September 25, 1909, lands were added to IR 64 in exchange for the 1905 lands. These exchanged lands were described using the township and section numbers, which meant that the road allowances were not included in the Cote Reserve.
74. The First Nation was entirely dependent on the Crown to properly execute the exchange of lands. By not including the road allowances when the lands were exchanged, the Crown breached its fiduciary duty to inform and advise the Band and to act in its best interests and properly fulfil the terms of the 1905 surrender. Insufficient lands were received by the Band in exchange.

December 15, 1906 Surrender of 20 Acres – Plan 1038

75. Canada breached its pre-surrender fiduciary obligation to withhold its consent to an exploitative bargain. The surrender was for 20 acres of land, for which the Band received no compensation. The Governor in Council breached its fiduciary duty to the Band when it accepted this surrender of reserve land for no compensation.
76. Similarly, the Crown breached its post-surrender fiduciary obligation when it failed to act in the best interests of the Cote Band by allowing the 20 acres to be used for a road without compensation paid to the Band.

77. The Crown ought to have followed the expropriation process under the *Indian Act* rather than seeking a surrender, which constitutes a breach of the Crown's fiduciary duty to minimally impair the Band's interest in its reserve land, and to provide for the road to be returned to reserve status, if and when no longer required for road purposes. In addition, the Crown had an obligation to obtain appropriate compensation for the taking of reserve land and to prevent a foolish, improvident or exploitative transaction.

May 31, 1922 Taking of 1.58 Acres – Plan 1837

78. The Crown breached its fiduciary duty to the Band when it authorized this transfer of Cote Reserve without legal authority. No attempt was made to inform and advise the Band or act in its best interests, including failure to obtain compensation for this taking. Further, the Crown did not make any attempt to properly expropriate these lands.

Highway 8 Development

June 12, 1911 Surrender of 72.49 Acres – Plan 1061

79. On June 12, 1911, the Cote Band surrendered 72.49 acres of its reserve land for a road allowance on IR 64, as described on Plan 1061. The surrender was confirmed by Order in Council P.C. 1649 dated July 22, 1911.
80. The Crown breached its fiduciary and honourable obligation when it took this surrender of 72.49 acres of Cote Reserve land without compensation, constituting an improvident bargain. The Crown acknowledged prior to the surrender that these lands were for road purposes and would benefit the public at large and be of use to the Band and thus compensation was not necessary.
81. Similarly, the Crown breached its post-surrender fiduciary obligation when it failed to act in the best interests of the Cote Band by allowing the 72.49 acres to be used for a road without any compensation paid to the Band.
82. The Crown ought to have followed the expropriation process under the *Indian Act* rather than seeking a surrender. Under the expropriation provisions in the *Indian Act*, the Crown had an obligation to inform and advise the Band and to obtain appropriate compensation for the taking of its reserve land and minimally impair the Band's interest in its reserve by ensuring the road was to be returned to reserve status if and when no longer required for road purposes.

March 4, 1933 Taking of 35.64 Acres - Plan 2539

83. The Crown breached its fiduciary duties to inform and advise the Band and to obtain proper compensation upon an expropriation of 35.64 acres of Cote Reserve land. There was no compensation paid. There is no indication that the Crown made

any attempt to minimally impair the impact of this expropriation on the Band or on its reserve.

January 11, 1936 Taking of .028 Acres - Plan 2652

84. The Crown breached its fiduciary duties to inform and advise the Band and to obtain proper compensation upon an expropriation of .028 acres of Cote Reserve land. There was no compensation paid. The Crown's duty to minimally impair the Cote Band's interest in its reserve was also breached.

May 4, 1943 Taking of .82 Acres and .81 Acres - Plan 2539A

85. The Crown breached its fiduciary duties to inform and advise the Band and to obtain proper and adequate compensation upon an expropriation of .82 and .81 acres of Cote Reserve land. While compensation was paid, Canada breached its duty to determine the adequacy of the compensation paid, and to ensure that the taking minimally impaired the Band's interest in its reserve. Further, the Crown did not inform the Band of the compensation offered, or the Band's right to claim for higher compensation amount.

November 16, 1972 Taking of 74.29 Acres - Plan 53922

86. The Crown breached its fiduciary duty to inform and advise the Band and to obtain proper and adequate compensation upon an expropriation of 74.29 acres of Cote Reserve land. The compensation paid was inadequate, and the taking did not minimally impair the Band's interest in its reserve. Further, the Crown did not inform the Band of the compensation offered, or the Band's right to claim for higher compensation amount.

1976 Road Widening - Plan 62877

87. The taking of Cote Reserve land for the widening of the road allowance for Highway 8 was without lawful authority, and in breach of the Crown's fiduciary obligations. The Crown made no attempt to follow its own statutory requirements, nor to fulfil the basic fiduciary obligations of full disclosure, good faith, loyalty, and ordinary prudence for the best interests of the Band.

Issue 3: Honour of the Crown

88. At all material times in this Claim, the Crown had an obligation to act honourably. When dealing with the reserve lands of the Cote Band, the Crown failed to comply with this duty throughout the surrenders, exchanges, and reconstitutions of the Cote First Nation's reserve lands.
89. The honour of the Crown requires compliance with statutory and fiduciary duties and conduct that is honourable and fair at all times leading up to the takings of

reserve land, throughout the process of the takings, and including its actions subsequent to the takings for the road allowances.

90. The Crown's actions in each of these instances fell short of this standard. The Crown did not consult or inform the Cote Band of decisions not to obtain compensation for the land takings; it took reserve lands without lawful authority; when compensation was obtained, no attempt was made to determine fair market value; and in all instances, the Crown acted without regard to the fiduciary relationship that exists between the Crown and the Cote First Nation.

VII. Relief Sought

91. The First Nation seeks the following relief:
- (a) Equitable compensation for the current, unimproved market value of the Claim lands;
 - (b) Equitable compensation for loss of use of the Claim lands;
 - (c) Equitable interest calculated from the date of the breaches to the date of the judgment;
 - (d) Compensation to the Cote First Nation for expending its own funds to repair or maintain the roads;
 - (e) an award of solicitor-client costs pursuant to the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, section 110(2) in relation to the specific claim and this proceeding; and
 - (f) such other relief as this Honourable Tribunal deems just.

Dated this 16th day of June 2021, at the City of Calgary, in the Province of Alberta.

MAURICE LAW



Sheryl A. Manychief/Ryan Lake
Lawyers for the Claimant

Maurice Law Barristers & Solicitors
35 Wolf Drive
Redwood Meadows, Alberta T3Z 1A3
Phone: (403) 266-1201
Fax: (403) 266-2701
Email: smanychief@mauricelaw.com
rlake@mauricelaw.com