FILE NO.: SCT-5003-13
CITATION: 2023 SCTC 1
DATE: 20230118

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:	
SAULTEAUX FIRST NATION Claimant	Ryan Lake, Sheryl Manychief and Ron Maurice, for the Claimant
– and –	
HIS MAJESTY THE KING IN RIGHT OF CANADA As represented by the Minister of Crown-Indigenous Relations Respondent	Scott Bell, Lauri Miller, Brady Fetch, Jody Lintott, David Culleton and Donna Harris, for the Respondent
	HEARD: April 14, 2016, September 27 to October 5, 2021 and June 13–15, 2022

REASONS FOR DECISION

Honourable Victoria Chiappetta, Chairperson

NOTE: This document is subject to editorial revision before its reproduction in final form.

Cases Cited:

Guerin v R, [1984] 2 SCR 335, 13 DLR (4th) 321; *Blueberry River Indian Band v Canada (Department of Indian Affairs & Northern Development)*, [1995] 4 SCR 344, 130 DLR (4th) 193*; Makwa Sahgaiehcan First Nation v Her Majesty the Queen in Right of Canada*, 2019 SCTC 5*; Kahkewistahaw First Nation v Her Majesty the Queen in Right of Canada*, 2022 SCTC 5; *Southwind v Canada*, 2021 SCC 28, 459 DLR (4th) 1*; Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada)*, 2015 SCTC 6*; Chippewas of Kettle & Stony Point v Canada (AG)*, 1996 CarswellOnt 4447, 141 DLR (4th) 1*; Osoyoos Indian Band v Oliver (Town)*, 2001 SCC 85, [2001] 3 SCR 746*; Wewaykum Indian Band v Canada*, 2002 SCC 79, [2002] 4 SCR 245*; Tobacco Plains Indian Band v Her Majesty the Queen in Right of Canada*, 2017 SCTC 4*; Williams Lake Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 6*; Semiahmoo Indian Band v Canada (1997)*, [1998] 1 FC 3, 1997 CarswellNat 1316.

Statutes and Regulations Cited:

Specific Claims Tribunal Act, SC 2008, c 22, s 14.

Headnote:

Aboriginal Law – Specific Claim – Surrender – Reserve – Fiduciary Duty – Tainted Dealings

In January 1960, the Saulteaux First Nation surrendered two Jackfish Lake waterfront parcels totalling 207 acres of Indian Reserve No. 159 (IR 159), for sale, in exchange for $20,000 in cash compensation and roughly 4,970 acres of vacant provincial Crown land, including some mineral rights, at Helene Lake and Birch Lake located approximately 65 kilometres northeast of IR 159. The Province of Saskatchewan desired the land at Jackfish Lake for a public park and recreation area.

The land at Helene Lake and Birch Lake offered few resources, as well as limited economic value and recreational utility, but it was significantly larger, had some potential for agriculture, hunting, and recreation, and provided more attractive mineral rights than the Jackfish Lake land. The Claimant argued that the surrender and exchange was foolish and improvident, and amounted to an exploitative bargain such that the Crown should have withheld its consent or at least guaranteed a minimal impairment of the First Nation's interest in the reserve land based on the Crown's fiduciary duty to Indigenous Peoples. The Respondent argued that it was a fair and reasonable agreement when viewed from the perspective of the First Nation at the time and that, as such, it had to respect and honour the First Nation's decision as an autonomous actor rather than substitute its judgement. It also argued that the Crown's fiduciary duty does not extend to a duty of minimal impairment in the circumstances of the case.

Both Parties presented expert evidence about the value of the land surrendered and the land exchanged at the time of the surrender. Two of the three experts, utilizing a valuation method known as the direct comparison approach, agreed that the values of the two parcels of land were similar and that, with the cash payment included, the value received by the Saulteaux First Nation was greater than what was surrendered. A third expert, using a valuation method known as the subdivision development approach, opined that the land surrendered was significantly more valuable than what was exchanged. Based on the circumstances of the case, and the fact that the land surrendered was not "ripe" for subdivision, the Tribunal determined that the direct comparison approach was the more appropriate and preferable methodology.

The Claimant also argued that the Crown tainted the dealings by pressuring the First Nation to surrender, and by withholding the option of surrendering the land to be leased rather than sold. The Tribunal concluded that the Crown did not place undue pressure on the First Nation, nor did it withhold the option to lease: the First Nation decided to surrender the land in exchange for a greater quantity of land elsewhere, as well as a cash payment, and it understood that the land could be leased, but chose to sell it instead.

With the value of the land surrendered and the land exchanged comparable, with the First Nation's understanding of the deal adequate, and with the dealings not tainted by the Crown, the Tribunal concluded that the surrender did not violate the Crown's fiduciary duty. The Tribunal

also determined that the duty of minimal impairment only applies to an expropriation, and not a surrender.

The Tribunal concluded that the Claim was not valid.

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I. OVERVIEW

[1] This Claim relates to the January 25, 1960, surrender for sale of two Jackfish Lake waterfront parcels totalling 207 acres of the Saulteaux First Nation's (Saulteaux, Claimant, the First Nation or the Band) Indian Reserve No. 159 (IR 159) bordering Jackfish Lake (the Surrender Land). In exchange for the surrender, Saulteaux received $20,000 in cash compensation and roughly 4,970 acres of vacant provincial Crown land at Helene Lake and Birch Lake (the Exchange Land) located approximately 65 kilometres northeast of IR 159, including some mineral rights.

[2] The Surrender Land was and continues to be desirable land for recreational development and economic exploitation. It contains 7,050 feet of sandy beach shoreline and excellent fishing resources. The Surrender Land had been attracting members of white settlements nearby as a recreational destination since as early as 1905 (Testimony of Norris Wilson, Hearing Transcript, September 27, 2021, at 79–80). The land was surrendered at the request of the Province of Saskatchewan for the establishment of a provincial park, to stimulate recreational and economic development in the region. It was sold, despite the First Nation's initial refusal to surrender and its initial stated preference for a leasing agreement.

[3] The Exchange Land received by the First Nation offered little fishing resources, limited agricultural potential, as well as a limited economic value and recreational utility. However, it was significantly larger, offered a potential for livestock raising and grazing, was suitable for growing slough hay, offered some hunting and trapping, some development potential for residential structures associated with the use of agricultural land, as well as provided more attractive mineral rights than the Jackfish Lake land.

[4] The Claimant argues that the surrender and exchange was so foolish and improvident, it amounted to an exploitative bargain. It submits that the Crown should have withheld its consent or at least guaranteed a minimal impairment of the First Nation's interest in the reserve land. The Respondent argues that it was a fair and reasonable agreement when viewed from the perspective of the First Nation at the time and that, as such, it had to respect and honour the First Nation's decision as an autonomous actor rather than substitute its judgement. Additionally, it argues that its fiduciary duty in the circumstances did not extend to the minimal impairment of the First Nation's interest in the reserve land.

II. PROCEDURAL HISTORY OF THE CLAIM

[5] The Claimant is a First Nation within the meaning of subsection 2(1) of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*].

[6] The Claimant originally filed a claim with the Minister of Indian Affairs and Northern Development on December 10, 2008, alleging a breach of fiduciary duties by the Respondent that are now the subject of the Claim.

[7] The Specific Claims Branch notified the First Nation in writing on November 25, 2011, that the Claim was not accepted for negotiation on the basis that there was no outstanding obligation on the part of the Government of Canada.

[8] The Claimant filed its Declaration of Claim with the Specific Claims Tribunal (Tribunal) on December 3, 2013, alleging violations of paragraphs 14(1)(b), (c) and (d) of the *SCTA*. The Claimant sought compensation for the current unimproved value of the land minus the current unimproved value of the land received in exchange as a set off, as well as damages as a result of the net loss of use of the Surrender Land from 1960 to the date of settlement. The Respondent filed its Response to the Declaration of Claim with the Tribunal on January 29, 2014.

[9] All conditions precedent were satisfied.

[10] The Claim was not bifurcated.

[11] Despite pleading more broadly, the Claimant restricted its Claim to paragraph 14(1)(c) of the *SCTA*. At the hearing, the Claimant alleged and submitted only that, in facilitating the 1960 surrender, the Respondent breached its pre-surrender fiduciary obligations owed to the Claimant. The Claimant did not allege a statutory violation further to the surrender, in accordance with paragraph 14(1)(b) of the *SCTA* or an illegal disposition in accordance with paragraph 14(1)(d) of the *SCTA*.

III. BACKGROUND AND HISTORICAL EVIDENCE

A. The Saulteaux Indian Band

[12] Treaty 6 was signed at Forts Carlton and Pitt in 1876. The treaty provisions included setting

apart reserves for the signatory First Nations in the amount of one square mile for each family of five, or 128 acres per capita. During the 1876 Treaty 6 negotiations, the government treaty party met with a group of Saulteaux Indians under Chief Yellow Sky. This group did not enter treaty at that time. On August 4, 1877, the Crown again met with the Saulteaux Indians under Chief Yellow Sky, who indicated they did not want to take treaty, as they wished to remain independent.

[13] The Claimant is the successor in interest of these Saulteaux Indians.

[14] It was not until August 18, 1954, and then May 15, 1956, that 31 members of the Saulteaux Band adhered to Treaty 6.

B. The creation of Indian Reserve No. 159 at Jackfish Lake

[15] By letter dated December 22, 1905, the Assistant Indian Commissioner reported to the Secretary of the Department of Indian Affairs (DIA) that a number of Saulteaux Indians had petitioned the Indian Agent at Battleford for a reserve.

[16] By letter dated May 21, 1906, the Indian Agent at Battleford reported to the Indian Commissioner that the Saulteaux Indians wish to be located in a strip along the northeast shore of Jackfish Lake, where the land is not yet settled.

[17] By letter dated June 7, 1906, the Indian Commissioner stated that the Saulteaux Indians have made Jackfish Lake their headquarters for a number of years and support themselves by fishing, hunting and other modes and have always been looked upon as independent non-treaty Indians.

[18] By letter dated June 13, 1906, the Secretary of the DIA wrote to the Secretary of the Department of the Interior (DOI) advising him that the Saulteaux Indians living in Battleford District were desirous of a reserve. He asked the DOI to reserve from sale or settlement a strip of land along the northeast shore of Jackfish Lake, until the DIA was in a position to state definitely what was required.

[19] Numerous letters were exchanged between the DIA and DOI from June 1906 to March 1909 to determine the amount and exact location of land to be set apart as a reserve for the Saulteaux Indians at Jackfish Lake.

[20] On December 22, 1922, Order in Council PC 1922-2617 confirmed IR 159 for the Saulteaux Band. The order in council described the reserve as consisting of "9010.869 acres".

C. Requests for the Indian Reserve No. 159 land at Jackfish Lake

[21] On June 12, 1947, the Saskatchewan Premier wrote a letter to the Minister of the Department of Mines and Resources (Canada) alleging that he had received a petition from the Saulteaux Band indicating they wanted to transfer their residence from IR 159 to the north side of Birch Lake. The Premier inquired whether it would be possible to make the exchange in accordance with the wishes of the Indians, by having the Dominion Government transfer the Crown land constituting IR 159 to the Province of Saskatchewan (Saskatchewan) and Saskatchewan making available an equivalent amount of land at Birch Lake.

[22] The letter did not enclose a copy of the petition and no such document has been located.

[23] By letter dated August 19, 1947, the Indian Agent reported he had called a Band meeting on August 18, and although only ten Band members attended the meeting, they were strongly against any transfer to Birch Lake because they had established homes in the vicinity of Jackfish Lake, they had wood, hay and engaged in considerable commercial fishing. While the land was not of the best from an agricultural viewpoint, it would be no better around Birch Lake.

[24] The Inspector of Indian Agencies, Saskatchewan, wrote to the Department of Mines and Minerals (Canada) on August 25, 1947, and stated that the Indian Agent discussed the transfer of the Band from their present location near Jackfish Lake to Birch Lake and, as expected, this matter had the support of very few Band members such that the matter should be considered closed.

[25] By letter dated September 12, 1947, the Acting Minister of the Department of Mines and Minerals (Canada) responded to the Saskatchewan Premier, informing him the Saulteaux Band was opposed to moving to the Birch Lake area. He further advised that "as they have indicated that they have no desire of making a move to the suggested location, I must advise that there is no further action the Indian Affairs Branch can take in the matter" (Ex-1, Tab 60).

[26] This first request of the Province for a surrender and exchange of the Saulteaux land at Jackfish Lake was thus rejected.

D. The Brown Report

[27] A further push for the IR 159 land came from the creation of the Brown Commission and the conclusions contained in its report. In the early 1950s, Saskatchewan commissioned C. S. Brown to complete a report entitled "Investigation of Recreational Facilities and Potentials in Northwestern Saskatchewan" (Ex-1, Tab 67 (Brown Report)).

[28] The purpose of the Brown Report was described as a "study of the recreational resources of the northwest settled region of the province, the Battleford-Meadow Lake area, and their relation to the recreational needs of the local residents and to the tourist industry." Brown noted that "[o]ne of the considerations which prompted this investigation was the public demand for establishment of a provincial park to serve the population of most of the western part of the province."

[29] With respect to Jackfish and Murray Lakes, Brown concluded that "Jackfish and Murray Lakes provide an exceedingly attractive recreational area. Jackfish Lake, in particular, has numerous good beaches, while both lakes offer fairly good pike fishing and some pickerel."

[30] Brown informed that recreational development had already taken place on Jackfish and Murray Lakes. He noted the favourable lake frontage had been roughly divided into lots and the cottage owner given a form of a long-term lease. They paid either an annual fee or a lump sum equivalent to a purchase price. He concluded that "[o]nly two attractive sites on the lake suitable for multi-use recreational development remain unoccupied and undeveloped. Both of these are on the northeast shore and both are within Indian Reserves."

[31] Brown recommended that:

> Because of the favourable character of the first of these two sites, it is suggested that an attempt be made to obtain title to it in return for remuneration or comparable land elsewhere. The fact that it is unused by the Indians[,] that it is isolated from the remainder of the reservation, and is of no agricultural value apart from grazing, may influence their decision in our favour.

[32] In his summary, Brown stated that Jackfish and Murray Lakes offered the most southerly areas with a major recreational potential. He noted the haphazard development that had already taken place in the area but concluded: "...a satisfactory site does remain undeveloped on an unused fragment of an Indian Reserve on the northeast shore of the lake, and I believe this site should be

obtained if possible and developed for the use and enjoyment of the public." Specifically, one of the recommendations coming out of the investigation was:

> 7. That an attempt be made to obtain title to the fractional east half of Section 10, Township 48, Range 17, West of the 3rd, containing about eighty acres on the east shore, north end of Jackfish Lake, presently Indian Reserve, and plans be formulated for its gradual development for intensive recreational use.

E. The Baker Report

[33] In 1956, a further report was completed for the Conservation Branch of the Department of Natural Resources (Saskatchewan) by Recreation Consultant W. M. Baker entitled "A Report on Recreation Conditions on Jackfish & Murray Lakes (Rural Municipality No. 468 – Meota)" (Ex-24, Tab 456 (Baker Report)). Baker proposed that "a portion of Indian Reservation No. 159 situated on Jackfish Lake…should be purchased or secured on a long term lease". He identified the reserve land as the most desirable for beach front, as well as another sand shoreline further to the north, within Indian Reservation No. 159.

[34] Baker insisted that the Saulteaux reserve land was central to the development of the lake resort.

[35] As a result of this report, the Recreational Resources Development Committee was created, and Honourable A. G. Kuziak was appointed as its Chair. The Committee recommended funds be made available to immediately acquire land for the provincial park. This included land that formed part of IR 159. Kuziak further stated:

> Your committee urgently recommends against postponing a decision on the Jackfish and Murray Lakes proposal…[t]he cost of acquiring necessary land – undoubtedly much higher today than 10 years ago – will climb even higher with each additional delay. [Ex-2, Tab 84]

F. Proposal for exchange of land

[36] In a letter dated March 4, 1958, the Deputy Minister of Natural Resources (Saskatchewan) inquired with the Deputy Minister of the Department of Citizenship and Immigration (Canada) as to whether Saskatchewan could procure title to certain portions of IR 159 for inclusion in a regional provincial park. He inquired as to the price the Saulteaux Band would want for the land.

[37] On March 14, 1958, Sam Moccasin, Saulteaux Band member, wrote to the Regional Supervisor of Indian Agencies (Canada) informing him of a Band meeting that was held on March 7, 1958, indicating that "[w]e held a Band meeting on the reserve on March 7/58 and the meeting was about the summer resort they want to build on the Jackfish Lake reserve but that's our only fishing spot for the reserve" (Ex-2, Tab 92).

[38] By letter dated March 17, 1958, the Superintendent of Reserves and Trusts (Canada) wrote to the Regional Supervisor (Canada) regarding the interest of Saskatchewan in a portion of IR 159. He noted the Superintendent of the Battleford Agency (Canada) would discuss the matter with the Saulteaux Band. A handwritten marginal note states the Superintendent reported by phone that "[h]e met with the Band and there might be a possibility of some sort of lease offered but so far no selling the Indians were not interested under any circumstances" (Ex-2, Tab 95).

[39] In a letter dated March 18, 1958, the Superintendent of the Battleford Agency (Canada) reported to the Regional Supervisor (Canada) that "a meeting of the Saulteaux Indian Band was held on their Reserve on March 17, 1958, for the purpose of discussing the selling to the Provincial Government those parcels of land on the Saulteaux Reserve adjacent to the Jack Fish Lake" (Ex-2, Tab 97). He reported the members "came forward one after another objecting to the disposal of these parcels of land and advised that they would not entertain any further discussion relating to the selling of any part of their Reserve."

[40] In a letter dated March 26, 1958, the Deputy Minister of Citizenship and Immigration (Canada) wrote to the Deputy Minister of Natural Resources (Saskatchewan) and stated that the Agency Superintendent met with the Band and they voted unanimously against disposing of their land. In addition, he stated:

> One objection was that the sale of the land would close off access to fishing grounds used by the Indians. A second objection was that a reduction in the area of the Reserve would make the Reserve too small for the needs of the Band.
>
> I do not know whether it would be possible to induce the members of the Band to alter their opinion, but if the Indians can be assured of continuing access to the fishing grounds and should there be conveniently located land under the control of the Province that could be exchanged for the land required by your Department, it might be worthwhile to discuss the matter further with the Indians. If the matter is to be taken up with the Indians again, it might be helpful if a representative of your Department met with them to explain your requirements in detail and to work out

> an acceptable arrangement for compensation either in terms of money or an exchange for other land owned by the Province. [Ex-2, Tab 100]

[41] The March 31, 1958, Battleford Agency Quarterly Report stated:

> For the last two years it has been brought to the attention of the Saulteaux Indian Band to consider the leasing for camping of that part of their Reserve which is adjacent to Jackfish Lake. At the meeting held for that purpose, the majority of the members were favourable toward the project. The leasing of that portion of the Reserve could be a good source of revenue as there is a shortage of space for campers along the Jackfish Lake. [Ex-2, Tab 85]

[42] On April 3, 1958, the Deputy Minister of Natural Resources (Saskatchewan) replied to the Deputy Minister of Citizenship and Immigration's (Canada) March 26th letter stating:

> I must say in all honesty that we appreciate and understand the position which the Band has adopted regarding our proposal. Naturally, we had hoped that the Band might feel inclined to sell their lands because it would simplify administrative problems as far as the proposed park is concerned.
>
> We had previously checked the provincial lands contiguous to the reserve and unfortunately these lands are tied up under 33-year pasture leases. Most of these do not expire until 1980 or later.
>
> I wonder if an arrangement could be worked out to gain administration and control of the lands in question, with the proviso that the Band be given an unrestricted right of access through these lands to their fishing grounds.
>
> It is our intention if we create this park to hold certain portions of it free from disposition and those parts of the reserve which we desire could easily be included within such areas.
>
> Basically our concern is to gain sufficient control of the lands abutting the westerly shore of Jackfish Lake to give all people in the province free access to the water.
>
> If the Band could agree to our proposal and provided their request for compensation meets our land acquisition budget, we need ask nothing further of the Band. [Ex-2, Tab 101]

[43] Correspondence took place between provincial and federal agencies attempting to set up a meeting with Band members to see if an arrangement could be worked out.

[44] In a letter dated June 13, 1958, the Superintendent of the Battleford Agency (Canada) reported to the Regional Supervisor of Indian Agencies (Saskatchewan) that there had been no further developments. He stated:

> Please be advised that there have not been any further developments since we last wrote on the subject on March 18, 1958.

> I further wish to advise that no representatives of the Provincial Department of Natural Resources have approached the Band for the purpose of discussing the Park deal.
>
> As stated in my letter of March 18th, the Band members would not consider to sell any part of their reserve. For the time being, in my opinion, it will not serve any good purpose to re-open the talk with the members of the Band, unless the Provincial Government has a very generous offer to make. [Ex-2, Tab 108]

[45] In a Saskatchewan cabinet memorandum from the Cabinet Secretary dated September 29, 1959, it was indicated that:

> Consideration was given to proposals of the Department of Natural Resources for the acquisition of further land on the shore of Jackfish Lake.
>
> It was agreed that the Department of Natural Resources is authorized to continue its negotiations further for the acquisition of land at Jackfish Lake on the basis outlined in the report entitled "Jackfish Lake Proposal." [Ex-2, Tab 119]

[46] A Band Council document dated October 13, 1959, with signature lines for Chief Alex Katcheech, Councillor John Swimmer and Councillor Jim Moccasin, which do not contain an actual signature but contain the reference "(signed)" states:

> A meeting was held on the Saulteaux Reserve, at the home of Chief Alex Katcheech, on Monday October 12, 1959. It was agreed that the Band was willing to negotiate with the Government of Saskatchewan for the sale of certain portions of the Saulteaux Reserve bordering the North Shore of Jack Fish Lake… [Ex-2, Tab 120]

[47] The Band Council document provides land descriptions for the land to be exchanged at Jackfish Lake and Birch Lake. In addition to land, the Saulteaux Band also sought:

> The sum of Twenty Thousand Dollars ($20,000.00) is also asked to be to the credit of the Saulteaux Band. It is also requested as a condition of sale, that all mineral rights be included in the above land transaction and to be the property of that party holding title.

[48] In a letter dated October 23, 1959, the Superintendent of the Battleford Agency sent a copy of the proposal set forth by the Saulteaux Band Council to the Regional Supervisor:

> Enclosed herewith please find a copy of the proposals as set forth by the Saulteaux Band Council in which they set forth their terms of negotiation in exchange for approximately 217 acres of reserve land bordering the north shore of Jackfish Lake. This meeting was held on the reserve without the presence of Department Officials. Their proposal has been submitted to the Department of Natural Resources for consideration. [Ex-2, Tab 122]

[49] He also noted they had "not as yet received any word from the Government of Saskatchewan as to whether these terms are acceptable to them."

[50] In a document dated October 29, 1959, to the Saulteaux Indian Council, the Deputy Minister of Natural Resources (Saskatchewan) set out a "proposal for [the] exchange of Indian Reserve lands on Jackfish Lake for lands in the Provincial Forest at Birch Lake" (Ex-2, Tab 130). The proposal was as follows:

> 1. The Indian Band to transfer to the Province the fractional south east quarter of Section 2 and the fractional east half of Section 10 in township 48, range 17, West of the Third Meridian including mineral rights.
>
> 2. The Province to pay the sum of $20,000.00 for the above described lands.
>
> 3. The Province to transfer to the Department of Indian Affairs, fractional north west quarter of Section 2, fractional east half of Section 3, fractional Sections 10, 11, 12, Sections 13 and 14, fractional Sections 15, 16, 20, Section 21 in township 52, range 15, West of the Third Meridian.
>
> 4. The Province to transfer to the Department of Indian Affairs the mineral rights to Section 14, township 52, range 15, West of the Third Meridian in exchange for mineral rights relinquished by the Indians.
>
> 5. The Province to compensate one occupant family on the fractional south east of Section 2 for improvements.
>
> 6. The Province to arrange for the closing and transfer of surveyed road allowances within the area to be exchanged.
>
> 7. The existing trail running north-easterly through Section 20 to remain and the Province to have free and unrestricted use of [the] same for access to the provincial forest.

[51] Minutes of the Saskatchewan Cabinet dated October 30, 1959, state the following:

> Consideration was given to a proposal of the Department of Natural Resources which involves acquiring two parcels of land on the shores of Jackfish Lake totalling 207 acres, including mineral rights, from the Sa[u]lteaux Indians, in exchange for which the Department will transfer to the Indians the following:
>
> (1) cash payment of $20,000;
>
> (2) a tract of Crown land 5,363 acres in extent; and
>
> (3) mineral right on one section of land. [Ex-2, Tab 133]

[52] It was also reported that if the Province acquires Indian land on the shores of Jackfish Lake,

it will be necessary to compensate for the removal and re-establishment of one Indian family now located on this land.

[53] It was generally agreed that the offer of the Department of Natural Resources to the Indians appears generous. It was agreed, however, that the proposal is approved in principle. It was further agreed that the Department should give consideration to reducing its offer if at all practical.

[54] On November 2, 1959, the Saulteaux Band Council prepared a Band Council Resolution (BCR) that states:

> That the proposal of the Department of Natural Resources, Government of Saskatchewan has been read and is fully understood by us.
>
> Said proposal is accepted and it is our request that the Indian Affairs Branch proceed with the preparation of the necessary documents for the surrender vote… [Ex-2, Tab 134]

[55] On November 3, 1959, the Superintendent of the Battleford Agency sent a letter to the Regional Supervisor of Saskatchewan (Canada) attaching the proposal for the exchange of Indian reserve land on Jackfish Land for land in the provincial forest at Birch Lake and the BCR wherein the Saulteaux Band accepts the proposal. He asked that "the necessary forms and instructions be forwarded so that we may call a meeting for the surrender vote" (Ex-2, Tab 138). He described the land that was to be obtained by the Saulteaux:

> The Crown owned lands under negotiation include approximately 300 acres of fair quality slough hay which grows along the lakes, the acreage varies according to water level. The remaining land is rolling and sandy, of no agriculture value. Timber is light and of little commercial value. There is limited fishing, but wild game and fur bearing animals are plentiful. Total acreage involves around 4,600 acres, compared with the 207 acres which the Saulteaux [Band] will relinquish.
>
> …
>
> It is felt the transaction will be of benefit to the Indians. They will derive revenue from trap[p]ing and the Big game obtainable will assist with their livelihood.

[56] In a letter dated November 5, 1959, from the Regional Supervisor (Canada) to the Chief of Reserves and Trusts Division (Canada), the former enclosed the proposal for the exchange of land on Jackfish Lake for land in the provincial forest at Birch Lake, and the BCR wherein the Saulteaux Band accepted the proposal. The letter noted:

> The Province of Saskatchewan is interested in acquiring about 200 acres of the Reserve [159] bordering on Jackfish Lake, for recreational area. No doubt the Province is being pressured by various residents of the City of North Battleford and the Jackfish Lake area to provide additional recreational space along the shores of this lake. It would appear that the Indians would benefit by entering into this transaction with the Provincial Government authorities.
>
> It is therefore recommended that the proposal receive careful consideration, and that the request of the Band Council be approved. It is requested that the necessary documents for taking a surrender vote of the Indians concerned be completed and forwarded to Superintendent Doll for presentation to the Indians of the Saulteaux Band.
>
> I have discussed this transaction with the Provincial Government authorities of the Department of Natural Resources. As this transaction will definitely benefit the Indians, I do not hesitate in recommending it be approved.
>
> …
>
> If the Province receives the mineral rights to 207 acres of the [Saulteaux] Reserve, they believe they are doing the best they can in granting the mineral rights on 640 acres in the exchange area to the Indians concerned.
>
> …
>
> We must admit that the proposal presented to the Indians by the Province of Saskatchewan is very fair and reasonable. I would point out that the 4,600 acres which the Indians would gain in this transaction would be suitable for livestock raising to a greater extent than the 207 acres that the Province wish to acquire for recreational purposes. [Ex-2, Tab 142]

[57] On December 2, 1959, the Deputy Minister of Natural Resources (Saskatchewan) wrote to the Deputy Minister of Citizenship and Immigration (Canada) stating that the Province was pleased that the Department found the proposal acceptable and that the Saulteaux Band would "of course, enjoy the same privileges in the use of this land they are asked to surrender as will the general public for lake access and recreation" (Ex-2, Tab 154).

[58] In a letter dated December 7, 1959, the Chief of Reserves and Trusts Division (Canada) wrote to the Regional Supervisor for Saskatchewan (Canada) regarding the proposed land transfer. He stated:

> Further to my letter of December 2, 1959, it has now come to our attention that we have been carrying out correspondence with the Agency office with respect to a surrender of the Fractional N.E. ¼ of Section 10-48-17 W3M. It appears that the Saulteaux Band would like to lease this area for summer resort purposes.

> The above proposal conflicts with the exchange to the Province as the areas in question is part of the 207 acres it is proposed to transfer. It is suggested that if the surrender documents sent to the Agency with our letter of October 8, 1959, have not yet been presented to the Band, that they be withheld until surrender documents are forwarded with respect to the 207 acres it is proposed to exchange with the Province.
>
> It is interesting to note that at a Band meeting held August 7, 1959, most of the voting members favoured leasing the land, and perhaps while the Band Council favours the proposed exchange, the majority could well disapprove. [Ex-2, Tabs 156 and 157]

[59] In a letter dated December 21, 1959, the Regional Supervisor for Saskatchewan (Canada) wrote to the Superintendent of the Battleford Agency inquiring as to a possible misunderstanding with regards to the leasing versus the exchange of the Jackfish Lake land:

> …there is some misunderstanding amongst the Indians in regards to [the] surrender for sale, as it would appear that the Saulteaux Band would like to lease this area for summer resort purposes.
>
> The contents of Department letter, December 7, is somewhat confusing to us here in this office and we would appreciate having an explanation. [Ex-2, Tab 160]

[60] In a letter dated December 23, 1959, the Superintendent of the Battleford Agency (Canada) responded to the Regional Supervisor for Saskatchewan (Canada) regarding the issue of leasing. He stated:

> On December 18 we returned the Surrender Document for a proposed lease of Saulteaux Indian land to headquarters. Since the Government of Saskatchewan's second proposal for acquiring approximately 207 acres of reserve land in exchange for other Provincial lands, as well as other conditions previously set forth, the Indians are no longer interested in leasing. [Ex-2, Tab 164]

[61] It is noteworthy to add that an omission to include the compensation of the one occupant family at the fractional south-east of Section 2 for improvements in the surrender agreement was rectified in the surrender documents prior to submitting them to voting members.

G. The 1960 surrender

[62] A meeting of the Saulteaux Band was held on January 25, 1960, at 1:00 P.M. at the Saulteaux Indian Day School for the purpose of taking a vote on the proposed surrender. The minutes of the meeting state the following:

- An interpreter was chosen on the recommendation of the Band Council and was sworn to interpret the meeting from Cree to English and from English to Cree. The Indian Superintendent of the Battleford Agency asked those at the meeting if they were satisfied with the selection of the interpreter and there were no objections;

- The terms of the surrender were read by the Indian Superintendent and translated by the interpreter. The Indian Superintendent asked if the conditions had been understood and if anyone had any questions;

- A representative of Saskatchewan stated if the deal was completed, "the Indian people would have the same right to use the land as the White people" (Ex-2, Tabs 171 and 172); and

- Voting was carried out; and the result was fifty-two votes in favour of surrender, and eight votes against.

[63] The Chief and two Councillors executed the surrender form with the Superintendent of the Indian Agency signing on behalf of Canada, which surrendered 207 acres of IR 159 to Her Majesty the Queen in trust to sell to Saskatchewan. The conditions included in the surrender were the following:

> 1. THAT the Province of Saskatchewan will pay to the Government of Canada for credit to our capital trust funds at Ottawa the amount of Twenty thousand Dollars ($20,000.00).
>
> 2. THAT the Province of Saskatchewan will transfer to Her Majesty the Queen in right of Canada, the following lands: The fractional northwest quarter of Section 2, fractional east half of Section 3, fractional Sections 10, 11, 12, Sections 13 and 14, fractional Sections 15, 16, 20 and 21, all in Township 52, Range 15, west of the third meridian, and also all statutory road allowances therein, excepting the existing trail running north easterly through Section 20, which is to remain open, and the Province of Saskatchewan is to have free and unrestricted use of this trail for access to the provincial forest. Mines and minerals to be reserved with the exception of Section 14.
>
> 3. THAT the Province of Saskatchewan will be required to fully compensate the occupant of the Southeast quarter of Section 2-52-15, W3M, for his improvements to land and to the buildings erected thereon, and if necessary the Province will also be required to move the dwelling to a chosen location and place it on a foundation or basement equivalent to that now in use.

> 4. THAT the land recited in item 2 above will be set apart as a reserve for the use and benefit of our Band. [Ex-2, Tab 175]

[64] On January 25, 1960, the Chief of the Saulteaux Band swore an affidavit attesting the surrender was assented to by a majority of the electors of the Band at a general meeting of the Band called by Council, and that the terms of the surrender were translated to the electors by an interpreter qualified to interpret from the English language to the language of the Indians.

[65] On January 26, 1960, the Indian Superintendent swore an affidavit attesting the surrender was assented to by a majority of the electors of the Band at a general meeting of the Band called by Council, and that he was present at the meeting when assent to the surrender was given.

[66] By letter dated January 29, 1960, the Regional Supervisor for Saskatchewan (Canada) sent the surrender and supporting documents to the Chief of the Reserves and Trusts Division (Canada) in Ottawa. He stated: "As this surrender was approved by more than 51% of the voting members of this Band, I would recommend that it be approved and the necessary action taken…" (Ex-2, Tab 178).

[67] In a memorandum dated February 8, 1960, the Director (Canada) advised the Deputy Minister (Canada) of the surrender. He wrote: "At this meeting, 60 voting members of the 82 eligible to vote were present and 52 were in favour of surrender with 8 against. As a majority vote was obtained at the meeting the surrender was carried" (Ex-2, Tab 179). He further stated: "The attached Submission to Council is for the purpose of having the surrender accepted, as provided by Section 40 of the Indian Act." On the same date, the Minister of Citizenship and Immigration (Canada) reported the surrender to the Governor General in Council, recommending the surrender be accepted as provided by section 40 of the *Indian Act*.

[68] On February 18, 1960, Order in Council PC 1960-178 was passed, accepting the surrender. On March 10, 1960, Order in Council PC 1960-297 was passed, transferring administration and control of the land described in the surrender to Saskatchewan.

[69] A May 9, 1960, department memorandum from the Deputy Minister of Natural Resources (Saskatchewan) to the Acting Minister of Natural Resources (Saskatchewan) requested an order in council to approve the transfer of title for the Birch Lake land to the Saulteaux Band and to

approve the payment of $20,000.

[70] On May 9, 1960, Saskatchewan passed Order in Council 785/60 authorizing the Saskatchewan Minister of Natural Resources to purchase the surrendered land and to transfer administration and control of the land at Birch Lake and payment in the amount of $20,000 to the Superintendent of Indian Affairs (Canada), in trust for the Saulteaux Band.

[71] In a voucher for payment dated May 12, 1960, Saskatchewan paid $20,000 to the Superintendent General of Indian Affairs (Canada), in trust for the Saulteaux Band, for the purchase of the surrendered land. This payment towards the credit of the Saulteaux Band was later confirmed by the Chief of Reserves and Trusts Division (Canada) on June 16, 1960.

[72] On May 21, 1960, Saskatchewan passed Order in Council 887/60 designating the surrendered land as a provincial park, to be known as "The Battlefords Provincial Park" (Ex-2, Tab 196).

[73] Appropriate certificates of title were issued, and the occupant of the south-east quarter of the land was moved and compensated to his satisfaction.

[74] In a BCR dated December 1, 1961, the Saulteaux Band resolved that the land in the Birch Lake area be designated as Saulteaux Indian Reserve No. 159A.

[75] On February 13, 1964, Order in Council PC 1964-219 was passed, setting apart the Birch Lake land as Saulteaux Indian Reserve No. 159A for the use and benefit of the Saulteaux Band.

[76] In a briefing note written on October 25, 1996, by an Environment Saskatchewan official to the Minister and Deputy Minister of the Department of Environment and Resource Management (Saskatchewan), the official noted the following:

> Further to the discussion which you had with the Honourable Bob Mitchell regarding the Saulteaux First Nation's understanding and conditions of sale of land under which they sold to the Department in 1960…
>
> According to the discussions which Mr. Mitchell had with the First Nation, the First Nation said there were three conditions of sale including:
>
> 1. No park access fees for the First Nation.

2. The First Nation could keep its fishing huts along the shore.

3. That First Nation members would get jobs in the park.

From a review of the files associated with this land sale, we could not find any record of the above three "conditions". [Ex-2, Tab 253]

IV. VALIDITY

A. Did Canada breach its pre-surrender fiduciary duty owed to the Claimant related to the 1960 surrender and exchange of IR 159, thus establishing a valid claim under paragraph 14(1)(c) of the *SCTA*?

1. Overview

[77] The Tribunal is asked to determine whether the Respondent breached its pre-surrender fiduciary duty in relation to the 1960 surrender and exchange of IR 159.

2. Did the surrender constitute an exploitative bargain?

a) Claimant's position

[78] The Claimant submits that the Respondent breached its pre-surrender fiduciary duty as the surrender constituted an exploitative bargain for the following reasons:

1. the surrender was foolish and improvident when viewed from the Band's perspective at the time;

2. the Band's understanding of the terms of the surrender was inadequate; and

3. the conduct of the Crown tainted the dealings in a manner which made it unsafe to rely on the Band's understanding and intention.

b) Respondent's position

[79] The Respondent denies that it breached its pre-surrender fiduciary duty in relation to the surrender. The surrender, it submits, was not an exploitative bargain. It argues that Canada took steps to confirm that the Saulteaux First Nation fully understood the bargain it had made with Saskatchewan and that the Claimant was an active participant in negotiating the terms of the surrender and exchange. The Respondent denies that its conduct tainted the dealings in a manner which made it unsafe to rely on the Band's understanding and intention and submits that there is

no evidence of undue pressure by the Crown on the Claimant to reach an agreement or agree to requests by Saskatchewan. The Respondent argues that the surrender and exchange negotiated by the Claimant with the provincial government of Saskatchewan was a fair and reasonable decision when viewed from the perspective of the First Nation at the time.

c) Law

[80] The first decision to qualify the relationship between the Crown and First Nations as a fiduciary relationship was *Guerin v R*, [1984] 2 SCR 335, 13 DLR (4th) 321 [*Guerin*].

[81] In *Guerin*, at page 376, Dickson J., writing for the majority, explained why a fiduciary obligation arose in the context of a surrender:

> In my view, the nature of Indian title and the framework of the statutory scheme established for disposing of Indian land places upon the Crown an equitable obligation, enforceable by the courts, to deal with the land for the benefit of the Indians. This obligation does not amount to a trust in the private law sense. It is rather a fiduciary duty. If, however, the Crown breaches this fiduciary duty it will be liable to the Indians in the same way and to the same extent as if such a trust were in effect.
>
> The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal, native or Indian title. The fact that Indian Bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the further proposition that the Indian interest in the land is inalienable except upon surrender to the Crown.
>
> An Indian Band is prohibited from directly transferring its interest to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the Crown then acting on the Band's behalf. The Crown first took this responsibility upon itself in the Royal Proclamation of 1763. It is still recognized in the surrender provisions of the *Indian Act*. The surrender requirement, and the responsibility it entails, are the source of a distinct fiduciary obligation owed by the Crown to the Indians.

[82] Discussing the surrender requirements contained in the *Royal Proclamation* as well as in the *Indian Act*, Dickson J. found that:

> The purpose of this surrender requirement is clearly to interpose the Crown between the Indians and prospective purchasers or lessees of their land, so as to prevent the Indians from being exploited. This is made clear in the Royal Proclamation itself, which prefaces the provision making the Crown an intermediary with a declaration that "great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our

> Interests, and to the great Dissatisfaction of the said Indians ....” Through the confirmation in the *Indian Act* of the historic responsibility which the Crown has undertaken, to act on behalf of the Indians so as to protect their interests in transactions with third parties, Parliament has conferred upon the Crown a discretion to decide for itself where the Indians’ best interests really lie. This is the effect of s. 18(1) of the Act. [*Guerin* at 383–84]

[83] The avoidance of exploitative bargains between Indigenous Peoples and incoming settlers is, therefore, at the very heart of what the imposition of a fiduciary duty on the Crown is meant to achieve.

[84] In *Blueberry River Indian Band v Canada (Department of Indian Affairs & Northern Development)*, [1995] 4 SCR 344, 130 DLR (4th) 193 [*Blueberry River*], the Supreme Court of Canada explored what constitutes exploitation in the context of reserve land surrenders. In a concurring opinion, McLachlin J. wrote that the *Indian Act*’s interposition of the Crown between Indigenous Peoples and settlers “strikes a balance between the two extremes of autonomy and protection” (para 35). Under the provisions of the *Indian Act*, a First Nation has “the right to decide whether to surrender [its] reserve, and its decision [is] to be respected” (para 35). However, if the decision to surrender is “foolish or improvident — a decision that constituted exploitation” the Crown has the discretion to refuse its consent to the surrender (para 35). To put it bluntly, “the Crown’s obligation was limited to preventing exploitative bargains” (para 35). Although writing in concurrence, the idea there must be a balance between autonomy and protection in McLachlin J.’s decision was adopted by the majority (para 14).

[85] In *Blueberry River*, McLachlin J. instructs that the impugned bargain must be “viewed from the perspective of the Band at the time” which leaves no room for hindsight (para 36). Citing *Fales v Canada Permanent Trust Co*, [1977] 2 SCR 302 at 315, 70 DLR (3d) 257, she directs that the standard by which the Crown, as fiduciary, is to be judged is that “of a man of ordinary prudence in managing his own affairs” (para 104). In the decision itself, Gonthier J. writes that he likely would not give effect to a surrender if “the Band’s understanding of its terms had been inadequate, or if the conduct of the Crown had somehow tainted the dealings in a manner which made it unsafe to rely on the Band’s understanding and intention” (para 14). The importance of understanding is underscored by McLachlin J. as well, as she puts significant emphasis on the time and opportunity to discuss a potential bargain within a First Nation, the quality of the Crown’s explanation of the proposed bargain, and the absence of influence by the Crown prior to or during

a surrender meeting (para 39).

[86] In this Tribunal it has been held that where the Crown has tainted the dealings such that a First Nation's understanding or intention cannot be relied upon, then a bargain is by definition exploitative (*Makwa Sahgaiehcan First Nation v Her Majesty the Queen in Right of Canada*, 2019 SCTC 5 at para 157 [*Makwa Sahgaiehcan*]). In its most recent decision which considered an impugned bargain, *Kahkewistahaw First Nation v Her Majesty the Queen in Right of Canada*, 2022 SCTC 5, the Tribunal determined that when a First Nation decides to surrender its land, the "decision is to be respected unless the Claimant's understanding of the terms of the surrender was inadequate or the decision to surrender … was so foolish or improvident that it constituted exploitation" (para 47).

[87] In *Southwind v Canada*, 2021 SCC 28, 459 DLR (4th) 1, the Supreme Court of Canada restated the content of the Crown's fiduciary duty applicable to *Indian Act* reserves in a surrender:

> The fiduciary duty imposes the following obligations on the Crown: loyalty, good faith, full disclosure, and, where reserve land is involved, the protection and preservation of the First Nation's quasi-proprietary interest from exploitation. The standard of care is that of a person of ordinary prudence in managing their own affairs. In the context of a surrender of reserve land, this Court has recognized that the duty also requires that the Crown protect against improvident bargains, manage the process to advance the best interests of the First Nation, and ensure that it consents to the surrender. [citations omitted; para 64]

d) Discussion

i) Was the surrender foolish or improvident when viewed from the Band's perspective at the time?

[88] The Claimant submits that the bargain was foolish and improvident when one considers the significant disparity in quality between the Surrender and the Exchange Lands, such that Canada ought to have refused its consent to the surrender proposed.

[89] The Exchange Land, the Claimant argues, was of much poorer quality than the Surrender Land. Jackfish Lake was pristine, while Birch Lake and Helene Lake were shallow, weedy, muddy, had few fish and were prone to winter kill. There was little recreational or cottage potential on the Exchange Land, and no water-based activities of any kind were possible in the murky, weed-filled water. The Exchange Land contained no sand beaches and had no agricultural or timber value

despite its great size. Further, much of the shoreline was inaccessible by road. Additionally, the Claimant argues, the development potential of the Exchange Land was significantly lower than that of the Surrender Land. The Province of Saskatchewan was well aware that the Surrender Land was ripe for recreational development due to the aforementioned Baker Report and the Brown Report.

[90] The evidentiary record sufficiently establishes, however, that the noted disparity in quality was reasonably offset, considering the Band's perspective at the time. The Exchange Land was 20 times larger. 207 acres of land at Jackfish Lake was exchanged for 4,970 acres at Birch Lake and Helene Lake. One objection to the proposed sale in 1958 was that a reduction would make the reserve too small for the needs of the Band. This concern was addressed with the size of the Exchange Land. The Exchange Land was neither remote nor inaccessible. It was close to the town of Glaslyn and accessible from Highway 4. The Exchange Land was also suitable for growing slough hay, limited livestock grazing, some hunting and trapping and some development potential in the nature of large acreage locations for residential structures associated with the surrounding agricultural use land.

[91] A second objection to the proposed sale in 1958 was that the sale of the land would close off access to fishing grounds used by the Band. This concern was addressed by the 8,803 acres of IR 159 which remained in possession of the Saulteaux First Nation after the exchange. This remaining portion bordered Murray Lake which provided good fishing. Further, the sum of $20,000 was paid in addition to the Exchange Land and the First Nation obtained mineral rights to 640 acres of the Exchange Land. These mineral rights were assessed as more attractive than the mineral rights in the 207 acres of the Surrender Land.

[92] The Claimant further submits that the bargain was foolish and improvident considering the significant disparity in value between the Surrender and the Exchange Lands that the Crown would have known had it determined the respective values at the time. On this issue, Alana Kelbert testified as an expert witness on behalf of the Claimant. Alana Kelbert is employed by DEMA Land Services, an Alberta-based property consultancy. She was qualified on consent "to give expert evidence in current and historical land valuation and historical loss of use determinations in western Canada" (Joint Plan of Expert Hearing, filed March 31, 2021, at 5). Alana Kelbert

testified that the Surrender Land was worth $48,100 in 1960, whereas the Exchange Land was worth $9,700. Even with the addition of a $20,000 cash payment, the Claimant argues that the sale price received by the First Nation was substantially lower than what the Surrender Land was worth, such that Canada should have refused its consent to the proposed surrender.

[93] Two further experts opined, however, on the value of the Surrender Land and the Exchange Land at the time of surrender. Norris Wilson testified as an expert on behalf of the Claimant. Norris Wilson is the Senior Director, Research Valuation and Advisory, of Altus Group Limited, an international property appraisal firm. He was qualified on consent to "give expert evidence regarding historical and current date valuation" of the lands that are the subject of this Claim (Joint Plan of Expert Hearing, filed March 31, 2021, at 4). Hal Love testified as an expert on behalf of the Respondent. He is the owner of Hal Love Real Estate Advisory Services. Hal Love was qualified on consent "to give expert evidence pertaining to highest and best use studies, First Nation reserve and non-reserve retrospective and current date land appraisals (including agricultural and recreational), and loss of use studies" (Joint Plan of Expert Hearing, filed March 31, 2021, at 5). The opinion of both experts is that at the time of surrender, considering the respective values of the Surrender Land and the Exchange Land, the bargain was fair and reasonable from the perspective of the Band.

[94] Norris Wilson testified that at the time of surrender, the value of the Surrender Land was $8,300–9,300 and the value of the Exchange Land was $5,900–7,100. Factoring in the $20,000 cash payment to these calculations renders the value received in exchange at $25,900–27,100. Similarly, Hal Love testified that in his opinion, the value of the Exchange Land was more lucrative than what was surrendered. He valued the Surrender Land in 1960 at approximately $4,550 and the Exchange Land at approximately $21,000, without factoring in the $20,000.

[95] The opinion of Alana Kelbert is substantially different from those of the other experts. This is explained in part by the approaches used to advance their respective opinions. Both Hal Love and Norris Wilson employed the direct comparison approach (DCA) to determine the value of the Surrender Land at the time it was surrendered. The DCA recognizes the principle of substitution which assumes that a buyer will not pay more for one property than for another that is equally desirable. Through this approach, the appraiser applies a comparative analysis of similar properties

to the subject property that have recently been sold, are listed for sale or are under contract. This approach focuses on similarities and differences that affect values.

[96] Alana Kelbert employed a combination of the subdivision development approach (SDA) and the DCA to determine the value of the Surrender Land. Alana Kelbert described the SDA as a "discounted cash flow analysis to value vacant bare land that has imminent potential for subdivision" (Hearing Transcript, September 28, 2021, at 158). Essentially, the appraiser provides an estimate of the value of a parcel of land by analyzing potential costs and potential revenues of the hypothetical subdivision and sale of the parcel.

[97] Hal Love testified that the SDA can be a useful process for valuing lands which are ripe for development or undeveloped tracts ready to be immediately developed for urban purposes but that it was an inappropriate method to value raw land where the development is not immediate. In 1960, the Surrender Land was not ripe for immediate development despite a stated potential for recreational development. It was without an applicable subdivision or development agreement. In these circumstances, too much speculation is required on such critical variables including the maximum number of lots, a committed developer, municipality buy-in, costs, revenues, cash flow, approvals, regulations, third party contracts and credit. There is inherent difficulty in assessing such determinative factors accurately, rendering the SDA less reliable than the DCA when valuing lands that are not subject to an executed subdivision or development agreement. For an assessment of the Surrender Land's historical value, therefore, I consider a pure DCA assessment to be the preferable methodology. Considering the value of the Surrender Land and the Exchange Land at the time of surrender, as estimated by Hal Love and Norris Wilson using the DCA, the bargain was fair and reasonable from the Band's perspective.

[98] For these reasons, I have concluded that the surrender and exchange negotiated by Saulteaux and Saskatchewan was neither foolish nor improvident when viewed from the Band's perspective at the time, such that Canada did not breach its fiduciary duty to the Band by consenting to the surrender proposed.

ii) Was the Band's understanding of the terms of the surrender inadequate?

[99] The Tribunal recently considered the meaning of "adequate understanding" in the context

of consent to a surrender for sale (*Kahkewistahaw First Nation v Her Majesty the Queen in Right of Canada*, 2022 SCTC 5). In 1944, Crown officials approached the Kahkewistahaw First Nation to request the surrender of 1.5 acres of Indian Reserve No. 72A to divert a road which was prone to flooding. Rather than surrender the 1.5 acres, the First Nation decided to surrender the whole of the reserve because they were not using it, and they wanted to purchase new reserve land nearer to Round Lake where members fished and their children went to school (para 23). Despite finding that the Crown "could have better guided Kahkewistahaw" (para 49) during the surrender, including by informing the First Nation of the potential to lease out the surrendered land and still have enough money in its accounts to purchase land where it desired, the Tribunal found that the First Nation "decided on its own volition to surrender the land for sale for its own determined best interests" and that the Crown was obliged to refuse its consent "only if the sale represented an exploitative bargain" (para 51). The Tribunal made this determination in an effort to "strike the stated balance between the two pillars of autonomy and protection" found in *Blueberry River* (para 47).

[100] The Claimant argues that the Crown did not take the necessary steps to ensure that the Band's understanding of the terms of the surrender and exchange was adequate thereby failing to ensure that their consent to the surrender for sale was free and informed. The Respondent argues that, as an active participant in negotiating the terms of the surrender and exchange, the Saulteaux First Nation conducted itself as an informed and independent party.

[101] I am satisfied that the Band's understanding of the terms of the surrender was adequate. The documentary evidence demonstrates that in 1959 the Saulteaux Band Council set out terms and conditions to the bargain that had not been historically offered by Saskatchewan. The documentary evidence further demonstrates that Canada recommended the proposal upon the request of the Band, after consideration and belief that it was fair and reasonable and of benefit to the Band, and made reasonable efforts to conduct the vote on the proposed surrender in a manner that promoted informed participation by Band members.

[102] The Saulteaux First Nation understood Saskatchewan's desire to purchase its reserve land as early as 1947. The Band opposed Saskatchewan's efforts in 1947. Both the Brown Report in the early 1950s and the Baker Report in 1956 contributed to the continued interest by

Saskatchewan to acquire the Surrender Land for a provincial park. The Band opposed Saskatchewan's efforts again in 1958.

[103] In late 1959, however, the Band Council took steps to open negotiations with Saskatchewan for the sale of certain portions of IR 159, for the first time with specific terms. At a meeting held at the home of Chief Katcheech on October 12, 1959, the Band Council defined the terms and conditions of the bargain it required. The Band Council proposed that designated portions of the reserve land would be exchanged for land bordering Helene Lake and Birch Lake, a $20,000 payment and mineral rights. It was in response to the Band Council's proposal that Saskatchewan set out its own proposal in a document dated October 29, 1959, to the Saulteaux Indian Council "for [the] exchange of Indian Reserve lands on Jackfish Lake for lands in the Provincial Forest at Birch Lake." Saskatchewan's proposal was refined with clarity and detail, but it essentially accepted the terms of sale set out by the Band Council. It was generally agreed by the Saskatchewan Cabinet that the offer made by the Band Council appeared generous, but it was approved in principle on October 30, 1959. Direction was nonetheless given by the Cabinet to the Natural Resources Department to give consideration to reduce the offer if at all practical. The offer was not reduced but rather stayed true to the conditions of sale originally proposed by the Band Council.

[104] On November 2, 1959, the Saulteaux Band Council prepared a BCR stating that Saskatchewan's proposal "has been read and is fully understood by us. Said proposal is accepted and it is our request that the Indian Affairs Branch proceed with the preparation of the necessary documents for the surrender vote." By letter dated November 5, 1959, to the Chief of Reserves and Trusts Division (Canada) the Regional Supervisor (Canada) enclosed the proposal for the exchange of land and the BCR of its acceptance. He recommended its approval without hesitation stating his belief that the "transaction will definitely benefit the Indians," the proposal "is very fair and reasonable," and that "the 4,600 acres which the Indians would gain in this transaction would be suitable for livestock raising to a greater extent than the 207 acres that the Province wish to acquire for recreational purposes."

[105] On two occasions the federal government reminded both provincial and federal officials that the decision to surrender the land at Jackfish Lake belonged to the Saulteaux First Nation. On

November 25, 1959, the Deputy Minister in the Department of Citizenship and Immigration (Canada), wrote to the Deputy Minister of Natural Resources (Saskatchewan), to say that the proposal was "generally acceptable, but the Department can make no definite commitment until a surrender is obtained from the Band" (Ex-2, Tab 145). On December 7, 1959, the Chief of Reserves and Trusts Division (Canada), wrote the Regional Supervisor (Canada) to note that, as late as August 1959 the First Nation held a vote which showed "most of the voting members favoured leasing the land" and suggested that "while the Band Council favours the proposed exchange, the majority could well disapprove."

[106] By memorandum dated December 30, 1959, the Chief, Reserves and Trusts Division (Canada), asked of the Superintendent, Battleford Agency "that the proposed surrender meeting be given the widest publicity possible in order to insure that as many voting members attend as is possible to have" (Ex-2, Tab 166).

[107] On January 25, 1960, a meeting of the Saulteaux Band was held for the purpose of taking a vote on the proposed surrender. The minutes of the meeting state that an interpreter was chosen on the recommendation of the Band Council and was sworn to interpret the meeting from Cree to English and from English to Cree. The evidence demonstrates that English and Cree were the main languages of the Band at the time. Elder Johnny Night testified that while his father and grandfather spoke English, the main language they spoke was Cree and Cree was widely spoken in the community in the 1950s and 1960s. Elder Marie Child, born in 1931, testified in Cree that her parents spoke Cree. Elder Mary Wegner, born in 1946, testified in English that she speaks both English and Cree, and that her ancestors spoke Cree. Elder Madeline Martell, born in 1944 and the great niece of Chief Alex Katcheech, testified that she speaks English, Cree and can understand Saulteaux, and that her father spoke Cree, English and French, while her mother spoke Cree, Saulteaux and English.

[108] The Indian Superintendent of the Battleford Agency asked those at the meeting if they were satisfied with the selection of the interpreter and there were no objections. The terms of the surrender were read by the Indian Superintendent and translated by the interpreter. Following the translation of the document from English to Cree, the Indian Superintendent asked if the conditions had been understood and if anyone had any questions. There are no recorded questions. Voting

was carried out. The result was 52 votes in favour of surrender and 8 votes against.

[109] Elder Night testified that "a lot of people thought that they were leasing the land" (Hearing Transcript, April 14, 2016, at 58). Since 1956, the Saulteaux First Nation expressed that there might be a possibility of some form of lease offered to Saskatchewan for the provincial park. On August 7, 1959, at a Band meeting, most of the voting members favoured leasing the land. Significantly, however, on October 12, 1959, the Saulteaux Band Council proposed specific terms of sale to Saskatchewan that had yet to be considered by the Band when most of the voting members favoured leasing. These terms were accepted by Saskatchewan. Elder Night testified that his father knew when he attended the meeting to vote on the proposed surrender that the Surrender Land was to be sold, not leased. Members of the Band may have thought at one time prior to October 12, 1959, that the land would be leased, but they voted on a sale with conditions to that sale put forward by their Council, after those conditions were translated to them by a qualified interpreter approved by them. Of the 60 members of the Band who voted on the proposal made by the Band Council, 52 were in favour of the surrender.

e) Conclusion

[110] For these reasons, I am satisfied that the Band's understanding of the terms of the surrender was adequate.

B. Did the conduct of the Crown taint the dealings in a manner which made it unsafe to rely on the Band's understanding and intention?

[111] The Claimant argues that the Crown's conduct was tainted by accepting the false representations by Saskatchewan that the Band was interested in a surrender despite knowing that the Band conclusively established at multiple meetings that there was no willingness on the part of the Saulteaux people to surrender its key reserve land on the shores of Jackfish Lake. The surrender transaction tainted the dealings to such an extent, it is submitted, that the Band's consent is vitiated and therefore cannot be relied upon as indicative of the Band's consent. I disagree.

[112] This Tribunal, as well as other courts, have previously considered what amount of malfeasance by the Crown rises to the level of "tainted dealings" such that a First Nation's consent to a surrender is vitiated.

[113] In *Makwa Sahgaiehcan*, the Tribunal determined that dealings between the Crown and the Makwa Sahgaiehcan First Nation had been tainted, such that the Makwa Sahgaiehcan First Nation's understanding and intention behind a series of surrenders could not be relied upon. In that case, the Tribunal found the Crown had favoured the interests of squatters by counselling the Makwa Sahgaiehcan First Nation that the only solution to the growing trespass problem was to surrender part of its reserve and make it available for settlement, despite the Crown bearing a fiduciary duty to protect the reserve and there being no legal obligation to surrender it (para 157).

[114] In *Doig River First Nation and Blueberry River First Nations v Her Majesty the Queen in Right of Canada*, 2015 SCTC 6, the Tribunal determined a breach of Canada's fiduciary duty for failing to obtain the subsurface rights in a parcel of land exchanged for reserve land surrendered by the First Nation. By leaving these rights with the province, the Crown made the First Nation vulnerable to the province or its designees exploring for minerals, taking timber, setting up works, and constructing infrastructure on the replacement reserves to serve subsurface harvesting operations (para 162). This meant that the provision of the replacement reserves "did not achieve [the First Nation's] intended purpose" to use the land for "trapping, hunting, growing hay and pursuing its traditional culture," and that the First Nation only acquiesced to the surrender proposal because it had not understood the full consequences of surrender (paras 163, 166–67).

[115] In *Chippewas of Kettle & Stony Point v Canada (AG)*, 1996 CarswellOnt 4447, 141 DLR (4th) 1, the Ontario Court of Appeal determined that dealings between the Crown and the Kettle and Stony Point Indian Band had not been tainted. The motions judge held that although cash payments made by the prospective purchaser to Band members prior to the surrender vote bore "an odour of moral failure", they did not vitiate the free and informed consent of the members (para 26).

[116] Since at least 1956, the majority of the Saulteaux First Nation favourably considered the leasing for camping of that small part of the reserve which is adjacent to Jackfish Lake (section 10). Objections to the surrender of all of its Jackfish Lake waterfront reserve land was expressed for at least the second time at a Band meeting on March 17, 1958, in the presence of Superintendent of Reserves and Trusts (Canada). The documentary evidence suggests that Saskatchewan officials were not present at this meeting. Most of the voting members continued to favour leasing the land

at a Band meeting held August 7, 1959.

[117] After its objection to the surrender proposed in 1958, Canada advised Saskatchewan that it would not serve any good purpose to re-open the talks with members of the First Nation unless it had a "very generous offer" to make. Saulteaux was consistent in that it would not agree to a straight sale of its land as to date had been requested by Saskatchewan. The Band Council document in October 1959, sets out for the first time how such a transaction could benefit the Band members, from the Band Council's perspective.

[118] Canada did not accept a representation by Saskatchewan that the Band was interested in a surrender. Rather, it accepted this representation from the Band Council. The November 2, 1959, BCR confirmed the Band Council "fully understood" and "accepted" the proposed transaction which included consideration for the surrender consistent with the Band Council document.

[119] Canada considered the proposal to be "fair and reasonable" and "of benefit" to the Saulteaux First Nation such that it was appropriate for the proposal to move forward to a members' vote. In doing so, Canada considered the mineral rights the Saulteaux First Nation would gain on 640 acres in the exchange and that the 4,600 acres which the Band would gain would be suitable for livestock raising to a greater extent than the 207 acres that the Province wished to acquire for recreational purposes. It acknowledged a specific possibility that the majority of the members could disapprove, given their favouring of leasing the land expressed on August 7, 1959. Considering the stated understanding and intention of the Band Council and its conclusion on the fairness of the proposed transaction set out above, Canada approved the request of the Band Council Resolution. In doing so, in my view, Canada properly struck the delicate balance between the two stated pillars of autonomy and protection.

[120] The Claimant further argues that Canada's role in what it refers to as the "bait and switch" of surrender documents tainted the dealings in a manner that made it unsafe to rely on the Band's understanding and intention.

[121] On December 7, 1959, the Chief of Reserves and Trusts Division (Canada), confirmed in writing to the Regional Supervisor for Saskatchewan (Canada), and Superintendent of the Battleford Agency, that his office had been communicating with the Agency office with respect to

a smaller, more northerly parcel of IR 159 (section 10) that the Saulteaux First Nation would like to lease for summer resort purposes. The documentary evidence does not include any other land exchange proposals by the Province but for its October 29, 1959, proposal for acquiring the 207 acres of reserve land. The Chief of Reserves and Trusts Division (Canada) recommended that the surrender for lease documents be withheld, had they not yet been presented to the Band, as they conflicted with the exchange to the Province of the 207 acres in its proposal.

[122] On December 21, 1959, the Regional Supervisor for Saskatchewan (Canada) wrote to the Superintendent of the Battleford Agency, expressing confusion and requesting an explanation as his office thought the Saulteaux Band wanted to lease this smaller area for summer resort purposes. On December 23, 1959, the Superintendent responded, writing that his office returned the surrender document for a proposed lease to headquarters as "[s]ince the Government of Saskatchewan's second proposal for acquiring approximately 207 acres of reserve land in exchange for other Provincial lands, as well as other conditions previously set forth, the Indians are no longer interested in leasing." There is no further correspondence in the documentary record or evidence regarding this issue.

[123] The Claimant submits that Canada should have presented both surrender options to the Saulteaux First Nation; an absolute surrender for sale of the 207 acres and a surrender for lease of the smaller area of 83 acres for summer resort purposes. Instead, it is submitted, Canada buried the option to surrender to lease only the northern parcel of IR 159. In doing so, it is argued, Canada tainted the dealings rendering it unsafe to rely on the Band's understanding and intention when consenting to the absolute surrender on January 25, 1960. I disagree.

[124] As recently as August 1959, most of the voting members of the Band favoured leasing the most northern area of IR 159 for summer resort purposes and not a straight surrender for sale of a larger portion of IR 159. The documentary evidence reflects a direction by Canada to Saskatchewan in 1958 to cease surrender efforts unless it was prepared to offer something generous to the Saulteaux First Nation, beyond a straight surrender for sale. In October 1959, the Band Council advised Saskatchewan of the conditions it needed for this bargain to be in its members' best interests. Saskatchewan accepted the Band Council's terms and for the first time during the years of negotiation over this land, Saskatchewan offered the Band more than a straight

surrender.

[125] As of December 7, 1959, the surrender documents for a proposed lease of Saulteaux land were returned because Canada believed that the Saulteaux First Nation was no longer interested in leasing given Saskatchewan's second proposal, namely the consideration now being offered by Saskatchewan for a surrender of 207 acres. The documentary evidence does not, therefore, support a conclusion that Canada concealed a surrender for lease option in favour of an absolute surrender. Rather, Canada presented the second proposal for a vote, at the request of the Band Council. Considering their opinion expressed in August 1959, the voting members of the Saulteaux First Nation understood that leasing a smaller portion of IR 159 for summer resort purposes was an option when they attended the January 25, 1960, meeting for the purpose of taking a vote on the proposed surrender of the 207 acres of IR 159. It was within their right to express their preference to do so by voting against the surrender proposal. A majority of the members had expressed their objection to selling the 207 acres in the past. For the first time, however, they were asked to vote on the sale with conditions designed by their Council. Of the 60 voting members, 52 voted in favour of approving the surrender proposal as presented. The evidentiary record does not therefore support a finding that presenting a vote only on the proposed surrender of the 207 acres of IR 159 vitiated the free and informed consent of the members.

[126] I have concluded that the Band's understanding of the terms of the surrender was adequate. The evidentiary record sufficiently establishes that Canada had good reason to believe that the Saulteaux First Nation wished to surrender the Surrender Land for sale to the Province, on specific defined terms. Canada did not conceal a proposal to lease a smaller portion of Saulteaux land. On January 25, 1960, the members of the Saulteaux First Nation attended a surrender meeting. They knew that they were going to be voting on a surrender for sale, not a surrender for lease. They further knew that they could vote against the sale but the vast majority did not. It is therefore reasonable to infer that the majority of the Saulteaux First Nation were no longer interested in leasing the smaller portion of their land for resort purposes, once presented with the option to sell in exchange for larger land, cash and mineral rights.

1. Conclusion

[127] For reasons set out above, I have concluded that there were no tainted dealings on the part

of Canada that would make it unsafe to rely on the Saulteaux First Nation's understanding and intention.

[128] For reasons set out above, I have concluded that the surrender did not constitute an exploitative bargain.

C. Was Canada required to ensure minimal impairment of the Band's interests and if so, did it meet this requirement?

1. Claimant's position

[129] The Saulteaux First Nation argues that Canada, in taking the surrender, was required to ensure that the Band's interest in its reserve was minimally impaired by the surrender because the land was being taken for a public purpose; namely the creation of a provincial park. The Claimant further argues that Canada breached this duty by failing to consider or present a surrender for lease as a viable alternative to a surrender for sale.

2. Respondent's position

[130] The Respondent denies these allegations. It argues that the Claimant is conflating the duties arising from the distinct situations of surrender and expropriation.

3. Law

[131] Although there are some notable predecessors, the concept of minimal impairment in relation to reserve land emerges in *Osoyoos Indian Band v Oliver (Town)*, 2001 SCC 85, [2001] 3 SCR 746 [*Osoyoos*]. Sometime prior to March 1925, a concrete-lined irrigation canal occupying an area of approximately 56 acres was constructed on Osoyoos Indian Reserve Number 1. In 1957, an attempt was made to formalize the interests in the canal land. Order in Council PC 1957-577 was made by the Governor in Council which utilized section 35 of the *Indian Act* to consent to the expropriation, rather than use the powers of expropriation for irrigation contained in the provincial *Water Act*. In 1995, the Osoyoos Indian Band attempted to assess and tax the town of Oliver, which operated the canal, but Oliver objected. This led to litigation. In the lower courts, it was found that the land had been removed from the reserve and could not be taxed. On appeal to the Supreme Court of Canada, this finding was reversed.

[132] In its decision, the Supreme Court of Canada further defined the content of the Crown's

fiduciary duty. The Attorney General of Canada intervened to argue that because an expropriation requires the Crown to act in "the greater public interest," it is effectively released from any fiduciary obligation to Indigenous Peoples in respect of the expropriation of reserve land (*Osoyoos* at para 51). The Supreme Court of Canada disagreed, ruling that "the fiduciary duty of the Crown is not restricted to instances of surrender" (para 52). The court determined that the Crown has significant discretion under section 35 of the *Indian Act* to use reserve land in the greater public interest, but that if the Crown determines an expropriation of reserve land is in the public interest "a fiduciary duty arises on the part of the Crown to expropriate or grant only the minimum interest required in order to fulfill that public purpose, thus ensuring a minimal impairment of the use and enjoyment of Indian lands by the band" (para 52). The court created a two-stage process to legally expropriate reserve land, applying the fiduciary duty only to the second stage:

> In the first stage, the Crown acts in the public interest in determining that an expropriation involving Indian lands is required in order to fulfill some public purpose. At this stage, no fiduciary duty exists. However, once the general decision to expropriate has been made, the fiduciary obligations of the Crown arise, requiring the Crown to expropriate an interest that will fulfill the public purpose while preserving the Indian interest in the land to the greatest extent practicable. [emphasis added; para 53]

[133] The duty to minimally impair an interest on expropriation stems from the fact of the expropriation itself in that it does not arise until the decision to expropriate has been made. Prior to the decision to expropriate, the content of the Crown's fiduciary duty with regard to reserve land is as described in *Wewaykum Indian Band v Canada*, 2002 SCC 79, [2002] 4 SCR 245, and *Blueberry River*. The content of the duty includes: loyalty; good faith; full disclosure appropriate to the subject matter; acting with ordinary prudence in the best interests of the beneficiaries; the protection and preservation of the First Nation's quasi-proprietary interest in the reserve from exploitation; protection against improvident bargains; and the duty to ensure a First Nation consents to a surrender (*Wewaykum Indian Band v Canada*, 2002 SCC 79, [2002] 4 SCR 245 at para 86; *Blueberry River* at para 35). In *Southwind*, the Supreme Court of Canada clarified that "[i]n an expropriation, the obligation to ensure consent is replaced by an obligation to minimally impair the protected interest" (emphasis added; para 64).

[134] The Tribunal has similarly applied *Osoyoos*. In *Tobacco Plains Indian Band v Her Majesty the Queen in Right of Canada*, 2017 SCTC 4, the Tribunal found that a 1915 expropriation of

reserve land breached the fiduciary duty by failing to "make any effort to minimally impair [the reserve] while administering the taking" (para 195). In *Makwa Sahgaiehcan*, the Tribunal had to consider a series of surrenders and expropriations of the Makwa Sahgaiehcan First Nation's reserve land, but applied the duty to minimally impair solely to the expropriations (paras 76–79), noting that the fiduciary duties established in *Osoyoos* applied "in the context of a compulsory taking of reserve land" (emphasis added; para 255). In *Williams Lake Indian Band v Her Majesty the Queen in Right of Canada*, 2018 SCTC 6, the Tribunal found that in the context of a 1916 expropriation of 4.37 acres of a provisional reserve in British Columbia, the Crown "had a duty to pursue minimal impairment" and did not breach its fiduciary duties (paras 61, 76).

4. Discussion

[135] The Claimant is attaching its submission on minimal impairment to the planned purpose of the land after surrender, namely for a public park. It argues that because the surrender was for a public purpose, Canada's fiduciary duty of minimal impairment applies. I disagree. It is not the nature of the post-transactional use of the reserve land that triggers the requirement of minimal impairment. Rather, it is the method by which the land is transferred in order to fulfill that public purpose.

[136] The requirement to minimally impair does not arise until the decision to expropriate has been made. An expropriation arises when the Crown makes a unilateral decision to take back designated reserve land for a public purpose. The nature of a surrender is entirely different. A surrender arises when a First Nation makes an autonomous decision to sell or lease the reserve land. In a surrender, the Crown has a fiduciary duty to withhold its consent in an act of protection if the bargain agreed to by the First Nation is exploitative. In a taking, the Crown has a fiduciary duty to minimally impair the First Nation's interest in an act of asserting a right to use reserve land, in the name of the greater public interest. The intention and means by which the reserve land is transacted are different. For this reason, the court has distinguished the nature of the applicable fiduciary duty directing that the obligation to ensure consent in a surrender is replaced by an obligation to minimally impair the protected interest in an expropriation.

[137] By way of exception, the duty of minimal impairment was considered in *Semiahmoo Indian Band v Canada* (1997), [1998] 1 FC 3, 1997 CarswellNat 1316, a case wherein the reserve

land was surrendered. Significantly in that case, however, it was found as a fact that the land was at risk to be expropriated if not surrendered such that the level of pressure meant that the Band "felt powerless to decide any other way" (para 44). It is this compulsory element that triggers the duty of minimal impairment. In this Claim, there was no risk of expropriation. Rather, the Band Council expressed its willingness to exchange a portion of its reserve land at Jackfish Lake for a greater parcel of land at Helene and Birch Lakes, cash and mineral rights. For these reasons, the requirement of minimal impairment does not apply to the January 25, 1960, surrender.

5. Conclusion

[138] For reasons set out above, I have concluded that Canada was not required to ensure minimal impairment of the Band's interests further to the 1960 surrender.

V. IF A VALID CLAIM IS ESTABLISHED, IS THE CLAIMANT ENTITLED TO EQUITABLE COMPENSATION UNDER SECTION 20 OF THE *SCTA* FOR THE SURRENDER AND EXCHANGE OF IR 159?

[139] I have concluded that a valid claim has not been established. For this reason, the Claimant is not entitled to equitable compensation under section 20 of the *SCTA*.

VICTORIA CHIAPPETTA

Honourable Victoria Chiappetta, Chairperson

SPECIFIC CLAIMS TRIBUNAL

TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

Date: 20230118

File No.: SCT-5003-13

OTTAWA, ONTARIO January 18, 2023

PRESENT: Honourable Victoria Chiappetta, Chairperson

BETWEEN:

SAULTEAUX FIRST NATION

Claimant

and

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

Respondent

COUNSEL SHEET

TO: **Counsel for the Claimant SAULTEAUX FIRST NATION**
As represented by Ryan Lake, Sheryl Manychief and Ron Maurice
Maurice Law, Barristers & Solicitors

AND TO: **Counsel for the Respondent**
As represented by Scott Bell, Lauri Miller, Brady Fetch, Jody Lintott, David Culleton and Donna Harris
Department of Justice